

01 August 2023

## **ICO Case Reference IC-244504-Z4L5**

### **Request for information**

Request received 12 July 2023:

*"Please provide information relating to the date and time and what was self reported by Capita to the ICO in relation to ALL their data breaches in 2023, broadly but also in regards to the loss of personal information from the Environment Agency Pension Fund."*

Your request has been handled under the Freedom of Information Act 2000 (the FOIA). As you are aware, this legislation provides public access to recorded information held by a public authority unless an appropriate exemption applies.

### **Our response**

We can confirm that we do hold information in scope of your request. We have published an [ICO statement on the Capita incident](#) on our website. You can also view our [Disclosure Log](#) for our responses to other requests about Capita.

The rest of the information we hold within scope of your request is being withheld under section 31 of the FOIA.

### **FOIA Section 31**

The information you have requested 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. Also, we must carry out a public interest test to weigh up the factors in favour of disclosure and those against.

Our investigation into Capita is ongoing. To release the information you have requested could prejudice the ICO's ability to conduct the investigation in an appropriate manner. Disclosure of information at this stage would likely discourage our ongoing discussions with Capita and may damage our ability to conduct and conclude the investigation fairly and proportionately. This would also likely 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 or obstruct the investigation process.

With this in mind, we have then considered the public interest test for and against disclosure of the requested information.

In this case, the public interest factors in favour of disclosing the information are:

- The understandable interest of the public, and those data subjects who may have been affected, in being able to see and understand the nature of the incident and the subsequent ICO investigation;
- increased transparency in the way in which Capita has responded to the ICO's enquiries; and

- increased transparency in the way in which the ICO conducts investigations, improving understanding of the ICO's regulatory functions.

The factors in favour of withholding the information are:

- the public interest in encouraging Capita and other data controllers to self-report data security incidents for ICO to investigate, ensuring ICO's effectiveness as a regulator;
- 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, thus allowing ICO to undertake robust and full investigations;
- the public interest in organisations being open and honest in their correspondence with the ICO without fear that their comments will be made public prematurely or, as appropriate, at all; and
- the public interest in maintaining the ICO's ability to conduct the investigation as it thinks fit.

Having considered these factors, we are satisfied that it is appropriate to withhold the information.

### **Further information**

There is no set amount of time that it takes to complete an investigation as there are a number of variables which affect this. Whilst we are not able to contact individuals when an investigation is completed, the ICO does publish information about the [Enforcement action](#) we take on our website, in line with our [Communicating our Regulatory and Enforcement Activity Policy](#).

With high profile investigations, we are likely to confirm the outcome on our website whether action is taken or not.

This concludes our response to your request.

### **FOI review procedure**

If you are dissatisfied and wish to request a review of our decision or make a

complaint about how your request has been handled you should write to the Information Access Team at [accessicoinformation@ico.org.uk](mailto:accessicoinformation@ico.org.uk), or the postal address below.

Your request for internal review should be submitted to us within 40 working days of your receipt of this response. Any such request received after this time will be considered only 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 and Compliance team at the address given, or visit our website at [Official information concern | ICO](#).

## **Your information**

Our [Privacy Notice](#) explains what we do with the personal data you provide to us and what your rights are. This notice includes entries regarding the specific purpose and legal basis for the ICO processing information that people such as [information requesters](#) have provided to us.

The length of time we keep information is laid out in our [retention and disposal policy](#).

Yours sincerely

Information Access Team

Risk and Governance Department

Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire SK9 5AF

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