

WP Company LLC  
Sent by email only to: [privacy@washpost.com](mailto:privacy@washpost.com)

11 October 2018

**Case Reference Number: RFA0768934**

Dear Sir/Madam,

We are writing to you because the Information Commissioner's Office ('ICO') has received a complaint about the way WP Company LLC ('Washington Post') handles personal information.

**ICO's role**

The ICO is an independent regulatory authority reporting directly to the UK Parliament. The Commissioner enforces and oversees data protection law within the UK.

On 25 May 2018 the General Data Protection Regulation (GDPR) came into effect within the European Union. The GDPR forms part of the data protection regime in the UK, together with the Data Protection Act 2018 (DPA 2018). The main provisions of this apply, like the GDPR, from 25 May 2018.

The GDPR applies to processing carried out by organisations operating within the EU. **It also applies to organisations outside the EU that offer goods or services to individuals in the EU.** It provides the legal framework for how organisations are required to handle personal data and provides individuals with a series of rights. If an individual considers any of their rights have been infringed, they are able to complain to a Data Protection Authority (DPA) within the EU. Part of the ICO's role is to consider such complaints. You can find further information about this legal framework and the ICO's role on our website (<https://ico.org.uk/>).

**Complaint raised with us**

██████████ has complained that to access the Washington Post website the only options are to either accept cookies or to pay for a full subscription to the service. ██████████ complaint is that this does not constitute 'freely given' consent.



Information Commissioner's Office

## **Our view**

I have considered the information available in relation to this complaint and I am of the view that you have not complied with your data protection obligations. This is because you have given users a genuine choice and control over how their data is used.

The definition of consent under the GDPR is:

'any freely given, specific, informed and unambiguous indication of the data subject's wishes by which he or she, by a statement or by a clear affirmative action, signifies agreement to the processing of personal data relating to him or her.'

Article 7 (4) states one of the conditions of consent is:

'When assessing whether consent is freely given, utmost account shall be taken of whether, *inter alia*, the performance of a contract, including the provision of a service, is conditional on consent to the processing of personal data that is not necessary for the performance of that contract.'

The Washington Post has not offered a free alternative to accepting cookies on their website and therefore in this case consent cannot be freely given and is invalid.

## **Further action required**

You should now take steps to improve your information rights practices and you should ensure that users of the Washington Post website have the option to access all levels of subscription without having to accept cookies.

We keep a record of all complaints raised with us about the way you process personal information. The information we gather from complaints may form the basis for action in the future where appropriate.

Yours sincerely,

Emma Wright  
Lead Case Officer  
Monday, Wednesday, Thursday  
0330 313 1828



Information Commissioner's Office

## **ICO Statement**

You should be aware that the Information Commissioner often receives request for copies of the letters we send and receive when dealing with casework. Not only are we obliged to deal with these in accordance with the access provisions of the data protection framework and the Freedom of Information Act 2000, it is in the public interest that we are open and transparent and accountable for the work that we do.

For information about what we do with personal data see our privacy notice at [www.ico.org.uk/privacy-notice](http://www.ico.org.uk/privacy-notice)