

[REDACTED]

From: FOI
Sent: 09 November 2023 09:15
To: [REDACTED]
Subject: FOI 144-23 - Response

Dear [REDACTED],

Our Ref: FOI-144-23

Thank you for your email to the Electoral Commission dated 18 September 2023.

The Commission aims to respond to requests for information promptly and has done so within the statutory timeframe (which includes the additional 20 working day extension for consideration of the Public Interest Test).

Your request is shown below followed by our response.

I require a copy of all investigations and their findings

Our response is as follows:

We hold some of the information you have requested more particularly:

- our own investigation (conducted with external security experts and the National Cyber Security Centre) and its findings and
- information given to the Information Commissioner's Office (ICO) for the purpose of its ongoing investigation.

Freedom of Information (FOI) Act section 31

Electoral Commission investigation

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

"would, or would be likely to, prejudice the prevention or detection of crime".

The Commission's investigation into, and findings in relation to, the root cause of the cyber-attack includes sensitive, confidential information about the 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 be likely to prejudice the security of the Commission's systems and potentially also the security of similar systems used by other public

bodies. Disclosure would be likely to prejudice the prevention and/or detection of similar cyber-attacks.

ICO Investigation

The Commission's response to the cyber-attack is currently under independent investigation by the ICO.

Information provided to the ICO for the purpose of their investigation is exempt from disclosure under section 31(1)(g) at this stage 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 information about the root cause of the attack 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.

The public interest factors in favour of 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 favour of 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 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.

Further information about the cyber-attack is available [here](#).

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

The Electoral Commission

electoralcommission.org.uk