IAF
Information Accountability Foundation

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The following comments are pursuant to the consultation of the Information Commissioner's Office (ICO) on the purpose limitation in the generative AI lifecycle (Second Consultation). The Information Accountability Foundation (IAF) welcomes the opportunity to provide its input.

1. <u>**Who We Are**</u>[1]

The IAF is the preeminent global information policy think tank, creating collaborative scholarship and education on the policies and processes necessary to use data responsibly in an observational age, while enabling a trusted digital ecosystem that serves people. It is not-for-profit and independent. The IAF is the incorporation of the Global Accountability Dialog, the multi-stakeholder project that developed the "Essential Elements of Accountability." For more information on the IAF's purpose and approach, see the IAF's Response to the ICO's First Consultation.

2. <u>**The Scope of Our Comments**</u>

The IAF's Comments focus on the subjects raised in Sections 1 and 3 of the Second Consultation.

3. <u>**IAF's Views on the Proposed Regulatory Approach**</u>
  A. Predictive AI v. Generative AI

The IAF respectfully observes that the Second Consultation is overly inclusive when it talks about generative AI. Confusingly, predictive AI is included in the discussion of generative AI. In MIT News, generative AI is explained as follows: "Generative AI can be thought of as a machine-learning model that is trained to generate new data, rather than making a prediction about a specific dataset." According to a Wachstock Post, Artificial Intelligence (AI) includes predictive and generative forms. Predictive AI analyses and interprets existing data and aids organizations by analysing historical data to make data-driven predictions. The primary purpose of predictive AI is to identify patterns in past data, enabling businesses to forecast future trends, behaviours, and outcomes. Generative AI, on the other hand, creates new content, such as images, videos and text. The Second Consultation discusses both forms of AI but treats them as generative AI. The "Purpose limitation" section of the ICO's AI Guidance already covers the predictive form of AI which includes the applications built on

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[1] These comments were prepared by IAF staff and do not necessarily reflect the views of the IAF Board of Directors, funders, or members of the IAF extended community.

top of the generative AI model either by the model developer or a third party. Discussing predictive AI in the Second Consultation is confusing.

The Second Consultation understands there is a difference between predictive and generative AI when it states: "We consider that developing a generative AI model and developing an application based on such a model (fine-tuned or not) constitute different purposes under data protection law." The problem is the Second Consultation's description of this solely as a "purpose" issue. Predictive AI and generative AI are two different types of processing. If the same organization is doing both types of processing on the same data, then the organization, as the Second Consultation points out, needs to determine whether the further processing is compatible with the original purpose.

The Second Consultation needs to limit its generative AI discussion only to the use of models to generate new data. It should not discuss the use of applications which analyse and interpret existing data, providing predictions, in the generative AI Consultation.

B. Thinking and Acting with Data

In the IAF's Response to the ICO's First Consultation, it discussed the distinction between "thinking with data" – the robust use of data to create insights - and "acting with data" – the use of those data to affect individuals. The distinction between predictive AI and generative AI reinforces the distinction between thinking with data and acting with data and also highlights the likely different risks to an individual. The IAF's research has concluded that there are less risks to the individual in the "thinking with data" phase, and that by extension, there arguably would be different risks in the uses of generative AI and predictive AI, even at the "thinking" phase. Being precise and making these distinctions points out that different purposes are not embedded in different phases, and this is the case even if the organization does not separate thinking and acting with data.

IAF's research confirms this conclusion. In its [Making Data Driving Innovation Work](#) Project, businesses told the IAF that they use personal data as part of analytics processing to solve identified business problems (Corporate Research) and that they generally do not use Corporate Research as a distinct processing activity.

If this is the case, then it does not matter what the technology is – generative AI or any other type of data analytics process such as basic machine learning. The rules are the same. A different purpose is not needed for each stage of the AI life cycle, and the failure to recognize this adds to the confusion in the Second Consultation's approach.

C. The GDPR is not Technology Specific

Article 2 of the UK GDPR is perfectly clear. The UK GDPR applies to the automated or structured processing of personal data. The UK GDPR applies no matter the type of automated technology. The IAF understood the reason for the First Consultation because sometimes the personal data are not being collected directly from the individual. Only a very small part of the Second Consultation is concerned with such a unique individual need.

The Second Consultation states that the purpose limitation is important so that the specified purpose in each stage can be identified and explained to the people to which the data relates. As discussed above, a different purpose is not needed for each stage of the life cycle. Once the predictive AI parts of the Second Consultation are stripped away, it is easy to recognize that the Second Consultation is much broader than it needs to be. Really what the Second Consultation is about is both the transparency principle and the purpose limitation principle. What is unique about generative AI is when the data is not collected from the people. Therefore, the Second Consultation only should have focused on the organization's purpose for building the generative AI model (and all the stages in that part of the AI life cycle) and how to notify people of the purpose of the model development when they are not collected directly from the people.

D. The Roles in the Generative AI Lifecycle

The IAF respectfully observes that the Second Consultation is inconsistent in how it describes (or does not describe) the role of organizations in the generative AI lifecycle. At times, the Second Consultation refers to developers and deployers. At other times, the Second Consultation talks about different stages having different purposes and one model having many purposes. Respectfully, stages and models do not have purposes; it is the organization that builds the model, and it is the organization that has a purpose for building the model.

This focus on the organization is consistent with a "processing of data" type approach rather than a technology driven approach which is confusing as discussed above because of its preoccupation with there being a different purpose at different technology stages. The IAF respectfully suggests that it would be more helpful if the ICO gave guidance to organizations based upon the role they play in the generative AI lifecycle (for example, first party or third party). Identification of roles and assignment of responsibilities according to roles is consistent with the accountability principle in Article 5(2) of the UK GDPR.

Final Comments

The IAF urges the ICO to be precise about the scope of generative AI, to focus on the parts of generative AI that often are not transparent to people and to otherwise be technology agnostic, and to focus on the roles of organizations in generative AI. This approach, in the IAF's view, would result in much more actionable guidance by the ICO. Thank you for the opportunity to submit comments on the Second Consultation.