

28 November 2024

Case reference: IC-341905-M6T3

We are now in a position to respond to your information request of 31 October.

Request

You asked us for the following:

"I'd like to know the ICO's position and discussions around websites using Consent or Pay cookies"

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

Our response

As you may be aware, the ICO launched a [call for views](#) on consent or pay business models in March 2024. This was to help us develop our final policy position on these models. The consultation closed in April 2024.

We can confirm we hold an 'ICO position' on consent or pay business models following this consultation. We intend to publish this position, along with accompanying information, early in 2025. This is listed on our guidance in development webpage [here](#).

We are withholding this information (ICO position) under section 22 of the FOIA as it is intended for future publication, and further detail on this exemption is provided later in this response.

The call for views webpage also contains sections on 'What does the law say about "consent or pay"?, 'What do organisations need to consider?', 'What do organisations using "consent or pay" need to tell people?' and 'What if people later want to withdraw consent?', which you may find helpful in your area of interest.

With regards to your request for 'discussions around websites using Consent or Pay cookies', we have considered the cost of complying with this request and can confirm that it exceeds the 'appropriate limit' as set out in section 12 of the FOIA. Further details on this are provided below.

Section 12 FOIA

Section 12 of the FOIA makes clear that a public authority is not obliged to comply with an FOIA request if the authority estimates that the cost of complying with the request would exceed the 'appropriate limit'. The 'appropriate limit' for the ICO, as determined in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 is £450. We have determined that £450 would equate to 18 hours work. You can read our guidance on section 12 on our website [here](#).

The call for views consultation work has been ongoing since February 2024. This has involved a number of teams across the ICO. Information within scope of your request will be held by the respective teams in their central records, as well as on the individual Outlook accounts of the members of staff involved in this piece of work. We have understood your request to be for internal ICO discussions.

We consider that the time it would take to identify and extract the information from these various locations would exceed 18 hours. This is because each team, and member of staff, would need to search these central records and individual email accounts to extract and collate the documents/emails containing these discussions. These documents/emails would then need to be further interrogated as many will contain discussion of other matters, which are not in scope of the request.

You could consider narrowing the scope of your request to bring it within the cost limit, such as a search for a shorter time period. Please note that other FOIA exemptions may apply to information within scope of a refined request.

Section 22 FOIA

We intend to publish our position on the use of consent or pay business models in early 2025. We are withholding this information pursuant to section 22 of the FOIA, as it is 'being held for future publication'.

Section 22 of the Act states that information is exempt from disclosure in response to an information request if:

- (a) the information is held by the public authority with a view to its publication, by the authority or any other person, at some future date (whether determined or not),
- (b) the information was already held with a view to such publication at the time when the request for information was made, and,

(c) it is reasonable in all the circumstances that the information should be withheld from disclosure until the date referred to in paragraph (a).

The exemption at section 22 is qualified by the public interest test, meaning that the information should be disclosed if the public interest in the maintenance of the exemption does not outweigh the public interest in disclosure.

The public interest factors in disclosing the information are:

- Providing information regarding our position as regulator on this topic in order to assist organisations in their compliance with the legislation we oversee.

The public interest factors in withholding the information are:

- The ICO has committed to publishing this information in due course, which will include the ICO's position, to provide guidance in this area.
- Earlier disclosure is not necessary to satisfy any pressing public interest at the present time. The ICO has published information for organisations on the factors they should consider when assessing these business models.

Having considered the public interest arguments, we have decided to withhold this information in reference to section 22 of FOIA.

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



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**For information about what we do with personal
data see our [privacy notice](#)**