

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 30 November 2022

**Public Authority:** Information Commissioner  
**Address:** Wycliffe House  
Water Lane  
Wilmslow  
SK9 5AF

Note: This decision notice concerns a complaint made against the Information Commissioner ('the Commissioner'). The Commissioner is both the regulator of the FOIA and a public authority subject to the FOIA. He is therefore under a duty as regulator to make a formal determination of a complaint made against him as a public authority. It should be noted, however, that the complainant has a right of appeal against the Commissioner's decision, details of which are given at the end of this notice.

In this notice the term 'ICO' is used to denote the ICO dealing with the request, and the term 'Commissioner' denotes the ICO dealing with the complaint.

### **Decision (including any steps ordered)**

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1. The complainant requested information from the Information Commissioner (ICO) about a named individual's involvement in a data breach at a specified university. The ICO explained that it did not hold information in scope of the request.
2. The Commissioner's decision is that, on the balance of probabilities, the ICO does not hold the requested information.
3. The Commissioner does not require the ICO to take any steps as a result of this decision notice.

## Request and response

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4. On 26 April 2022, the complainant wrote to the ICO and requested information in the following terms:

"In the next seven days I require

1. Everything the ICO hold on [redacted] and the [redacted] University data breach, cover up and refusal by [redacted] to allow the ICO access to equipment.

2. Also what actions have been taken against and or are planned against [redacted].

3. Also who is in charge of the case against [redacted] and [redacted] University.

Many thanks"

5. On 27 April 2022, the ICO wrote to the complainant asking them to clarify "approximately when the data breach you are interested in occurred ... and any information regarding the nature of the breach".

6. The complainant replied on 27 April 2022, clarifying that the relevant breach occurred in 2018/19.

7. On 28 April 2022, the complainant further clarified that:

"I am specifically interested in what happened after the breach was discovered I.e. as best I can tell; [redacted] for [redacted] University failed to inform the ICO of a serious breach of the DPA within 72 hours of discovery. In fact failed to inform the ICO at all, failed to warn the individuals there personal data had been hacked, obstructed the ICO investigation into the matter and only complied after threats by the ICO. What actions have been taken against [redacted] and what actions/fines are in the process of being issued to [redacted] University."

8. On 3 May 2022 the complainant contacted the ICO to correct the spelling of the individual's first name which should be included in the search from '[redacted]' to '[redacted]'.

9. The ICO responded on 4 May 2022, providing a link to an audit executive summary. The response also stated that the ICO had:

"searched our systems and records for information relating to personal data breach cases that involved both [redacted] and [redacted] University. We considered both possible spellings of the name ("[redacted]" and "[redacted]") in our searches. These searches focused on breaches that occurred in 2018 and 2019, and we also considered any information that might refer to a 'cover up' or a refusal of ICO access to equipment in relation to said breach(es). We can confirm that, following reasonable searches based on the above criteria, we do not hold any information that falls within the scope of your request."

10. The ICO also explained that:

"When a personal data breach associated with an organisation is investigated by the ICO, we investigate the organisation and not specific members of staff. Outcomes, such as regulatory action and fines, are similarly directed towards the organisation rather than any individual staff member ... We can consider further requests for information about data breaches involving [redacted] University, including any breaches that took place in 2018/19 involving malware, for instance. We can also consider requests for the outcomes of such cases, including whether or not regulatory action was taken by the ICO. If you want us to consider a new request framed in these terms, please let us know. However please note that any requests for personal data are likely to trigger the exemption cited above."

11. Following an internal review request, the ICO wrote to the complainant on 24 May 2022. It stated that it was "confident that all necessary searches and consultations have been completed" and upheld its original position, confirming that the requested information is not held.

## **Scope of the case**

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12. The complainant contacted the Commissioner on 2 August 2022, to complain about the way their request for information had been handled.

13. The Commissioner considers the scope of the investigation is to determine if, on the balance of probabilities, the ICO holds the requested information and whether it has complied with section 1(1) of FOIA.

## **Reasons for decision**

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14. Under section 1(1) of FOIA anyone who requests information from a public authority is entitled, under subsection (a), to be told if the

authority holds the information and, under subsection (b), to have the information communicated to them if it is held and is not exempt information.

15. The Commissioner has sought to determine whether, on the balance of probabilities, the ICO holds the requested information.
16. From the information provided, the Commissioner can see that the ICO has explained in both the original response to the complainant and in the internal review, that it does not hold information in scope of the wording of the request.
17. On the balance of probabilities, the Commissioner is satisfied that the requested information is not held by the ICO and, therefore, it cannot be provided.
18. The Commissioner noted that the ICO provided assistance and guidance to the complainant about its personal data breach investigations being about the organisation and not specific members of staff. The Commissioner suggested that the complainant make a new request for information, for example about data breaches involving the University during 2018/19 involving malware.
19. The ICO has complied with its obligations under section 1(1) of FOIA in this case.

## Right of appeal

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20. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)  
GRC & GRP Tribunals,  
PO Box 9300,  
LEICESTER,  
LE1 8DJ

Tel: 0203 936 8963  
Fax: 0870 739 5836  
Email: [grc@justice.gov.uk](mailto:grc@justice.gov.uk)  
Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

21. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
22. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

**Signed .....**

**Michael Lea**  
**Team Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**