

10 July 2023

**Ref: IC-238149-B4L8**

## **Request**

In summary you have requested a copy of our full case file and / or our final outcome letter in respect of a personal data breach by South Yorkshire Housing Association.

We have dealt with your request of 13 June 2023, clarified on 21 June 2023, in accordance with your 'right to know' under section 1(1) of the Freedom of Information Act 2000 (FOIA).

## **Our response**

We can confirm that we hold information within the scope of your request.

The ICO received a report of a personal data breach from the South Yorkshire Housing Association and for this particular incident, we found that further regulatory action was not required in line with our [Communicating our Regulatory and Enforcement Activity Policy](https://ico.org.uk/for-organisations/our-activity/communicating-our-regulatory-and-enforcement-activity-policy) ([ico.org.uk](https://ico.org.uk))

We hold information sent to us from South Yorkshire Housing Association within the scope of your request under case number IC-135283-P3S6. We also hold information sent to South Yorkshire Housing Association by the ICO under the same case number. The information does not contain your personal data. We have therefore considered their disclosure under the FOIA.

We also hold an internal administrative email, which has been considered for disclosure, but we do not feel this is relevant to the request.

## **Information withheld**

The information sent to us by South Yorkshire Housing Association is being withheld from disclosure pursuant to S.44 FOIA.

## **Section 44 of the FOIA**

Section 44 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'

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 the information that was provided to us in confidence in our capacity as regulatory authority.

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.

### **Section 31 of the FOIA**

The information we sent to South Yorkshire Housing Association is being withheld pursuant to Section 31(1)(g) of the FOIA. This exemption applies when disclosure would or would be likely to prejudice our ability to carry out our regulatory function.

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)."

The purposes referred to in sections 31(2)(a) and (c) are -

"(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...”

This exemption is not absolute. When considering whether to apply it in response to a request for information, there is a ‘public interest test’. That is, we must consider whether the public interest favours withholding or disclosing the information.

In this case the public interest factors in favour of disclosing the information are as follows;

- Increased transparency in the way in which we carry out our investigations.
- The understandable interest of the public, and those data subjects affected by this incident in the details of the data breach.

The public interest factors in maintaining the exemption are as follows;

- We consider that disclosure of this information would be likely to compromise our ability to conduct future investigations and therefore affect the discharge of our regulatory function in vital areas, including our ability to influence the behaviour of data controllers and to take formal action.
- There is public interest in us being able to maintain effective and productive relationships with the parties we communicate with. It is essential that organisations continue to engage with us in a constructive and collaborative way without fear that the information exchanged between us will be made public if it is inappropriate to do so.
- There is a public interest in the ICO maintaining effective working relationships with other data controllers based on the confidential sharing of relevant information to help facilitate compliance with the legislation we regulate. Having considered the arguments both for and against disclosure we do not find that there is sufficient weight in the arguments that favour disclosure. We consider that we need a ‘safe space’ in which to fulfil our regulatory function and to determine any regulatory action we may choose to take, without undue external influence.

- Disclosure of the requested information would be likely to be prejudicial to our regulatory function as it would impact upon our ability to effectively carry out investigations of this nature both now and in the future.

## **Review procedure**

If you are dissatisfied with our response under the FOIA you have the right to seek an internal review of our response. To request such a review you should write to the Information Access Team at the address below or e-mail [accessicoinformation@ico.org.uk](mailto:accessicoinformation@ico.org.uk).

Your request for internal review should be submitted to us within 40 working days of receipt by you of this response. Any such request received after this time will only be considered 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 Customer Contact Team at the address given or visit our website if you wish to make a complaint under the Freedom of Information Act.

A copy of our review procedure can be accessed from our website. [here](#).

## **Your information**

Please note that our [Privacy notice](#) explains what we do with the personal data you provide to us and what your rights are.

This includes entries regarding the specific purpose and legal basis for the ICO processing information that people have provided us with, such as an [information requester](#).

The length of time we keep information is laid out in our retention schedule, which can be found [here](#).

Yours sincerely



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