

10 July 2023

IC-238095-G2Z6

Request

You asked us:

"I kindly request that you provide me with the following information pertaining to Article 36 of the UK GDPR for the last financial year:

The number of Data Protection Impact Assessments (DPIAs) disclosed to the Information Commissioner's Office (ICO) which indicate that the processing would result in a high risk in the absence of measures taken by the controller to mitigate the risk.

A list, by name/title, of the DPIAs which indicate that the processing would result in a high risk in the absence of measures taken by the controller to mitigate the risk.

A copy of the DPIAs which indicate that the processing would result in a high risk in the absence of measures taken by the controller to mitigate the risk, and the ICO's response to those DPIAs."

We received your request on 13 June 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.

Our DPIA and Innovation Advice Team have advised that in the financial year 22/23 we dealt with 4 prior consultations that indicated high risk that the controllers were unable to mitigate.

When Data Controllers contact the ICO in line with their responsibilities under Article 36 of the UK GDPR they have an expectation that the information they provide to us will be treated with a degree of confidentiality. We are therefore

withholding the names/titles of the DPIAs provided to us, and the copies of the DPIAs themselves in reliance upon section 44 of the FOIA, by virtue of section 132 of the Data Protection Act 2018 (DPA). Section 132(3) imposes a criminal liability on the Commissioner and his staff not to disclose information provided to us or obtained for the purposes of carrying out our regulatory functions, unless we have the lawful authority to do so or it has been made public from another source. I have explained the exemption further below.

FOIA section 44 (& DPA section 132)

This exemption is an absolute exemption, which does not require a consideration of the public interest test of the type required by the qualified exemptions.

Section 44(1)(a) of the FOIA 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 and specifically section 132(1) of part 5 of that Act. This 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."

Section 132(2) lists the circumstances in which a disclosure can be made with lawful authority, however we find that none of them apply here. As a result, the information is exempt under the FOIA and withheld from our response.

I appreciate that this response may be disappointing, but I hope the explanation above is helpful.

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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