

12 August 2024

IC-319365-S6C3

Request

You asked us for information relating to a personal data breach reported to us by Withall & Co.

We received your request on 11 July 2024.

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

Our response

I can confirm that we hold information in scope of your request.

The personal data breach you refer to was reported to us on 8 March 2024, and assessed under case references IC-293459-L3F7 and IC/0166/2024. Our investigation into this case ended on 17 May 2024, and the case was closed with the outcome that no formal regulatory action was deemed necessary in this instance.

Further information about this breach, which includes the initial breach report, our correspondence with Withall & Co., and internal documents relating to the investigation which contain information provided by Withall & Co. are being withheld from disclosure. Please see below for the reasons why.

Information withheld

FOIA section 44 and DPA section 132

The information outlined above has been withheld from disclosure under section 44 of the FOIA. Section 44(1)(a) 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. Section 132(1) of part 5 of that Act 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."

We can confirm that:

- The information was provided to the Commissioner in order to carry out their functions.
- The information relates to an identifiable business, specifically – Withall & Co.
- The information is not, and was not previously, publicly available from other sources.

As a result we cannot disclose the information unless we have lawful authority.

Section 132(2) of the DPA provides conditions in which disclosure could be made with lawful authority. We have therefore considered each condition in turn:

"(a) the disclosure was made with the consent of the individual or of the person for the time being carrying on the business,"

I can confirm that we do not have consent to disclose this information.

"(b) the information was obtained or provided as described in subsection (1)(a) for the purpose of its being made available to the public (in whatever manner),"

The information was not obtained by or provided to the Commissioner as part of their regulatory role in order to make it available to the public and for this reason we are treating it as confidential.

"(c) the disclosure was made for the purposes of, and is necessary for, the discharge of one or more of the Commissioner's functions,"

We find that disclosure is not necessary in order to fulfil any of their functions.

"(e) the disclosure was made for the purposes of criminal or civil proceedings, however arising,"

Disclosure would not be for the purposes of criminal or civil proceedings.

"(f) having regard to the rights, freedoms and legitimate interests of any person, the disclosure was necessary in the public interest."

We do not consider it necessary or justifiable to disclose this information as there is no compelling public interest to do so. In this instance no formal regulatory action was taken in response to the breach, and so we do not believe that there is a public interest in disclosing information provided in confidence.

The Commissioner and his staff risk criminal liability if they disclose information without lawful authority. The right of access under the FOIA is not sufficient to override these important factors and the information is therefore withheld.

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 [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 sets out [your rights](#). Our [Retention and Disposal Policy](#) details how long we keep information.

Yours sincerely



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