

19 December 2023

Case reference: IC-271704-Y3R7

We are now in a position to respond to your information request of 21 November.

Request

"I would like to make an FOI request about the Commissioner's announcement on 21st November 2023 about sending letters to certain controllers about cookie compliance. Please supply only recorded information held at the time of my request. If you wish to include any unrecorded information in your response, please clearly label it as such.

- 1) How many organisations were sent letters?*
- 2) What are the names of the organisations?*
- 3) What criteria were used to select them?*
- 4) What is the text of the letter that was sent?*
- 5) Stephen Almond was quoted as saying the following: ""Gambling addicts may be targeted with betting offers based on their browsing record, women may be targeted with distressing baby adverts shortly after miscarriage and someone exploring their sexuality may be presented with ads that disclose their sexual orientation." Does the Commissioner hold evidence that such examples have happened, or are they hypothetical examples? If evidence is held, I would like to request it. You can limit my request to specific evidence used to write Almond's statement."*

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

Our response

Please find below information in response to your requests in points 1 to 5.

1. How many organisations were sent letters?

We have written to 53 organisations.

2. What are the names of the organisations?

We are withholding the names of these organisations under section 31 of the FOIA. Further detail on this is provided later in the response.

3. What criteria were used to select them?

This is outlined in the attached letter. The reasons we wrote to the organisations were as follows: 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.

4. What is the text of the letter that was sent?

Please find enclosed a copy of the template letter. We have redacted some information under section 40(2) by virtue of section 40(3)(a)(i), which is the exemption under FOIA concerning personal information.

5. Stephen Almond was quoted as saying the following: ""Gambling addicts may be targeted with betting offers based on their browsing record, women may be targeted with distressing baby adverts shortly after miscarriage and someone exploring their sexuality may be presented with ads that disclose their sexual orientation." Does the Commissioner hold evidence that such examples have happened, or are they hypothetical examples? If evidence is held, I would like to request it. You can limit my request to specific evidence used to write Almond's statement."

The examples provided in the statement are hypothetical and contextual, rather than specific individual examples. They are informed by concerns that have been raised with us, our understanding of the potential harms of online advertising based on research conducted by civil society, and our wider work looking into the adtech industry. The current action in relation to cookies forms part of our strategy to ensure that people's rights are upheld by the online advertising industry.

As you may be aware, the ICO has 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 gambling-related harms. This includes assessing the report submitted to us from the UK campaign group Clean Up Gambling. This submission is available on the charity's website.

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

We also launched a consultation into period tracking and fertility apps in 2023. This aimed to gather views on whether users had experienced harmful consequences from, or were negatively impacted by, the way their personal information had been used or shared by these apps. You can read more about this consultation on our website [here](#).

Section 31 FOIA

We consider that the names of the 53 organisations to be exempt from disclosure under Section 31(1)(g) of the FOIA.

This section states:

"Information... is exempt information if its disclosure under this Act would, or would be likely to, prejudice – (g) the exercise by any public authority of its functions for any of the purposes specified in subsection (2)"

The purposes referred to in Sections 31(2)(a) and (c) 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*

The purposes at Section 31(2)(a) and (c) apply when a regulator is determining whether or not there has been a breach of relevant legislation, and whether any further action is appropriate.

The information you have requested relates to ongoing work we are conducting into the adtech sector. Our enquiries with these organisations is ongoing. To release the information you have requested at the present time could prejudice the ICO's ability to conduct the investigation fairly and in an appropriate manner.

The exemption at Section 31 is not absolute, and we need to consider the public interest test by weighing up the factors for and against disclosure of the information we hold at this time, as well as any prejudice or harm which may be caused by disclosure.

We have considered the public interest test for and against disclosure. In this instance, the public interest factors in favour of disclosure are:

- Openness and transparency on our work as regulator into the compliance of organisations with relevant legislation.
- The understandable interest of the public in being able to see the organisations who have been identified in our work on cookie compliance.

The public interest factors in favour of maintaining the exemption are:

- The need for the ICO to continue to encourage these organisations, and other data controllers, to engage with us as regulator.
- To ensure the confidentiality of the enquiries we have undertaken. Disclosure of the names while our enquiries are ongoing would be likely to undermine the effectiveness of this process, and our ability to conduct this work fairly and in an appropriate manner.
- The ICO has a demonstrable history of sharing information about our work when it is appropriate to do so, in line with our 'Communication our regulatory and enforcement activity policy', which you can read online [here](#). We have stated that we will provide an update on this work in January 2024, including details of companies that have not addressed our concerns.

Having considered all of these factors we have taken the decision that the public interest in withholding the information outweighs the public interest in disclosing it, and the information you have asked for is exempt from disclosure under S31(1)(g) of the FOIA.

This concludes our response to your request. We hope you found this 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 [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 sets out [your rights](#). Our [Retention and Disposal Policy](#) details how long we keep information.

Yours sincerely



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