

2 May 2023

Reference number: IC-226985-P3C9

Request

You asked us: *"...Please could you assist me with providing any known details around the data breach applicable to Perfect Placement? I understand that they communicated a ransomware breach to the ICO..."*

We received your request on 12 April 2023.

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

Within this letter Perfect Placement may be referred to as the data controller.

Our response

Having searched our records, we can confirm we hold information in the scope of your request.

We received a data breach notification from Perfect Placement on 15 March 2023. The information provided to us within this breach is withheld under section 44 of the FOIA.

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 is exempt from disclosure.

I can also advise that, after considering this data breach notification, the ICO has opened an investigation, which is currently ongoing.

The information contained within this investigation has been withheld because it 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.

When data controllers contact us, there is an expectation that the information they provide to us will be offered a degree of confidentiality. Disclosure of the information within this investigation could result in this, as well as other data controllers/parties, being reluctant to engage with the ICO in the future. This would affect our ability to complete our regulatory functions, including enforcement of the law, which creates a prejudice to the ICO as well as to the public.

As well as this, disclosure of this information could jeopardise the ICO's ability to obtain information relating to this investigation from the data controller. This would affect our ability to conduct the investigation which, in turn, could affect our ability to take regulatory action. Both of these factors creates a prejudice to the ICO as well as to the public.

We also have to carry out a public interest test to weigh up the factors in favour of disclosure and those against. In this case, the public interest factors in disclosing the information are –

- Increased transparency in the way in which Perfect Placement has responded to the ICO's enquiries.
- Increased transparency in the way in which the ICO conducts its investigations.

The factors in withholding the information are –

- The public interest in organisations being open and honest in their correspondence with the ICO without fear that their comments will be made public.
- The public interest in maintaining organisations' trust and confidence that their replies to the ICO's enquiries will be afforded an appropriate level of confidentiality.
- Disclosure could lead to other data controllers not reporting data breaches to us, for fear this information will be disclosed. This is not in the public interest as it will impact negatively on the affected data subjects. It would also limit the ICO's ability to complete our regulatory functions including enforcement of the law.
- The public interest in maintaining the ICO's ability to conduct investigations as it sees fit.

I can also advise that the ICO does already make public the data breaches we receive and investigations we complete. This is available on our [website](#).

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.

Next steps

You can ask us to review 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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