

[REDACTED]

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**From:** FOI  
**Sent:** 01 November 2023 15:48  
**To:** [REDACTED]  
**Subject:** FOI 112-23 - Response

Dear [REDACTED],

**Our Ref: FOI-112-23**

Thank you for your email to the Electoral Commission dated 8 August 2023.

The Commission aims to respond to requests for information promptly and regrets that it has not been able to do so within the statutory timeframe. The delay is a result of the high volume of Freedom of Information (FOI) requests received following the public announcement of the cyber-attack on 8 August 2023.

Your request is shown below followed by our response.

*Please can you share your record of the data breach assessment report/analysis completed by the Data Protection Officer and others?*

**Our response is as follows**

We hold the information you have requested.

Information relating to the cyber-attack is available in a Frequently Asked Questions (FAQ) section of our website. Please use this [link](#) which explains what happened, what kind of information was accessible, our risk assessment of the breach, what we know about those responsible for the attack, when and how we found out about the attack, and the steps we then took.

With regard to your request for the internal data breach assessment and report, this information is exempt from disclosure at the present time under sections 31(1)(a) and (g) of the FOI Act.

**FOI Act section 31**

Section 31(1)(a) provides an exemption where disclosure:

*“would, or would be likely to, prejudice the prevention or detection of crime”.*

The investigation into the cyber-attack includes sensitive, confidential information about the Electoral Commission’s information technology systems and the nature of the attack on those systems. Disclosing sensitive, confidential information about our technology systems (such as how a breach happened and what security protocols were in place) would prejudice the security of our own systems and potentially also the security of similar systems used by other public bodies. Disclosure would be likely to prejudice the prevention and detection of similar cyber-attacks.

Our investigation into the cyber-attack is currently under consideration by the Information Commissioner's Office (ICO) for the purpose of their independent investigation and preparation of their report. Disclosure of our investigation would be likely to prejudice the ability of the ICO and other public bodies with whom we work to prevent and detect crime(s).

Section 31(1)(g) provides an exemption 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 specified in subsection (2) are:

*“(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...”*

The ICO's investigation into the cyber-attack at the Electoral Commission is still ongoing. To release at this stage the Electoral Commission's internal investigative report would, or would be likely to, prejudice the ICO's ability to conduct and conclude its investigation in a timely, fair and confidential manner.

Section 31 is not an absolute exemption. The Commission must consider the factors in favour of disclosure and those against.

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

- increased transparency about how the Commission has dealt with the data breach;
- increased transparency about how the Commission has engaged with the ICO investigation.

The public interest factors in withholding the information are:

- maintaining the ICO's ability to conduct investigations in a timely, fair and confidential manner;
- enabling organisations to engage openly with the ICO giving full disclosure of all relevant information without fear that information will be made public prematurely, or, as appropriate, at all;
- preventing potential crime against the Electoral Commission or other public bodies.

Having considered these factors, we are satisfied that on balance the public interest in maintaining the exemptions outweighs the public interest in disclosure at the present time (while the ICO's investigation is ongoing).

The Commission strives to be an open, transparent authority, but in some circumstances we cannot responsibly release requested information, and we ask for your understanding in this regard.

If you are not satisfied with this response, please note that the Commission operates a review procedure, details of which can be found on the Commission website at: <https://www.electoralcommission.org.uk/freedom-information/make-a-freedom-information-request>.

Please also note that if you have exhausted all internal Commission review procedures and you are still not satisfied you have the right to appeal to the Information Commissioner. Details of this procedure can be found on the ICO website: <https://ico.org.uk/>.

Yours sincerely

Information Officer

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**The Electoral Commission**

[electoralcommission.org.uk](http://electoralcommission.org.uk)