

The Information Commissioner's response to Ofcom's consultation on Draft Online Safety Information Powers Guidance

About the Information Commissioner

The Information Commissioner has responsibility for promoting and enforcing data protection and information rights. This includes responsibilities under the UK General Data Protection Regulation (UK GDPR), the Data Protection Act 2018 (DPA 2018), the Freedom of Information Act 2000 (FOIA), the Network and Information Systems Regulations 2018 (NIS), and the Privacy and Electronic Communications Regulations 2003 (PECR).

The Information Commissioner is independent from government and upholds information rights in the public interest, promoting openness by public bodies and data privacy for individuals. The Commissioner provides guidance and support to individuals and organisations, aimed at helping organisations to comply, and takes appropriate action where the law is broken.

ICO and Ofcom collaboration

As the bodies responsible for regulating data protection and online safety in the UK, the ICO and Ofcom share a commitment to protecting people online. We published a [joint statement in 2022](#) which set out our overall vision of ensuring coherence across online safety and data protection requirements and promoting compliance with both regimes. In May 2024, we deepened our collaboration and published a [second joint statement](#) explaining how we intend to collaborate on supervision and enforcement on issues that are relevant to both regimes.

Compliance across the data protection and online safety regimes

The ICO welcomes the online safety regime and its objective to make the UK the safest place in the world to be online.

Compliance with many of the online safety duties will inevitably involve the processing of personal data and, as Ofcom recognises, complying with an Information Notice may require services to disclose personal data to Ofcom.

We welcome Ofcom's inclusion of references to data protection law compliance throughout the draft guidance.

We agree that service providers should familiarise themselves with the data protection legislation and understand how to comply with the data protection regime when complying with Information Notices. We encourage Ofcom to continue to refer services to relevant ICO guidance resources where appropriate. We are happy to work with Ofcom to identify the appropriate ICO resources as it prepares the final guidance.

Information requests and data protection compliance (paragraph 3.43)

Under data protection law services must have a valid lawful basis to process personal data. We would not expect this to present an obstacle to compliance with an Information Notice.

We note that the draft guidance refers to the UK GDPR Article 6(1)(c) lawful basis (processing is necessary for compliance with a legal obligation to which the controller is subject) as an available lawful basis for personal data processing when fulfilling an information request (annex 1, footnote 19). We agree that Article 6(1)(c) may provide an appropriate lawful basis. It should however be noted that the UK GDPR does not prescribe which lawful basis is appropriate in a particular context.

Services are required to determine their lawful basis before they begin processing personal data, and they should document it. To ensure that services are signposted to the complete information about available lawful bases, we suggest that the guidance includes a reference to the [ICO's lawful basis guidance](#) in the relevant footnote and recommends that services refer to it when determining their lawful basis.

Services will also need to consider whether they are processing special category¹ personal data or data relating to criminal convictions and offences². If so, they will be required to identify both a lawful basis for their personal data processing and an additional condition for processing these

¹ [Article 9](#) UK GDPR

² [Article 10](#) UK GDPR

types of data³. Information about these requirements is set out in the ICO's lawful bases guidance.

Remote viewing Information Notices (paragraphs 4.45-4.52) (paragraph 3.43)

We note that Paragraph 4.55 of the draft guidance explains that Ofcom's power is limited to remotely viewing information generated by the performance of a test or demonstration, and that Ofcom will not be able to directly control the service, nor could it require companies providing infrastructure services to create the means to weaken or circumvent cybersecurity measures such as encryption. The paragraph also provides that where Ofcom requires that a test be performed using the 'live' service environment any data processing would need to comply with data protection law.

We would however like to engage further with Ofcom to consider the potential risks that the remote viewing powers may pose to a services' ability to ensure ongoing confidentiality, integrity, availability and resilience of its systems and processes. Any compromise to a service's system could have serious privacy and security implications including potential breaches of UK GDPR⁴.

We recommend that the guidance should remind services that they must therefore consider the security of their systems when complying with a Remote Viewing Information Notice. We further recommend that the guidance recommends that services consult the [ICO's "A Guide to Data Security"](#) to ensure the 'confidentiality, integrity and availability' of your systems and services when complying with an information notice.

³ [Schedule 1](#) UK Data Protection Act 2018

⁴ [Article 32](#) UK GDPR