

Systematic Monitoring

In order to consider if the processing activity which is the subject of the allegation constitutes systematic monitoring, it is necessary to first define the term. There is no categorical definition provided by the UK GDPR, Data Protection Act 2018, or the Information Commissioner's Office (ICO), however there is sufficient information available to formulate a reliable definition of the term. In order to arrive at a definition, we have first considered both elements of the term in turn:

Systematic

The legislation provides no definition of the term 'systematic', however the [EDPB Guidelines on DPOs](#) contains a section titled 'What does 'regular and systematic monitoring' mean?' (p21) which provides a clear definition:

WP29 interprets 'systematic' as meaning one or more of the following:

- *occurring according to a system*
- *pre-arranged, organised or methodical*
- *taking place as part of a general plan for data collection*
- *carried out as part of a strategy*

The Article 29 Working Party (WP29) was an EU advisory body whose opinions on data protection matters carry significant weight, and whose opinion in this case has been adopted by the European Data Protection Board (EDPB). As such, we can consider the definition above to be a reliable one.

Monitoring

[UK GDPR Recital 24](#) states:

In order to determine whether a processing activity can be considered to monitor the behaviour of data subjects, it should be ascertained whether natural persons are tracked on the internet including potential subsequent use of personal data processing techniques which consist of profiling a natural person...

The criteria identified in Recital 24 is therefore that a processing activity must consist of the tracking and/or profiling of data subject(s) to be classed as monitoring. [UK GDPR Art 4\(4\)](#) provides us with the following definition of profiling:

any form of automated processing of personal data consisting of the use of personal data to evaluate certain personal aspects relating to a natural person...

As the above definition makes clear, a fundamental component of profiling is that it is carried out automatically – an example of this is automating decisions about benefits payments based on characteristics of the claimant. We have seen no evidence to support the view that any of the processing activity which is under scrutiny took place by anything other than manual means, therefore we can categorically state that no profiling has occurred. In terms of 'tracking', we do not have the luxury of a definition provided within the legislation and as such must consider the common meaning of the word. The Oxford English Dictionary provides the following:

Track, v

To follow up the track or footsteps of; to trace the course or movements of...

We consider that the key element of tracking is that it involves following or observing the movement of someone or something, either physically or digitally. For example, tracking cookies, which follow an individual's movement across multiple digital spaces, or the Covid Track and Trace programme, which followed an individual's physical movement based on who they'd come into contact with.

With the above points in mind, we would consider the following to be a reliable definition of 'systematic monitoring': 'the tracking and/or profiling of individuals which occurs according to a system, and/or is pre-arranged, organised, or methodical, and/or takes place as part of a general plan for data collection, and/or is carried out as part of a strategy.'

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