

Date: 29 November 2023

IC-269647-D2N9

Request

You asked us:

"Please confirm whether prior analysis relating to online generic marketing in a logged-in website has been undertaken? This guidance does not appear in the Code so was it just ignored or does the analysis exist but it was ruled out? If the analysis exists, please will you provide me with a copy including the decision not to include it in the Code. I'll submit a FOI if I have to. I want to see the formal view of the IC in relation to generic marketing displayed in a logged-in website. Does it exist? If not, why not?"

We received your request on 1 November 2023. We have handled your request under the Freedom of Information Act 2000 (the FOIA).

Our response

In relation to whether we hold analysis and views about online generic marketing displayed in online accounts, I can confirm we hold information in scope of your request.

I have attached a copy of a request for internal policy advice and the response that was produced following a query to the ICO. The policy advice, from 2014, provides our thoughts at the time about non-personalised marketing in a logged-in website. Some information has been redacted to hide the identity of the organisation who made the enquiry. This information is exempt from disclosure under s.44 FOIA and I have provided further information below.

There is also some relevant information in our [draft direct marketing code of practice](#). This was published for consultation in 2020 and the relevant part is at page 86:

"If your online advertising does not involve the processing of personal data – ie it is not based on any interests, behaviours or other information about individuals – then the GDPR will not apply. For example, if the advertising is non-targeted (ie the same marketing is displayed to everyone who visits your website) or contextual (ie targeted to the content of the page rather than the identity or characteristics of the visitor) then this will not constitute direct marketing because it is not 'directed to' an individual."

Some further relevant information is contained in our [2021 opinion on online advertising](#). This opinion highlights the difference between personalised and contextual advertising. On page 43:

"Individuals must be offered the ability to receive adverts without tracking, profiling or targeting based on personal data, eg contextual advertising that does not require any tracking of user interaction with content"

And page 46:

"As a general rule, contextual-based advertising allows most readily for compliance with the data protection principles".

Some relevant information is also held in our guidance on [identifying direct marketing](#). The relevant excerpt is as follows:

"Marketing is not "directed to" if it is indiscriminate blanket marketing. For example:

- leaflets delivered to every house in an area;*
- magazine inserts;*
- online adverts shown to everyone who views a website; or*
- an advertising post on social media that is broadcast to all followers of the account or all users of the platform."*

Finally, we hold some internal views about the matter, too. Here is the relevant excerpt from article titled "Online advertising – user accounts":

"What are the rules for ads shown to people logged in to an online account?"

If the ads are targeted to the user, the organisation needs to comply with the usual data protection obligations, and with cookie rules. PECR marketing rules might also apply for some types of account messages.

But these rules are unlikely to apply if it's just a generic ad shown to all users."

Additionally, we express a view in our internal guidance titled "Online advertising - targeted ads". The relevant excerpt is as follows:

"Do organisations need consent for targeted online ads?"

Yes – they need consent for any cookies involved.

Many online ads are targeted to users based on their browser history, previous purchases and so on, using cookies (small text files placed on their device). If an organisation uses cookies to target ads in this way, they must comply with the PECR cookie rules – which means they must tell people about the cookies and get consent

[...]

Note that it is possible to place online ads which aren't targeted using cookies. For example, 'contextual' ads are placed based on the content of the website itself and shown to anyone visiting that site. This type of ad doesn't always need consent."

I have been unable to locate any further prior analysis or views on the matter. I can confirm no information is held pertaining to a decision to exclude it from the code.

Some information withheld: FOIA Section 44 and DPA section 132

Some information has been withheld under section 44 of the FOIA. Section 44(1)(a) 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."

The policy advice was given in the context of a request for advice from a company. The advice contained the name of the company, details about their product offering, and the sector in which the company was situated. As such, I consider that full disclosure would reveal information provided to the Commissioner in the course of discharging his functions, that the information would relate to an identified or identifiable business, and I do not consider the information is available from other sources at the time of the disclosure. Disclosure is therefore prohibited by s.132 of the Data Protection Act 2018 and therefore exempt from disclosure under FOIA.

Ordinarily, we would consult with the company to ask whether they consent to disclosure. On this occasion, I have not consulted with the company to seek its views. This means I do not have lawful authority to disclose the information in full. However, I have still been able to disclose the vast majority of the information in the policy advice because I have redacted the company's name, details about the company's product offering, and the company's sector such that the information no longer 'relates to an identified or identifiable... business'.

This concludes our response to your request. I hope you find the information 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](#) 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



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