

INFORMATION NOTICE

INV/0694/2021

**THE DATA PROTECTION ACT 2018
PART 6, SECTION 142**

Dated 09 July 2021

To: Gina Coladangelo



-
1. In exercise of her powers under section 142(1) of the Data Protection Act 2018 ("DPA"), the Information Commissioner ("the Commissioner") requires **Gina Coladangelo**, to provide her with the information set out in Annex 1 within 30 days of the date of this Notice.
 2. This Notice is issued under section 142(1) (b) of the DPA.
 3. The information is required for the purposes of carrying out the Commissioner's functions under the data protection legislation to monitor and enforce the application of the UK General Data Protection Regulations ('UK GDPR'). In particular, the Commissioner requires the information set out in Annex 1 for the following reasons:
 - To determine whether Gina Coladangelo holds personal data that has been received from, or communicated to the Department of Health and Social Care (the 'DHSC');
 - To determine whether Gina Coladangelo holds personal data in other electronic private channels of communication (such as Google Mail, Hotmail, Yahoo Mail, WhatsApp or similar) sent or received from DHSC.
 4. The Commissioner's suspicions are based predominately on a series of consistent reports in the media that during at least the time of the COVID-19 pandemic, Ministers have conducted official affairs, including Ministerial business with Departments of State, from private, non-official email accounts,

or other private channels of communication. This includes an allegation that communications were sent and /or received by Gina Coladangelo.

5. The Commissioner wishes to determine that such processing has taken place.

Consequences of failing to comply with this Information Notice

6. If a person fails to comply with an Information Notice the Commissioner may serve a Penalty Notice to that person under section 155(1)(b) of the DPA requiring payment of an amount up to £17,500,000, or 4% of an undertaking's total annual worldwide turnover, whichever is higher.
7. Where a person fails to comply with an Information Notice the Commissioner may also apply to the court under section 145(1) of the DPA for an order requiring the person to provide the information referred to in the notice, or other relevant information the Commissioner requires. A failure to comply with an order made under section 145(2) of the DPA will constitute a contempt of court.
8. It is a criminal offence under section 144 of the DPA for a person, in response to an Information Notice, to knowingly or recklessly make a statement which is false in a material respect.
9. It is a criminal offence under section 148(2) of the DPA for a person in receipt of an Information Notice to cause or to permit or to destroy, dispose of, conceal, block or falsify information with the aim of preventing the Commissioner accessing the requested information.

Right of Appeal

10. By virtue of section 162(1)(a) of the DPA, there is a right of appeal against this Notice to the First-tier Tribunal (Information Rights). If an appeal is brought the information requested in Annex 1 need not be provided pending determination or withdrawal of that appeal. Information on the appeals process is set out in Annex 2.
11. Any Notice of Appeal should be served on the Tribunal within 28 days of the date of this Notice.
12. Information concerning further statutory provisions relating to this Notice is set out in Annex 3.

ico.

Information Commissioner's Office

Signed: 

Stephen Eckersley
Director of Investigations
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Annex 1

INFORMATION REQUIRED TO BE PROVIDED TO THE COMMISSIONER

This Notice requires that the Commissioner be provided with the information described below:

1. Please confirm whether you are employed by Oliver Bonas Ltd and if so, please confirm your current job title and dates of employment.
2. Please confirm whether you hold an Oliver Bonas Ltd issued email account and if so, provide the address of this account and confirm the dates for which it has been in use.
3. If the answer to question 2 is affirmative, please confirm whether you have (a) received or (b) sent emails containing personal data relating to the official business of the DHSC, to or from the DHSC via this account.
4. If the answer to question 3 is affirmative, please confirm (a) how many emails were sent or received; (b) the dates they were sent or received.
5. Where such emails contain personal data relating to the official business of the DHSC, please provide copies of that personal data.
6. Please confirm whether you have used any other email accounts (or other electronic private channels of communication such as WhatsApp) to send or receive communications containing personal data in relation to the official business of the DHSC.
7. If the answer to question 6 is affirmative please confirm for each account (a) how many communications were sent or received; (b) the dates they were sent or received and; (c) and where such communications contain personal data relating to the official business of the DHSC, provide copies of that personal data.

Annex 2

THE DATA PROTECTION ACT 2018 (PART 6, SECTION 162)

RIGHTS OF APPEAL AGAINST DECISIONS OF THE COMMISSIONER

1. Section 162 of the DPA gives any person upon whom an Information Notice has been served a right of appeal to the Tribunal against the Notice.

2. If you decide to appeal and if the Tribunal considers:-

(a) that the notice or decision against which the appeal is brought is not in accordance with the law; or

(b) to the extent that the notice or decision involved an exercise of discretion by the Commissioner, that the Commissioner ought to have exercised the discretion differently,

the Tribunal must allow the appeal or substitute such other decision as could have been made by the Commissioner.

3. You may bring an appeal by serving a notice of appeal on the Tribunal at the following address:

General Regulatory Chamber
HM Courts and Tribunals Service
PO Box 9300
Leicester
LE1 8DJ

Telephone: 0203 936 8963
Email: grc@justice.gov.uk

a) The notice of appeal should be received by the Tribunal within 28 days of the date that the notice was sent.

b) If your notice of appeal is late the Tribunal will not accept it unless the Tribunal has extended the time for complying with this rule.

4. The notice of appeal should state:-

- a) your name and address/name and address of your representative (if any);
- b) an address where documents may be sent or delivered to you;
- c) the name and address of the Information Commissioner;
- d) details of the decision to which the proceedings relate;
- e) the result that you are seeking;
- f) the grounds on which you rely;
- g) you must provide with the notice of appeal a copy of the assessment notice;
- h) if you have exceeded the time limit mentioned above the notice of appeal must include a request for an extension of time and the reason why the notice of appeal was not provided in time.

Before deciding whether or not to appeal you may wish to consult your solicitor or another adviser. At the hearing of an appeal a party may conduct his case himself or may be represented by any person whom he may appoint for that purpose.

The statutory provisions concerning appeals to the First-tier Tribunal (General Regulatory Chamber) are contained in sections 162 and 163 of, and Schedule 16 to, the Data Protection Act 2018, and the Tribunal (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 (Statutory Instrument 2009 No. 1976 (L.20)).

Annex 3

THE DATA PROTECTION ACT 2018 (PART 6, SECTION 143)

INFORMATION NOTICES – FURTHER STATUTORY PROVISIONS

Section 143 of the DPA materially states:

(1) The Commissioner may not give an information notice with respect to the processing of personal data for the special purposes unless—

(a) a determination under section 174 with respect to the data or the processing has taken effect, or

(b) the Commissioner—

(i) has reasonable grounds for suspecting that such a determination could be made, and

(ii) the information is required for the purposes of making such a determination.

(2) An information notice does not require a person to give the Commissioner information to the extent that requiring the person to do so would involve an infringement of the privileges of either House of Parliament.

(3) An information notice does not require a person to give the Commissioner information in respect of a communication which is made—

(a) between a professional legal adviser and the adviser's client, and

(b) in connection with the giving of legal advice to the client with respect to obligations, liabilities or rights under the data protection legislation.

(4) An information notice does not require a person to give the Commissioner information in respect of a communication which is made—

- (a) between a professional legal adviser and the adviser's client or between such an adviser or client and another person,*
- (b) in connection with or in contemplation of proceedings under or arising out of the data protection legislation, and*
- (c) for the purposes of such proceedings.*

(5) In subsections (3) and (4), references to the client of a professional legal adviser include references to a person acting on behalf of the client.

(6) An information notice does not require a person to provide the Commissioner with information if doing so would, by revealing evidence of the commission of an offence expose the person to proceedings for that offence.

(7) The reference to an offence in subsection (6) does not include an offence under—

- (a) this Act;*
- (b) section 5 of the Perjury Act 1911 (false statements made otherwise than on oath);*
- (c) section 44(2) of the Criminal Law (Consolidation) (Scotland) Act 1995 (false statements made otherwise than on oath);*
- (d) Article 10 of the Perjury (Northern Ireland) Order 1979 (S.I. 1979/1714 (N.I. 19)) (false statutory declarations and other false unsworn statements).*

(8) An oral or written statement provided by a person in response to an information notice may not be used in evidence against that person on a prosecution for an offence under this Act (other than an offence under section 144) unless in the proceedings—

- (a) in giving evidence the person provides information inconsistent with the statement, and*
- (b) evidence relating to the statement is adduced, or a question relating to it is asked, by that person or on that person's behalf.*

(9) In subsection (6), in relation to an information notice given to a representative of a controller or processor designated under Article 27 of the UK GDPR, the reference to the person providing the information being exposed to proceedings for an offence includes a reference to the controller or processor being exposed to such proceedings.