

19 July 2023

**IC-240469-W2Q2**

**Request**

You asked us:

*"Kindly provide all material related to and flowing from the submission of a DPIA by AWO on behalf of Global Witness on 7 September 2021."*

We received your request on 24 July.

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

**Our response**

We do hold information within the scope of your request. Some information in the internal correspondence bundle has been redacted and one document has been withheld, which relate to legal advice provided by ICO internal lawyers to our DPIA team, and attract legal professional privilege, this information has been withheld pursuant to s.42 FOIA. In addition to this, some redactions have been made to the AWO correspondence bundle to information which is the personal data of third parties and this information is withheld pursuant to s.40(2) FOIA. Further information about this can be found below.

The information which we have considered to be within the scope of your request relates purely to the DPIA process. While some of the issues raised in your submission were taken forwards and considered for further investigation by our High Priority Inquiries team (HPI), this was unconnected to the DPIA process and there was no further consideration of the matter under Article 35 after September 2021.

We note that your request also asks for information 'flowing from' the submission of the DPIA. This wording imposes an evaluative standard on the information you are requesting and requires a subjective assessment as to what might be considered to 'flow from' these matters by the ICO.

The information which we hold relating to the work undertaken by HPI after the DPIA matter was closed covers scoping exercises in which the issues raised in the DPIA were considered in the context of our ongoing investigatory work, other related investigations which were already underway when the DPIA was received and wider areas of work such as our Adtech strategy.

The matters raised by Global Witness were ultimately not progressed further than the scoping exercise, and as such the information held from this portion of work is made up mostly of consideration of other areas of ICO work which did not stem from the DPIA, but which were relevant to considerations of whether the issues raised in the Global Witness DPIA should be further considered or investigated.

As a result, we do not consider this information falls in scope of your request. The information held relating to the HPI work discusses matters which were already ongoing or triggered by other matters, and it would be very difficult to identify what, if any, information contained in it purely 'flows from' the DPIA submitted on behalf of Global Witness in any comprehensive or uniform way.

It is also worth noting that this further information runs to over two hundred pages, and contains extensive consideration of other areas of ICO work which are still live and/or sensitive, much of this information would therefore be exempt and require redaction, if it were considered to be within the scope of the request.

We therefore consider that, should we have interpreted your request more broadly, to encompass all of the information held which in any way references the Global Witness DPIA or the issues contained in it, we would have been unable to respond to the request in that either the searches involved would have breached the appropriate costs limit, or that the work involved in preparing the information for disclosure would be disproportionate to the value of the information that we would be able to disclose.

## **FOIA section 42**

I can confirm that we hold some information which is subject to legal professional privilege and is withheld from our response in accordance with section 42 of the FOIA.

Section 42(1) of the FOIA states:

*"Information in respect of which a claim to legal professional privilege or, in Scotland, to confidentiality of communications could be maintained in legal proceedings is exempt information."*

There are two types of privilege covered by the exemption at section 42. These are:

- Litigation privilege; and
- Advice privilege.

We find that some of the information in scope of your request is subject to advice privilege. This covers confidential communications between the client and lawyer, made for the purpose of seeking or giving legal advice.

Section 42 is not an absolute exemption, so we must consider whether the public interest favours withholding or disclosing the information.

The factors in favour of lifting the exemption include:

- The public interest in the ICO being open and transparent;
- The public interest in transparency about the DPIA process.

With the public interest factors in favour of maintaining the exemption including:

- The disclosure of legally privileged information threatens the important principle of legal professional privilege;
- Maintaining openness in communications between client and lawyer to ensure full and frank legal advice;
- The disclosure of legal advice could have a chilling effect on both policy officers and legal advisers by dissuading them from discussing such matters in the future in the knowledge that it could potentially be made public.

Taking into account the above factors we conclude that the public interest lies in maintaining the exemption.

## **FOIA section 40(2)**

You will see that some of the third party personal data has been redacted in our response.

Section 40(2) of the FOIA exempts information if it is personal data belonging to an individual other than the requester and it satisfies one of the conditions listed in the legislation.

We find that the condition at section 40(3A)(a) applies in this instance: that disclosure would breach one of the data protection principles. The principles are outlined in the General Data Protection Regulation (GDPR) with the relevant principle on this occasion being the first principle as provided by Article 5(1): that personal data shall be processed lawfully, fairly and in a transparent manner.

We do not consider that disclosing this information into the public domain is necessary or justified. There is no strong legitimate interest that would override the prejudice to the rights and freedoms of the relevant data subjects. We have therefore taken the decision that disclosing this information would be unlawful, triggering the exemption at section 40(2) of the FOIA.

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. 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



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