

11 November 2020

Name: Madeline Bowles

By email only: request-657619-c8ea0e7c@whatdotheyknow.com

Ref: IC-40394-MOS2

Dear Madeline Bowles

We write in response to your recent request for information, which we received on 2 April 2020. We are now in a position to provide a response. I sincerely apologise for the delay in responding to your request.

We have dealt with your request in accordance with your 'right to know' under section 1(1) of the Freedom of Information Act 2000 (FOIA).

Request

In the draft code of practice on Direct Marketing at:

<https://eur03.safelinks.protection.outlook.com/?url=https%3A%2F%2Fico.org.uk%2Fmedia%2Fabout-the-ico%2Fconsultations%2F2616882%2Fdirect-marketing-code-draft-guidance.pdf&data=01%7C01%7Caccesscoinformation%40ico.org.uk%7C5db307d1a8eb4584915b08d7d6e89d99%7C501293238fab4000adc1c4cfefba21e6%7C1&sdata=iSs1IPdm0ZEqHdNCXc3fkob3fzJc47E0VXrem6zyd9I%3D&reserved=0>

the final sentence of the second paragraph of page 62 asserts that consent to send direct marketing emails is specific to a particular email address.

Para 22(2) of the PECR refers only to the "recipient of the electronic mail" and not the email address itself.

In an earlier FOI request to you I asked for detail of any legal opinion or advice you had received in respect of PECR in the last five years. You refused that request on the grounds that it would have taken too long to extract the information, if it exists.

You also, earlier, refused a more general request asking for the legal basis for the assertion made in the guidance. This was refused on the

basis that the FOIA provides a facility for information to be disclosed, and my request was not a request for information.

This, then, is a much more specific request.

Please provide copies of any meeting notes, pre-publication drafts of the draft guidance (with "track change" style or similar comments where available) or correspondence which were produced by the officer or officers responsible for, or involved with, the production of the draft guidance specifically where those notes or pre-publication drafts or correspondence relate to the second paragraph on page 62 of the guidance which begins "You cannot assume that an individual..."

Response

In answer to your request we can confirm that we do not hold any meeting notes or correspondence about the second paragraph on page 62 of the Draft direct marketing code of practice which begins "You cannot assume that an individual...".

The only recorded information that we hold is in relation to the refining of that paragraph during the drafting process. However there are no 'comments' associated with that paragraph. The attached pdf. document shows the evolution of the paragraph, please note the second version of the paragraph is not held with track changes although as you will see it does contain slight refinements from the first version.

By way of advice and assistance it may be helpful to clarify that the Privacy and Electronic Communications Regulations (PECR) takes its standard of consent from the GDPR. There are various requirements that need to be met in order for consent to be valid and one of these is that the consent must be specific. More information on consent can be found on our website.

This concludes my response to your request. Once again, I apologise for the delay in sending this to you and hope that the information contained within is helpful to you.

I note you have requested a review of your request prior to this response being sent. Please let me know, using the process explained below, if you would like to continue with that process following receipt of this correspondence.

Review Procedure

If you are dissatisfied with this response and wish to request a review of our decision or make a complaint about how your request has been

handled you can write to the Information Access Team at the address below or e-mail accessicoinformation@ico.org.uk.

Your request for internal review should be submitted to us within 40 working days of receipt by you of this response. Any such request received after this time will only be considered at the discretion of the Commissioner.

If having exhausted the review process you are not content that your request or review has been dealt with correctly, you have a further right of appeal to this office in our capacity as the statutory complaint handler under the legislation. To make such an application, please write to our Customer Contact Team at the address given or visit our website if you wish to make a complaint under the Freedom of Information Act.

A copy of our [review procedure](#) can be accessed from our website.

Yours sincerely

Alexis Karlsson-Jones

Senior Information Access Officer, Risk and Governance Department

Corporate Strategy and Planning Service

Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire SK9 5AF

T. 0330 313 1886 F. 01625 524510 ico.org.uk twitter.com/iconews

For information about what we do with personal data see our [privacy notice](#).

Please consider the environment before printing this email