

27 March 2024

## **IC-290438-R1T3**

### **Request for Information**

Further to our acknowledgement of 27 February we can now respond to your request for information of the same date.

We have dealt with your request in accordance with the Freedom of Information Act 2000 (FOIA).

### **Request**

In your email, you asked:

*"In your previously provided/published DPIA's for your use of Microsoft Cloud services (Azure, M365, Sharepoint Online, and Teams), the assertion is repeatedly made that personal data is processed only within the UK, and that specifically this is limited to Microsoft UK Data Centres.*

*Similarly in your recent published interventions with the DESC partners in Scotland assertions of 'UK Sovereignty' (UK -only based) processing have been made by some of the DESC partners for both Axon processing and for the Microsoft platform on which they sit.*

*These assertions are commonly and regularly applied by both public bodies and commercial data controllers within DPIA's conducted under both the UK GDPR and Data Protection Act 2018 Part 3/4.*

*I would be grateful therefore if you could provide me with the following information:*

*1 - A copy of any documents, emails, analysis conducted by the ICO or other party, or similar information in your possession which indicates or evidences*

*that Microsoft shall not process any personal data outside of the UK - including any transfers conducted for support purposes or as a function of their provided software and services.*

*OR Conversely;*

*2 - A copy of any documents, emails, analysis conducted by the ICO or other party, or similar information in your possession which indicates or evidences that Microsoft may process personal data outside of the UK - or conduct transfers for support purposes or as a function of their provided software and services.*

*NOTE: Since only one of those conditions can logically apply I am content to receive a response to either Element 1 or 2 - not both of them.*

*AND*

*3 - A copy of any guidance provided by the ICO to the DESC partners re their processing of personal data for a Law Enforcement purpose for the DESC project if this has been issued, or an expected date of publication if the ICO intend to publish this. "*

## **Our response**

I can confirm we hold information falling within the scope of your request, however have to confirm that locating the full extent of the information requested would breach the cost limit envisaged by section 12 of the FOIA.

I have provided some more detail about why this is the case in this instance below, along with some advice about how a refreshed request, with a more narrow scope, may elicit information which is of interest to you.

## **FOIA section 12**

Section 12 of the FOIA makes clear that a public authority is not obliged to comply with an FOIA request if the authority estimates that the cost of complying with the request would exceed the 'appropriate limit'.

The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 stipulates that the 'appropriate limit' for the ICO is £450. We have determined that £450 would equate to 18 hours work.

In your first two questions you ask for any document containing a statement made by the ICO or any other party indicating that Microsoft does or does not process any personal data outside of the UK. This is matter that could have arisen and been discussed in almost any matter that the ICO has dealt with, whether it was the main subject of the matter or not. For example it could have arisen in the course of our discussions with a data controller when discussing a complaint or personal data breach case when they are providing the ICO with information about their data protection practices, whether or not the complaint or data breach specifically concerned that issue. Statements of this nature could be included in supporting materials such as DPIAs provided to us in relation to a vast variety of matters. You state that we must only hold information falling within scope of part 1 or part 2 of your request but this is not the case, it is highly possible that statements or analysis reaching both conclusions could have been provided to us by different parties and be in our possession.

The ICO deals with tens of thousands of complaints and data breach cases each year and there would be no way to narrow this number down given that this information could have been provided or discussed in relation to any complaint or data breach case, or indeed request for advice, regardless of the main reason for the case being brought to us. As you will appreciate, we would not be able to do a key word search for words such as 'Microsoft' as this would return hundreds of thousands of irrelevant results, if not more.

This would mean that manual searches would be required which would far exceed the 18 hours which would accrue a charge of £450 or less, triggering the provisions of section 12 of the FOIA.

This is all in addition to the searches that we would need to do in relation to projects that we know concern this type of information such as our work with the DESC partners and our own enquiries in relation to our own DPIAs.

It may be that you did not intend to cast the net so wide in respect of this request however your wording was such that it would not be appropriate for us to assume a narrower interpretation.

The third part of your request would not breach the costs limit on its own. It is however very closely connected to the first two parts of your request, given that the information in scope is likely to overlap, and the [ICO guidance](#) provides that in those circumstances the whole request should be refused rather than answering sections of the request separately.

We have provided advice below on how you can amend your request so that we can respond without breaching the costs limit.

### **Advice and assistance**

For the first two parts of your request, if you are specifically interested in any documents falling into the description mentioned in your request which we have relied upon or considered in relation to our own processing using Microsoft Cloud Services (as opposed to other organisations in contact with us as the regulator), we can answer this without breaching the costs limit.

If, alternatively or additionally, you are interested in this in respect of our work with the DESC partners, specifying this would also avoid breaching the costs limit.

Or, if there are other external parties who you believe that we may have discussed these issues with, please provide the names of those parties and this will help us to narrow our searches.

As the third part of your request does not hit the costs limit on its own, it would not need to be changed if the first two parts are altered appropriately.

### **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](#) on our website.

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 sets out [your rights](#). Our [Retention and Disposal Policy](#) details how long we keep information.

Yours sincerely



Information Access Team  
Strategic Planning and Transformation  
Information Commissioner's Office, Wycliffe House, Water  
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[ico.org.uk](http://ico.org.uk) [twitter.com/iconews](https://twitter.com/iconews)  
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