

29 October 2024

**Case reference: IC-335210-T7S5**

We are now in a position to respond to your information request of 1 October.

**Request**

You asked us for the following:

"I am writing this email to ask you for a copy of the requests for information to X, Meta, LinkedIn, Spotify, Microsoft, Google and OpenAI about the lawful basis for processing information to train AI and DPIAs."

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

**Our response**

We have published some information on this area of work and the relevant links are provided below.

14 June 2024: [Statement in response to Meta's plans to train generative AI with user data](#)

14 September 2024: [ICO statement in response to Meta's announcement on user data to train AI](#)

We have disclosed a copy of the ICO's letters requesting information sent to Google and OpenAI and these are available on our disclosure log under [IC-311642-V7P8](#). As Meta proactively contacted us there is no equivalent letter for them.

Please find enclosed the letter sent to Microsoft. The contact details of staff at the organisation have been redacted under section 40 of the FOIA. Further detail on this exemption is provided below.

For X and LinkedIn, there was an initial meeting with each organisation and we subsequently requested information following these discussions. A copy of the relevant emails are attached. The correspondence to X does not have a second page. Some of the information has been redacted and further detail on the relevant exemptions are provided below.

There is no information held with regards to Spotify as we did not engage with them as part of this piece of work.

### **Section 40 FOIA**

We are withholding the contact details of the staff at these organisations, and some ICO employee/s, under section 40(2) by virtue of section 40(3)(a)(i), which is the exemption under FOIA concerning personal information. You can read our policy on the disclosure of ICO staff information on our website [here](#).

### **Section 31 FOIA**

We consider some of the information 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  
regulatory action in pursuance of any enactment exist or may arise'

These purposes apply when the Information Commissioner is considering whether or not a data controller has complied with its obligations as laid out in data protection legislation.

Disclosing details about the content of our discussions with X and LinkedIn would be likely to prejudice our regulatory work. Organisations need to be confident that details of these interactions will not be made public unless it is appropriate to do so. If this is not the case, it would be likely to prejudice our ability to engage productively with X and LinkedIn in the future on these and other topics.

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.

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

- The legitimate interest of the public in understanding the nature and content of our discussions with X and LinkedIn on this topic area.
- Openness and transparency in the way in which the ICO engages with organisations as regulator.

The public interest factors in withholding the information are:

- There is a strong public interest in the ICO not disclosing information relating to our engagement with organisations unless it is appropriate to do so. If this information is routinely disclosed, organisations would be less willing to work with the ICO. This could, in turn, impact on our regulatory work at a wider level with organisations less likely to report concerns or engage with us during investigations for example, if they fear that information may be disclosed when it is inappropriate to do so.
- There is also a public interest in ensuring that organisations engage with us fully and candidly. This applies to both current and future engagement work. If there is a concern that the details of our engagement work will be routinely disclosed, this would be likely inhibit open discussion.

Having considered these factors, we have taken the decision that the public interest in withholding the information outweighs the public interest in disclosing it.

## **Section 44 FOIA**

Section 44 is an absolute exemption which means that it can be withheld without further consideration if other legislation prevents its release, if it meets certain conditions, and if none of the circumstances that would give us lawful authority to release it apply.

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'

In this case, the Data Protection Act 2018, Part 5, Section 132 prohibits the disclosure of confidential information that –

- 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.

We do not have lawful authority to disclose the information provided to us by X and LinkedIn as this information was given to us in confidence.

Section 132(3) imposes a criminal liability on the Commissioner and his staff not to disclose information relating to an identifiable individual or business for the purposes of carrying out our regulatory functions, unless we have the lawful authority to do so or it has been made public from another source.

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