

16 August 2023

Our Reference: IC-245926-K3V3

Request

You stated to us: *"We require all documents relating to your investigations into the Leigh Day Solicitors [the data controller] data breach incident that occurred on or around 31/03/2022 and the outcome of your investigations."*

...further requests for information...

1. *copy of the company's data protection policy for the relevant period;*
2. *any relevant notes and documents pertaining to any internal investigation into the breach...;*
3. *a copy of any reports and/or correspondence with the ICO regarding the breach...;*

4. [Redacted]
5. [Redacted]
6. [Redacted]
7. [Redacted]
8. [Redacted]

The above numbers have been to the request by us to make our response easier to follow.

We received your request on 19 July 2023.

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

Our response

Having searched our records, we can confirm that we hold some information in the scope of your request. The ICO received a data breach notification from Leigh Day Solicitors on 3 April 2022. This was handled under case reference IC-164115-H0H0 and it is on this case where we have focused our searches.

In relation to your request for 'all documents relating to your investigations', I can confirm that we do not hold information in the scope of this part of your request. This is because the ICO did not complete a formal investigation into this data breach.

In relation to your numbered questions, please find our response below.

1. We do not hold a copy of their privacy policy, however, a link was provided in their correspondence to us: [Leigh Day Privacy and Cookies Policy | Leigh Day](#). Please note, as this link takes you to their website, it is possible that this is not the same privacy policy used in April 2022. Confirmation about if their privacy policy has changed will need to be discussed directly with the data controller.
2. As explained above, the ICO did not complete a formal investigation into this data breach.
3. This information is exempt from disclosure under Section 44 and Section 31 of the FOIA. More information about this exemption is provided below.
4. [REDACTED] exempt from disclosure under Section 44 of the FOIA.
5. [REDACTED] exempt from disclosure under Section 44 of the FOIA.
6. [REDACTED]
7. [REDACTED] it is exempt from disclosure under Section 44 of the FOIA.
8. [REDACTED]

We can rely on Section 44(1)(a) where:

"(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.

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...

(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.

Disclosure could jeopardise the ICO's ability to obtain information relating to this case. Should we become aware of new information, the ICO may make additional enquiries into this breach. Disclosure of the requested information would likely mean that this data controller would not engage further with the ICO. This limits our ability to complete our regulatory functions, which is not in the public interest.

Disclosure of the requested information is also likely to result in other parties being reluctant to engage with the ICO in the future. This is because disclosure would damage trust with other data controllers and this would discourage

engagement with the ICO. If we have less engagement with data controllers, we cannot regulate as effectively. This makes us less able to effectively deal with personal data breach (PDB) notifications we receive. A lack of trust would also inhibit our ability to carry out our other regulatory tasks set out in the UK GDPR.

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 Leigh Day has responded to the ICO's enquiries; and
- increased transparency in the way in which the ICO handles PDB notifications that we receive.

The factors in withholding the information are:

- 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;
- 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;
- If a breach of confidentiality was made public this may also see individuals refusing to, or not wanting, to contact the ICO. This would mean individuals are unable to invoke their rights which is not in the public interest.
- the public interest in maintaining the ICO's ability to handle (PDB) notifications as it sees fit.

We also feel it appropriate to advise that the ICO also provides transparency around how we handle PDB notifications that we receive as this information is on our [website](#) and in [our privacy notice](#). The outcomes of data breaches are provided in our [data sets](#).

Having considered these factors, we are satisfied that it is appropriate to withhold 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 set out your rights. Our retention schedule can be found [here](#).

Yours sincerely



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