

[REDACTED]

From: FOI
Sent: 02 November 2023 14:51
To: [REDACTED]
Subject: FOI 123-23 - Response

Dear [REDACTED],

Our Ref: FOI-123-23

Thank you for your email to the Electoral Commission dated 14 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.

I want to know how many people were affected, how they have been informed of this data breach, what has been done to retrieve this stolen information and what will stop this happening again.

Our response is as follows:

We hold the information you have requested.

Freedom of Information Act (FOIA) section 21

With regard to how many people were affected, how have they been informed, and the steps taken to help prevent this happening again, these are 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, and the steps we then took.

Providing you with a link to information on our website in response to your request for information is permitted by section 21 of the FOIA 2000 which removes the need to provide information in our response if it is reasonably accessible to an applicant by other means.

FOIA section 31

With regard to your request for information about attempts to retrieve the information which was subject of the breach, this information is exempt from disclosure under section 31(1)(a) and section

31(1)(g). The public interest in maintaining the exemptions outweighs the public interest in disclosure at this time.

Section 31(1)(a) provides an exemption from disclosure that:

“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 (including attempts to retrieve the information which was subject of the breach) 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 ICO for the purpose of their independent investigation and preparation of their report. Disclosure of our investigation at this stage 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 Information Commissioner’s Office’s investigation into the cyber-attack at the Electoral Commission is still ongoing. To release at this stage confidential information about the cyberattack (including attempts to retrieve the information which was subject of the breach) would, or would be likely to, prejudice the Information Commissioner’s Office’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,
- protecting the integrity and security of the Electoral Commission’s information technology systems and those of 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

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The Electoral Commission
electoralcommission.org.uk