

21 May 2024

IC-305365-J9W3

Request

You asked us: *"Did they inform you within 72 hours of becoming aware of the incident as required."*

Your request relates to a [breach at the Ministry of Defence](#) (MoD).

We received your request on 9 May 2024. We have handled it under the Freedom of Information Act 2000 (the FOIA).

Our response

We hold information in scope of your request.

However, it is withheld under section 31 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.

As explained in our press statement, we are currently at the stage of establishing the details of the incident to determine next steps. If we find evidence of the MoD failing its obligations, action may be taken.

To release the information you have requested at this time could prejudice the ICO's ability to conduct our enquiries into this matter.

Disclosure at this stage would discourage our ongoing discussions between the ICO and the MoD and may damage our ability to conduct and conclude our enquiries fairly and proportionately.

Disclosure could also jeopardise the ICO's ability to obtain information relating to this case or others in the future, and it is possible that other parties could be reluctant to engage with the ICO in the future.

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:

- Transparency about whether the MoD has complied with its obligation to report a data breach incident within the required timescale;
- increased transparency about a high-profile incident.

The factors in withholding the information are:

- the public interest in maintaining organisations' trust and confidence that their breach reports will be afforded an appropriate level of confidentiality before the full facts have been established;
- the public interest in organisations being open and honest in their discussions 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 enquiries into reported breaches as it sees fit.

Having considered these factors, we consider that the public interest balance lied in withholding the information at this time.

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



Information Access Team
Information Commissioner's Office
Wycliffe House, Water Lane, Wilmslow, Cheshire SK9 5AF
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