

4 October 2023

IC-256106-X2V9

Request

You asked us:

"We make a Freedom of Information Request under section 1 of the Freedom of Information Act 2000 ('FOIA') for information regarding the leak of the personal data announced on or around May 19th 2020 reported by, or on behalf of EasyJet.

We also make a further Freedom of Information Request under section 1 of the Freedom of Information Act 2000 ('FOIA') for information regarding the reasons for the decision that has been made.

We would also be grateful for a copy of the full report and decision regarding the matter."

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

Our response

I can confirm that we hold information in scope of this request, and I have attached some of the information to this response. Information relating to the investigation has been withheld under section 31 and the information relating to the outcome decision has been withheld under section 42 of the FOIA. Further explanation has been provided below.

I have attached the letter sent to Easyjet explaining the decision to de-prioritise the investigation at this time. I have redacted some of the personal data from that letter.

FOIA section 31

Some of the information you have requested 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..."

"(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 Easyjet could potentially be reopened. 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 any future discussions between the ICO and Easyjet 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 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 any future 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 Easyjet has responded to the ICO's enquiries; and
- 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; and
- the public interest in maintaining the ICO's ability to conduct the investigation into complaints as it thinks fit,

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

Information withheld – section 42

I can confirm that we hold some information which is subject to legal professional privilege and is withheld from our response in accordance with section 42 of the FOIA.

Section 42(1) of the FOIA states:

"Information in respect of which a claim to legal professional privilege or, in Scotland, to confidentiality of communications could be maintained in legal proceedings is exempt information."

There are two types of privilege covered by the exemption at section 42. These are:

- Litigation privilege; and
- Advice privilege.

We find that the information in scope of your request is subject to advice privilege. This covers confidential communications between the client and lawyer, made for the purpose of seeking or giving legal advice.

Section 42 is not an absolute exemption, so we must consider whether the public interest favours withholding or disclosing the information.

The factors in favour of lifting the exemption include:

- The public interest in the ICO being open and transparent;
- The public interest in transparency about any previous or future investigation into Easyjet

With the public interest factors in favour of maintaining the exemption including:

- The disclosure of legally privileged information threatens the important principle of legal professional privilege;
- Maintaining openness in communications between client and lawyer to ensure full and frank legal advice;

- The disclosure of legal advice could have a chilling effect on both policy officers and legal advisers by dissuading them from discussing such matters in the future in the knowledge that it could potentially be made public.

Taking into account the above factors we conclude that the public interest lies in maintaining the exemption.

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 and EIR. 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

Senior Information Access Officer

