

4 October 2023

IC-261143-N6M0

Request

You asked us:

"We would be grateful if the ICO could confirm the following:

- 1. Confirmation of the outcome of the investigation and any final decision letter issued to Optionis Group and connected companies to include Parasol*
- 2. Whether the ICO imposed a fine on Optionis Group and connected companies to include Parasol*
- 3. Whether the ICO issued a reprimand to Optionis Group and connected companies to include Parasol*
- 4. Whether the ICO made any recommendations to Optionis Group and connected companies to include Parasol"*

We received your request on 2 October 2023.

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

Our response

We can confirm that the ICO received a breach report from Optionis Group on 12 January 2022. This breach was referred to our Investigations department and the investigation remains ongoing. Therefore, we are unable to provide any information held in relation to the case as to do so may prejudice this and other investigations. We are relying on section 31 of the FOIA to exempt this information from disclosure. We shall now explain this exemption 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 ..."

These purposes apply when the Information Commissioner is considering whether or not a data controller has met its obligations in respect of data protection legislation.

The exemption at section 31 is not absolute, and we must therefore consider the prejudice or harm which may be caused by disclosure of the information you have sought, as well as applying a public interest test by weighing up the factors in favour of disclosure against those in favour of maintaining the exemption.

Given that our investigation into the breach report received from Optionis is still ongoing, in considering the prejudice or harm that disclosure may cause we have taken into account the factors that would, in our view, impact on the release of the information at this stage.

Firstly, we take the view that to release the information you have asked for could prejudice the ICO's ability to conduct the investigation in an appropriate manner. For example, it is probable that any disclosure at this stage would discourage ongoing discussions between the ICO and Optionis, and may damage our ability to conduct and conclude the investigation fairly and proportionately.

Disclosure could also jeopardise the ICO's ability to obtain information either relating to this case or others in the future.

In our view harm could be caused if either party 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.

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 in the way in which Optionis has responded to the ICO's enquiries;
- increased transparency in the way in which the ICO conducts its investigations.

The factors in withholding the information are –

- the public interest in maintaining data controllers' trust and confidence that their replies to the ICO's enquiries will be afforded an appropriate level of confidentiality while investigations are continuing;
- the public interest in data controllers' being open and honest in their correspondence with the ICO about the way they have handled a data breach, without fear that their comments will be made public prematurely or, as appropriate, at all.

Having considered all of these factors we have taken the decision that the public interest in withholding the information outweighs the public interest in disclosing it.

This concludes our response to your request

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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