

22 June 2023

ICO Case reference: IC-234892-Z0G7

Request

In your email of 24 May referring to Shiseido UK Ltd you said: *"We act on behalf of the above noted client. It is our understanding that you currently hold 'personal data' pertinent to the client relating to your investigations into Shiseido UK Limited cyber-attack that occurred on or around the 14th April 2022.*

It is our understanding that Shiseido UK Limited experienced a cybersecurity incident that affected our client's information.

As such our client has instructed us Under the Freedom of Information Act, to request from you all documents in relation to the investigations into this matter including any report or decision from the ICO.

We would also like to be advised if this cyber attack was reported to the ICO, and date when it was reported to the ICO."

We received your request on 24 May 2023.

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

Our response

We searched our electronic case management systems based on the information you provided.

I can confirm that a personal data security breach incident was reported to the ICO by Shiseido UK Ltd (Shiseido) on 11 April 2022.

The breach was considered by our Investigations team and a no further regulatory action outcome letter was issued by the ICO on 26 July 2022.

Some information about this incident is published on our website at [Cyber investigations ICO](#).

With regards to your request for a copy of the outcome/decision letter and other documents in relation to the investigations into this matter, this information is exempt information therefore we are withholding it.

In summary we have concluded that there are a number of FOIA exemptions which apply to the information which you have requested i.e. information received from Shiseido (or which has been derived from information received from Shiseido) about the case which is contained in the case documentation and outcome/decision letter.

Please see further explanation about exemptions below.

Information Withheld

FOIA Section 44 (& Data Protection Act S132)

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.

We do not consider it necessary or justifiable to disclose this information as there is no compelling public interest to do so. The Commissioner and his staff risk criminal liability if they disclose information without lawful authority. The right of access under the FOIA is not sufficient to override these important factors and the information is therefore withheld.

FOIA Section 31 -Law Enforcement

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

Prejudice test

Disclosure of the relevant information is likely to result in Shiseido and other parties being reluctant to engage with the ICO in the future, because it would diminish the expectation that communications processed during a case will be kept strictly confidential.

Less engagement would make it harder for us to obtain detailed information and material from data controllers. Without this, we cannot carry out thorough investigations and we cannot ensure that data controllers are complying with the law and following best practice. This means our regulatory capability would be weakened by disclosure.

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 for disclosing the information are –

- increased transparency in the way in which the ICO carries out its investigations and casework.

The factors in withholding the information are –

- the public interest in maintaining organisations' trust and confidence that communications between the ICO and others will be afforded an appropriate level of confidentiality for personal data breach cases and investigations.
- the public interest in maintaining the ICO's ability to conduct investigations and regulatory enquiries as it thinks fit.

There is a strong public interest factor in allowing appropriate confidentiality between the ICO and data controllers, to ensure that incidents are reported, investigations can be properly carried out through appropriate channels, and to allow the ICO to ensure data protection compliance and best practice is followed by data controllers.

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. We have concluded that the relevant information is exempt information by virtue of section 31(1)(g) of the FOIA, therefore we are withholding the information.

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 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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