

16 January 2024

ICO Case Reference IC-277337-N9D6

Request for information

Request received 18 December 2023:

"Sixt Rent A Car Data Breach

...

- *Details of the initial notification made to the ICO by Sixt rent a Car Limited;*
- *Supporting documentation supplied by Sixt rent a Car Limited;*
- *Details of the investigation conducted by Sixt rent a Car Limited;*
- *Details of the findings of the ICO following your investigation, including information regarding the security measures in place both prior and subsequent to the breach; and*
- *Any other information relevant to the breach in question."*

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

Our response

We do hold information in scope of your request. The incident was reported to the ICO and was investigated as a cyber incident, as detailed in our [Cyber investigations](#) datasets. Our investigation was closed on 29 July 2022. We published our outcome letter to Sixt in response to a previous FOI request. This can be found on our [Disclosure Log](#) under request case reference [IC-206299-R4V6](#).

As the information above is already reasonably accessible to you, technically it is withheld under section 21 of the FOIA. Section 21 states that we do not need to provide you with a copy of information when you already have access to it. However, we have provided the links above for your convenience.

All other information we hold in scope of your request is being withheld from disclosure. Information provided to us by Sixt is being withheld because it was provided to the ICO in confidence to assist with our investigations (section 44 of the FOIA). Outgoing correspondence is being withheld because disclosure would or would be likely to prejudice our ability to carry out our regulatory function (section 31 of the FOIA). Further explanation of these exemptions is provided below.

FOIA section 44

Information provided to the ICO by Sixt is being withheld under the provisions of section 44 of the FOIA which places prohibition on disclosure. This exemption is an absolute exemption which does not require consideration of the public interest test of the type required by a qualified exemption.

Section 44(1)(a) of the FOIA states:

*'(1) Information is exempt information if its disclosure (otherwise than under this Act) by the public authority holding it -
(a) is prohibited by or under any enactment'*

The enactment in question is the Data Protection Act 2018 and specifically section 132(1) of part 5 of that Act. This states that:

*"A person who is or has been the Commissioner, or a member of the Commissioner's staff or an agent of the Commissioner, must not disclose information which—
(a) has been obtained by, or provided to, the Commissioner in the course of, or for the purposes of, the discharging of the Commissioner's functions,
(b) relates to an identified or identifiable individual or business, and
(c) is not available to the public from other sources at the time of the disclosure and has not previously been available to the public from other sources,
unless the disclosure is made with lawful authority."*

The information withheld relates to an identifiable business and we do not have lawful authority to disclose this information to you. Section 132(3) imposes a criminal liability on the Commissioner and their staff not to disclose information relating to an identifiable individual or business for the purposes of carrying out our regulatory functions, unless we have the lawful authority to do so, or it has been made public from another source.

FOIA section 31

This exemption applies when disclosure would or would be likely to prejudice our ability to carry out our regulatory function.

The exemption at section 31(1)(g) of the FOIA refers to circumstances where the disclosure of information:

*"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)."*

The purposes contained in sections 31(2)(a) and 31(2)(c) are:

"(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 ..."

These purposes apply when the Information Commissioner considers whether an organisation has met its obligations in respect of data protection legislation.

The exemption at section 31 is not absolute, and so we must consider the prejudice or harm which may be caused by disclosure of the information requested, 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.

We take the view that disclosure of the information requested could prejudice the ICO's ability to conduct investigations in an appropriate manner. For example, it is probable that any disclosure would discourage future discussions between the ICO and Sixt. Disclosure could also jeopardise the ICO's ability to obtain information for future investigations from other data controllers who report a breach to us.

Harm could be caused were the requested information to be disclosed as it is likely to result in Sixt and other data controllers being reluctant to engage with the ICO in the future, negatively impacting our ability to effectively carry out our regulatory work.

With this in mind, we have then considered the public interest test for and against disclosure.

In this case the public interest factors in favour of disclosing the information are as follows:

- Increased transparency in the way in which we carry out our investigations.
- The understandable interest of the public, and those data subjects affected by this incident in the details of the data breach.

The public interest factors in maintaining the exemption are as follows:

- Disclosure of this information would be likely to compromise our ability to conduct future investigations, and would therefore affect the discharge of our regulatory function in vital areas, including our ability to influence the behaviour of data controllers, and to take formal action.
- The public interest in the ICO being able to maintain effective and productive relationships with the parties we communicate with. It is essential that organisations continue to engage with us in a constructive and collaborative way without fear that the information they provide us will be made public if it is inappropriate to do so.
- The public interest in meeting the expectation of non-disclosure of the data controller, and thus maintaining their trust in the ICO, having ascertained their views on this request.

- We consider that the public interest in disclosure of information relating to these matters is fulfilled by the information we have already placed in the public domain.

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

This concludes our response to your request.

Next steps

You can ask us to review our response. Please let us know in writing within 40 working days if you want us to carry out a review.

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

T. 0303 123 1113 ico.org.uk twitter.com/iconews

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