

3 August 2023

## **IC-246926-S9K9**

### **Request**

You asked us:

*"I have been made aware that my data has been breached. I would like to know the severity of this so please provide full comprehensive details and report and investigation findings relating to the Capita Pensions Data Breach that occurred in March 2023.*

*This is in relation to Environment Agency Pension fund.*

*Please include information about the following:*

- how was the data stored and what level of protection did the data have*
- how was the data accessed*
- who was responsible for the attack*
- how was the data exfiltrated (how did they take the data)*
- how was this first identified by Capita*
- when were the ICO first notified*
- are you aware if the data has been made available by the attackers (in any way, including but not limited to being published on the dark/deep web)"*

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

### **Our response**

We can confirm that Capita reported a data breach incident to us and we are currently investigating the matter.

We have issued a statement about this here: <https://ico.org.uk/about-the-ico/media-centre/news-and-blogs/2023/05/ico-statement-on-capita-incident/>

We can therefore confirm that, in response to your request, the ICO holds some information regarding the data breach and our investigation into the matter.

However, information regarding the investigation has been withheld because our investigation is ongoing and the information is therefore exempt pursuant to section 31 of the FOIA. Further, we are unable to confirm nor deny whether we hold information in scope of the specific categories of information listed in your request, in accordance with the provisions of section 31(3) of the FOIA.

Please find an explanation of this below.

### **Section 31 FOIA**

The exemption at Section 31(1)(g) of the FOIA refers to circumstances where the disclosure of information "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 ..."

Clearly, these purposes apply in relation to the information that you have requested, given that there is currently an open investigation into the breach reported by Capita.

Section 31(3) provides that: "The duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a) would, or would be likely to, prejudice any of the matters mentioned in subsection (1).

We find that, as the investigation into Capita is still open, confirming or denying whether we hold specific information in relation to the investigation would be premature and would interfere with the open investigation.

The exemption at section 31 is not absolute, however. The duty to confirm or deny depends on the balance of the public interest.

It is our view that the balance of the public interest supports the use of the provision to neither confirm nor deny that the requested information is held. This is because if the ICO were to were to disclose whether we held any specific detail

about the status of an open investigation, this would be likely to harm the investigation process and could lead to Capita being reluctant to cooperate with us.

It is probable that any disclosure at this stage would discourage our ongoing discussions with Capita and the other data controllers affected, including those we are aware of and any that we are not aware of who may be considering whether they need to report to us. This is likely to damage our ability to conduct and conclude the investigation fairly and proportionately.

Further, revealing the status of an open investigation could lead to other parties being reluctant to engage with the ICO in future investigations. In our view harm could be caused if a data controller were reluctant to enter into any further discussions if information had already been disclosed in response to information requests or even general enquiries. This is likely to 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 the investigation process.

It is also necessary to adopt a consistent approach to our response to requests for information about such matters, in the public interest, because any inconsistency could lead to inferences being made about that response, but also could inadvertently lead to conclusions being drawn about other 'neither confirm nor deny' (NCND) responses.

There is a risk that a confirmation or denial - which in itself appears benign - could enable somebody to deduce whether information was in fact held or not in other circumstances where an NCND response had been given. In such circumstances, that deduction could itself prejudice open investigations and proceedings undertaken by the ICO.

It is therefore our view that, irrespective of the specific public interest in transparency in any individual case, the importance of maintaining the integrity of the NCND responses, past and present, is of the greater public interest. Combine this with the public interest arguments specific to this request and I trust it will be clear why our response in the present case must be to neither confirm nor deny that the information you have requested is held by the ICO.

For the avoidance of doubt, therefore, nothing in the above should be taken as being either confirmation or denial that the ICO holds any specific information regarding the investigation as identified in your request.

This concludes our response to your request.

### **Further advice and assistance**

It may be of interest to you to view our recent responses to FOI requests on this topic, as published in our [disclosure log](#) under case references [IC-242510-R7K7](#) and [IC-235406-T7M2](#).

### **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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