

15 March 2024

IC-291569-X1P6

## Request

In summary, you asked us:

*"Do you have any open or closed cases relating to this organisation [Lynton & Barnstaple Railway Trust]? If you do, please advise what they are concerned with."*

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

## Our response

We have searched our records based on the information you provided and can confirm that we hold information within the scope of your request.

We hold one personal data breach (PDB) report case from Lynton & Barnstaple Railways Trust. This PDB was submitted to the ICO on 29 February 2024. Our investigation into this case is still ongoing and so further detail is withheld under section 31 of the FOIA, which will be explained in more detail below.

We do not hold any personal data or Freedom of Information complaints regarding Lynton & Barnstaple Railway Trust.

It is possible that that such complaints were previously raised with the ICO but that the records were disposed of in line with our [Retention and Disposal Policy](#). Data protection and FOI complaints are held for 2 years. This means that any complaints submitted more than 2 years ago would have been erased in line with this policy.

## Section 31 of the FOIA

As stated above, further detail about our investigation into the PDB reported by Lynton & Barnstaple Railway Trust 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..."*

and

*"(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. Also, we must carry out a public interest test to weigh up the factors in favour of disclosure and those against.

Our investigation into Lynton & Barnstaple Railway Trust is ongoing. To release the information you have requested could prejudice the ICO's ability to conduct the investigation in an appropriate manner. Disclosure of information at this stage would likely discourage our ongoing discussions with Lynton & Barnstaple Railway Trust and may damage our ability to conduct and conclude the investigation fairly and proportionately. This would also likely result in other parties being reluctant to engage with the ICO in the future.

In addition, any information released at this stage could be misinterpreted, which in turn could distract from or obstruct the investigation process.

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

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

- The understandable interest of the public, and those data subjects who may have been affected, in being able to see and understand the nature of the incident and the subsequent ICO investigation;
- increased transparency in the way in which Lynton & Barnstaple Railway Trust has responded to the ICO's enquiries; and
- increased transparency in the way in which the ICO conducts investigations, improving understanding of the ICO's regulatory functions.

The factors in favour of withholding the information are:

- the public interest in encouraging Lynton & Barnstaple Railway Trust and other data controllers to self-report data security incidents for ICO to investigate, ensuring ICO's effectiveness as a regulator;
- 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, thus allowing ICO to undertake robust and full investigations;
- 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 as it thinks fit.

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

No other information has been redacted or withheld from disclosure.

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 [here](#).

Yours sincerely



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Risk and Governance Department, Corporate Strategy and  
Planning Service

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