

22 February 2024

## IC-285671-J1K2

### Request

You asked us:

"The guidance on the *Data type* page appears to contradict the *What is special category data?* page on the ICO website.

'On the ICO website, on the page ['Data type'](#) it states:

**Gender reassignment data** – information about those who have transitioned or are transitioning between genders. This may also include that the person identifies as non-binary or another gender type. This information is considered special category data in accordance with Article 9 of the UK GDPR.

Request:

1. Please confirm the reason why gender reassignment data about people who have transitioned or are transitioning, including people who identify as non-binary or another gender type, is always considered to be special category data.
2. Please provide copies of any internal documents including documents which have not been published such as memos or emails, which contains reference to the ICO's position in 1, above, on gender reassignment data and article 9 UK GDPR."

We received your request on 1 February.

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

## **Our response**

We do not hold any information within the scope of your request. The definition that you have quoted comes from the glossary of terms linked to the 'Data security incident trends' reports which are published by our Economic Analysis team. They have confirmed that the definitions were drafted in summer 2022 but that they no longer hold copies of any documentation or correspondence about how those definitions were reached.

Having reviewed this definition, we are of the view that it does not accurately represent the ICO's position on gender reassignment data. I have attached for information an excerpt from our internal knowledge base which does correctly explain our position on this. We are now in the process of updating the quoted definition on our website accordingly.

We would just add that this definition has not been used by ICO staff to make decisions about data breach cases, and was only provided on the website to assist the public in interpreting the reports published on the connecting page.

## **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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