

24 July 2024

IC-316307-N9B7

Request

You asked us for information relating to a reported data breach by the University of Manchester in June 2023, specifically:

- *Is the ICO investigating this incident?*
- *When do you expect to report? (Or have you already completed your investigation?)*
- *Can you say anything publicly about your findings, including about the cause(s) of the breach?*

We received your request on 27 June 2024.

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

Our response

We can confirm that we hold information falling within the scope of your request.

We can further confirm that the ICO is investigating the breach and that the investigation is currently ongoing. At this stage, we are unable to provide a timescale as to when the investigation will be completed.

We are unable to disclose the remaining requested information to you as the information is exempt from disclosure.

The information that the data controller has shared with us is exempt by virtue of section 44 (prohibitions on disclosure) of the FOIA and the information we have sent to the data controller in return is exempt by virtue of section 31 (prejudice to law enforcement) of the FOIA.

Further details about these exemptions can be found below.

FOI section 44 (& DPA s132)

Section 44 is an absolute exemption and not subject to a public interest test.

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'

In this case, the enactment in question is the Data Protection Act 2018. Section 132(1) of part 5 of that Act prohibits the disclosure of confidential information that:

(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(3) imposes a criminal liability on the Commissioner and his staff not to disclose information relating to an identifiable individual or business for the purposes of carrying out our regulatory functions unless we have the lawful authority to do so or it has been made public from another source.

We do not consider that we have the lawful authority to disclose the information which has been provided to us in confidence in our capacity as a regulatory authority.

Section 31(g) FOIA

This exemption applies when disclosure would, or would be likely to, prejudice our ability to carry out our regulatory function.

The exemption at section 31(1)(g) of the FOIA applies 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 ..."

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.

Should the ICO be seen to be disclosing information in relation to data breach reports, or security incidents, it is likely to dissuade organisations from reporting these incidents in the future given that such breach reports, and their associated outcomes, contain sensitive information which will have been provided to the ICO with an expectation of confidence.

For investigations to be conducted effectively, the ICO relies upon the co-operation of data controllers and we feel this is best achieved by an open, voluntary and uninhibited exchange of information with these organisations.

Where a data controller, or any other person, comes to feel that the information they provide to us will be shared with the public prematurely, in response to FOIA requests, it could result in those organisations becoming reluctant to engage with the ICO to the extent necessary in future - especially if the disclosed information is misinterpreted and subsequently serves to distract the investigation process.

This could jeopardise the ICO's ability to function effectively as a regulator. We need to provide assurance that the details we receive, as well as the information we generate in the process of handling a data breach incident, are treated securely and used appropriately for our regulatory purposes. If trust in the ICO's

practices becomes eroded this will weaken the ICO's capability to monitor, respond and ultimately produce the correct outcomes.

With these points in mind, we have 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 the ICO conducts its investigations.
- the understandable interest of the public, and the data subjects affected by this incident, in the details of the data breach.

Conversely, the factors in withholding the information, and maintaining the exemption, are –

- 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 so that they, and other data controllers, feel comfortable sharing information openly with the ICO
- the public interest in organisations being open and honest in their correspondence with the ICO without fear that their disclosures will be made public prematurely or, as appropriate, at all;
- the public interest in maintaining the ICO's ability to conduct enquiries and investigations into complaints as it deems fit without interference, or undue influence, attributable to the premature release of information.

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

We are, therefore, satisfied that it is appropriate on this occasion 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](#) 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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