[redacted]

From: FOI
Sent: 31 October 2023 17:01
To: [redacted]
Subject: FOI 116-23 - Response

Dear [redacted],

Our Ref: FOI-116-23

Thank you for your email to the Electoral Commission dated 9 August 2023.

The Commission aims to respond to requests for information promptly and regrets that is has not done so within the statutory timeframe of twenty working days.

Your request is shown below followed by our response.

To disclose when the Commission became aware of the data breach announced on 8 August 2023

To disclose whether any individuals have resigned or been dismissed as a consequence

Our response is as follows

We hold the information you have requested.

With regard to when the Commission became aware of the data breach, this is 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 page to the question 'When and how did you find out'.

Providing you with a link to our website is in line with section 21 of the Freedom of Information Act 2000 ('FOIA') which removes the need to provide information in our response if it is reasonably accessible to an applicant by other means.

With regard to whether any individuals have resigned or been dismissed as a consequence of the data breach, at this time this information is being withheld under section 31 of the Freedom of Information Act (FOIA).

FOIA section 31

Information about whether individuals have resigned or been dismissed as a consequence of the data breach announced on 8 August 2023 is exempt from disclosure under s.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 Information Commissioner's Office's investigation into the data breach at the Electoral Commission is still ongoing. To release at this stage the information about whether any of the Commission's employees have resigned or been dismissed as a consequence of the data breach would likely 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. We 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 in the way in which the Electoral Commission has dealt with the data breach; and 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;
- encouraging organisations to enable their staff to be open and honest in their correspondence with the ICO without fear that information will be made public prematurely, or, as appropriate, at all.

Having considered these factors, we are satisfied that it is appropriate to withhold the information at the present time.

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

The Electoral Commission
electoralcommission.org.uk