

25 May 2023

ICO Case Reference IC-232169-N7W9

Request

On 11 May 2023 you asked us to provide all information we hold about a 'data hack' that occurred in October 2022 involving the Morton Media Group Ltd, including whether or not this was reported to the ICO (and, if so, when it was reported).

We have dealt with your request in accordance with the Freedom of Information Act (2000).

Response

We can confirm that Morton Media Group Ltd reported a data breach to the ICO, which occurred in October 2022. The breach was reported to us on 18 November 2022.

All of the other information that we hold about this case has been withheld in accordance with Section 31 and Section 44 of the FOIA. More details about what has been withheld under each exemption and have been provided below.

Information withheld – FOIA Section 31

Information created by the ICO in relation to this matter has been withheld pursuant to Section 31(1)(g) of the FOIA. This is an exemption relating to information which, if disclosed, would or would be likely to cause prejudice to our ability to regulate the laws we oversee.

Specifically, 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.

In this case the public interest factors in favour of disclosing the information are as follows –

- Increased transparency in the way in which we carry out our investigations; and
- The interest of the public, and those data subjects affected by this incident.

The public interest factors in maintaining the exemption are as follows –

- We consider that disclosure of this information would be likely to compromise our ability to conduct future investigations and therefore affect the discharge of our regulatory function in vital areas, including our ability to influence the behaviour of data controllers and to take formal action.
- There is public interest in us being able to maintain effective and productive relationships with the parties we communicate with. It is essential that organisations continue to engage with us in a constructive and collaborative way without fear that the information exchanged between us will be made public if it is inappropriate to do so.
- There is a public interest in the ICO maintaining effective working relationships with other data controllers based on the confidential sharing of relevant information to help facilitate compliance with the legislation we regulate.

Having considered the arguments both for and against disclosure we do not find that there is sufficient weight in the arguments that favour disclosure.

Disclosure of the requested information would be likely to be prejudicial to our regulatory function as it would impact upon our ability to effectively carry out investigations of this nature both now and in the future.

Information withheld - FOIA Section 44 (and DPA s132)

Information provided to us by Morton Media Group Ltd. about this matter has been withheld under the provisions of section 44 of the FOIA which places prohibitions on disclosure. This exemption is an absolute exemption, which does not require a consideration of the public interest test of the type required by the qualified exemptions.

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'*

The enactment in question is the Data Protection Act 2018 and specifically section 132(1) of part 5 of that Act. This 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 the circumstances in which a disclosure can be made with lawful authority, however we find that none of them apply here. As a result the information is exempt under the FOIA and withheld from our response.

This concludes our response to your request.

Next steps

Please come back to us in the first instance if you would like a clarification 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,



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