

9 October 2023

Case reference IC-251480-N6J3

Request

You asked us:

"We are now writing to you to ask if you would confirm whether, beyond your past correspondence with us concerning our client, you are investigating these various data breaches by the Ministry of Defence in September 2021. On the basis that you are, we would be grateful if you would clarify what progress you are making and when you expect to conclude the investigation and, if appropriate, then publish your findings. While we accept that you may not be able to give a definitive answer, some indication as to whether you expect to conclude your investigation within, say, the next 3 months, 6 months, 12 months, etc would be helpful, not least so that it will enable us to respond to queries that we have received from our client on this issue.

Alternatively, if you have investigated these breaches, but the investigation has now concluded, we would be grateful if you would confirm the outcome of your investigations and any action taken.

If you are not, and have never been, investigating this matter, we would be grateful if you would make this clear."

We received your request on *11 August 2023*.

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

Our response

We can confirm we are officially investigating this matter. However, at this stage, we cannot disclose any further details about it. Please see below for our explanation.

FOIA Section 31

At this stage, we cannot disclose any information about the status or progress of our investigation, or any indication of the potential outcome.

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.

Prejudice test

We have to consider the potential prejudice to our regulatory work, both in this case, and for future cases.

We believe that disclosing details about the investigation at this stage would discourage the Ministry of Defence from engaging with the ICO. This may jeopardise our ability to reach an appropriate conclusion for this case.

This may also create a precedent that would jeopardise the ICO's ability to obtain information relating to other cases in the future.

Disclosure of investigation details at this stage would also be likely to cause a distraction from the core investigation. It would be likely to lead to further enquiries which would draw resources away from dealing with the core investigative matter.

Public interest test

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 about a high-profile data protection case

The factors in withholding the information are:

- the public interest in maintaining organisations' trust and confidence that the ICO's investigations and enquiries will be afforded an appropriate level of confidentiality at appropriate stages of a case
- the public interest in maintaining the ICO's ability to conduct investigations as it thinks fit

Having considered these factors, we are satisfied that it is appropriate to withhold the information.

We would consider that there is a strong interest in having assurance about the progress of the ICO's investigation, and having assurance about how it has been handled. However, we do consider that there is a stronger interest in ensuring the ICO can carry out its regulatory work for a high-profile case without undue disruption or harm to its investigation.

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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