

Date: 7 March 2024

IC-287319-C7H8

Request

You asked us:

"I write further to your recent press release entitled *Commissioner warns UK's top websites to make cookie changes*: <https://ico.org.uk/about-the-ico/media-centre/news-and-blogs/2024/01/ico-warns-organisations-to-proactively-make-advertising-cookies-compliant/>

I also write further to this press release from November 2023: <https://ico.org.uk/about-the-ico/media-centre/news-and-blogs/2023/11/commissioner-warns-uk-s-top-websites-to-make-cookie-changes/>

In November's press release, the ICO committed to publishing details of companies that have not addressed the ICO's concerns in January 2024. However, I am unable to find these details on your website.

Please can you provide me with the following information regarding the ICO's latest actions underlying the press releases:

- 1. A list of names of the organisations that the ICO has written to regarding cookies non-compliance, together with the corresponding website URLs.*
- 2. For each of those organisations, please indicate what the current status of that organisation's cookies compliance is (for example, the organisation has changed their cookies banners to be compliant, has committed to reach compliance within the next month, has refused to make the changes requested, or has failed to respond to the ICO's correspondence).*
- 3. January's press release states: "We can already see the ripple effect of our intervention with many organisations making changes to cookie banners without receiving a letter from us." Please provide any evidence you hold to show that this is the case, including a list of relevant organisations and website URLs.*

4. Please provide any policy or other document you hold, specifically in the context of the ICO's cookies compliance intervention, that sets out what enforcement action the ICO will take if an organisation does not improve their cookies compliance (i.e. reprimand, penalty notice or enforcement notice and under PECR or UK GDPR).

5. Please provide the source through which the ICO establishes what the UK's top websites are."

We received your request on 8 February 2024. We have handled your request under the Freedom of Information Act 2000 (the FOIA).

Our response

For ease, I have responded to each of your points by the numbering you have used above.

In relation to points one and two of your request, we are withholding the names of these organisations and current status of these investigations under section 31 of the FOIA. You can find further details about this exemption below.

In relation to point three of your request, we are withholding the information held in respect of these organisations under section 44 of the FOIA. This is because this information was provided to us in correspondence had with organisations while exercising our regulatory capacity, which is prohibited from disclosure by law by s.132 of the Data Protection Act 2018. Further information about this exemption is provided below.

It might be helpful to explain that when we sent our initial cookie letters expressing our concerns about the cookie compliance of top visited websites, some of these organisations, in response, advised that they had also taken action to improve the compliance of other websites that they control but that we had not yet written to. Thus, the evidence of a 'ripple effect' is these organisations telling us that action has been taken by them to improve compliance elsewhere.

In relation to point four of your request, I can confirm we do not hold any policy or document which is *specifically* about the enforcement action we'll take if these organisations do not improve their cookie compliance. However, the closest thing we hold is our [regulatory action policy](#), which sets out our powers and the circumstances in which we will use them. For your convenience, you can see an overview of our regulatory activities starting on page 8, the considerations we

may take into account when we're considering which regulatory action is appropriate starting on page 10, and the statutory guidance concerning when we may exercise different formal regulatory powers starting on page 15. All action the ICO takes is taken in line with our regulatory action policy.

Finally, in relation to point five of your request, I can confirm we hold information in scope of the request. We used the Ipsos Iris 'Online Audience Measurement' data for May 2023, which reports on active time spent on websites by the total UK internet population over the age of 15, as the source of the UK's top visited websites and as the starting point for our searches for organisations to write to about cookie compliance. However, I consider the data is exempt from disclosure as the data is a commercial product and I consider disclosure under FOIA would prejudice Ipsos Iris's commercial interests. Further details about this exemption has been provided below.

Information withheld: Section 31 FOIA

We consider that the names of the organisations and the current status of our enquiries with each of them to be exempt from disclosure under Section 31(1)(g) of the FOIA.

This section states:

"Information... is exempt information if its disclosure under this Act would, or would be likely to, prejudice – (g) the exercise by any public authority of its functions for any of the purposes specified in subsection (2)"

The purposes referred to in Sections 31(2)(a) and (c) are:

"(a) the purpose of ascertaining whether any person has failed to comply with the law

[...]

(c) the purpose of ascertaining whether circumstances which would justify regulatory action in pursuance of any enactment exist or may arise"

The purposes at Section 31(2)(a) and (c) apply when a regulator is determining whether or not there has been a breach of relevant legislation, and whether any further action is appropriate. The information you have requested relates to ongoing work we are conducting into the adtech sector. Our enquiries with these organisations is ongoing. To release the information you have requested at the

present time could prejudice the ICO's ability to conduct the investigation fairly and in an appropriate manner.

The exemption at section 31 is not absolute, and we need to consider the public interest test by weighing up the factors for and against disclosure of the information we hold at this time, as well as any prejudice or harm which may be caused by disclosure.

We have considered the public interest test for and against disclosure.

In this instance, the public interest factors in favour of disclosure are:

- Openness and transparency on our work as regulator into the compliance of organisations with relevant legislation.
- The understandable interest of the public in being able to see the organisations who have been identified in our work on cookie compliance and our progress in improving cookie compliance.

The public interest factors in favour of maintaining the exemption are:

- The need for the ICO to continue to encourage these organisations, and other data controllers in potential future enquiries, to engage with us as regulator.
- To ensure the confidentiality of the enquiries we have undertaken. Disclosure of the names while our enquiries are ongoing would be likely to undermine the effectiveness of this process, and our ability to conduct this work fairly and in an appropriate manner.
- The ICO has a demonstrable history of sharing information about our work when it is appropriate to do so, in line with our 'Communication our regulatory and enforcement activity policy', which you can read online [here](#).

Having considered all of these factors we have taken the decision that the public interest in withholding the information outweighs the public interest in disclosing it, and the information you have asked for is exempt from disclosure under S31(1)(g) of the FOIA.

Information withheld: FOIA section 43

Some of the information you have requested is exempt from disclosure under section 43 of the FOIA. Section 43(1) states:

"Information is exemption information if its disclosure under this Act would, or would be likely to, prejudice the commercial interests of any person (including the public authority holding it)."

A 'person' may be an individual, a company, the public authority itself or any other legal entity. Our guidance on what constitutes a commercial interest states:

"A commercial interest relates to a person's ability to participate competitively in a commercial activity."

Section 43 is not an absolute exemption, and we must consider the prejudice or harm which may be caused by disclosure. We also have to carry out a public interest test to weigh up the factors in favour of disclosure and those against.

We find that disclosure of this information would prejudice the commercial interests of Ipsos Iris because the 'Online Audience Measurement' data is a commercial data product which has an associated cost and disclosure. If we were to disclose this under FOIA, it would obviously impact Ipsos Iris's ability to continue to market and sell its product.

With this in mind, we have then considered the public interest test for and against disclosure.

In this case the public interest factors in disclosing the information are:

- The appreciable interest in how the ICO uses data to drive its decision-making and regulatory action.

The factors in withholding the information are:

- There is an inherent public interest in the ICO – and other public authorities – having access to high quality data sources and research to support our work. I consider this public interest is only served by withholding the information because disclosure under FOIA would cause organisations like Ipsos Iris from being reluctant or unwilling to sell products to the ICO and other public authorities more broadly, as

disclosure outwardly signals a blatant and obvious disregard for the value of their goods and services.

Having considered these factors, we are satisfied that it is appropriate to withhold the information.

Information withheld: FOIA Section 44 and DPA section 132

Some information has been withheld 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."

Section 132(2) lists circumstances in which a disclosure can be made with lawful authority, however I do not consider any of them apply here.

This concludes our response to your request. We hope you found this information helpful.

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](#)**