

17 August 2023

ICO Case Reference IC-248673-Q2L5

Request for information

Request received 4 August 2023:

"I would like to make a freedom of information request regarding Capita data breaches that have been reported to the ICO over the last 12 months. Most specifically I am seeking to understand how many breaches may have taken place and how many individuals have been affected by having personal information exfiltrated."

and

"what proportion of the number of people affected by the databreach or breaches are+ living within Aberdeenshire?"

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

Our response

We do hold some information in scope of your request. We are withholding some of the information as per section 21 of the FOIA because it is reasonably accessible to you already. We are withholding other information as per section 22 of the FOIA because we intend to publish the information you have requested. Any other information we hold in scope of your request is being withheld as per section 44 of the FOIA because it was provided to the ICO in confidence in order to assist with our investigations. Further explanation of these exemptions is provided below.

Section 21

You can access some of the information you have requested on the ICO website. Personal data breaches reported to the ICO are published in our [Complaints and concerns data sets](#) on the ICO website at [Personal data breach cases - data sets](#). The current published data sets include information up to and including March 2023. You can search or filter the information in these datasets as required.

Because the information is already reasonably accessible to you, technically it is withheld under section 21 of the FOIA. Section 21 states that we don't need to provide you with a copy of information when you already have access to it. However, we are providing the direct links above for your convenience.

Section 22

We intend to publish some of the information you have requested in future; namely the [Personal data breach cases - data sets](#) referred to above. The current published data sets include information up to March 2023. Datasets of casework from April 2023 onwards will also be published. This means that information in those datasets is exempt from disclosure under section 22 of the FOIA.

This is not an absolute exemption, which means we must consider the public interest in disclosing and withholding the information.

The factors in favour of disclosing the information are:

- Openness about organisations that report personal data breaches to ICO regarding their compliance with data protection legislation.
- Openness regarding the casework of the ICO.
- Openness regarding the action we take in response to personal data breach reports.
- The understandable interest of the public, and those data subjects affected by specific incidents, in the details of data breaches.

The factors in favour of withholding the information are:

- The ICO has a history of regularly publishing this information, and has committed to publishing further relevant datasets which will include the requested information.
- To prepare this information for disclosure earlier than our intended date of publication in response to individual requests would not be an efficient use of resources.
- Controlling the release of this information helps us to ensure it is fair to those who have an interest in the information. Premature release may be seen as unfair, and discourage further engagement by the organisations involved.

Having considered these factors, we are satisfied that it is appropriate to withhold this information intended for future publication.

FOIA section 44

Any further information we hold in scope of your request was provided to the ICO by Capita and so is being withheld under the provisions of section 44 of the FOIA, which places prohibition on disclosure. This exemption 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'

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.”*

The information withheld relates to an identifiable business and we do not have lawful authority to disclose this information to you. In addition, section 132(3) of the DPA 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.

We do not hold information about the location of people who may have been affected by any Capita data breaches. We do not ask organisations to provide this information when they report a breach.

This concludes our response to your request.

Further information

We have published an [ICO statement on the Capita incident](#) on our website. You can also read our responses to other FOIA requests about Capita data breaches on our [Disclosure Log](#). Finally, details of any [Enforcement action](#) taken by the ICO is published on our website.

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, 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
Strategic Planning and Transformation

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For information about what we do with personal data see our [privacy notice](#)