

31 January 2024

IC-281035-D4D5

Request

You asked us:

"[...] I would be grateful if you could supply the following information: [...]

A copy of all correspondence received from or sent by ICO to Malwarebytes UK or its overseas offices for the last three years.

Details of any complaints or correspondence received by ICO in respect of any office of Malwarebytes over the last three years, including complaints about their processing of personal data.

The job title and email address of Malwarebytes' representative [name of individual], who was the recipient of your email of 5/9/23.

Furthermore, I note that ICO has issued Malwarebytes UK with a Data Protection Registration Certificate (ZB483445).

I would be grateful if you could explain to me the criteria that Malwarebytes UK were required to meet in order to qualify for that certificate and I ask that you provide me with a copy of all submissions they produced to ICO in order to obtain it."

We note that you named a specific individual member of Malwarebytes UK Limited's staff in your request. To protect the personal data of this individual, their name has been redacted from this response.

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

Our response

We note that several points of your request specify a three year timeframe.

It is important to note that the ICO's retention schedule sets out timeframes for the erasure of information. For example, the timeframe for data protection complaints is two years, after which the information should be erased.

This means that we will be unable to confirm whether or not we previously held information in scope of your request where the scope of your request falls outside our retention timeframes.

Please see our [retention and disposal policy](#) for more information.

For convenience, we have responded to each of your requests separately below.

A copy of all correspondence received from or sent by ICO to Malwarebytes UK or its overseas offices for the last three years.

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

We can confirm that we hold one item of correspondence in respect of a data protection complaint case. As correspondence held regarding the complainant's data protection complaint is considered to be the personal data of yourself as the complainant, it is therefore exempt under section 40(1) of the FOIA.

Disclosure under FOIA is disclosure to the wider world. Disclosure of this data would therefore break the first principle of data protection - that personal data is processed lawfully, fairly and in a transparent manner.

There is no strong legitimate interest that would override the prejudice that disclosure would cause to the rights and freedoms of the individual concerned to disclose the details of their complaint to the wider world. We are therefore withholding the information under section 40(1) of the FOIA.

We can confirm that we also hold some correspondence between Malwarebytes UK and the ICO regarding their data protection registration. However, we have addressed this separately below as part of your request on the topic of Malwarebytes' registration submissions.

Details of any complaints or correspondence received by ICO in respect of any office of Malwarebytes over the last three years, including complaints about their processing of personal data.

We consider this request to be for information regarding two separate categories: complaints about Malwarebytes UK Limited, and general correspondence about Malwarebytes UK Limited.

We can confirm that we hold information regarding one data protection complaint about Malwarebytes UK Limited. The ICO proactively publishes information about data protection complaints in [the complaints and concerns data sets](#) on our website, and this includes an overview of this data protection complaint.

As the information is already accessible to you, technically it is withheld under Section 21 of the FOIA. Section 21 states that we don't need to provide you with a copy of information when you already have access to it. However, we have reproduced the information from the relevant entry below for your convenience:

Status	Completed
Legislation	Hybrid
Case Reference	IC-244952-H0C0
Date Received	13/07/2023
Received FY	2023/24
Received Qtr	Q2
Received FY Month	04-Jul
Completed Date	05/09/2023
Completed FY	2023/24
Completed Qtr	Q2
Completed Month FY	06-Sep
Sector	Online Technology and Telecoms
Sub Sector	Service providers
Legislation Reason	Art 5 - Principles relating to processing of personal data
Submitted About	Malwarebytes UK Limited
Decision	Informal action taken
Decision Detail1	Potential infringement
Decision Detail2	More work for org; unsatisfactory response to ind complaint

In the above, "FY" stands for Financial Year, "Qtr" is short for "Quarter" and "ind complaint" is short for "individual complaint".

Further information regarding this complaint case has been withheld under section 40(1) of the FOIA as outlined in the previous section, as this is the personal data of yourself as the complainant.

You also requested copies of general correspondence issued to the ICO about Malwarebytes UK Limited. We are of the view that retrieving this information would exceed the cost limit set out by section 12 of the Freedom of Information Act 2000.

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.

Not all correspondence received by the ICO is intended for the ICO, and we frequently receive irrelevant or misdirected correspondence. In the event that we identify correspondence of this nature, we do not always generate a case file in our casework system, and in the majority of cases we do not provide a response to the correspondence of this nature.

Where such correspondence is not attached to a case in our casework system, we are unable to run quick automated reports on the contents of this non-relevant correspondence. To locate information that could be held in respect of your request would require a manual search of thousands of items of correspondence.

Assuming that it would take around 1 minute to review a single item of correspondence – and it is certain that some searches would take much longer than that – this would equate to over 80 hours' worth of searching. This clearly exceeds the 18 hours which would accrue a charge of £450 or more, triggering the provisions of section 12 of the FOIA.

It is also highly likely that the majority of this information would be exempt from disclosure under section 40(2), as this would be the personal data of the correspondents.

The job title and email address of Malwarebytes' representative [...].

We can confirm that we hold some information in scope of this request.

However, this information is exempt from disclosure under 40(2) of the FOIA, as this is the personal data of the representative in question.

We are also withholding this information 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."

We can confirm that the information was provided to the Commissioner in order to carry out their functions. As a result, we cannot disclose this information unless we have lawful authority.

Section 132(2) lists circumstances in which a disclosure can be made with lawful authority. However, none of these circumstances apply here. The Commissioner and his staff risk criminal liability if they disclose information without lawful authority. As a result, the information is exempt from disclosure.

Furthermore, I note that ICO has issued Malwarebytes UK with a Data Protection Registration Certificate (ZB483445). I would be grateful if you could explain to me the criteria that Malwarebytes UK were required to meet in order to qualify for that certificate and I ask that you provide me with a copy of all submissions they produced to ICO in order to obtain it.

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

Under the Data Protection (Charges and Information) Regulations 2018, individuals and organisations that process personal data need to pay a data protection fee to the Information Commissioner's Office (ICO), unless they are exempt. The reference ZB483445 is a registration number, showing that Malwarebytes UK Limited has paid the fee and is included in the ICO's register of data protection fee payers.

You can find our [guidance to organisations on the data protection fee](#) on our website. You can find the Data Protection (Charges and Information) Regulations 2018 at the following website:
www.legislation.gov.uk/ukdsi/2018/9780111165782/contents.

Organisations that are registered with the ICO are listed on our [register of fee payers](#), which is proactively published on our website. The ICO also issues a certificate to the organisation as proof that they have registered. It is important to note that the data protection registration certificate is not an award or qualification based on an evaluation of the organisation's data protection practices.

You can find Malwarebytes UK Limited's registration information, as well as a downloadable copy of the relevant certificate, [published in the register of fee payers](#).

Where the information provided above is already accessible to you, technically it is withheld under Section 21 of the FOIA. Section 21 states that we don't need to provide you with a copy of information when you already have access to it.

You also requested copies of submissions from Malwarebytes UK to the ICO concerning their registration. We can confirm that we do hold information in scope of this request. The correspondence is, however, exempt under section 44 of the FOIA.

We can confirm that the information was provided to the Commissioner in order to carry out their functions. As a result, we cannot disclose the information unless we have lawful authority.

Section 132(2) lists circumstances in which a disclosure can be made with lawful authority. However, none of these circumstances apply here. The Commissioner and his staff risk criminal liability if they disclose information without lawful authority. As a result, the information is exempt from disclosure.

This concludes our response to your request.

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



Information Access Team
Strategic Planning and Transformation
Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire SK9 5AF
ico.org.uk twitter.com/iconews
Please consider the environment before printing this email
For information about what we do with personal data see our [privacy notice](#)