

11 October 2023

IC-257882-D2D9

## Request

You asked us:

1. In relation to

<https://eur03.safelinks.protection.outlook.com/?url=https%3A%2F%2Fico.org.uk%2Fmedia%2Fabout-the-ico%2Fdisclosure-log%2F4026336%2Fic-249368-g7q0.pdf&data=05%7C01%7Caccessicoinformation%40ico.org.uk%7C095aeb4f121247f3986d08dbb5d922e7%7C501293238fab4000adc1c4cfefba21e6%7C1%7C0%7C638303716418983057%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Iik1haWwiLCJXVCI6Mn0%3D%7C3000%7C%7C%7C&sdata=SelLKM5SBNPnYiE9EA0xWeqVv%2BhGEhSnfk2RfnRBQbU%3D&reserved=0>

would you be so kind please as to provide me with copies of the ICO TRA and DPIA referred to in relation to Twilio Sendgrid?

2. In relation to

<https://eur03.safelinks.protection.outlook.com/?url=https%3A%2F%2Fico.org.uk%2Fglobal%2Fprivacy-notice%2Fhow-you-can-contact-us%2F%23email&data=05%7C01%7Caccessicoinformation%40ico.org.uk%7C095aeb4f121247f3986d08dbb5d922e7%7C501293238fab4000adc1c4cfefba21e6%7C1%7C0%7C638303716418983057%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Iik1haWwiLCJXVCI6Mn0%3D%7C3000%7C%7C%7C&sdata=1NAfUBw7IRbIRM9XWSmA5ItCAK6GBtsS7tVRoDB7QNg%3D&reserved=0>

which says "We use machine learning tools to review the content of emails sent to us. We use this information to train our systems, gain insight into demand for our services and to improve how we operate" - would you please let me have a copy of the ICO's DPIA regarding these machine learning tools?

3. BTW while I write, the links on

<https://ico.org.uk/about-the-ico/our-information/disclosure-log/ic-245469-y8q8/%20%20> seem to be for the wrong request number, 245725 (on ICO FOI statistics).

Would you please provide the links relating to the inquiry the ICO conducted on the use of algorithms and similar technologies in the welfare and care sector?

We received your request on 15 september 2023.

We have handled your request under the Freedom of Information Act 2000 (the FOIA).

## **Our response**

We can confirm that we hold information which falls within the scope of your request and have responded to each numbered point below.

1.

We have undertaken 2 DPIA's relating to our use of Twilio Sendgrid and these are now available on our disclosure log at the following link - [IC-248699-J1F7 | ICO](#).

Please find attached a copy of the Transfer Risk Assessment.

The TRA was carried out by a third party legal firm. We have redacted the names of employees under section 40(2) as this constitutes the personal data of individuals.

You will see that much of the TRA has been redacted. This information attracts the exemption under legal professional privilege at section 42 of the FOIA, which states:

*"Information in respect of which a claim to legal professional privilege or, in Scotland, to confidentiality of communications could be maintained in legal proceedings is exempt information."*

There are two types of privilege covered by the exemption at section 42. These are:

- Litigation privilege; and
- Advice privilege.

Litigation privilege covers confidential communications between the client and lawyer made for the purpose of preparing for existing or anticipated legislation. Advice privilege covers such communications when they're made for the purpose of seeking or giving legal advice. We find that the information in scope of your request is subject to advice privilege.

Section 42 is not an absolute exemption, so we must consider whether the public interest favours withholding or disclosing the information.

Public Authorities are allowed to extend the timescale for a response where there is a public interest test to consider. We are currently performing this test and when this is complete we will contact you with our decision as to whether the public interest favours the disclosure of the withheld information. Our [Request handling, Freedom of Information – Frequently Asked Questions](#) and the [section 45 Code of Practice](#) stipulate that, in most cases, it should take no more than a further 20 working days to perform the public interest test. You should therefore hear from us by 8 November 2023.

You may have seen on our disclosure log that this TRA was recently the subject of another request. This means that the public interest test is already being considered and we may therefore be able to provide our complete response before the above date.

2.

Please find attached a copy of the DPIA requested at point 2.

You will see that we have redacted some information.

We have redacted the name of an employee at the ICO under section 40(2) as this is the personal data of a third party individual and we do not have consent to disclose it.

We have also redacted some information in reliance upon section 31(1)(a) of the FOIA. The information relates to certain aspects of our IT systems, including operational details of technical solutions which, if disclosed, would be likely to compromise the security of these and leave us vulnerable to criminal activity by malicious actors.

Section 31(1)(a) of FOIA states that:

*"Information... is exempt information if its disclosure under this Act would, or would be likely to, prejudice- (a) the prevention or detection of crime..."*

*As stated in our guidance, this covers "all aspects of the prevention and detection of crime" and can be used to "withhold information that would make anyone, including the public authority itself, more vulnerable to crime for example, by disclosing its own security procedures..."*

As a data controller, we have a duty to safeguard the information that we hold. The 'security principle' of the UK GDPR, states that a data controller must process personal data securely by means of appropriate technical and organisational measures. These measures must ensure the confidentiality, integrity and availability of systems and services and the information processed within them.

We consider that disclosure of this information would be likely to prejudice our effectiveness as a data controller and compromise our ability to protect the information we hold. We have therefore considered the public interest test for and against disclosure.

In this instance, the public interest factors in favour of disclosure are:

- Increased transparency in the way in which the ICO processes information.

The public interest factors in favour of maintaining the exemption are:

- There is a strong public interest in the ICO maintaining the security and integrity of the information it holds;
- The risk that, if disclosed, such information could be used by malicious actors seeking criminal access to our information and systems.

Having considered all of these factors we have taken the decision that the public interest in withholding the information outweighs the public interest in disclosing it.

3.

Thank you for bringing it to our attention that the attachments on the disclosure log are incorrect. I have notified our web team and asked them to correct the error. This has not yet been completed so I have attached copies of the response and disclosure to case reference IC-245469-Y8Q8.

This concludes our response to parts 2 and 3 of your request. We will be in contact as soon as possible regarding the public interest test as explained in part 1 above.

## **Next steps**

You can ask us to review our response. Please let us know in writing if you want us to carry out a review. Please do so within 40 working days.

You can read a copy of our full review procedure [here](#).

If we perform a review but you are still dissatisfied, you can complain to the ICO as regulator of the FOIA. This complaint will be handled just like a complaint made to the ICO about any other public authority.

You can [raise a complaint through our website](#).

## Your information

Our [Privacy notice](#) explains what we do with the personal data you provide to us, and set out your rights. Our retention schedule can be found [here](#).

Yours sincerely



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