

[REDACTED]

From: FOI
Sent: 01 November 2023 15:19
To: [REDACTED]
Subject: FOI 118-23 - Response

Dear [REDACTED],

Our Ref: FOI-118-23

Thank you for your email to the Electoral Commission dated 9 August 2023 and received by the Commission on 10 August 2023.

The Commission aims to respond to requests for information promptly and regrets that it was not 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.

Specifically related to the revelation of the security breach of the Electoral Commission - which includes my electoral data. Information released by the Electoral Commission states that the breach happened in August 2021, but was only identified in October 2022.

My requests for freedom of information:

- 1. On what date and time did the Electoral Commission discover the breach?*
- 2. On what date and time was the ICO advised about this breach?*

Our response is as follows

We hold the information you have requested.

Both of your questions are partly answered in a Frequently Asked Questions (FAQ) section of our website specifically relating to the cyber attack. Please use this [link](#) and scroll down the webpage to the following questions:

1. When and how did you find out?
2. Who did you alert?

Providing you with a link to our website is in line with 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.

Information about the exact date and time the breach was discovered is exempt from disclosure under sections 31(1)(a) and (g) of the FOI Act. Information about the exact date and time the ICO were advised of the breach is exempt from disclosure under section 31(1)(g) of FOI Act.

Section 31(1)(a) of the FOI Act

Section 31(1)(a) exempts from disclosure information that would, or would be likely to, prejudice the prevention or detection of crime.

The exact date and time that the breach was discovered is sensitive information that could indicate to third parties how the breach happened. Disclosing the exact date and time that the breach was discovered could prejudice the security of our systems and potentially the security of similar systems used by other public bodies. Disclosure at this time would be likely to prejudice the prevention and detection of similar cyber attacks on the Commission's systems or those of other public bodies.

Section 31(1)(g) of FOI Act

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 Information Commissioner's Office's investigation into the cyber attack at the Electoral Commission is still ongoing. To release at this stage information about the exact date and time the breach was discovered, and the ICO were informed would, or would be likely to, prejudice the ICO's ability to conduct and conclude its investigation in a timely, fair and confidential manner.

Public Interest Test

Section 31 is not an absolute exemption which means that the Commission must consider the public interest arguments in favour of both disclosure and those against.

The Electoral Commission recognises that there is an inherent public interest in transparency and accountability in relation to the procedures and decision making of public authorities.

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:

- preventing the commission of future crimes against public bodies;
- 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 disclosure is outweighed at this stage by the public interest in favour of maintaining the exemption.

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

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The Electoral Commission
[electoralcommission.org.uk](https://www.electoralcommission.org.uk)