

25 October 2023

IC-263929-V1F1

Request

We received your request on 12 October. You asked for the following information, regarding a cyber-attack suffered by the Electoral Commission:

- *Whether you are in the process of investigating this incident;*
- *Whether the EC is prohibited from responding to requests for compensation and/or information as a result of your ongoing investigations;*
- *When your investigation is likely to conclude; and*
- *Whether you are able to provide any further information which might be helpful to our clients at this time.*

Your request has been handled under the Freedom of Information Act 2000 (the FOIA). As you are probably aware, this legislation provides public access to recorded information held by a public authority unless an appropriate exemption applies.

Our response

We do hold information within the scope of your request. Please find our response to your queries below:

- We can confirm that we are investigating this incident.
- The ICO does not impose a restriction on data controllers from disclosing information or responding to claims during the course of our investigation, it would be for them to determine what is appropriate in the circumstances.
- We are not able to advise on the date of conclusion at this time.
- We cannot disclose any further information while our investigation is ongoing. The further details of the investigation are exempt pursuant to s.31 FOIA, further detail is provided below.

Information Withheld

Further information about our investigation is withheld because it is exempt from disclosure under section 31(1)(g) of the FOIA.

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" and

"(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.

Our investigation into the Electoral Commission is still ongoing. To release the information you have requested could prejudice the ICO's ability to conduct the investigation in an appropriate manner. Disclosure at this stage would discourage our ongoing discussions between the ICO and the Electoral Commission and would be likely to damage our ability to conduct and conclude the investigation fairly and proportionately.

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

Disclosure is likely to result in other parties being reluctant to engage with the ICO in the future.

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 the Electoral Commission 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 organisations' trust and confidence that their replies to the ICO's enquiries will be afforded an appropriate level of confidentiality;
- the public interest in organisations being open and honest in their correspondence with the ICO without fear that their comments will be made public prematurely or, as appropriate, at all;
- the public interest in maintaining the ICO's ability to conduct the investigation into complaints as it thinks fit, free from unnecessary interference.

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.

FOI review procedure

If you are dissatisfied and wish to request a review of our decision or make a complaint about how your request has been handled you should write to the Information Access Team at the address below or e-mail icoaccessinformation@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 FOIA.

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 that 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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