

16 December 2024

ICO Case Reference IC-344590-X5Z8

Request for information

Request received 15 November 2024:

"I would like to submit a further request for information under the Freedom of Information Act about the ICO's work on cookie banner compliance with the requirements of PECR and UK GDPR. Please can you tell me the names of the 7 gambling companies that are referenced in the response - Case reference: IC-338267-N2M1 - that responded to your request for information. Please can you provide the responses of the 7 gambling companies."

Your request has been handled under the Freedom of Information Act 2000 (the FOIA). This legislation provides public access to recorded information held by a public authority unless an appropriate exemption applies.

Our response

We do hold information in scope of your request. However, we are withholding the names of the companies under section 31 of the FOIA. We are also withholding responses from those companies under section 44 of the FOIA. Further information about these exemptions is provided below.

FOIA section 31

We consider the names of the organisations to be exempt from disclosure under section 31(1)(g) of the FOIA. 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.

The information you have requested relates to work we are currently conducting around ad-tech, and our enquiries with these organisations and others are ongoing. To release the information requested could prejudice the ICO's ability to conduct our enquiries fairly and in an appropriate manner.

Disclosure of the information at this stage would discourage ongoing discussions. It could also jeopardise the ICO's ability to obtain information relating to this matter in the future as it could make other parties reluctant to engage with the ICO. Any information released at this stage could also be misinterpreted, which in turn could distract from the investigative process.

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 way in which the ICO conducts its investigations; and
- The understandable public interest in the organisations with whom we are engaging in our work on cookie compliance.

The factors in withholding the information are:

- the public interest in maintaining organisations' trust and confidence that their involvement in ICO investigations will be afforded an appropriate level of confidentiality;

- the public interest in organisations being open and honest in their correspondence with the ICO without fear that their involvement and comments will be made public prematurely or, as appropriate, at all;
- the public interest in maintaining the ICO's ability to conduct the investigation into complaints as it thinks fit; and
- the demonstrable history of the ICO sharing information about our work when appropriate to do so, and in line with our [Communicating our Regulatory and Enforcement Activity Policy](#).

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

FOIA Section 44 and DPA section 132

Responses from the organisations are exempt from disclosure 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 none of them apply here. As a result, the information is exempt from disclosure.

This concludes our response to your request.

Further information

Where appropriate, we publish information about the work we are doing. For example: [ICO warns organisations to proactively make advertising cookies compliant after positive response to November call to action](#). We also publish information when we take [enforcement action](#) in the [action we've taken](#) area of the ICO website. This is in line with our [Communicating our Regulatory and Enforcement Activity Policy](#).

Next steps

You can ask us to review our response. Please let us know in writing within 40 working days if you want us to carry out a review. You can read a copy of our full [review procedure](#) on our website.

If we perform a review but you remain dissatisfied, you can [raise a complaint](#) to the ICO as regulator of the Freedom of Information Act. This complaint will be handled just like a complaint made to the ICO about any other public authority.

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

Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire SK9 5AF
Telephone: 0303 123 1113. Website: ico.org.uk
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