

8 January 2023

IC-275087-C4G6

Request

On 6 December 2023 you made the following request:

We refer to the above and make a request under the Act for information relating to the Information Commissioner's investigation into the breach of customer data held by EasyJet in a cyber security incident. This breach was announced on 19th March 2020. We understand that an investigation was commenced by the ICO but that this has now been brought to an end.

We request the following information:

- 1) Why was the decision made to end the investigation into the data breach?*
- 2) What information about the nature of the breach and data affected was gathered?*
- 3) What conclusions, if any, were reached prior to the investigation being brought to an end?*
- 4) What information was provided to the ICO by EasyJet in relation to the cyber attack and access to customer data?*
- 5) What information was provided to the ICO by EasyJet in relation to the measures taken to secure customer data prior to the breach?*
- 6) What information was provided to the ICO by EasyJet in relation to the measures taken to recover and secure customer data after the breach?*
- 7) Did the ICO obtain any report(s) on the adequacy of Easy Jet's cyber security measures at the time of the breach? If so, we request copies of the report(s).*
- 8) Did Easy Jet provide any report(s) to the ICO in respect of the adequacy of their cyber security measures at the time of the breach? If so, we request copies of the report(s).*

Should there be any further information available in relation to the investigation and/or steps taken as a result of the breach, we would be grateful if this could also be provided.

You have asked us to consider this request in accordance with the Freedom of Information (Scotland) Act 2002. Please note this act only applies to Scottish public authorities, so we have instead handled your request under the Freedom of Information Act 2000 (the FOIA).

Response

In relation to point 1 of your request, the investigation has been de-prioritised and we have disclosed some of the information about this decision here:

[IC-268335-T4Y5](#)

This information is technically exempt in accordance with Section 21 of the FOIA as it is already available to you. Some of the information has been withheld under section 40(2) by virtue of section 40(3)(a)(i), which is the exemption under FOIA concerning personal information. Other information has been withheld in entirety under Section 42 and further details on this are provided below.

In relation to the remaining points of your request, where the information is held, it has already been considered as part of a previous request. Some information has been disclosed as part of this request here:

[IC-256106-X2V9](#)

This information is technically exempt in accordance with Section 21 of the FOIA as it is already available to you. This information contains some personal data which has been withheld in accordance with Section 40(2) as mentioned above.

Information relating to the investigation has been withheld under section 31 and information relating to the outcome decision has been withheld under section 42 of the FOIA. Further explanation has been provided below.

Please note that we cannot confirm what we hold in relation to your individual points because to do so would involve disclosing details about withheld information, which includes the nature and extent of our engagement with the data controller and whether or not they have provided particular types of information to the ICO as part of this.

Information withheld - 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 - FOIA Section 40

Some of the information you have requested has been withheld in accordance with Section 40(2) of the FOIA, which exempts information if it is personal data belonging to an individual other than the requester and it satisfies one of the conditions listed in the legislation.

We find that the condition at section 40(3A)(a) applies in this instance: that disclosure would breach one of the data protection principles. The principles are outlined in the General Data Protection Regulation (GDPR) with the relevant principle on this occasion being the first principle as provided by Article 5(1): that personal data shall be processed lawfully, fairly and in a transparent manner.

We do not consider that disclosing this information into the public domain is necessary or justified. There is no strong legitimate interest that would override the prejudice to the rights and freedoms of the relevant data subjects. We have therefore taken the decision that disclosing this information would be unlawful, triggering the exemption at section 40(2) of the FOIA.

Information withheld – FOIA Section 42

Some of the information within scope of your request 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.

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](#) on our website.

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