

23 May 2024

IC-306265-B4W8

Request

On 14 May 2024 you requested information about 'the Capita breach'. When we asked for clarification you confirmed that it happened 'some months prior' to June 2023 and involved 'the British Coal Staff Superannuation Scheme'.

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

Response

We understand that the British Coal Staff Superannuation Scheme (BCSSS) was affected by the following incident involving Capita, which fits with the timeframe provided in your request:

<https://ico.org.uk/about-the-ico/media-centre/news-and-blogs/2023/05/ico-statement-on-capita-incident/>

Please note that we do not hold any information about BCSSS specifically in relation to this matter, but can confirm that we are currently investigating the Capita incident and all information we hold about this has been withheld in accordance with Section 31(1)(g) of the FOIA.

Information withheld – Section 31

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 Capita 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 Capita 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 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 Capita 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 Capita and other data controllers to self-report data security incidents for the 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 or next steps 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.

Advice and assistance

There is no set amount of time that it takes to complete an investigation as there are a number of variables which affect this. Whilst we are not able to contact individuals when an investigation is completed, the ICO does publish information about any enforcement action we take on our website.

<https://ico.org.uk/action-weve-taken/>

We are likely to confirm the outcome on our website whether action is taken or not.

Details about personal data breaches reported to us are published via the link below:

<https://ico.org.uk/about-the-ico/our-information/complaints-and-concerns-data-sets/self-reported-personal-data-breach-cases/>

We have already dealt with a number of FOI requests in relation to this particular breach, including requests for details of companies affected, and all information about this matter – see links below:

<https://ico.org.uk/about-the-ico/our-information/disclosure-log/ic-239851-p0r9/>
<https://ico.org.uk/about-the-ico/our-information/disclosure-log/ic-242510-r7k7/>

You can search for other previous request responses on our disclosure log here:

<https://icosearch.ico.org.uk/s/search.html?collection=ico-meta&profile=disclosurelog&&query=>

As you can see from previous responses, information relating to data breaches may be subject to exemptions.

If you are concerned about how an organisation has handled your data you can make a complaint to us here:

<https://ico.org.uk/make-a-complaint/>

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



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