

07 December 2023

**IC-271174-Y7V4**

**Request**

*You have requested details of a data breach involving Southend-on-Sea City Council.*

We have handled your request 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 confirm that the ICO has been made aware of the breach incident and are in contact with Southend-on-Sea City Council concerning this matter.

We would also confirm that the ICO do hold some information within the scope of your request but are withholding this in accordance with Section 31 of the FOIA as it relates to matters subject to investigation.

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 ..."*

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.

Firstly, we take the view that to release the information you have asked for could prejudice the ICO's ability to investigate relevant matters in an appropriate manner. For example, it is probable that any disclosure at this stage would discourage discussions with those involved. This is likely to damage our ability to conduct and conclude our investigations fairly and proportionately.

Disclosure could also jeopardise the ICO's ability to obtain information either relating to the organisation mentioned in your request or others in the future. In our view harm could be caused if relevant parties were reluctant to enter into any further discussions due to information about them and their case being disclosed in response to information requests or even general enquiries. This is likely to result in these parties being reluctant to engage with the ICO, particularly if they believe that information they provide will routinely be considered for disclosure.

In addition, any information released at this stage could be misinterpreted, which in turn could distract from ongoing investigation processes.

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 ICO conducts its investigations.
- The interest of the public, and any data subjects who may be affected, in issues relating to this particular organisation.

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.

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

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 at [Retention and Disposal Policy \(ico.org.uk\)](#)

Yours sincerely



Information Access Team  
Strategic Planning and Transformation  
Information Commissioner's Office, Wycliffe House, Water  
Lane, Wilmslow, Cheshire SK9 5AF  
[ico.org.uk](http://ico.org.uk) [twitter.com/iconews](https://twitter.com/iconews)  
Please consider the environment before printing this email  
**For information about what we do with personal  
data see our [privacy notice](#)**