

The ICO's updated regulatory approach in response to the coronavirus pandemic

Our role as an independent regulator is to act in the public interest, and our approach has always been to be a pragmatic and proportionate regulator.

The ongoing coronavirus pandemic means that we must continue to focus our priorities and our resourcing, so that we retain the right balance in these challenging times, focusing on those issues likely to cause the greatest public harm.

We published a document setting out our regulatory approach during the coronavirus pandemic in April 2020, which we then [reviewed and updated in July](#).

This paper follows a further review and update and sets out how we will regulate in the coming months, focusing in particular on data protection and freedom of information laws. It is another step towards returning to our approach before COVID-19, but with the caveats and exceptions that reflect today's reality.

We will continue to monitor the situation. We understand that organisations are trying to operate during uncertain and challenging times, and we will adjust our regulatory approach accordingly, taking into account the context the organisations we regulate are operating in, and acknowledging the important role that people's information rights continue to have, both around privacy protections and transparency of decision making by public bodies.

Background:

We are committed to an empathetic and pragmatic approach, focusing on issues of greatest risk, and will demonstrate this through our actions:

- We will continue to recognise the rights and protections granted to people by the law, both around their personal information and their right to freedom of information. We recognise that confidence in how personal data is used and safeguarded is a key determining factor in how willing the public are to engage with initiatives to tackle the spread of Covid-19.

- We will focus our efforts on the most serious risks and greatest threats to the public.
- We recognise that organisations are having to react quickly to new risks and initiatives; we will assist organisations by providing advice and guidance on data protection laws and how to meet their obligations in response to new requirements and initiatives.
- We will take firm action against those looking to exploit the public health emergency through nuisance calls or by misusing personal information.
- We will be flexible in our approach, taking into account the impact of the potential economic or resource burden our actions could place on organisations, particularly those engaged in tackling the pandemic or supporting vulnerable people.
- We will continue to provide effective support to businesses and public authorities, focusing on how we can accelerate and expand our sandbox, provide more upstream advice, and better support innovation.

Engagement with the public and organisations:

We remain committed to continuing to support the public and organisations through this period.

1. We will continue to identify and fast track advice, guidance or tools that will have the most impact in helping public authorities and businesses deal with, or recover from, the crisis. This work will build on the success of our data protection and coronavirus information hub, accountability framework and self-assessment FOI toolkit.
2. We will continue to ensure that the public can raise complaints with us about information rights concerns; and we will use insight from our public advice services, complaints, investigations and horizon scanning to inform how we can engage with the public to better uphold their privacy rights.
3. We will continue to develop further regulatory measures aimed at supporting economic growth and recovery including our advice services and sandbox.
4. Organisations have told us that resources initially assigned to support the emergency pandemic have begun to be released back to dealing with information rights complaints, with the majority of organisations now able to deal with complaints they receive from

members of the public. Where organisations have a backlog of complaints, we expect them to have robust recovery plans in place to ensure they reduce these backlogs within a reasonable timeframe.

5. We will continue to proactively engage with businesses and public authorities to better understand how the measures implemented to tackle the pandemic may impact on their capacity to deal with information rights complaints in a timely manner.
6. We will keep our approach to complaints handling under regular review, understanding that we must balance this approach with the important role that people's information rights continue to have, especially during the present circumstances.

Regulatory action:

We will continue to act proportionately and in line with the ICO's [Regulatory Action Policy](#) so that we balance the benefits to the public and the dissuasive effect of taking regulatory action against the effect of doing so on regulated organisations, taking into account the particular challenges being faced by organisations and the UK economy at this time.

1. Organisations should continue to report personal data breaches to us, without undue delay. This should be within 72 hours of the organisation becoming aware of the breach.
2. We will continue to prioritise investigations that present the greatest harm to the public and work directly related to our response to the pandemic. We will recommence some investigations that we initially paused at the start of the public health pandemic and keep under review the small number we continue to pause. Where we conduct investigations, we will seek to understand the individual challenges faced by organisations and will consider the impact of the coronavirus pandemic and the present economic situation on the organisation.
3. We will continue to take a strong regulatory approach against any organisation breaching data protection laws aimed at taking advantage of the current crisis.
4. In deciding whether to take formal regulatory action, we will consider whether the organisation's non-compliance results from the coronavirus pandemic. We may give organisations longer than usual to rectify any breaches that predate the pandemic, where this has impacted the organisation's ability to take steps to put things right and would not create undue risks to the public.

5. As set out in the Regulatory Action Policy, before issuing fines we consider the economic impact and affordability. In current circumstances, this is likely to continue to mean the level of fines will be reduced.
6. We will undertake some risk-based audit work on an offsite basis recognising the restrictions that remain in force.
7. We will recommence our formal regulatory action in connection with outstanding information request backlogs held by organisations that pre-date the pandemic.
8. In May, we announced that we had paused our adtech and real time bidding investigation work so that we could focus our efforts on supporting organisations during the pandemic. We continue to keep this work under regular review and will publish a separate update on adtech and real time bidding in due course.

Freedom of Information Act and Environmental Information Regulations:

At the beginning of the pandemic we set out the empathetic and pragmatic approach we would take in our role regulating access to information regulation, recognising the importance of transparency, especially where people have seen their civil liberties impacted, and also the potential impact on public authorities timeliness in supplying information in circumstances where staff were not able to access premises as a result of the national lockdown or had been diverted to support efforts to address the pandemic or support vulnerable citizens.

Throughout the pandemic, we have continued to accept new information access complaints and have recognised that the reduction in public authorities' resources would likely impact their ability to comply with aspects of freedom of information law, such as how quickly FOI requests were handled.

1. We will continue to accept new information access complaints. We will take a pragmatic approach to resolving these complaints, while reflecting that the majority of public authorities have told us that their capacity has increased.
2. Where public authorities have complaint backlogs, we expect organisations to establish recovery plans focused on bringing the organisation back within compliance with the Freedom of Information Act within a reasonable timeframe. Where these backlogs pre-date the public health emergency, we may also unpause formal monitoring and regulatory action that was in train before the crisis.

3. As public authorities continue to support the economy throughout this crisis, we will continue to encourage them to proactively publish information they know will be of importance to their communities.
4. We will expect organisations to appreciate the ongoing importance of proper record keeping during a period that will be subject to future public scrutiny.

We will keep this guidance under review as the situation progresses and may issue further updates as and when appropriate.