

By email

3 March 2023

Case reference: IC-213119-J4H1

We are now in a position to respond to your information request.

Request

In your email you asked the following:

"Please could you provide email correspondence between representatives of the Information Commissioner's Office and South Staffordshire PLC between 1 August 2022 and 27 January 2023.

Please provide the minutes of all meetings between representatives of the Information Commissioner's Office and South Staffordshire PLC between 1 August 2022 and 27 January 2023..."

We asked for clarification on the information you were seeking. You kindly provided the following:

"The area of work I am interested in concerns cyber-attack and customer data breach..."

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

Our response

Following a search of our records, we can confirm we hold a data breach case that matches your description. The investigation into the matters raised is ongoing. We are withholding all of the correspondence we have exchanged with

South Staffordshire Plc (South Staffs Water) pursuant to sections 31 and 44 of the FOIA and further detail on this is provided below.

Section 31(1)(g) of the FOIA

As our investigation is ongoing, we consider the information we hold relating to this incident to be exempt from disclosure under section 31(1)(g) of the FOIA. This section states:

'Information... is exempt information if its disclosure under this Act would, or would be likely to, prejudice – (g) the exercise by any public authority of its functions for any of the purposes specified in subsection (2)'

The purposes referred to in sections 31(2)(a) and (c) are:

- 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

The purposes at section 31(2)(a) and (c) apply when the Information Commissioner is determining whether or not there has been a breach of the legislation we regulate.

The exemption at section 31 is not absolute, and we need to consider the public interest test by weighing up the factors for and against disclosure of the information we hold, as well as any prejudice or harm which may be caused by disclosure.

We believe that disclosure of the information we hold at this time would be likely to prejudice the ongoing co-operation of South Staffordshire Plc with the ICO and discourage future engagement. This in turn would be likely to damage our ability to conduct investigations thoroughly, fairly and proportionately.

We have considered the public interest test for and against disclosure. In this instance, the public interest factors in favour of disclosure are:

- Openness and transparency in the way in which the ICO conducts its investigations and the enquiries made.
- The understandable interest of the public, and those data subjects affected, in being able to see and understand the precise nature of the incident in question.

The public interest factors in favour of maintaining the exemption are:

- The need for the ICO to continue to encourage South Staffordshire Plc, and other data controllers, to report data security incidents to the ICO for investigation.
- To allow the ICO to maintain the trust and confidence of data controllers by affording the information provided an appropriate level of confidentiality. Disclosure of information provided in confidence, or considered to be confidential, would be likely to have a long term detrimental effect on our ability to investigate such incidents in the future.
- Allowing us a 'safe space' in which to consider the information provided, free from external influence, and to ensure the confidentiality of our enquiries and analysis of the incident while the investigation continues.

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, and the information you have asked for is exempt from disclosure under S31(1)(g) of the FOIA.

The ICO has a demonstrable history of sharing information about our enforcement and regulatory activities when it is appropriate to do so, in line with our 'Communication our regulatory and enforcement activity policy', which you can read online [here](#). If we decide to take action against a data controller, it will be published on our website [here](#).

Section 44(1)(a) of the FOIA

This section 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'

In this case, the Data Protection Act 2018, Part 5, section 132 prohibits the disclosure of confidential information that -

- 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.

We do not have lawful authority to disclose to you information provided to us by South Staffordshire Plc as this information was given to us in confidence.

Section 132(3) imposes a criminal liability on the Commissioner and his staff not to disclose information relating to an identifiable individual or business for the purposes of carrying out our regulatory functions, unless we have the lawful authority to do so or it has been made public from another source.

This concludes our response to your request. We understand this response may be disappointing but hope the information provided above is helpful.

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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**For information about what we do with personal data
see our [privacy notice](#)**