

21 August 2024

**Reference number: IC-323888-P9S3**

**Request**

You asked us: "1/ Three Rivers (TRDC) [Three Rivers District Council] have now formally advised you of their breach?  
2/ Have TRDC told you they had contacted all the people mentioned on the breach?...  
3/ If the Three Rivers person who made the breach error (member of TRDC staff) has been notified of the findings yet?  
4/ If so, what were the ICO findings?  
5/ If the foi officer taking over the case (member of TRDC staff } has been communicating with you..."

We received your request on 23 July 2024.

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

**Our response**

Having conducted a reasonable search of our records, our responses to your requests are below.

1. In response to a separate request, received 25 June 2024, the ICO confirmed that the data breach had been reported to us.
2. We neither confirm nor deny if we hold this information. This is in reliance with section 44(2) of the FOIA.
3. We can confirm that we have contacted TRDC with an outcome letter which contains our 'findings'. However, we can neither confirm nor deny that we hold the information requested about the member of staff. This is in reliance with section 40(5) of the FOIA.
4. The outcome letter is withheld in reliance with section 44 and 31 of the FOIA.
5. We can neither confirm nor deny that we hold the information requested. This is in reliance with section 40(5) of the FOIA.

We will now explain the exemptions in more detail below.

## **Section 44**

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."*

Section 132(2) lists circumstances in which a disclosure can be made with lawful authority, however none of them apply here. As a result, the information is exempt from disclosure.

## **Section 40(5) 'neither confirm nor deny'**

Section 40(2) FOIA states:

*"Any information to which a request for information relates is also exempt information if—*

*(a) it constitutes personal data which does not fall within subsection (1), and*

*(b) the first, second or third condition below is satisfied."*

Section 40(3A), which sets out one of the three conditions, states:

*"(3A) The first condition is that the disclosure of the information to a member of the public otherwise than under this Act—  
(a) would contravene any of the data protection principles"*

Finally, section 40(5B)(a) states:

*"The duty to confirm or deny does not arise in relation to other information if or to the extent that any of the following applies—  
(a) giving a member of the public the confirmation or denial that would have to be given to comply with section 1(1)(a)—  
(i) would (apart from this Act) contravene any of the data protection principles"*

The information you have requested for requests 3 and 5, if held, would constitute the personal data of those individuals as it relates to an identified natural person. Section 40(2) of FOIA exempts disclosure of the personal data of others, subject to conditions.

Section 40(3A)(a) details one of these conditions. In our view, this condition would be met in this case because disclosure of the information you have requested, if held at all, would break the first principle of data protection – that personal data is processed lawfully, fairly and in a transparent manner. Therefore, the information you have requested, if held, would be exempt from disclosure.

We also consider confirmation or denial would itself contravene the data protection principles because it would reveal personal data. Therefore, our response to your request is we can neither confirm nor deny that we hold the information you have requested.

### **Section 44(2) 'neither confirm nor deny'**

Section 44(2) states: *"The duty to confirm or deny does not arise if the confirmation or denial that would have to be given to comply with section 1(1)(a) would (apart from this Act) fall within any of paragraphs (a) to (c) of subsection (1)."*

As such, Section 44(2) of the FOIA exempts us from our duty to say whether or not we hold the information you have requested. The terms of this exemption mean that we do not have to consider whether or not it would be in the public interest for us to reveal whether or not the information is held.

The requested information, if held, would be exempt from disclosure under section 44(1)(a) of the FOIA. The details of this exemption are explained above.

Please note, this should not be taken as confirmation that the information you have requested does or does not exist.

### **Section 31**

Information is withheld by section 31(1)(g) 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.

While we have issued a case outcome, the ICO can reopen this incident if new information comes to light. This means that to release the information you have requested, at this time, would be likely to prejudice the ICO's ability to conduct any future enquiries or investigations into this matter.

Disclosure of the outcome letter would also be likely to jeopardise the ICO's relationship with TRDC. As most contact we have with data controllers is voluntary, this would negatively affect our ability to obtain information from them in any future cases we may handle. This will make it more difficult for us to handle cases we receive about them, which will have a negative effect on our ability to regulate them.

We feel it important to state that, as a district council, they are the [data controller](#) for a large amount of data subjects, which means it is almost certain that we will receive future cases about them.

Disclosure of the requested information would signal to other organisations that information they provide could be disclosed into the public domain. This would be

likely to result in other organisations stopping, or reducing, their engagement with us or being more guarded when they do so.

As the regulator, our work into the legislations we oversee is continuous and ongoing and involves liaising with multiple organisations at any one time. Less engagement would make it much harder for us to disseminate and influence good practice in the legislations we oversee, which could potentially lead to a more 'hazardous' data protection landscape.

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 TRDC has complied with their data protection obligations.
- Transparency about how the ICO conducts its investigations.

The factors in withholding the information are:

- The public interest in maintaining organisations' trust and confidence that information they provide to us will be afforded an appropriate level of confidentiality and that their comments will not be made public prematurely or, as appropriate, at all.
- The public interest in the ICO being able to maintain a communication channel with all organisations. A lack of, or reduced, communications channels inhibits our work into the legislations we oversee which is not in the public interest.
- The public interest in organisations being open and honest in their discussions with the ICO.
- The public interest in the ICO being able to take enforcement action where we see fit. Disclosure of the requested information could undermine our ability to do this.
- The public interest in maintaining the ICO's ability to conduct investigations into reported breaches as it sees fit.

As well as this, we are satisfied that the ICO provides transparency into the personal data breaches, and any other cases we handle, with our [datasets](#).

## **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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