

19 December 2023

IC-271679-S7H9

## Request

You asked us:

*"I write further to your recent press release entitled Commissioner warns UK's top websites to make cookie changes: <https://ico.org.uk/about-the-ico/media-centre/news-and-blogs/2023/11/commissioner-warns-uk-s-top-websites-to-make-cookie-changes/>*

*Please can you provide me with the following information regarding the ICO's latest actions underlying this press release:*

- 1. The number of organisations that the ICO has written to regarding cookies non-compliance.*
- 2. A list of names of the organisations that the ICO has written to regarding cookies non-compliance, together with the corresponding website URLs.*
- 3. If a template warning letter was used: a copy of the template warning letter.*
- 4. A copy of the letter sent to the first organisation in the alphabetically sorted list of organisations that the ICO wrote to.*
- 5. Confirmation of whether the ICO used any tools to automate cookies compliance checks on websites; and if so, a list of names of those tools.*
- 6. If available, a high-level list of the reason categories explaining why the ICO wrote to organisations (for example, no reject all button, no consent mechanism, no granular consent mechanism, insufficient transparency etc.). For the avoidance of doubt, if the reasons are not already separately recorded, I am not asking for you to go through all the letters to extract the reasons, as this is may exceed the FOI cost limit."*

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

## **Our response**

We hold information in scope of your request. I have answered each question below.

1. The number of organisations that the ICO has written to regarding cookies non-compliance.

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2. A list of names of the organisations that the ICO has written to regarding cookies non-compliance, together with the corresponding website URLs.

This information is held by the ICO but it is being withheld under section 31 of the FOIA. The reason for this is that there are open investigations which are ongoing and as such it would not be appropriate to disclose this information. The need to withhold this information will change over time, but at present we are not in a position to disclose this information. I have included further explanation of section 31 of the FOIA in the response below.

3. If a template warning letter was used: a copy of the template warning letter.

Please see the attached template letter. I have redacted a small amount of personal data from the letter under section 40(2) by virtue of section 40(3)(a)(i), which is the exemption under FOIA concerning personal information.

4. A copy of the letter sent to the first organisation in the alphabetically sorted list of organisations that the ICO wrote to.

This is being withheld for the reasons outlined in the answer to question 2.

5. Confirmation of whether the ICO used any tools to automate cookies compliance checks on websites; and if so, a list of names of those tools.

I can confirm that the ICO has not used any tools to automate the cookies compliance checks on websites.

6. If available, a high-level list of the reason categories explaining why the ICO wrote to organisations (for example, no reject all button, no consent mechanism, no granular consent mechanism, insufficient transparency etc.). For the avoidance of doubt, if the reasons are not already separately recorded, I am not asking for you to go through all the letters to extract the reasons, as this may exceed the FOI cost limit.

This is outlined in the letter but the three reasons we wrote to organisations were if:

- non-essential advertising cookies were placed before the user had the opportunity to provide consent;
- users could not reject non-essential advertising cookies as easily as they could accept them; and
- non-essential advertising cookies were placed even if the user did not consent to such cookies.

### **Further information about FOIA section 31**

Some of the information you have requested is exempt from disclosure under section 31(1)(g) of the FOIA. We can rely on section 31(1)(g) of the FOIA where disclosure:

*"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)."*

In this case the relevant purposes contained in subsection 31(2) are 31(2)(a) and 31(2)(c) which state:

*"(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 ..."*

Section 31 is not an absolute exemption, and we must consider the prejudice or harm which may be caused by disclosure. We also have to carry out a public interest test to weigh up the factors in favour of disclosure and those against.

Our investigation into various organisations is still ongoing. To release the information you have requested could prejudice the ICO's ability to conduct the investigation in an appropriate manner. Disclosure at this stage would discourage our ongoing discussions between the ICO and the various organisations and may damage our ability to conduct and conclude the investigation fairly and proportionately.

Disclosure could also jeopardise the ICO's ability to obtain information relating to this case or others in the future.

Disclosure is likely to result in other parties being reluctant to engage with the ICO in the future.

Any information released at this stage could be misinterpreted, which in turn could distract from the investigation process.

With this in mind, we have then considered the public interest test for and against disclosure.

In this case the public interest factors in disclosing the information are:

- increased transparency in the way in which the various organisations have responded to the ICO's enquiries; and
- increased transparency in the way in which the ICO conducts its investigations.

The factors in withholding the information are:

- the public interest in maintaining organisations' trust and confidence that their replies to the ICO's enquiries will be afforded an appropriate level of confidentiality;
- the public interest in organisations being open and honest in their correspondence with the ICO without fear that their comments will be made public prematurely or, as appropriate, at all; and
- the public interest in maintaining the ICO's ability to conduct the investigation into complaints as it thinks fit,

Having considered these factors, we are satisfied that it is appropriate to withhold the information.

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 and EIR. 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

Senior Information Access Officer



Information Access Team  
Risk and Governance Department, Corporate Strategy and  
Planning Service  
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[ico.org.uk](http://ico.org.uk) [twitter.com/iconews](https://twitter.com/iconews)

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data see our [privacy notice](#)**