

2 May 2024

Case Reference IC-298383-G2C3

Request

We write to request details of the informal action that the ICO took against Emma Sleep, as detailed in the Data Protection Complaints spreadsheet of 2022/23 and would be grateful if a copy of such action could be forwarded to ourselves.

We received your request on 4 April 2024.

Your request has been handled under the Freedom of Information Act 2000 (the FOIA).

Our response

We can confirm we hold information in scope of your request.

The outcome of the complaint cases referred to in the data protection complaint data sets you refer to were recorded as infringement / informal action taken. Those complaints were dealt with by our data protection complaint team, who having considered the complaint case, found that there had been an infringement and when closing the complaint case recorded 'informal action taken' as the most appropriate outcome. In reality, the incident was also reported to the ICO by Emma Sleep on 25 March 2022 and investigated by our cyber investigations team under case reference IC-162716-M3V1. Having investigated the incident, they concluded that no further action was to be taken and this was the final outcome. Therefore, we did not take regulatory or informal action in relation to this incident.

Further details relating to this data breach can be found in the [Cyber investigations](#) data sets on our website, specifically the cyber incidents Q4 2022-2023, row 16.

We are unable to provide a copy of the outcome letter to Emma Sleep for reasons outlined below.

Information withheld

Regulatory function of the Commissioner - FOI section 44 & DPA s.132

The outcome letter to Emma Sleep about the data breach 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.

This concludes our response to your information 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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