

2 August 2024

## Case Reference IC-307474-ZOR8

### Request

You asked us about the use of artificial intelligence ("AI") and machine learning ("ML") technologies in government decision-making processes.

I have listed your specific questions further below alongside our answers.

We received your request on 20 May 2024 and proceeded after clarification was received on 8 June 2024.

We have handled your request under the Freedom of Information Act 2000 (the FOIA) and we have considered whether the public interest is in favour of disclosing or withholding some information which falls under section 31 (law enforcement) of the FOIA.

### Our response

I can confirm we hold information in scope of your request. Please find our responses below. Your questions are in **bold** text, and our answers are underneath them. Please also find the separate attachments where necessary.

Please note that there may be references to AI and ML in other information locations, such as our casework systems (eg data protection complaint cases), however, to search all possible locations would significantly exceed the reasonable cost limit for complying with an FOI request.

You asked for:

***A list of all government departments and agencies currently using AI or machine learning algorithms to assist in decision-making processes as of [specific date or time period].***

We do not hold a list (current or otherwise) of departments and agencies which are using AI or ML.

***For each department or agency listed in response to question 1:***

***a. A brief description of the specific AI or machine learning applications being used.***

***b. The purposes for which these technologies are employed (e.g., predictive analytics, data analysis, automation of tasks).***

***c. The types of decisions that are influenced or made by these technologies.***

Although our answer to the previous question technically means we don't have an answer to this which follows exactly as requested, we will provide you some details about what we hold and what work we have done on this subject matter.

We have relevant information relating to a number of government departments which has been obtained during our regulatory enquiries across the past few years, however please note it does not provide a straightforward and current answer to each of your points.

### AI Survey

In 2021, our Audit team sent out a survey to government departments to find out about the extent of AI usage, and we received some responses.

This was undertaken to determine if the use of AI by central government was sufficiently widespread and of sufficient concern to warrant undertaking an audit project. After reviewing the responses received, it was decided that we would not progress this into a full project.

Please find the attached relevant documents:

- "Doc 1 - Copy of Central Gov - Use of AI survey - Raw data"

*(Please note His Majesty's Treasury's information was based on products that were being scoped and investigated at the time, rather than being used or implemented at that time. Also note this is an edited version of the survey, as there are responses from some departments which are exempt information under the FOIA. Please see further below for an explanation)*

- "Doc 2 - Central Gov - Use of AI - survey results summary"

### SNAP

In early 2024, we engaged with Companies House and the Public Sector Fraud Authority ("PFSA" – of the Cabinet Office) to get an overview of the Single Network Analytics Platform ("SNAP").

Please find the attached record of our meeting with Companies House:

- "Doc 3 - 20240109 Meeting notes - Meeting with Companies House re SNAP\_Redacted"

Please see the attached record of our follow-up meeting with Companies House and the PFSA:

- "Doc 4 - 20240416 SNAP CoH and Cabinet Office update meeting\_Redacted"

In addition, we then reviewed the data protection impact assessment ("DPIA") documentation completed by the Cabinet Office for the platform. The information in the DPIA is exempt from disclosure. Please see further below for an explanation.

The government published some information about the platform earlier this year:

<https://www.gov.uk/government/news/criminals-should-be-aware-says-minister-as-government-upgrades-ai-fraud-detection-tool>

### Regulatory Language Processor project

We recently engaged with Department for Business and Trade ("DBT") about their Regulatory Language Processor project which was looking into whether a Large Language Model (LLM) could be used to extract metadata from UK regulations which have been published.

Please find the attached relevant record:

- "Doc 5 - Corres re DBT - IC-307474-Z0R8\_Redacted"

Our Public Affairs team met with the DBT in November 2023 where the topic of AI was discussed. The meeting record is exempt from disclosure. Please see further below for the explanation

### Common Risk Engine

We received a data protection impact assessment from the Department for Work and Pensions ("DWP") about the Common Risk Engine which is intended for the prevention of fraud, error and debt.

Please find the attached DPIA:

- "Doc 6 - DPIA\_1300 REDACTED"

Our Technology team have also engaged with the DWP for advisory purposes in relation to AI using the AI Risk Toolkit.

### Guidelines for use of Generative AI in government

In 2023, our Technology team engaged with the Central Digital and Data Office ("CDDO") to review their guidelines for use of generative AI in government. They have since published them on the government website here:

<https://www.gov.uk/government/publications/generative-ai-framework-for-hmg>

### Algorithmic Transparency Standard

Our Technology team engaged with the CDDO about the Algorithmic Transparency Standard and contributed to the pilot.

Further details are published on the government's website here:

<https://www.gov.uk/government/collections/algorithmic-transparency-recording-standard-hub>

<https://www.gov.uk/algorithmic-transparency-records/information-commissioners-office-registration-inbox-ai>

### Cross-Government Data Protection Forum

In November 2023, our Technology team delivered a presentation to the Cross-Government Data Protection Forum about generative AI. The forum involved presentations from a number of government departments.

Please find the attached extracted slides from the ICO:

- "Doc 7 - Cross Government Data Protection Practitioners' Forum Slides\_Redacted"

### Generative AI Hackathons steering group

The ICO is a member of two steering committees about generative AI in education. We took part in a Generative AI Hackathons steering group event in 2023, and the results of this workgroup are due to be published soon.

***Any policies, guidelines, or frameworks that govern the use of AI or machine learning in decision-making within government departments and agencies.***

We hold a copy of the draft Generative AI Framework, however that is exempt information. Please see further below for the explanation.

***Details of any audits, reviews, or evaluations conducted on the effectiveness and ethical implications of using AI or machine learning in government decision-making over the past three years.***

We do not hold this information. The remit of our audits and assessments would only focus on data protection compliance.

It would be up to the organisations to consider the effectiveness of a technology, and it is likely we would look into the ethics of a technology only to the extent that the ethics are connected to actual or potential legal infringements or risks.

For example, if personal data is being processed for a purpose which seems unfair from an ethical standpoint, and it is also found to have been processed in a way which contravenes the legal requirement for fairness set out in the UK General Data Protection Regulation (UK GDPR), then we would only be able to make a material judgement on the UK GDPR aspect, because that is in the remit of our regulatory powers. We couldn't order an organisation to stop processing personal data under the UK GDPR or Data Protection Act if the processing activity was actually in compliance with them laws, even if the purpose or end result was arguably unethical.

***Information on any public consultations or stakeholder engagements undertaken regarding the deployment of AI in government decision-making.***

In the second question above, I have provided a summary of our engagements with government departments.

In terms of consultation responses, we responded to the Department for Education's consultation about the use of AI in education in August 2023.

You can find the link to our response on our website here:

<https://ico.org.uk/about-the-ico/consultations/department-for-education-s-call-for-evidence-on-generative-ai-in-education/>

***The total expenditure by the government on AI and machine learning technologies for decision-making purposes over the past three years."***

We do not hold this information. You will need to approach the government departments themselves for this information.

## **Information withheld – FOIA Section 31**

The following information is exempt under section 31(1)(g) of the FOIA, and has either been withheld entirely, or has been redacted within the documents attached:

Withheld entirely:

- Contact report from meeting with PFSA regarding SNAP - dated 23 January 2024
- Contact report from Public Affairs meeting with the DBT – dated 22 November 2023
- The AI survey responses from the Department for International Trade (now Department for Business and Trade), the Ministry of Justice, and the Department for Levelling Up, Housing and Communities
- The draft Generative AI Framework received from CDDO
- Correspondence with the CDDO about the Generative AI Framework
- Correspondence with the parties involved in the generative AI in education steering groups
- Slides from government departments involved in the Cross-Government Data Protection Forum
- Copy of the DPIA for the Analytical Platform from the Ministry of Justice

Redacted in the attached documents:

- Information and responses from PFSA within “Doc 4 - 20240416 SNAP CoH and Cabinet Office update meeting\_Redacted”
- Information within the Common Risk Engine DPIA from DWP



We can rely on section 31(1)(g) of the FOIA where disclosure:

*"would, or would be likely to, prejudice... the exercise by any public authority of its functions for any of the purposes specified in subsection (2)."*

In this case the relevant purposes contained in subsection 31(2) are 31(2)(a) and 31(2)(c) which state:

*"(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 ..."*

Section 31 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.

### **Prejudice test**

Disclosure is likely to result in parties being reluctant to engage with the ICO in the future.

If we are overly transparent with the information we receive and hold, then there will be less trust from data controllers who may be using or proposing to use AI or ML technology. This may deter them from consulting or engaging with us, which will make it harder for us to get insight into what they're doing, and harder for us to provide assured guidance on data protection matters.

### **Public interest test**

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:

- increased transparency in the ICO's enquiries with government departments about AI and ML technology;
- increased transparency about the specific details of the technology being used, or being considered, by government departments which may have,

or is having, significant effects on people's data and public services

The factors in withholding the information are:

- the public interest in maintaining organisations' trust and confidence that their engagement with the ICO will be afforded an appropriate level of confidentiality to encourage sharing sufficient details to assist with the ICO's regulatory processes;

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

The significance of the interest in this subject matter is justification for sufficient transparency by public authorities about what they are doing and what they hold. However, the importance of these increasingly high-profile topics is also a reason why we need to ensure that there are some safe spaces for regulatory activity to take place and for regulatory resources to be consulted and trusted.

We believe there is a significant public interest in data controllers (particularly those in government) maintaining a sufficient level of trust in the ICO, so we can provide effective regulation to make sure people's data is likely to be used in compliance with data protection law.

This is particularly pertinent with topics such as AI and ML, which are likely to involve new or changed methods or techniques which we need to have insights on. If we maintain adequate confidentiality with the information we receive and communicate, we can then ensure that we're getting all the details we need and we can communicate openly to provide effective, targeted regulation to protect people's data.

We consider this interest to be best served by withholding some of the information which is in scope, or arguably in scope, of this FOI request.

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

You will see that some third party personal data has been redacted in our response. It is exempt under section 40(2) of the FOIA. Specifically, we have redacted some external staff member names and contact details, and some internal staff member names and contact details.

Disclosure of this data would break the first principle of data protection - that personal data is processed lawfully, fairly and in a transparent manner.

There is no strong legitimate interest that would override the prejudice that disclosure would cause to the rights and freedoms of the individuals concerned. So we are withholding the information under section 40(2) of the FOIA.

## **External resources**

The following external resources may be useful to you.

TAG Register from the Public Law Project:

<https://trackautomatedgovernment.shinyapps.io/register/>

The National Audit Office's report on the use of AI in government:

<https://www.nao.org.uk/wp-content/uploads/2024/03/use-of-artificial-intelligence-in-government.pdf>

Algorithm transparency records published by the government:

<https://www.gov.uk/algorithmic-transparency-records>

Published details about the SNAP platform:

<https://www.gov.uk/government/news/new-counter-fraud-team-saves-taxpayers-311-million-in-first-twelve-months-beating-target-by-more-than-100-million>

## 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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