

[REDACTED]

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**From:** FOI  
**Sent:** 07 November 2023 07:34  
**To:** [REDACTED]  
**Subject:** FOI 115-23 - Response

Dear [REDACTED],

**Our Ref: FOI-115-23**

Thank you for your email to the Electoral Commission dated 8 August 2023 and received by the Commission on 9 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.

*Why did I have to read about the data breach in a newspaper? If you apologise to those impacted as per your statement, why have you not actually written to all 40 million people impacted?*

*Please can you provide the email discussions about the decisions made not to write to all individuals impacted by this 14 month data breach.*

*If you deem this too costly or to take too long to provide the detail (though of course the malicious actor had 14 months to snoop around) please provide the actual sole approval email that was written to approve a website briefing over individual contact.*

*Please can you provide the context and mitigations that were compiled by the team that would enable a member of the public to be able to confirm if this has taken place - "However, anyone who has been in contact with the Commission, or who was registered to vote between 2014 and 2022, should remain vigilant for unauthorised use or release of their personal data." and confirmation of why these additional actions are actually not listed out to further protect the 40 million affected.*

**Our response is as follows:**

We hold the information you have requested.

The Electoral Commission followed Information Commissioner's Office (ICO) guidance when deciding how to inform the affected individuals (data subjects). Please use this [link](#) for further information on the guidance that was followed.

**FOI Act section 21**

With regard to steps you can take in relation to your personal data, this is answered in a Frequently Asked Questions (FAQ) section of our website specifically relating to the cyber-attack. 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, the steps we then took, as well as steps the public can take in relation to their personal data.

Providing you with a link to information on our website in response to your request for information is permitted by section 21 of the Freedom of Information Act which removes the need to provide information in our response if it is reasonably accessible to an applicant by other means.

## **FOI Act section 31**

Email discussions containing information about notifying individuals potentially impacted by the data breach is exempt from disclosure under section 31(1)(g) and the public interest in maintaining the exemption outweighs the public interest in disclosure.

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 any further information about how, when, and why the Commission made certain decisions following the data breach 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.

Having considered these factors, we are satisfied that on balance the public interest in maintaining the exemption in relation to email discussions about notifying individuals potentially impacted by the

data breach 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  
[FOI@electoralcommission.org.uk](mailto:FOI@electoralcommission.org.uk)

**The Electoral Commission**  
[electoralcommission.org.uk](http://electoralcommission.org.uk)