

25 September 2024

**Case Reference IC-325393-H7T4**

**Request**

Further to our initial response under this case reference number, we are providing a further response to address the element of information which we needed more time to decide about.

Specifically, we needed more time to consider whether the public interest lay in favour of either disclosing the information or withholding the information. We have now made a decision about that.

You asked us:

*"Dear Information Commissioner's Office,*

*I refer to the story linked below in which it is suggested that Home Office notified the ICO, on or around 2nd May 2024, of a personal data breach relating to corporate systems operated on their behalf by Microsoft.*

<https://eur03.safelinks.protection.outlook.com/?url=https%3A%2F%2Ftherecord.media%2Frussia-hack-uk-government-home-office-microsoft&data=05%7C02%7Cicoaccessinformation%40ico.org.uk%7C6cea0ff3f2a84230d44408dcb51481%7C501293238fab4000adc1c4cfefba21e6%7C0%7C0%7C638591633614863138%7CUnknown%7CTWFpbGZsb3d8eyJWIjojMC4wLjA wMDAiLCJQIjojV2luMzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C0%7C%7C%7C&sdata=DQQIcMJexlILva%2FE41ZkvY0dASqimtg5GTNG5oBX%2BWQ%3D&reserved=0>

*The story suggests that the ICO previously responded to an FOI request, but did not include any details of your response and you have not yet listed that response on your published FOI pages.*

*1 - I would therefore be grateful if you would either publish that response in full and provide me with a link to it;*

OR

*Reply to the following request for information:*

*Please provide me with a copy of the notification made to the ICO by Home Office on or around May 2nd 2024 relating to their corporate email services as per the above story."*

We received your request on 13 August 2024.

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

### **Our decision**

As mentioned, there is no previous FOI response, because we didn't handle that request.

However, we do hold the notification submitted to the ICO by the Home Office (logged as a personal data breach case under the reference IC-304588-B6D4).

We have decided to withhold the information contained in the notification, because we believe the public interest lies in favour of withholding the information.

Please see below for our public interest test and further details.

## **Exemptions**

There are a few qualified exemptions which apply to the requested information. We have included our public interest test further below.

### **Section 24 – National security**

Section 24 of the FOIA states:

*"(1) Information which does not fall within section 23(1) is exempt information if exemption from section 1(1)(b) is required for the purpose of safeguarding national security."*

...

*"(3) A certificate signed by a Minister of the Crown certifying that exemption from section 1(1)(b), or from section 1(1)(a) and (b), is, or at any time was, required for the purpose of safeguarding national security shall, subject to section 60, be conclusive evidence of that fact."*

### **Section 31 – Law enforcement**

Sections 31(1)(a) and 31(1)(b) of the FOIA state:

*"(1) Information which is not exempt information by virtue of section 30 is exempt information if its disclosure under this Act would, or would be likely to, prejudice—*

*(a) the prevention or detection of crime,"*

...

*(b) the apprehension or prosecution of offenders,"*

Section 31(1)(g) states:

*"(1) Information which is not exempt information by virtue of section 30 is exempt information if its disclosure under this Act would, or would be likely to, prejudice—*

*(g) 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 38 – Health and safety**

Section 38 of the FOIA states:

*"(1) Information is exempt information if its disclosure under this Act would, or would be likely to—*

*(a) endanger the physical or mental health of any individual, or*

*(b) endanger the safety of any individual."*

### **Public interest test**

We have considered the public interest test for and against disclosure of the information.

In this case the public interest factors in disclosing the information are:

- increased transparency about the specific details of a data security incident at a UK government department which has a significant remit, including domestic security;
- increased transparency about how the Home Office communicated to the ICO about the incident
- increased transparency about how the Home Office handled or responded to the incident

The factors in withholding the information are:

- maintaining the confidentiality of information to the extent that it prevents undermining national security and the integrity and effectiveness of the government's security measures
- maintaining the confidentiality of information to the extent that it allows investigative bodies to carry out effective decision-making and law enforcement functions without these processes being undermined
- maintaining trust and confidence in the ICO that detailed security reports from high-profile data controllers will be afforded an appropriate level of confidentiality;
- ensuring the protection of the physical and mental health of individuals who are identifiable from the information in the notification

Having considered these factors, we are satisfied that it is appropriate to withhold the information.

We accept there is a public interest in transparency about the details of data security incidents relating to a government department. The Home Office has a significant domestic remit for the UK, and they may be likely to hold particularly sensitive or restricted data which may present higher risks or more unique risks than other data controllers would be presented with. However, the risks associated with disclosure are also strongly supportive factors for withholding the information.

Evidently, there has already been a basic layer of transparency about the incident, and this has satisfied the public interest in having a certain level of information about high-profile data security incidents. The specific, fuller details provided to us by the Home Office need to be considered differently.

We consider that the benefit of transparency would be significantly outweighed by the potential harms that could result from disclosing the information. We cannot accept there are strong enough reasons or other contextual factors which mean that a full disclosure is appropriate.

We consider that withholding the information is the only reasonable response which aligns with the fundamental interests of national security, law enforcement capabilities, and personal safety.

## **Section 44 – Prohibition on disclosure**

It is likely the information would also fall under section 44 of the FOIA which is an absolute exemption (this is effectively an automatic or inherent exemption which means we wouldn't have to consider factors such as prejudice and public interest). However, we considered it appropriate to take wider consideration of the public interest factors in this case.

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 would apply here. As a result, the information would be likely to be exempt from disclosure on this basis.

## 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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