

12 July 2024

**IC-313521-W6Q9**

**Request**

You asked us:

*Please can you provide me with the following information:*

*1. Correspondence sent by the ICO to Meta, regarding Meta's plans to use Facebook and Instagram user data to train generative AI.*

*2. Correspondence received by the ICO from Meta, confirming that Meta is pausing its plans to use Facebook and Instagram user data to train generative AI.*

*(Regarding S.132 DPA2018: The fact that Meta is pausing its plans is already in the public domain, further and alternatively there is a strong public interest in properly understanding what Meta is doing with user data under the UK GDPR transparency principle)*

*3. Correspondence sent by the ICO to Meta, regarding Meta's use of WhatsApp user data to train generative AI.*

We received your request on 14 June.

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

## **Our response**

We hold information within the scope of parts 1 & 2 of your request. We do not hold any information within the scope of the third part of your request.

The information that we hold within the scope of the first two parts of your request is withheld pursuant to s.44 FOIA due to the statutory bar on disclosure at s.132 DPA 2018.

## **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."

This information has been provided to the ICO by Meta in the course of our regulatory work and is not in the public domain. Meta first contacted the ICO about this matter proactively and so all of our subsequent outgoing correspondence to them about the matter is composed of information that they have provided to us, or that is inextricably connected to it.

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. The public interest gate way at s.132(f) requires not only that there is a public interest in disclosure but also that disclosure is 'necessary' to meet that public interest, and that such public interest outweighs the rights and freedoms of the parties involved, and we find that those conditions have not been met.

As a result the information is exempt under the FOIA and withheld from 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](#) 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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