Date: 26 May 2023

IC-223659-M0D1

Request

You asked us:

"The blog 'Addressing concerns on the use of AI by local authorities' by Stephen Bonner (Blog: Addressing concerns on the use of AI by local authorities | ICO) dated 19 January 2023, makes reference to concerns “raised about the use of algorithms in decision-making around benefit entitlement and in the welfare system more broadly”.

Please provide the following information:

1. The rationale/decision making process behind ICO’s inquiry.
   a. Specifically, the "concerns” that were raised about the "use of algorithms in decision-making around benefit entitlement and in the welfare system”, and by whom.
   b. Which of these “concerns” this inquiry is responding to.

2. The internal final report or briefing document that informed this blog post.

3. The technical suppliers that were consulted as part of the inquiry.
   a. The software or technology they provide, to which local authority and/or or which DWP team/area.

4. Which local authorities were consulted, and the decision-making process behind the sample selection.

5. Which DWP teams were consulted, and the decision-making process behind the sample selection.”

We received your request on 27 March 2023. We have handled your request under the Freedom of Information Act 2000 (the FOIA).
Our response

For my ease as well as yours, I have responded to each of your points below under a separate header.

Point 1

I can confirm we do hold information in scope this part of your request. On 15 July 2021, the ICO received a letter addressed to Elizabeth Denhem, who was the Information Commissioner at the time, from Jake Hurfurt, Head of Research and Investigations, at Big Brother Watch. The letter raised concerns about the use of automation and algorithms in the welfare state. Big Brother Watch also provided us with an embargoed, draft copy of a report they had prepared titled "Poverty Panopticon: the hidden algorithms shaping Britain’s welfare state".

I consulted with Big Brother Watch as to whether it would be happy for me to disclose their letter and the draft copy of Poverty Panopticon that they shared with us. They have advised they are happy for us to share with you a copy of their letter (pages 1-5 of the bundle), but they do not want us to provide the copy of the report that they shared with us because this was an advance draft copy which will have undergone change since its publication.

With that in mind, I have enclosed a copy of the letter. I have exempted the version of Poverty Panopticon that we received under s.31 FOIA. Further information will be provided below about this exemption. However, the full and final version of the report is published on Big Brother Watch’s website, and you can find it here: Poverty Panopticon | Big Brother Watch.

Following Big Brother Watch’s letter, we created an ‘initiation document’, which details many things, including what concerns our inquiry was responding to. I have extracted the relevant sections which detail the concerns the inquiry was responding to (pages 6-11 of the bundle). Some of the information has been redacted because it is exempt from disclosure by virtue of s.31 or s.44. Further details about redactions have been provided below.

Point 2

I can confirm we do not hold anything as formal as a report or briefing document that informed the blog post. However, our High Priority Inquiries team did send some bullet points via email to our communications team to help them produce a
As discussed earlier, the below bullet points detail the key outcomes of Op Letton;

- Algorithms are not used to the extent suggested.
- [EXEMPT – s.43 FOIA]
- No decisions are made by the algorithm and human intervention always results.
- LA’s do not have a particular desire to use algorithms but need to make an administration function more efficient and pay the right benefit to the right person at the right time.
- We have been able to influence improvement and promote good practice.
- LA’s have welcomed our contact which has resulted in proactive reviews of DPIA’s and privacy notices.
- In response to our enquiries some local authorities have indicated that they will review their compliance. One council [REDACTED – s.44 FOIA] confirmed that since receiving enquiries they have reminded teams of their data protection obligations, prompted privacy notice reviews and the creation of DPIAs. A further council [REDACTED – s.44 FOIA] noted that following ICO enquiries, amendments will be made to their privacy notices to ensure transparency of their processing.
- Improved stakeholders relationships through openness, transparency and demonstrated our credibility as a responsible regulator
- Great example of our ability to deliver on a complex matter in a matter of months without the use of any formal powers to progress our inquiries
- We have been able to promote responsible innovation while addressing some concerns.
- [REDACTED – s.44 FOIA]
- Through cross office collaboration with Tech Policy we applied the newly created AI and DP risk toolkit to the [REDACTED – s.44 FOIA]. This enabled us to provide timely advice to the [REDACTED – s.44 FOIA] to influence its practice straight away, rather than waiting for the conclusion of the inquiry.”

You will note I have applied exemptions to some of the information. I have provided further information about these exemptions below.
Point 3

I can confirm we hold some information in scope of this part of your request. I consulted with the organisations who we approached to establish their views on whether they were happy to be named as having been consulted. I can confirm the following were happy to be named as part of the enquiry:

- Transunion (Risk Based Verification – TransUnion has advised this product is no longer offered);
- MobySoft (RentSense);
- Xantura (Risk Based Verification); and
- NEC Software Solutions (NEC Housing).

I have exempted disclosure of other providers because they have not consented to their involvement being disclosed (eg because they didn’t respond to our enquiries, they objected, etc). I have exempted this information under s.31 FOIA. Further details about this exemption have been provided below.

I can confirm that we do not hold any information concerning which software providers supply which local authorities or DWP teams because this was not something we enquired about during our inquiry.

Point 4

I can confirm we hold information in scope of your request. The local authorities we consulted were:

- Birmingham City Council
- Brighton & Hove City Council
- Cornwall Council
- Cardiff Council
- Durham County Council
- Glasgow City Council
- Liverpool City Council
- Leeds City Council
- London Borough of Newham Council
- Nottingham City Council
- Norwich City Council

Our High Priority Inquiries Team produced a document setting out the various options for selecting local authorities to make enquiries with. The document concludes with the option chosen. I have attached a copy (pages 15-32 of the
bundle). Some information has been redacted because it is out of scope and other information has been redacted to protect the identity of the technology providers who have not consented to being named.

At a later date, we selected an alternative local authority to be part of the inquiry. The change of local authority was recorded in a wider document, which is not in scope of the request. I have therefore extracted the relevant part and included the record of the change (page 33 of the bundle). Most of the information from the excerpt is exempt from disclosure by virtue of s.31 FOIA. Further information has been provided below.

**Point 5**

I can confirm we consulted with the DWP’s data protection officer. However, we do not hold any information pertaining to the decision-making process for selecting to consult with the DPO. By way of explanation, if we’re going to consult with an organisation about data protection matters, the ICO will direct its enquiries to the relevant data protection officer.

**Information withheld – s.31 FOIA**

I have exempted some information from disclosure owing to the exemption detailed in 31(1)(g) FOIA, which states information is exempt if it:

"*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).*"

Subsection (2) details two points – s.31(2)(a) and s.31(2)(c) – which are relevant. These are:

"(a) the purpose of ascertaining whether any person has failed to comply with the law” and

"(c) the purpose of ascertaining whether circumstances which would justify regulatory action in pursuance of any enactment exist or may arise …”

There are different reasons why I have applied this exemption throughout the bundle and each of these have different prejudice and different public interest considerations. The broad categories of information that I have applied s.31 to are as follows:
• Information voluntarily supplied to the ICO (advance copy of Poverty Panopticon).
• Information relating to intelligence and investigations (pages 7 and 33 of the bundle).
• Information relating to the identity of private companies who have not agreed to or objected to being named (page 10 of the bundle).

I have identified the prejudice and performed a public interest test for each below.

**Information voluntarily supplied to the ICO**

The ICO often receives information voluntarily which support it in carrying out its regulatory function. In this instance, we received an advanced, pre-publication copy of Poverty Panopticon from Big Brother Watch.

I consulted with it to ask its views on disclosure of both their letter and the advanced copy of the report. They agreed to disclose the letter but they asked us not to share the advanced copy of Poverty Panopticon because it was a draft copy which will have undergone some changed prior to publication. Also, the full and final report is available on their website.

I do consider there would be a prejudice to disclose the advance copy of Poverty Panopticon. This is because it was provided to us voluntarily and to disclose would be against the express wishes of Big Brother Watch. This being the case, it may result in a reduced flow of information in future from that organisation as well as other organisations.

With this in mind, I have considered the public interest test.

• On the one hand, the factors in favour of disclosure are a general interest in the information voluntarily shared with us as a regulator. I am also conscious that the vast majority of the report is already in the public domain.
• On the other hand, the factors against disclosure are that our investigations and inquiries may become more challenging if organisations considering a voluntary disclosure are more risk averse due to such information being released, especially against stated wishes. Further, the public interest is served already by the availability of the final, complete report.
Having considered all of these factors we have taken the decision that the public interest in withholding the information outweighs the public interest in disclosing it.

**Information relating to intelligence and investigations**

During our inquiry, we have drawn upon knowledge gained via intelligence as well as other lines of investigative enquiry. Naturally, this happens because an inquiry does not happen in isolation of other work being conducted by the ICO.

Having considered some of the information in scope of the request, I consider disclosure would prejudice our ability to gather intelligence and conduct investigations in an appropriate manner. Disclosure at this stage may discourage ongoing and future discussions between the ICO and the organisations whom the information pertains to.

With this in mind, I have considered the public interest test:

- On the one hand, the factors in favour of disclosure are increased transparency in the way the ICO conducts intelligence and investigation activities.
- On the other hand, the factors against disclosure are the public interest in maintaining organisational trust, namely that information shared with us and information about organisations will be afforded an appropriately level of confidentiality, which affords such organisations the space to be open and honest with us. Further, there is a public interest in ensuring the ICO can conduct its intelligence and investigation activities as it sees fit.

Having considered all of these factors we have taken the decision that the public interest in withholding the information outweighs the public interest in disclosing it.

**Information relating to the identity of private companies who have not agreed to or objected to being named**

The inquiry we conducted into the use of AI in the welfare system was a voluntary inquiry. There are a number of technology companies who were candidates for consultation, some of whom played an active role in providing information to help the inquiry. These technology companies engaged with us without the need for use of our formal, regulatory powers and this is an ideal situation because mutual cooperation requires less resources and has a less
damaging impact on our relationships with stakeholders as compared to taking formal action.

With this in mind, I am very mindful of the fact that some of the technology providers have either not agreed to be named or have objected to being named. If I were to disclose the information sought with this in mind, I consider it would have a serious, prejudicial impact on our ability to conduct voluntary inquiries in future because it outwardly demonstrates to stakeholders that we may not treat their involvement or the information they share with us in confidence.

With this in mind, I have conducted a public interest test:

- On the one hand, the factors in favour of disclosure are increased transparency in the way the ICO has conducted this inquiry and who it has consulted as part of it.
- On the other hand, the factors against disclosure are maintaining the trust and voluntary cooperation of the technologies providers, which, if there was a need for any future inquiries, would make such inquiries significantly easier. Further, I also attach weight to the fact that most of the public interest value in disclosure is served by the information contained in the blog as well as the other information that we are disclosing.

Having considered all of these factors we have taken the decision that the public interest in withholding the names of technology companies who have not specifically agreed to be named as the outweighs the public interest in disclosing it. However, the names of organisations who have agreed will be included in the disclosure as this tips the balance in favour of disclosure in these instances.

**Information withheld – s.43 FOIA**

You will note that I have applied s.43 FOIA to exempt one of the points of the bullet points we shared with our communications team. The information exempted pertains to the product offerings of the technology providers we consulted. FOIA Section 43(1) states:

"Information is exemption information if its disclosure under this Act would, or would be likely to, prejudice the commercial interests of any person (including the public authority holding it).”

‘A person’ may be an individual, a company, the public authority itself or any other legal entity. Our guidance on what constitutes a commercial interest states:
"A commercial interest relates to a person’s ability to participate competitively in a commercial activity."

I consider disclosure of the redacted point would prejudice the commercial interests of the technology providers we consulted because the information reveals details about the nature, quality, and scope of the product offerings which is based on information shared with us in confidence by those technology companies. I consider revealing this information may harm the commercial interests of the providers.

Section 43 FOIA is a qualified exemption, and therefore I must consider a public interest test to establish if the balance favours disclosure or withholding.

In this particular case we consider that the factors in favour of disclosing this information are:

- The general public interest in understanding the scope, nature, and quality of the product offerings of the technology companies; and
- The general public interest in our views about the same.

The factors for maintaining the exemption and withholding the information are:

- I have consulted with the technology providers about being named, and while many of them were supportive of being named, the providers that responded made it very clear they did not want information they shared with us disclosed. The exempted information is based on information shared with us. There is a public interest in maintaining organisational trust, namely that information shared with us and information about those providers will be afforded an appropriately level of confidentiality, which affords such organisations the space to be open and honest with us.
- As explained above, our inquiry was conducted on a voluntary basis without the need for exercising formal regulatory powers. Being able to conduct inquiries via mutual, voluntary cooperation is in the public interest because it is more cost-effective, efficient, and effective than utilising formal regulatory powers.

I attach a lot of weight to respecting the wishes of those technology providers who supported a very positive overall inquiry. With this in mind, I consider that in all the circumstances the public interest in maintaining the exemption outweighs the public interest in disclosing this information.
Information withheld – s.44 FOIA

Section 44 of the FOIA exempts information where disclosure would be prohibited by law. Section 132 of the Data Protection Act 2018 prohibits disclosure of certain information. Specifically, it prohibits the Information Commissioner and his staff from disclosing information it has received in our capacity as a regulator where such information identifies an individual or business and where such information has not otherwise been made public.

I have applied this exemption to some of the information in scope of your request. In particular, some of the points shared with our communications team and pages 8 and 9 of the bundle. This information would be exempt by virtue of s.132 DPA because the information summarises information that was provided to us in the course of exercising our regulatory capacity, they would identify a business, and I am not aware this information has otherwise been made public.

I have tried to apply these redactions using the least intrusive method I can. For example, where possible, showing what actions were taken but redacting who took the action. The information I have disclosed therefore reveals as much as possible about the positive outcomes of our inquiry without revealing information prohibited from disclosure. However, some information has been exempted fully because there was no way to reveal the action taken without identifying the business.

This exemption is absolute so I do not need to consider prejudice or conduct a public interest test.

This concludes our response to your request. I hope you find the 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 here.

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 set out your rights. Our retention schedule can be found here.

Yours sincerely

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Risk and Governance Department, Corporate Strategy and Planning Service
Information Commissioner’s Office, Wycliffe House, Water Lane, Wilmslow, Cheshire SK9 5AF
ico.org.uk twitter.com/iconews
Please consider the environment before printing this email
For information about what we do with personal data see our privacy notice