

3 July 2024

IC-311642-V7P8

Request

You asked us for the following:

- *Communications between the ICO and OpenAI regarding the appropriateness of different GDPR legal bases to process data to train AI, since 1 January 2023.*
- *Communications between the ICO and Google regarding the appropriateness of different GDPR legal bases to process data to train AI, since 1 January 2023.*
- *Communications between the ICO and Meta Platforms regarding the appropriateness of different GDPR legal bases to process data to train AI, since 1 January 2023.*

We received your request on 6 June 2024.

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

Our response

We hold information in scope of your request.

We have been engaging in discussions with OpenAI, Google and Meta about the lawful basis for processing personal data to train generative AI. We hold email correspondence between us and all three organisations.

Please find attached letters we sent to OpenAI and Google in June 2023 requesting information about their processing of personal data for generative AI. Please note that Meta proactively informed the ICO of its approach and it was therefore not necessary to send an initial information request of this nature.

We have withheld some personal data from the attached letters - Stephen Almond's signature and the names of our contacts at both organisations. We explain this in further detail below.

Some of the redacted information in the Google letter was provided to us in confidence and is withheld under section 44 of the FOIA, explained below. All subsequent correspondence between the ICO and Google, Meta and OpenAI in relation to this matter is withheld under section 44 for the same reason.

Withheld information - FOIA section 44 (& section 132 DPA)

Section 44(1)(a) of the FOIA 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 and specifically section 132(1) of part 5 of that Act. This 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."

Section 132(2) lists the circumstances in which a disclosure can be made with lawful authority, however we find that none of them apply here. As a result the information is exempt under the FOIA and withheld from our response.

Withheld information - FOIA section 40(2)

We have redacted the name and contact email address of our contacts at OpenAI and Google, along with Stephen Almond's signature.

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. We have therefore taken the decision that disclosing this information would be unlawful, triggering the exemption at section 40(2) of the FOIA.

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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