

1 December 2023

Case reference: IC-268335-T4Y5

We are now in a position to respond to your information request of 5 November.

Request

"The Information Commissioner has confirmed that he has dropped his investigation into easyJet following a security incident. An ICO spokesman was quoted in the Sunday Telegraph as saying that the Commissioner had to "make difficult choices about which issues we take forward" and "Having carefully considered this particular case, the Commissioner decided that pursuing enforcement action would not be the best use of our limited resources at this time." I would like to request the following information about this.

1) Confirmation that the decision to drop the investigation was taken by the Commissioner himself as the quote above implies, or if the decision was in fact taken by someone else, who that person was.

2) Any recorded information showing why either Edwards / the decision maker decided to drop the case i.e. emails, notes or other internal messages that set out the reason not to take the investigation any further" "

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

Our response

We understand this request relates to our investigation into the EasyJet data breach of May 2020. We can confirm we hold information within scope of your request. Please find enclosed the information to which you are entitled.

In response to your request in point 1, the decision to de-prioritise the case was taken by Stephen Bonner, Deputy Commissioner Regulatory Supervision. The ICO's scheme of delegations, available online [here](#), describes how the Commissioner's powers and responsibilities are delegated throughout the ICO to facilitate the effective delivery of services and outcomes as regulator.

Please find enclosed the letter of 17 August 2023 notifying EasyJet of the de-prioritisation of the case, signed by Stephen Bonner. This letter was disclosed in response to a previous FOI request but was not available on our disclosure log at the time of your request. It is now available online [here](#).

We have redacted some of the information under section 40(2) by virtue of section 40(3)(a)(i), which is the exemption under FOIA concerning personal information.

We are withholding the information within scope of your request in point 2 under section 42 and further details on this are provided below. One email exchange that is not subject to legal professional privilege has been provided in this response. Some information contained within these emails has been redacted under section 40(2) by virtue of section 40(3)(a)(i).

Section 42 FOIA

The information within scope of your request in point 2 is subject to legal professional privilege and is being withheld 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 this information 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 and we must consider whether the public interest favours withholding or disclosing the information.

Public interest factors in favour of disclosing the information:

- The general public interest inherent in FOIA, i.e. the assumption of disclosure that is associated with the 'right to know' contained in section 1 of the FOIA.
- Openness and transparency in the work that we do and our decision making as regulator.

Public interest factors in favour of maintaining the exemption:

- The disclosure of legally privileged information threatens the important principle of legal professional privilege.
- Disclosing legal advice of this nature would lead to a reticence in seeking advice and the provision of that advice. This could lessen the effectiveness of the advice process and potentially undermine the client's ability to make fully informed legal decisions.

Given the strong inherent public interest in maintaining the principle of legal professional privilege, we have concluded that the public interest favours maintaining the exemption and withholding this information.

Section 40(2) FOIA

Section 40(2) of the FOIA allows a public authority to withhold information from a response to a request when the information requested is personal data relating to someone other than the requestor, and its disclosure would contravene one of the data protection principles. We have redacted this information under section 40(2) by virtue of section 40(3)(a)(i). You can read our employee information disclosure policy online [here](#).

This concludes our response to your information 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 sets out [your rights](#). Our [Retention and Disposal Policy](#) details how long we keep information.

Yours sincerely



Information Access Team
Risk and Governance Department, Corporate
Strategy and Planning Service
Information Commissioner's Office, Wycliffe House,
Water Lane, Wilmslow, Cheshire SK9 5AF
ico.org.uk twitter.com/iconews

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