

29 April 2024

IC-300822-P4M5

Request

On 16 April 2024 you asked us for all information about a specific data security incident involving Leicestershire Partnership Trust.

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

Response

We can confirm that we hold information that falls in scope of this request. The information has been withheld in accordance with Sections 31 and 44 of the FOIA, as detailed below.

Information withheld – FOIA Section 31

Information created by the ICO in relation to this matter has been withheld pursuant to Section 31(1)(g) of the FOIA. This is an exemption relating to information which, if disclosed, would or would be likely to cause prejudice to our ability to regulate the laws we oversee.

Specifically, 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)."

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 ..."

Clearly, these purposes apply when the Information Commissioner is considering whether or not a data controller has met its obligations in respect of data protection legislation.

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.

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

- Increased transparency in the way in which we investigate incidents that are reported to us
- The interest of the public, including anyone affected, in information associated with the incident

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

- There is public interest in the ICO encouraging the reporting of data security incidents for investigation. It is our view if the details of such incidents are routinely made public in all cases, this might discourage reporting to the ICO
- There is public interest in us being able to maintain effective and productive relationships with the parties we communicate with. It is essential that organisations and individuals continue to engage with us in a constructive and collaborative way without fear that any information exchanged between us will be made public if it is inappropriate to do so
- There is public interest in maintaining the ICO's ability to conduct investigations as it thinks fit without undue external influence. To disclose detailed information about individual cases may prejudice our ability to effectively investigate future incidents

Having considered the arguments both for and against disclosure we do not find that there is sufficient weight in the arguments that favour disclosure. Disclosure of the requested information would be likely to be prejudicial to our regulatory function as it would impact upon our ability to effectively carry out investigations of this nature both now and in the future.

Information withheld - FOIA Section 44 (and DPA s132)

Information provided to us by the data controller has been withheld under the provisions of section 44 of the FOIA which places prohibitions on disclosure. This exemption is an absolute exemption, which does not require a consideration of the public interest test of the type required by the qualified exemptions.

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."

Section 132(2) lists the circumstances in which a disclosure can be made with lawful authority, however we find that none of them apply here. As a result the information is exempt under the FOIA and withheld from our response.

Advice and assistance

Please note that we publish information about incidents reported to us [here](#), and details about cases we've dealt with [here](#). This includes information about personal data breaches reported to the ICO, complaints that we have dealt with and details about investigations we have conducted. We also publish details about [action we've taken here](#).

While we can consider requests for further details about specific incidents or cases, exemptions may apply to some or all of the information, for example where this involves third party data.

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



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