

21 June 2023

IC-237079-X0R0

Request

You asked us:

"We seek details of the investigation and outcome (including any recommendations or action taken) in respect of a data breach that occurred between June 2016 and November 2019. The party involved in the data breach is Surrey and Sussex Healthcare NHS Trust, involving a Surgeon/Registrar, a copy of the notice letter sent to our client is attached."

We received your request on 5 June 2023.

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

Our response

It appears that the ICO did receive a personal data breach report (PDB) from Surrey and Sussex Healthcare NHS Trust which matches the one described in your request.

The report was referred to our Criminal Investigations Team who closed the case as another agency was already investigating the matter. We can confirm that this matter was being investigated by Devon and Cornwall Police. We would therefore recommend that you contact them to seek further information.

Although your request did not specify which recorded information you were seeking we have considered whether we can disclose the PDB report to you. However, this report was sent to the ICO in our role as a regulator and is therefore exempt under section 44 of the FOIA.

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'

In this case, the Data Protection Act 2018, Part 5, section 132 prohibits the disclosure of confidential information that -

- (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.

We do not have lawful authority to disclose to you the information relating to Surrey and Sussex Healthcare NHS Trust as this information was provided to us in confidence. Section 132(3) imposes a criminal liability on the Commissioner and his 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.

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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