

18 August 2023

**Case reference IC-246580-Y5P6**

**Request**

You asked us:

*"I am writing under the Freedom of Information Act to request the following:*

- 1. All information relating to "Operation Calder"*
- 2. All information relating to actions, investigations etc. about "the use of targeted advertising (adtech) of gambling on social media and the use of personal information within the gambling sector" since the release of ICO25.*
- 3. All information related to the report by Cracked Labs entitled Digital Profiling in the Online Gambling Industry."*

We received your request on *21 July 2023*.

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

**Our response**

We can confirm we hold information in scope of your request.

**FOIA Section 12**

Unfortunately, the work which would be required to fully confirm and gather the information you have asked for would exceed the cost limit set out by section 12

of the Freedom of Information Act 2000 (FOIA).

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

In this case, we would need to instruct a significant number of staff to search through their own email accounts and information storage areas to confirm the full scope of information in scope of your request (as the request is currently worded).

As there are many staff involved in Operation Calder itself, and other connected work which is looking into advertising technology ("ad-tech"), we believe there may be hundreds of documents and items dated from 2022 onwards which are held by each relevant staff member that may contain relevant information in scope of your request.

In addition to the time we have already taken to establish an overview of the information we hold, we reasonably estimate that a full, detailed search would exceed the cost limit.

We are therefore not obliged to comply with your request as it stands, however we have provided the following advice and assistance which may be useful to you.

## **Advice and assistance**

### **The request**

You may wish to narrow down the scope of your request in the following ways in order to avoid exceeding the FOIA cost limit, for example, you may wish to request -

- A more specific document, or a more selective range of documents
- Recorded information from a more limited time range
- Access to any final outcomes/findings (but please note the below)
- Confirmation of certain aspects of our work, rather than full-scale access

### **An overview**

We can confirm a basic summary for you about our work in this area.

Regarding Operation Calder, we have been exploring the use of targeted advertising and personal information within the gambling sector. In particular, whether the misuse of people's personal information may contribute to problem gambling. This includes assessing the report submitted to us from the UK campaign group Clean Up Gambling.

Operation Calder has not yet been concluded, however we intend to publish our findings at an appropriate date.

Please bear in mind the following advisory information below, as this may be applicable to all requests for information about this subject matter.

### **The information we hold**

We hold a range of recorded information relating to Operation Calder and other connected ad-tech matters we have explored. This includes:

- Plans
- Reports
- Project management documentation
- Meeting minutes
- Monitoring documentation
- Email correspondence
- Information received from, or relating to, external sources

## **Possible exemptions**

We would advise you that there are likely to be some exemptions which may apply to some information. We have included this information to make you aware of potential limitations of what could be disclosed.

Exemptions are contained in the FOIA, and we (as a public authority) can rely upon them to withhold certain types of information from being disclosed or published.

Some exemptions are 'absolute,' which means they are self-explanatory or fixed for a particular reason, and they do not require any further qualification.

Some exemptions are 'qualified,' which means they can only be applied if we conclude that a certain prejudice would occur because of disclosure, and/or there is a strong public interest in withholding the information.

Please read below for further details.

## **FOIA Section 30**

Section 30(2) of the FOIA is a qualified exemption relating to investigative material. It states:

*(2) Information held by a public authority is exempt information if—*

*(a) it was obtained or recorded by the authority for the purposes of its functions relating to—*

*(i) investigations falling within subsection (1)(a) or (b),*

*(ii) criminal proceedings which the authority has power to conduct,*

*(iii) investigations (other than investigations falling within subsection (1)(a) or (b)) which are conducted by the authority for any of the purposes specified in section 31(2) and either by virtue of Her Majesty's prerogative or by virtue of powers conferred by or under any enactment, or*

*(iv) civil proceedings which are brought by or on behalf of the authority and arise out of such investigations, and*

*(b) it relates to the obtaining of information from confidential sources*

## **Further details**

Section 30(2)(iii) may apply to some of our information, if it relates to investigations which are covered by FOIA Section 31(1)(2) (this could cover any regulatory investigation we carry out under data protection law). This is explained further in the FOIA Section 31 section below.

Section 30(2)(iii) can apply to ICO information obtained or received from confidential sources for the purpose of establishing whether there has been a contravention of the relevant legislation or not.

In this case, it may apply to information we have obtained or received from confidential sources connected to our Operation.

Disclosure of this information may prejudice our ongoing investigation and future

investigations. It is likely to reduce the level of trust in the ICO, which would discourage engagement with us and thereby make it harder for us to obtain details we need to establish whether contraventions of the legislation have taken place or not. Disclosure may also allow potential subjects of investigations to subvert our usual investigative approaches and procedures.

## **FOIA Section 31**

Section 31(1)(g) of the FOIA can relate to investigative material, but also wider law enforcement and regulatory capabilities. It states:

*(1) Information which is not exempt information by virtue of section 30 is exempt information if its disclosure under this Act would, or would be likely to, prejudice—*

*"would, or would be likely to, prejudice... the exercise by any public authority of its functions for any of the purposes specified in subsection (2)."*

Subsection 31(2) states:

*"(2) The purposes referred to in subsection (1)(g) to (i) are—*

*(a) the purpose of ascertaining whether any person has failed to comply with the law...*

*(c) the purpose of ascertaining whether circumstances which would justify regulatory action in pursuance of any enactment exist or may arise ..."*

## **Further details**

This exemption can generally apply to ICO information that is created and held for the purpose of carrying out our regulatory functions set out in the information legislation which we oversee.

In this case, it may apply to:

- Correspondence sent by the ICO to organisations
- Correspondence sent between internal ICO staff
- Information we have recorded about the findings, developments, actions and status of our investigation work
- Strategic information
- Project management information

Disclosure of this kind of information could prejudice our law enforcement capabilities for a number of reasons.

It may discourage engagement and openness in this context, not only from external sources, but also within the ICO, if there is an expectation that our business and regulatory-related correspondence may be disclosed.

The release of full scale documentation and correspondence may also trigger further requests and enquiries which may disrupt and slow down the very investigation it relates to.

At this stage, disclosure of our internal correspondence and strategic or planning information may also prejudice our intended resolution for this area of work. Our intelligence and analysis, or references to them, may also be undermined if it is disclosed into the wider public domain.

As such, there is likely to be an argument in favour of maintaining the confidentiality of some of our internal communications and channels and more sensitive information, so we can continue to allow staff to openly and effectively record, communicate, discuss and consult our strategies, plans and intelligence at appropriate stages of projects and operations, and to ensure that sensitive information is processed only through limited, protected channels to give ourselves a regulatory advantage.

From an external perspective, if there is less trust in the ICO about how we handle information, it is likely they will be less forthcoming during the course of our investigative work. This will make it harder for us to obtain detailed information to be able to establish whether legislation has been contravened.

Excessive disclosure is also likely to discourage wider engagement with the ICO and may dissuade others to consult us and our resources. Therefore, there would be an argument to favour withholding of information if it prevents the risk of weakening our regulatory position.



## **FOIA Section 44, and, Data Protection Act ("DPA") Section 132**

Section 44(1)(a) of the FOIA is in place to take account of other potentially prohibiting legislation which is relevant to public authorities. It states:

*"(1) Information is exempt information if its disclosure (otherwise than under this Act) by the public authority holding it -*

*(a) is prohibited by or under any enactment"*

The enactment in question is the Data Protection Act 2018. Section 132(1) of part 5 of that Act states that:

*"A person who is or has been the Commissioner, or a member of the Commissioner's staff or an agent of the Commissioner, must not disclose information which—*

*(a) has been obtained by, or provided to, the Commissioner in the course of, or for the purposes of, the discharging of the Commissioner's functions,*

*(b) relates to an identified or identifiable individual or business, and*

*(c) is not available to the public from other sources at the time of the disclosure and has not previously been available to the public from other sources,*

*unless the disclosure is made with lawful authority."*

### **Further details**

This exemption is intended to tie up with other legislation which prohibits what we can do with the information we hold, and in this case, it would mean Section 132 of the DPA. This DPA Section can apply to ICO information obtained or received information from confidential sources during the course of our regulatory work.

In this case, it may apply to information we have obtained or received from confidential sources connected to Operation Calder.

It is a criminal offence to disclose information in contravention of Section 132 (disclosure without lawful authority). Having the consent of the identifiable

individual or business is a lawful basis for disclosure, however, given the investigatory nature of the information, it would be unlikely this could be relied upon.

There would undoubtedly be a public interest in having access to any information about an area of data processing and technology which has potentially significant scope, however this still would not guarantee the disclosure of actual, specific communications received from individuals or businesses. As such, there is no guarantee that 'public interest' would be an overriding basis for disclosure of all communications and information obtained or received by the ICO.

If we were to find that Section 132 is applicable, then Section 44 of the FOIA would be initiated, which would require a prohibition on disclosure.

## **FOIA Section 42**

Section 42 of the FOIA applies to information which could qualify as legally privileged information.

Some of our recorded correspondence between our legal professional staff and other ICO staff ('clients') is likely to qualify for this exemption, on the basis that it would be considered as legal advice regarding regulatory matters.

## **Public interest**

For any qualified exemptions, we would have to take the public interest factors into consideration. This means we have to consider the arguments for and against both the disclosure and non-disclosure of the information being requested.

It may be that we conclude that public interest in disclosure of some information is sufficiently strong, if, for example, we consider there is a sufficient interest in transparency about the details of our operational procedures. However, we may instead decide in favour of the reverse option of non-disclosure, if we consider there is a stronger interest in protecting certain information to ensure we preserve our regulatory capabilities.

This concludes our response.

## **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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