

Sent via email: [REDACTED]

6 December 2023

Dear [REDACTED],

Internal review of FOI request FOI 144-23

Thank you for your email to FOI@electoralcommssion.org.uk of 9 November 2023 which we took to be a request for an internal review of your Freedom of Information request, reference number FOI 144-23.

In seeking an internal review you made the following comments:

You appear not provided copies of ALL investigations as requested, notable you have not detailed any communications received from the Information Commissioner.

The Information Commissioner has advised that it is insufficient to simply quote an exemption, you must fully justify it and I require you so to do, wherever and whenever you seek to apply such an exemption, such as below. Yo9u may, of course redact any truly sensitive data, but not withhold all data on the basis that it does it may contain sensitive data.

As to the ICO investigation, has the ICO stated that "public interest in maintaining the exemption outweighs the public interest in disclosure", or are you simply claiming this? If the latter, I require you to disclose or provide a copy of an ICO opinion to support your position, or at least fully justify it as required by the Information Commissioner. I do not accept the extremely limited and unqualified justifications provided below.

I note that you state you hold only some of the information requested, but provide absolutely none of it. Furthermore, how can you hold only part of a request for all you hold? This is nonsensical. Please advise.

Meanwhile, you have STILL not provided me with details of my own personal data that you hold, or that was potentially and/or actually disclosed to third parties.

To date, it appears not only that your security measures for extremely sensitive special category person data where clearly inadequate, but that you have failed to manage the consequences of your own negligence and are now seeking to delay and avoid an open and honest response. I do not accept your claims regarding openness, nor do you have my patience any more, as you have exhausted it.

You need to do better.

We have responded to the points you raise individually, below.

You appear not provided copies of ALL investigations as requested, notable you have not detailed any communications received from the Information Commissioner.

Your request was for “a copy of all investigations and their findings”. There have been two investigations into the data breach, our own, and the ongoing investigation by the ICO.

In our original response we stated:

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.*

The second bullet point encompasses information provided at the request of the ICO, and therefore includes communications received from the ICO. We accept however that the wording does not explicitly include communications received from the ICO, and we appreciate this may not have been clear to you. Communications received from the ICO are exempt from disclosure under section 31(1)(g) in exactly the same way as information provided by us to the ICO, so there is no impact in terms of disclosure of information.

That is because the communications received from the ICO are information that if released could prejudice the exercise of the ICO's public function in deciding whether the Electoral Commission is in breach of the law. It could also affect the way the ICO conducts future investigations because it may highlight lines of enquiry and so could impact on the enquiries.

We understand that once the ICO has concluded its investigation, its findings will be published.

You may, of course redact any truly sensitive data, but not withhold all data on the basis that it does it may contain sensitive data.

The issue here is not sensitive data, it is prejudice to the ICO investigation, and in that context we have taken the view that non-disclosure is the correct approach for all of the information. In our view the risk of prejudice exists in disclosing any of the information requested.

As to the ICO investigation, has the ICO stated that "public interest in maintaining the exemption outweighs the public interest in disclosure", or are you simply claiming this? If the latter, I require you to disclose or provide a copy of an ICO opinion to support your position, or at least fully justify it as required by the Information Commissioner.

Your request was to the Electoral Commission, not to the ICO. Section 31 is a qualified exemption which means that once we have identified information that falls within that exemption we must then assess the public interest of withholding or disclosing it. We are required by the Freedom of Information (FOI) Act to reach our own view on the public interest on the information we hold, regardless of any view the ICO may hold. We did so, and reached the conclusion that it was not in the public interest to disclose.

In our view, the public interest of withholding, and protecting, information about the cyber-attack and the ICO's approach to investigations (which needs protecting so future investigations are not compromised) would outweigh the public interest in disclosure. The fact that we have already disclosed a significant amount of detail is a factor in our reaching this view.

You are of course free to make the same request for information to the ICO, who will hold broadly the same information, if you wish to establish the ICO's view on the public interest in this matter.

Furthermore, how can you hold only part of a request for all you hold?

Your request was for 'all investigations and their findings' and not in fact 'all we hold'. We responded to your request as written. As we have noted above, there are two investigations, and clearly we do not hold all of the information relating to the ICO investigation. They will have generated their own material, for example in which they consider material we have provided, which we do not have and would not expect to be shared with us. That is why we have stated we hold 'some of' the information requested - we do not hold all of the information relating to all investigations and their findings.

I have completed this review because I am a member of the Electoral Commission's management team and I was not previously involved in the original response to your request.

If you remain dissatisfied with our response, you can appeal to the Information Commissioner at: The ICO, Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF. For further details about the appeal procedure please visit www.ico.org.uk.

Yours sincerely

Daniel Adamson
Head of Monitoring and Enforcement
electoralcommission.org.uk