

1 June 2023

ICO Case Reference IC-235406-T7M2

Request

On 30 May 2023 you requested the following information:

Would you be able to provide a list of the approx 90 organisations reported to have registered data breaches please?

According to the title of your email your request refers to reports relating to a data breach reported by Capita. We have dealt with your request in accordance with the Freedom of Information Act (2000).

Response

We have interpreted this as a request for a list of data controllers that have reported personal data breaches to the ICO in relation to the incidents involving Capita which are described below:

<https://ico.org.uk/about-the-ico/media-centre/news-and-blogs/2023/05/ico-statement-on-capita-incident/>

We can confirm that we hold information that falls within scope of your request, but we are withholding the names of the data controllers affected because our investigation is ongoing and the information is therefore exempt pursuant to Section 31 of the FOIA. The exemption at Section 31(1)(g) of the FOIA refers to circumstances where the disclosure of information "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 ..."

Clearly, these purposes apply when the Information Commissioner is considering whether or not a data controller has met its obligations in respect of data protection legislation.

The exemption at section 31 is not absolute, and we must therefore consider the prejudice or harm which may be caused by disclosure of the information you have sought, as well as applying a public interest test by weighing up the factors in favour of disclosure against those in favour of maintaining the exemption.

Given that our investigation into this matter is still ongoing, in considering the prejudice and/or harm that disclosure may cause we have taken into account the factors that would, in our view, impact on the release of the information at this stage.

Firstly, we take the view that to release the information you have asked for could prejudice the ICO's ability to conduct the investigation in an appropriate manner. For example, it is probable that any disclosure at this stage would discourage our ongoing discussions with Capita and the other data controllers affected, including those we are aware of and any that we are not aware of who may be considering whether they need to report to us. This is likely to damage our ability to conduct and conclude the investigation fairly and proportionately.

Disclosure could also jeopardise the ICO's ability to obtain information either relating to this case or others in the future. In our view harm could be caused if a data controller were reluctant to enter into any further discussions if information had already been disclosed in response to information requests or even general enquiries. This is likely to result in other parties being reluctant to engage with the ICO in the future. In addition, any information released at this stage could be misinterpreted, which in turn could distract from the investigation process.

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 –

- Increased transparency in the way in which we carry out our investigations; and
- The interest of the public, and any data subjects who may be affected, in the case and which data controllers are involved.

The factors in withholding the information are –

- the public interest in maintaining data controllers' trust and confidence that their assistance with the ICO's enquiries will be afforded an appropriate level of confidentiality while investigations into a personal data breach report are continuing;
- the public interest in data controllers being open and honest in their correspondence with the ICO, without fear that details provided will be disclosed prematurely, or in some cases, at all;
- the public interest in data controllers being able to come forward and report to the ICO that they have been affected by or involved in a personal data breach without fear that this will be disclosed prematurely; and
- the public interest in maintaining the ICO's ability to conduct the investigation into a personal data breach as it thinks fit, in line with data protection legislation.

In addition, the provisions of section 44 of the FOIA exempt from disclosure under section 1(1) any information which a public authority is legally prohibited from disclosing. Section 44 is an absolute exemption which does not require consideration of the public interest test of the type required by a qualified exemption.

Section 44(1)(a) of the FOIA 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.

The information withheld relates to identifiable businesses and we do not have lawful authority to disclose this information to you. Section 132(3) imposes a criminal liability on the Commissioner and their 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.

Next steps

Please come back to us in the first instance if you would like a clarification or a review of the way your request has been handled. If you remain dissatisfied you can then request a review of our decision under the FOIA or make a complaint about how your request has been handled by writing to the Information Access Team at the address below or email icoaccessinformation@ico.org.uk.

Your request for internal review should be submitted to us within 40 working days of receipt by you of this response. Any such request received after this time will only be considered at the discretion of the Commissioner.

If having exhausted the review process you are not content that your request or review has been dealt with correctly, you have a further right of appeal to this office in our capacity as the statutory complaint handler under the legislation. To make such an application, please write to our FOI Complaints & Appeals Department at the address below or visit our website if you wish to make a complaint under the Freedom of Information Act.

A copy of our review procedure can be accessed from our website [here](#).

Your rights

Our [privacy notice](#) explains what we do with the personal data you provide to us and what your rights are, with a specific entry, for example, for [an information requester](#). Our retention policy can be found [here](#).

Yours sincerely,



Information Access Team
Risk and Governance Department, Corporate Strategy and
Planning Service
Information Commissioner's Office, Wycliffe House, Water
Lane, Wilmslow, Cheshire SK9 5AF
ico.org.uk twitter.com/iconews
Please consider the environment before printing this email
**For information about what we do with personal
data see our [privacy notice](#)**