[redacted]

From: FOI
Sent: 27 October 2023 12:00
To: [redacted]
Subject: FOI 119-23 - Response

Dear [redacted],

Our Ref: FOI-119-23

Thank you for your email to the Electoral Commission on 9 August 2023 which was received on 10 August 2023. We have handled your request for information under the Freedom of Information Act 2000 (FOIA).

The Electoral Commission aims to respond to FOIA requests promptly and regrets that it was not able to do so within the statutory timeframe of twenty working days. The delay is a result of the high volume of FOIA requests received following the public announcement of the cyber attack on 8 August 2023.

Your request is shown below followed by our response.

I instruct you to send to me the complete investigation and outcome from the investigation.
What happened to cause the breach. Why did it happen. Why were security protocols not already in place that would stop this breach? Who or what is being held accountable.
Where can the public take this up with the highest court in the land? On behalf of every single person eligible to vote.
As this is a public entity, all public details, all investigation and remedial action will be given to the public. As per the law.

Our response

We hold the information you have requested.

With regard to your request for the complete investigation and outcome, information about what caused the breach, the security protocols that were in place and who or what is being held accountable, this information is exempt from disclosure at the present time under section 31(1)(a) and (g) of FOIA.

Section 31(1)(a) of FOIA

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

2. The investigation into 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 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.

3. Our investigation into the cyber-attack is currently under consideration by the Information Commissioner's Office (ICO) for the purpose of their independent investigation and preparation of their report. Disclosure of our investigation 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) of FOIA

4. Section 31(1)(g) exempts from disclosure information that would, or would be likely to, prejudice the exercise by any public authority of its functions for the purpose of ascertaining whether any person has failed to comply with the law (s.31(2)(a)) and the purpose of ascertaining whether circumstances which would justify regulatory action in pursuance of any enactment exist or may arise (s.31(2)(c)).

5. The ICO's duties and powers are set out (in part) in the Data Protection Act 2018 and UK GDPR. The ICO monitors and enforces the application of the GDPR (s.115(2), DPA 2018). The ICO is responsible for investigating civil breaches, contraventions and criminal offences under the laws it regulates.

6. Disclosure of information which relates to, or forms part of the ICO's investigation into the Electoral Commission's cyber-attack would be to the detriment to the ICO's investigation. It could impact, or even prevent, the ICO's ability to question relevant persons or to gather information to enable them to make a regulatory decision.

7. The ICO is the decision-maker as to any infringement of the Data Protection Act and UK GDPR. The ICO has the power to take enforcement action, including the issue of fines. Disclosure of information relating to their ongoing investigation would likely prejudice this decision-making process.

Public interest test

Section 31 is a qualified exemption which means that we must consider the public interest arguments in favour of both disclosure and maintaining the exemption.

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.

Here the need for transparency and accountability will continue to be addressed by the independent investigation being carried out by the ICO. There is a strong public interest in protecting the ICO's ability to investigate independently and reach thorough and fair conclusions. Disclosing information before the ICO has completed and published its full investigation may prejudice that investigation.

On the basis of the above considerations, the public interest in disclosure is outweighed at this stage by the public interest in favour of maintaining the exemption.

Publicly available information about the cyber-attack is available here: Information about the cyber-attack | Electoral Commission. This explains what happened, what data was affected, what impact the cyber-attack might have, what steps the Commission is taking and how to make a complaint to

the Information Commissioner's Office as the UK supervisory authority for data protection. Providing you with a link to our website reflects section 21 of FOIA which removes the requirement to provide information that is already reasonably accessible by other means.

The Electoral 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 Electoral Commission operates a review procedure, details of which can be found on the Electoral Commission website at: Make a Freedom of Information request | Electoral Commission.

Please also note that if you have exhausted all internal Electoral 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