

28 March 2023

Case reference IC-218562-L8Z7

Request

You asked us for any information relating to a personal data breach incident involving Arnold Clark Automobiles Ltd ("the data controller").

We have handled your request under the Freedom of Information Act 2000 ("FOIA").

Our response – Disclosable information

The data controller sent a personal data breach report to the Information Commissioner's Office ("the ICO") on 27 December 2022.

Personal data breach cases are set up so that incidents can be triaged and assessed, before escalating if necessary.

The personal data breach team set up a case (reference IC-208358-X9S3) and transferred it to our Cyber Investigations team ("Cyber") for further investigation (investigation reference IC/0026/2023).

The investigation is still ongoing, so there is no information held relating to a final outcome. However, we can confirm we do hold more information about the case as a whole. Please see below for full clarification.

Our response – Withheld information

All other information about this case is being withheld. However, in accordance with FOIA Section 1(1)(a) (the duty to confirm or deny what we hold) we have provided confirmation of what we hold, and we have set out the reasons for why we cannot disclose any more information.

Personal data breach case

The personal data breach case on our case management system contains correspondence between the ICO and the data controller, and various items of meta-data which allow the case to be categorised (eg what the outcome was, completion date, receipt date).

The information we have provided on the first page above is the full extent of details which we can disclose. The rest of the case information is withheld for the reasons set out further below.

Subsequent investigation case

For the purposes of the investigation, we hold the personal data breach case information and also further information received from the data controller. This includes documentation such as reports and other pertinent information and correspondence from the data controller. There are also some relevant items of internal correspondence held by the Cyber Investigations team.

This information is withheld for the reasons set out further below.

General summary

Information about the specifics of the incident and any related correspondence and documentation is being withheld. Please see further below for a detailed explanation of the applicable FOIA exemptions which apply in this case.

In this case, we are withholding information under the following parts of the FOIA:

- FOIA Section 30
- FOIA Section 31

- FOIA Section 44

In this case, please note FOIA Section 30 is about the risks of disclosing information which is being used for the ICO's investigation into this data breach case.

And in this case, FOIA Section 31 and FOIA Section 44 are a wider consideration about the risks of disclosing any information received or obtained by the ICO from external sources for the purposes of any of the ICO's regulatory functions.

FOIA Section 30 - Investigations and proceedings conducted by public authorities

As mentioned, this case is currently being investigated. The information held for the purposes of the ICO's investigation is exempt from disclosure under section 30(2) of the FOIA.

Section 30(2) states:

"(2) Information held by a public authority is exempt information if—

(a) it was obtained or recorded by the authority for the purposes of its functions relating to—

- (i) investigations falling within subsection (1)(a) or (b),*
- (ii) criminal proceedings which the authority has power to conduct,*
- (iii) investigations (other than investigations falling within subsection (1)(a) or (b)) which are conducted by the authority for any of the purposes specified in section 31(2) and either by virtue of Her Majesty's prerogative or by virtue of powers conferred by or under any enactment, or*
- (iv) civil proceedings which are brought by or on behalf of the authority and arise out of such investigations, and*

(b) it relates to the obtaining of information from confidential sources."

Point **(iii)** applies because we are carrying out an investigation under the data protection legislation we oversee, and we have received confidential details from the data controller for the purpose of it. The purposes of the investigation fit in with FOIA Section 31(2)(a) and (c) below.

The ICO is investigating this case for -

- "(a) the purpose of ascertaining whether any person has failed to comply with the law,*
- c) the purpose of ascertaining whether circumstances which would justify regulatory action in pursuance of any enactment exist or may arise,"*

Because we are doing an investigation which fits in with FOIA Section 31(2)(a) and (c), we can rely on FOIA Section 30(2) to withhold the information being used for the investigation.

Public interest test

Section 30 is not an absolute exemption. This means we need to carry out a public interest test.

Factors in favour of disclosure include:

- The public interest in having access to a full extent of information about a personal data breach case and assurance about how the ICO conducts investigations

Factors against include:

- The public interest in ensuring the ICO's ongoing investigations are not weakened or disrupted by the premature or inappropriate disclosure of information

Having considered these factors, we are satisfied that we can rely on section 30 to withhold the information.

Given that the investigation ongoing and is still yet to be resolved, there is a stronger case in the public interest for ensuring the ICO avoids unnecessary disclosure risks, so it can most effectively carry out its regulatory work and reach the most appropriate outcome as soon as it can.

FOIA Section 31 - Law enforcement

The initial data breach report from the data controller, and all incident details and related correspondence derived from the data controller is exempt from disclosure under section 31(1)(g) of the FOIA.

We can rely on Section 31(1)(g) of the FOIA where disclosure:

"would, or would be likely to, prejudice – ... the exercise by any public authority of its functions for any of the purposes specified in subsection (2)."

In this case the relevant purposes contained in subsection 31(2) are 31(2)(a) and 31(2)(c) which state:

"(a) the purpose of ascertaining whether any person has failed to comply with the law" and

"(c) the purpose of ascertaining whether circumstances which would justify regulatory action in pursuance of any enactment exist or may arise ..."

Section 31 is not an absolute exemption, and we must consider the prejudice or harm which may be caused by disclosure.

We also have to carry out a public interest test to weigh up the factors in favour of disclosure and those against.

Prejudice test

The ICO's investigation is ongoing. To release the information you have requested could prejudice the ICO's ability to conduct the investigation in an appropriate manner.

Disclosure at this stage would be likely to damage trust in the ICO, as there is an expectation of confidentiality of information passed on to the ICO, unless there is an overriding factor (see DPA Section 132 explanation below). If we disclose the confidential information in this case, we would discourage engagement and it would be more difficult for us to carry out our regulatory functions.

Disclosure could also jeopardise the ICO's ability to obtain information relating to other cases in the future.

Public interest test

With this in mind, we have then considered the public interest test for and against disclosure.

In this case the public interest factors in disclosing the information are –

- The public interest in having access to a full extent of information about a personal data breach case and assurance about how the ICO conducts investigations

The factors in withholding the information are –

- the public interest in organisations being open and honest with the ICO without fear that their information will be made public prematurely or, as appropriate, at all;
- The public interest in ensuring the ICO's ongoing investigations are not weakened or disrupted by the premature disclosure of information

Having considered all of these factors we have taken the decision that the public interest in withholding the information outweighs the public interest in disclosing it.

Ensuring an appropriate level of confidentiality means that the ICO is best placed to receive information and engagement which will allow the ICO to most effectively carry out its duties and public tasks.

FOI section 44 (& Data Protection Act s132)

Section 44 of the FOIA is also an applicable exemption for any information we have received from the data controller.

Section 44(1)(a) states;

'(1) Information is exempt information if its disclosure (otherwise than under this Act) by the public authority holding it -

(a) is prohibited by or under any enactment'

The enactment in question is the Data Protection Act 2018. Section 132(1) of part 5 of that Act states that:

"A person who is or has been the Commissioner, or a member of the Commissioner's staff or an agent of the Commissioner, must not disclose information which—

(a) has been obtained by, or provided to, the Commissioner in the course of, or for the purposes of, the discharging of the Commissioner's functions,

(b) relates to an identified or identifiable individual or business, and

(c) is not available to the public from other sources at the time of the disclosure and has not previously been available to the public from other sources,

unless the disclosure is made with lawful authority."

Section 132(2) lists circumstances in which a disclosure can be made with lawful authority, however none of them apply here. As a result the information we have from the data controller is exempt from disclosure.

Next steps

You can ask us to review of our response. Please let us know in writing if you want us to carry out a review. Please do so within 40 working days.

You can read a copy of our full review procedure [here](#).

If we perform a review but you are still dissatisfied, you can complain to the ICO as regulator of the FOIA. This complaint will be handled just like a complaint made to the ICO about any other public authority.

You can [raise a complaint through our website](#).

Your information

Our [Privacy notice](#) explains what we do with the personal data you provide to us, and set out your rights. Our retention schedule can be found [here](#).

Yours sincerely



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