

28 March 2024

IC-293652-G8Q5

Request

You asked us:

"Could you please share with me via email all information and documents in relation to your investigation of the Arnold Clark data breach December 2022."

We received your request on 12 March 2024.

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

Our response

I can confirm that we hold information in scope of your request. However, we are withholding the information in scope of this request in full under section 31 of the FOIA. Further details on this can be found below.

Information withheld

FOIA section 31

Our investigation into the Arnold Clark data breach of December 2022 is still ongoing. The information we hold relating to this investigation is therefore 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 these matters is still ongoing. 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 our ongoing discussions between the ICO and Arnold Clark 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 the 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 Arnold Clark 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 need for the ICO to continue to encourage Arnold Clark and other data controllers to engage with us as regulator in the investigation of data security incidents;

- 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. Disclosure of information provided in confidence, or considered confidential, would be likely to have a long term detrimental effect on the self-reporting of incidents and our ability to investigate them;
- 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; and
- The ICO has a demonstrable history of sharing information about our enforcement and regulatory activities when it is appropriate to do so, in line with our '[Communicating our regulatory and enforcement activity policy.](#)' We publish details of the action we take on our website [here](#).

Having considered these factors, we are satisfied that it is appropriate to 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 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
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](#)**