Information Commissioner's Office

The ICO's Impact Assessment Framework

Our approach to impact assessment of our interventions

September 2023

Information Commissioner's Office

Contents

Document:	Impact Assessment Framework
Contact for queries:	Impactandevaluation@ico.org.uk
Original publication Date:	October 2023
Updated:	March 2026
Reason(s) for update:	Minor updates to account for legislative reform brought about by the Data Use and Access Act 2025, which amended the Data Protection Act 2018 and UK GDPR. The changes also reference key documents such as the ICO's Ex-Post Impact Framework.

1. Introduction

The purpose of this framework is to provide enhanced clarity about how we discharge our regulatory duties. This includes explaining the circumstances in which we are likely to conduct an impact assessment (IA), and where we are not likely to conduct an IA. It also summarises our approach to conducting IAs.

This framework focuses on our ex-ante (prior to intervention) impact assessment work. For information on the ICO’s approach to ex-post (after intervention) impact measurement (which includes monitoring, review and evaluation activities), please refer to the ICO’s Ex-Post Impact Framework[1](EPIF).

1.1. Context

The ICO is the UK’s independent authority set up to uphold information rights in the public interest, promoting openness by public bodies and data privacy for individuals.

Impact assessments (IAs) are a key way in which regulators balance different obligations and objectives, and ensure that regulatory action is both proportionate to the issue at hand and not unduly burdensome on those they regulate.

The ICO has both specific and general legal obligations to consider the impact of its activities as part of a proportionate, risk-based approach to regulation. These include:

- a statutory duty imposed on the Information Commissioner under section 124C Data Protection Act (DPA) 2018 to carry out and publish an IA in relation to codes of practice (and amendments to such codes) prepared under sections 121 to 124A DPA 2018;
- a statutory duty to consider the desirability of promoting economic growth under section 108 of the Deregulation Act 2015, which has its own Statutory Guidance; and
- an obligation under the Regulators’ Code to carry out activities in a way that supports those we regulate to comply and grow.

[1] ICO (2024) *The ICO’s Ex-post Impact Framework*. Available at: https://ico.org.uk/media2/migrated/4031030/ex-post-impact-framework_sept24_v1.pdf

Balancing duties is a core component of effective regulation, and IA is a key mechanism that helps the ICO do this. IAs help avoid unintended burdens and support proportionate, evidence based regulation that deliver better outcomes.

Our objective and duties

Section 120A DPA 2018 provides the principal objective of the Commissioner, in carrying out functions under the data protection legislation:

- to secure an appropriate level of protection for personal data, having regard to the interests of data subjects, controllers and others and matters of general public interest; and

- to promote public trust and confidence in the processing of personal data.

Section 120B DPA 2018 imposes a duty on the Information Commissioner, when carrying out functions under the data protection legislation, to have regard to such of the following as appears to be relevant in the circumstances:

- the desirability of promoting innovation;

- the desirability of promoting competition;

- the importance of the prevention, investigation, detection and prosecution of criminal offences;

- the need to safeguard public security and national security; and

- the fact that children merit specific protection with regard to their personal data because they may be less aware of the risks and consequences associated with processing of personal data and of their rights in relation to such processing.

The ICO’s specific and more general obligations regarding impact have a common basis in general good regulatory practice. This includes ensuring that interventions are:

- made only when necessary once the problem, the risks and the context have been considered;
- proportionate to the problem under consideration;
- informed by evidence and analysis of market conditions;
- conducted by staff with the necessary knowledge and skills; and
- appropriately evaluated so that lessons can be learned for the future.

1.2. Scope

This framework sets out our approach to using IAs in our decision-making, as part of our commitment to regulatory good practice and providing regulatory certainty.

The purpose of this framework is to provide enhanced clarity about how we discharge our regulatory duties. This includes explaining the circumstances in which we are likely to conduct an IA, and where we are not likely to conduct an IA. It also summarises our approach to conducting IAs.

Our approach draws closely on the guidance set out by HM Treasury in the Green Book. And it reflects the Better Regulation Framework, which sets out the principles of better regulation, providing a useful toolkit for measuring and improving the quality of regulation.

Points of clarification

While many of the external guidelines referenced in this framework refer to ‘regulatory impact assessment’ in the context of regulators, we use the term ‘impact assessment (IA)’. This reflects the broad scope of policy-making and intervention mechanisms available in the ICO, which often go beyond duties associated with regulatory implementation, such as information dissemination and engagement interventions.

‘Impact assessment’ as used in this framework should not be confused with the term ‘data protection impact assessment (DPIA)’, which is a requirement imposed in relation to certain personal data processing under the UK GDPR and DPA 2018.

This framework does not have binding legal effect. The ICO will apply this framework where it is appropriate to do so. In the event that we depart from the framework, we will normally set out our reasons for doing so.

1.3. What are impact assessments?

Impact assessments (IAs) are formal, evidence-based processes to assess the economic, social, and wider effects of policy decisions. The purpose of IAs is to provide objective analysis to support decision-making. IAs use cost-benefit analysis to ensure good practice in developing interventions based on robust and holistic evidence.

- IAs are an essential part of considering different options for intervention, including a 'business as usual' option[2], and then, using objective criteria, selecting the best option.
- IAs are part of the policy cycle (see Section 4) and use appraisal analysis, as set out in the Green Book, to ensure good practice in developing policy. They are based on robust evidence in order to provide objective analysis to support decision-making.

1.4. Why are impact assessments important?

IAs provide decision-makers with crucial information on whether and how to regulate to achieve public policy goals. They also help decision-makers defend decisions not to intervene in markets where the costs of doing so outweigh the benefits. They further help defend decisions by demonstrating that there are benefits to regulation, something that can be often overlooked.[3]

IAs improve regulatory interventions and policy-making by:

- informing decision-makers about potential economic, social, and (where relevant) environmental ramifications;
- providing a mechanism to consider the impact of interventions on a range of stakeholders, including different groups of citizens and organisations. In some cases, for example, we will need to consider the impact of intervention options on the interests of people living in different parts of the UK or people from different socio-economic contexts;
- improving the transparency of regulation by explicitly setting out the intervention theory of change and the quality of underlying evidence;
- increasing public participation in order to reflect a range of considerations, improving the legitimacy of policies;
- clarifying how public policy helps achieve its goals and priorities through policy indicators; and
- contributing to continuous learning in policy development by identifying causalities that inform ex-post review of interventions and improve future policy-making.

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[2] Business as usual is the baseline scenario representing the continuation of current arrangements if a new policy or project is not implemented. It acts as a benchmark against which all alternative options are compared.

[3] See National Audit Office (NAO), World Economic Forum.

2. When the ICO does an impact assessment

Our decision to complete an IA and its form will be decided on a case-by-case basis. This will depend on our relevant statutory obligations, the characteristics of the intervention we are considering, and what we consider to be proportionate in the circumstances.

2.1. When will we do an impact assessment (IA)?

Table 1 sets out the circumstances in which we will do an IA. This includes IAs required under any statutory duties and non-statutory IAs, such as those we undertake in line with best practice, where appropriate.

Table 1: When we will do an IA

Statutory obligations for IA	Section 124C of DPA 2018 gives the ICO the statutory obligation to carry out and publish an IA where a code of practice is prepared under sections 121-124 and 124A of DPA 2018. This also applies to amendments prepared under these sections. The assessment must include: a) who would be likely to be affected by the code; and b) the effect the code would be likely to have on them. Where codes or amendments are prepared under the sections specified, we will carry out and publish an IA.

Non-statutory IAs	IA forms a key part of best practice scrutiny of regulatory proposals and we expect them to be carried out in relation to many of our intervention decisions as appropriate. A non-exhaustive list of the factors we will consider to decide whether an IA is appropriate is set out below.
	We would be more likely to carry out an IA if an intervention decision was likely to:
	• have a significant impact on:
	  ○ the interests of data subjects;
	  ○ the interests of data controllers and/or others;
	  ○ matters of general public interest;
	  ○ on (any or all of):
	    ▪ economic growth

        - innovation
        - competition;
    - prevention, investigation, detection and prosecution of criminal offences;
    - safeguarding public security and national security;
    - children who merit specific protection with regard to their personal data because they may be less aware of the risks and consequences associated with processing of personal data and of their rights in relation to such processing; or
- involve a major change in ICO activities.

Where we have identified a requirement for an IA, the nature of the IA will depend on the type of intervention or decision we are making, in line with the principle of proportionality. For example, an IA relating to a wide-ranging statutory code will look different to an IA concerned with a narrowly-focused, minor policy proposal.

Proportionality is a key concept in IA. Not all interventions will require the same level of scrutiny. In the case of a low-risk, well-evidenced and low-impact intervention (eg a sector specific training offer) a light-touch IA is likely to be all that is necessary. On the other hand, a high risk, uncertain, and high impact intervention (eg a statutory code in a novel policy area) is likely to require a larger-scale IA. The nature and scale of the IA will depend on several factors, including:

- policy context (eg is it novel or contentious);
- levels of uncertainty or risk;
- cost and resource implications of the intervention;
- analytical needs (eg do we have the evidence, what are the costs of obtaining evidence, and is the evidence reliable);
- practicalities (eg time and resources required to deliver the IA and the urgency of the need to act); and
- learning potential (a low priority intervention based on the other criteria listed can have a high potential for filling a strategically-important evidence gap).

Overall, we will be guided by the principle that the resources and effort employed should be related to costs, benefits and risks involved to society and to the regulatory landscape as a result of the proposals under consideration.

There may be circumstances where we decide that even though an activity meets the criteria for an IA, it is impractical or unsuitable for us to do an IA. Where this is the case, we will state our reasons.

2.2. When won’t we produce an impact assessment (IA)?

The circumstances in which we would not expect to produce IAs include but are not limited to:

- where the urgency of the matter makes it impractical or inappropriate;
- when conducting investigations or enforcement activities. There is specific guidance to ensure our investigation and enforcement activities are proportionate[4];
- when publishing guidance relating to how we will undertake investigations and take enforcement action;
- when implementing primary or secondary legislation which has been approved by Parliament and already subject to IAs by the sponsoring government department, except for statutory codes and where we have a large amount of discretion about how to implement the statutory requirement;
- when publishing proposals which draw together a range of options which have already been subject to separate IAs;
- where government has already undertaken an IA for a programme we have been asked to deliver;
- where an IA relating to the same issue has been produced relatively recently;
- avoiding duplication in situations or interventions related to regulatory cooperation and where an IA has been produced by another regulator;
- when the resources required to do an IA would be disproportionate to the expected impact of the proposal; and
- where decisions do not need an IA because they implement previously agreed policy.

[4] Our duties to investigate and enforce must be carried out in line with legislation that itself will have been brought into effect in the light of an impact assessment. Further information on how we ensure our approach is proportionate when carrying out investigations and enforcement activity in relation to the conduct of individual controllers or processors is detailed in our Data protection fining guidance and Data protection enforcement procedural guidance (currently in draft for consultation) for UK GDPR/DPA 2018 cases.

3. Our approach to impact assessment

As a minimum, every IA will adopt a proportionate approach when addressing the following six steps: problem definition; rationale; consideration of alternatives; description of the proposed intervention; analysis of benefits and costs; and setting out the proposed monitoring and review needs.

Our approach draws closely from best practice principles and guidance set out by HM Treasury in the Green Book, the Better Regulation Framework, the Regulatory Policy Committee (RPC), and the Organisation for Economic Co-operation and Development (OECD).

Our IAs will be guided by the following principles for IA success. Where possible, IAs should:

- start at the inception phase of the intervention-making process;
- clearly identify the problem and desired goals of the proposal;
- identify and evaluate all potential alternative solutions (including non-regulatory ones) as applicable;
- always attempt to assess all potential costs and benefits, both direct and indirect considering outcomes and impact;
- be based on all available evidence and technical expertise, proportionate to the scale, complexity and potential impact of the intervention;
- be developed transparently with stakeholders; and
- have the results clearly communicated.

The level of analysis should be proportionate to the problem it is addressing and reflect the scale or impact of the intervention.

3.1. What will be included in ICO impact assessments?

As a minimum, every IA will adopt a proportionate approach when addressing the following six elements:

- problem definition;
- rationale;
- consideration of alternatives via options appraisal;
- description of the proposed intervention;
- analysis of benefits and costs; and
- setting out the proposed monitoring and review needs.

Table 2 below sets out the steps involved in the ICO's IA process in more detail.

Table 2: ICO IA Steps

<table>
<tr><td>1: Problem definition</td><td>This step should explain the situation or problem the intervention aims to address, including the severity of the problem, what is causing it, and expectations on how the problem might evolve. It should clearly set out the evidence base to support the identification of the situation or problem.</td></tr>
<tr><td>2: Rationale for intervention</td><td>This step will consider the rationale for intervention and should explore the following questions:

What is or are the market failure(s)?
Political and legislative context:

How would solving the identified problem fit with government objectives and the wider UK policy and legislative landscape?
Are there any interrelated problems or initiatives?

Legal context - is there a legal basis for the ICO acting to resolve the problem?
Why is the ICO best placed to resolve it?
What current or future harms are we aiming to tackle? This should be done in reference to the ICO’s Data Protection Harms Framework.
Which specific groups of persons, organisations, markets or any other stakeholders will be affected, and how, if the ICO does intervene?
Could the problem be resolved without intervention (eg through the market, innovation or other stakeholder-led change)? This includes consideration of a ‘counterfactual’ scenario representing the consequences of no intervention from the ICO.
</td></tr>
<tr><td>3: Consideration of alternatives for options appraisal</td><td>This step involves generating options for consideration. Initially a long list of options should be considered in respect to scope, solution, delivery, implementation and funding. These should be appraised against the policy and implementation objectives and various critical success factors (CSFs) to produce a shortlist of options, including a preferred way forward, a business as usual option and other credible options.</td></tr>
</table>

4: Detail of proposed intervention	This step will describe in detail the preferred regulatory intervention under consideration (ie preferred way forward). It should include a Theory of Change building on steps 1 to 3 and clearly illustrate the following: • the change (impact) the intervention aims to bring about; • the causal chain of events that are expected to bring about the change (activities, outputs and outcomes); • the main actors and groups expected to be impacted; and • how the objectives link to the problem identified.
5: Cost-benefit analysis	Cost-benefit analysis carried out at this step includes analysis of the costs, benefits and risks and should be considered from both a societal and economic perspective, in line with our objectives. The analysis may be quantitative (applying figures to the different costs and benefits), take a qualitative view of the different impacts, or use a mix of both, as far as is possible and proportionate. Where monetised estimates are produced, if necessary, these should be adjusted proportionately for inflation, time discounting, risk and optimism biases via sensitivity analysis. Depending on reporting requirements and evidence availability, this step should consider the need to produce figures such as the Equivalent Annual Net Direct Cost to Businesses (EANDCB), Net Present Social Value (NPSV) and Net Present Business Value (NPBV). Costs, benefits and risks should, where possible, be split into direct and indirect impacts on relevant groups and individuals within society, and include the following aspects as appropriate: • all uncertainty, risks, sensitivities and assumptions and how each of these impacts the policy options and analysis; • any disproportionate adverse direct or indirect impacts on small and medium businesses (SMBs) that should be considered, ideally in quantified terms, with appropriate exemptions or mitigations where possible;

	• distributional analysis including proportionate quantification of the wider impacts of the intervention on groups and individuals within society (for example impacts on particularly vulnerable groups);
	• where relevant and significant, the assessment of the potential implications of the intervention for:
	  ○ promoting innovation and competition;
	  ○ promoting economic growth;
	  ○ the prevention, investigation, detection and prosecution of criminal offences;
	  ○ safeguarding public security and national security;
	  ○ children who merit specific protection with regard to their personal data because they may be less aware of the risks and consequences associated with processing of personal data and of their rights in relation to such processing;
	  ○ trade and trade negotiations; and
	  ○ environmental matters.

6: Monitoring and review	The final step should set out in line with the ICO's Ex-post Impact Framework how implementation and impacts will be monitored and reviewed to assess effectiveness, together with any areas for improvement, or unintended consequences of the intervention.

4. Policy-making, consultation, and publication

An IA should not be an additional step which takes place after a policy or intervention decision has already been made. The steps in our IA process and the stages of the policy-making process are interlinked, interdependent, and should be conducted concurrently.

Consultation is an important part of the process of robustly assessing impacts and should be delivered in a proportionate manner depending on the degree of urgency, complexity, impact and likely interest in the proposal, and the approach will vary depending on the type of IA in question.

Our default position is a presumption of openness and transparency for all IA work, with an ambition to always publish our final IA findings.

4.1. How does impact assessment fit with the wider policy-making process?

The IA framework is complementary to, and consistent with, our systematic approach to policy-making. This systematic approach is underpinned by a portfolio of interlinked frameworks. Below we outline how the IA framework supports and aligns with each of these interlinked frameworks.

4.1.1. Policy methodology

The ICO's policy methodology describes what is meant by regulatory policy in the ICO, the context in which the ICO operates, and the different tools and resources available to support policy-makers. It is non-prescriptive and is designed as a guide to good practice to be applied flexibly.

Consideration of the need to conduct an IA should usually begin as soon as we start to consider an issue, with IA scoping being developed from then onwards. An IA should not be an additional step which takes place after a policy decision has already been made. The steps in our IA process and the stages of the policy-making process are interlinked and interdependent. In Table 3 below, we set out where these steps most align.

Table 3: Alignment of policy methodology and impact assessment steps

Policy methodology steps	Impact assessment steps
1. Identifying the issue	1. Problem definition

2. Research and analysis	2. Rationale
3. Develop policy options	3. Identification of alternatives (as applicable)
4. Consultation (formal and informal)	4. Description of the regulatory proposal
5. Recommendation and decision	5. Analysis of benefits and costs
6. Implementation	6. Setting out a proposed monitoring and impact review plan
7. Impact and review (evaluation)	

4.1.2. Ex-post impact framework

Our Ex-post impact framework (EPIF) focuses on our approach to impact measurement after intervention and the circumstances in which we will carry ex-post impact activity, such as monitoring, review and evaluation.

To ensure the ICO’s activities are effective and efficient, it is important for us to generate and analyse robust evidence on the impact of our interventions for accountability, transparency, and learning. This helps us to understand what effects are produced by our interventions (for who and why), facilitating learning and supporting our commitment to evidence-based decision-making across the ICO.

Ex-post impact activity should begin in conjunction with implementation of an intervention. As with ex-ante impact activities, proportionality is a key concept in ex-post work, and the nature of the intervention will determine the type of ex-post activity required.

Ex-ante (prior to intervention) and ex-post (after intervention) impact work are different in focus, but each help to improve the other. Both activities enhance our understanding of what works and help to grow our organisational evidence base.

4.1.3. Theory of change: driving impact by design

Theory of Change (ToC) is a systematic approach that enables the articulation of a vision for change, definition of desired outcomes, and development of the necessary steps to achieve them. It serves as a roadmap, illuminating the causal relationships between inputs, activities, outputs, and outcomes.[5] By mapping out

[5] See Annex B of the Ex-Post Impact Framework for definitions of these terms.

this route to impact, it allows us to understand how change happens and provides a reference point for implementation, monitoring, and review.

Whilst developing an IA, it is important to consider what the intervention is aiming to achieve, the desired outcomes and the context in which the intervention will be operating. ToC can be a useful tool for mapping the aims and objectives of the intervention and considering what needs to be done to achieve these, including the underlying assumptions that will ensure the success of the intervention.

4.1.4. Taxonomy of data protection harms

The ICO’s taxonomy of data protection harms sets out our approach to understanding the concept of harm drawing legal, policy and economic insights from wide-ranging sources. We use this in our ex-ante impact work to consider in more depth:

- what the cause of the issue is;
- what harm may result from this issue;
- who is most affected by it; and
- what change we intend to influence linked to the previous bullets.

4.1.5. Consultation policy

The ICO’s consultation policy explains how and why we use consultation in developing policy decisions and discharging our regulatory duties. As part of our IA approach, we may, where appropriate, seek the views of stakeholders allowing them to contribute to our thinking and evidence, enabling scrutiny and accountability in our work. Our initial IA work may also be used, where appropriate, to provide information for stakeholders when responding to consultation activities on the intervention itself. Our approach to consultation for IAs is covered in more detail in Section 4.2 below.

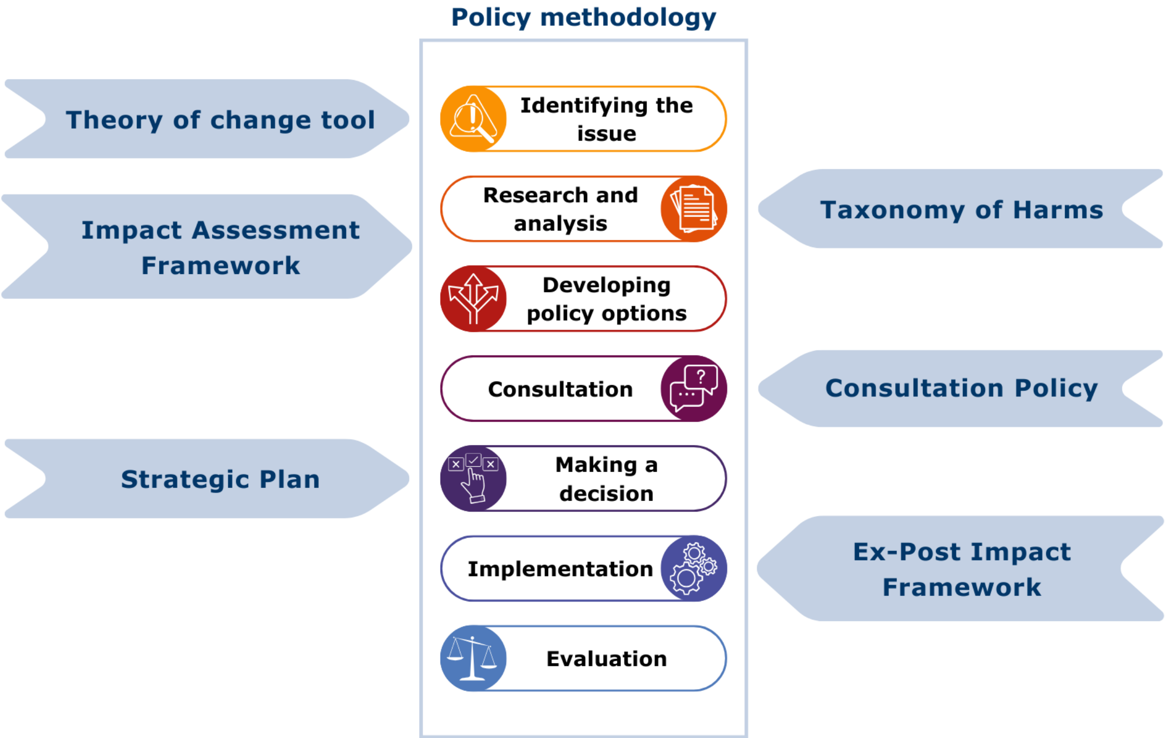
4.1.6. Strategic plan

When carrying out an IA, we draw on the ICO’s strategic plan to help place the impacts of the intervention in the context of the organisation’s overarching purpose, objectives and values.

Summary of how impact assessment fits with wider policy making

Figure 1 shows our seven-stage policy methodology process, and the stages at which we deploy each of our frameworks, policies and tools when discharging our regulatory duties, as described above.

Figure 1: Policy methodology process and complementary tools including impact assessment



Source: ICO.

4.2. What is the consultation process for impact assessments?

Consultation is an important part of the process of robustly assessing impacts. It ensures that the development of intervention options is open, and the quality of our analysis is greatly assisted by the quality of the input received.

We will adopt a proportionate approach to consulting on our IAs, depending on the nature of the intervention under consideration. For example, consultation about a low-status, low-risk project (eg a minor update to sector specific guidance) could include targeted engagement with relevant affected civil society or sector groups, whereas consultation for a higher-status, resource intensive project (eg a statutory code) is likely to be broader.

Where possible, we will normally include draft IAs when we consult publicly on codes of practice and other regulatory interventions, such as guidance, as appropriate. These will generally form part of the consultation document, often as an appendix. And in circumstances where we use consultative panel approaches, if appropriate we will include impact considerations.

Consultation periods will last for a proportionate amount of time depending on the degree of urgency, complexity, impact and likely interest in the proposal, and the approach will vary depending on the type of IA in question. Decisions to consult and for what period of time will be made in line with the ICO’s Consultation Policy.

4.3. Will impact assessments be published?

The role of IAs is to provide objective evidence and analysis that feeds information into the design, scrutiny and approval processes that support decision-making. Accordingly, IA results should be presented transparently and should be published in a way that promotes public trust.

Our default position is a presumption of openness and transparency for all IA work, with an ambition to always publish our final IA findings. However, there may be circumstances where we decide for good reason that it is not possible to publish our IA findings, or decide to publish a summary or redacted version of the IA findings. Where this is the case, we will state our reasons.

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For more information or queries, please contact:

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