

DECISION OF THE INFORMATION COMMISSIONER

Snap Inc. and Snap Group Limited

Decision of the Information Commissioner following
provisional findings of infringements of Articles 35 &
36 UK GDPR by Snap Inc. and Snap Group Limited in
relation to the launch of the "My AI" feature on
Snapchat

21 May 2024

CONTENTS

- I. Introduction and Summary
- II. Factual Background
 - A. The Snapchat Platform
 - B. The My AI Feature
 - C. The Commissioner’s Investigation
 - D. The Commissioner’s Decision
- III. Relevant Legal Framework
- IV. The Commissioner’s Findings of Non-Infringement
 - A. Controllership and Jurisdiction
 - B. Non-Infringement of Article 36 UK GDPR
 - C. Non-Infringement Findings of Article 35 UK GDPR
 - (a) Article 35(7)(a) UK GDPR: Systematic Description of the Processing
 - (b) Article 35(7)(b) UK GDPR: Necessity and Proportionality
 - (c) Article 35(7)(c) UK GDPR: Risk Assessment
 - (d) Article 35(7)(d) UK GDPR: Mitigatory Measures
- V. Conclusion
- VI. Annex: My AI JIT Notice

DECISION OF THE INFORMATION COMMISSIONER

To: Snap Inc.
3000 31st Street
Santa Monica
California
90405

and

Snap Group Limited
50 Cowcross Street
Floor 2
London
EC1M 6AL

FAO: [REDACTED]

Email: [REDACTED]

21 May 2024

I. INTRODUCTION AND SUMMARY

1. The Information Commissioner (the "**Commissioner**") has concluded that:
 - (a) as of 22 November 2023, Snap Inc. ("**Snap**") has carried out a revised data protection impact assessment ("**DPIA**") relating to the "My AI" feature on the Snapchat platform ("**My AI**") which meets the requirements of Article 35 of the UK General Data Protection Regulation (the "**UK GDPR**"); and
 - (b) Snap and Snap Group Limited did not infringe Article 36(1) UK GDPR by failing to consult the Commissioner prior to commencing the processing of personal data in connection with My AI.
2. As a result, there are no grounds to issue an Enforcement Notice pursuant to section 149(2) of the Data Protection Act 2018 (the "**DPA 2018**") on the terms set out in Annex 1 of the Preliminary Enforcement Notice (the "**PEN**") issued to Snap and Snap Group Limited on 6 October 2023.
3. The PEN set out the Commissioner's provisional conclusion that Snap and Snap Group Limited, in their capacity as either independent or joint controllers in respect of the personal data processed in connection with My AI, had infringed:
 - (a) Article 35(1) UK GDPR in relation to the processing of personal data associated with My AI by failing to carry out a DPIA which complied with the requirements of Article 35(7) UK GDPR prior to the launch of My AI on Snapchat on 27 February 2023; and
 - (b) Article 36(1) UK GDPR by failing to consult the Commissioner prior to processing personal data in connection with My AI, despite appearing to conclude in the first four iterations of its DPIA relating to My AI that such processing would result in a

high risk to the rights and freedoms of users aged 13-17 in the absence of measures taken to mitigate the risk.

4. The PEN set out the Commissioner's provisional conclusion to issue Snap and Snap Group Limited with an Enforcement Notice requiring them to cease processing the personal data of Snapchat users in the UK for any purpose connected to My AI until a revised DPIA had been carried out, provided to the Commissioner, and confirmed, in writing, by the Commissioner to be compliant with the requirements of Article 35 UK GDPR. The Commissioner informed Snap that he would carefully consider any oral or written representations it wished to make before he reached a final decision.
5. On 3 November 2023, the Commissioner received written representations in response to the PEN, which were later supplemented by a "skeleton argument" on 11 December 2023, which, albeit submitted after the deadline for written representations had passed, the Commissioner took into consideration as a further set of written representations. Oral representations were provided at a hearing on 14 December 2023. The Commissioner has taken into account the entirety of the written and oral representations made by Snap in reaching his decision.
6. On 22 November 2023, Snap provided the Commissioner with a revised version of its DPIA relating to My AI (the "**Fifth DPIA**"). The Fifth DPIA replaced and superseded all previous DPIAs relating to the My AI feature. Noting that paragraph 4(a) of Annex 1 of the PEN required Snap to "*carry out a revised data protection impact assessment in relation to My AI*", the Commissioner regards the carrying out and provision to the Commissioner of the Fifth DPIA as a significant development in the course of his investigation.
7. Having carefully considered the written and oral representations

and the Fifth DPIA, the Commissioner is satisfied that:

(a) as of 22 November 2023 Snap has carried out a DPIA which is compliant with Article 35 UK GDPR. Snap has invested considerable time and effort into producing the Fifth DPIA and has taken steps to directly address the concerns raised in the PEN. The Commissioner is satisfied that the detailed risk analysis contained in the Fifth DPIA demonstrates that Snap has carried out an assessment of the impact of the processing operations performed in connection with My AI on the protection of personal data which complies with the requirements of Article 35 UK GDPR. The Commissioner's assessment of the Fifth DPIA found that it:

- (i) contained a significantly more detailed breakdown of the processing operations performed for the purposes of generating My AI's responses than the prior iterations of Snap's DPIA relating to My AI;
- (ii) considered the extent to which Snap's use of generative AI technology differed from its existing processing activities and thus impacted upon the necessity and proportionality of its processing related to My AI, including addressing how the use of such technology could impact upon the nature and volume of special category data shared by users with My AI and subsequently processed by Snap;
- (iii) adopted a structured and detailed assessment of the risks posed by the processing activities carried out in connection with My AI, with specific consideration of the risks posed to 13-17 year-old users, with this cohort accounting for approximately [REDACTED] of the average

daily active users of My AI in September 2023¹; and

(iv) clearly identified measures which Snap envisaged would address the risks to the rights and freedoms of users of My AI, including an explanation of how and to what extent such measures would mitigate the risks it had identified.

(b) Snap did not infringe Article 36 UK GDPR by failing to consult the Commissioner prior to commencing the processing of personal data in connection with My AI. The Commissioner has accepted the explanation provided by Snap (including a signed witness statement accompanied by a statement of truth) that the conclusion in the earlier iterations of its DPIA relating to My AI that the processing posed a residual high risk to 13-17 year-old users, was recorded in error. In addition, the Fifth DPIA does not engage the obligation to consult the Commissioner under Article 36(1) UK GDPR.

8. This decision (the "**Decision**") sets out the reasons why the Commissioner has found that Snap has now carried out a DPIA relating to My AI which complies with the requirements of Article 35(7) UK GDPR, meaning that there are no grounds upon which to issue an Enforcement Notice on the terms set out in Annex 1 of the PEN. This Decision relates solely to the Commissioner's assessment of Snap's compliance with Articles 35 and 36 UK GDPR, as of 22 November 2023 in relation to My AI. The Commissioner has not assessed, and makes no findings in respect of, the wider processing performed by Snap in connection with My AI or its compliance with the UK GDPR and DPA 2018 more generally.

9. As the PEN was issued to Snap and Snap Group Limited, this Decision has also been addressed to both parties. However, as

¹ Section 1.4(a) of the Fifth DPIA. This figure had increased by [REDACTED] average daily active users of My AI aged 13-17 since March 2023

explained at paragraphs 43 - 50 below, the Commissioner has concluded that Snap is the sole controller of personal data processed in connection with My AI.

II. FACTUAL BACKGROUND

A. The Snapchat Platform

10. Snapchat is a multimedia instant messaging app and service developed by Snap. Snap describes Snapchat as “*an alternative to traditional social media – a visual messaging app that helps enhance [users’] relationship with [their] friends, family and the world.*”²
11. On 9 May 2024, Snap informed the Commissioner of the total daily active users of Snapchat in the UK, which was between [REDACTED] [REDACTED]. Of the this total number, [REDACTED] (approximately 14.5%) were aged 13-17.³
12. Snapchat+ is a paid subscription service available within the Snapchat app. Snapchat+ is only available to Snapchat users who pay a monthly fee. These users can access features not available to the wider Snapchat audience and may be granted early access to new features.⁴

B. The My AI Feature

13. My AI is a chatbot that provides Snapchat users with the ability to raise queries via a conversational interface. The Commissioner understands that a “*query*” constitutes any input from a user into the My AI chatbot, which can be in the form of text (a “Chat”),

² [Safety and Privacy Hub | Snapchat](#)

³ Letter from Baker McKenzie LLP to the ICO: Annex 1, 9 May 2024

⁴ Section 3.2 of the letter from Baker McKenzie LLP to the ICO dated 13 July 2023 (the “**13 July 2023 Letter**”)

image (a “Snap”) or audio (voice notes). A chatbot is a service that allows users to hold conversations with a “bot” (or automated service) in a manner akin to conversations with another human. My AI is powered by a form of generative pre-trained transformer (“GPT”) technology developed by Open AI Opco, LLC (“OpenAI”). OpenAI describes itself as “an AI research and deployment company”⁵. OpenAI’s GPT technology is a form of large language model (“LLM”) which, broadly defined, is a set of algorithmic systems which can recognise, summarise, translate, predict and generate content using very large datasets.⁶

14. OpenAI permits software developers to use and build upon OpenAI’s GPT technology through the provision of an application programming interface (“API”).
15. In a letter dated 13 July 2023, Snap informed the Commissioner that My AI is powered by OpenAI’s GPT technology, implemented via OpenAI’s API for developers. The specific API used for the My AI user interface has been developed by Snap.⁷
16. Snap first began considering the application of a generative AI feature within Snapchat in January 2023⁸. Snap launched My AI for Snapchat+ subscribers on 27 February 2023.
17. Snapchat+ is sometimes used to release novel features before they are released to the wider Snapchat audience, in order to observe how such features are received by Snapchat’s most engaged users.⁹ On 9 May 2024, Snap informed the Commissioner that:
 - (a) in March 2023, the first full month in which My AI was available to Snapchat+ subscribers, the average number of daily active

⁵ [About \(openai.com\)](https://openai.com/about)

⁶ [What are Large Language Models? | NVIDIA](https://www.nvidia.com/en-gb/ai/edge/what-are-large-language-models/)

⁷ 13 July 2023 Letter

⁸ 13 July 2023 Letter

⁹ 13 July 2023 Letter

Snapchat+ subscribers in the UK was [REDACTED] of which [REDACTED] (approximately 25.5%) were aged 13-17; and

(b) between 1 March and 18 April 2023, the average number of daily users of My AI was [REDACTED] of which [REDACTED] (approximately 35.5%) were aged 13-17.¹⁰

18. In Section 1.3 of the Fifth DPIA, Snap states that the “*specific types of data collected in the context of My AI*” are:

- (a) My AI Bio – A customised personality for My AI which is set by the user and may include a specific name which the user has attributed to My AI on their account.
- (b) Age Bucket – Whether the user is aged under 18, with Snap using the lower of the user’s declared and inferred age.
- (c) Non-Granular Geolocation – This data is derived from precise location data if the user has granted Snapchat access to their location at an app-level. Snap states that this does not mean that, in the context of My AI, it processes the precise location of the user, but merely the city or region where the user is located when a query is submitted.
- (d) Metadata – This includes the user’s IP address, country code, region, city and user ID, as well as timestamps and conversation IDs for individual queries submitted to My AI.
- (e) Interaction Data – The queries submitted by users and the responses from My AI, which can be both text or image-based. Users can also submit audio queries which generate a text response from My AI.
- (f) Keywords – Keywords which are extracted from queries submitted to My AI using Snap’s internal model¹¹ in order to

¹⁰ Letter from Baker McKenzie LLP to the ICO, Annex 1, 9 May 2024

¹¹ Letter from Baker McKenzie LLP to the ICO, 1 March 2024

identify commercial intent in the context of the service of advertisements through My AI and across Snap's service.

(g) Memories – A summary of the interaction data from previous conversations between the user and My AI, which Snap uses in order to enable My AI to “remember” certain facts about the user and use this information to inform future interactions with the user.¹²

19. Snap made My AI available to all UK Snapchat users on 19 April 2023. On 9 May 2024, Snap confirmed to the Commissioner that the total number of monthly active users of My AI in the UK in April 2023, which was over [REDACTED] of which [REDACTED] (approximately 13%) were aged 13-17¹³.

20. If a Snapchat user submits a query to My AI via the chatbot interface, the query is passed to OpenAI, together with¹⁴:

(a) previous queries that Snapchat users have sent to My AI. Snap has stated that this currently comprises the previous [REDACTED] individual user queries¹⁵;

(b) specific user attributes provided by users to Snap, such as whether a user's stated profile age is between 13-17, and city level location (which Snap describes as a user's “non-granular” geolocation¹⁶ and asserts is only shared where the user has granted Snapchat access to their location when creating their account). Users are prompted to choose whether to grant Snapchat access to their device's location when first opening the app, and periodically thereafter if they continue to use the app without location services enabled; and

¹² Section 1.2(1) of the Fifth DPIA

¹³ Letter from Baker McKenzie LLP to the ICO, Annex 1, 9 May 2024

¹⁴ Snap explained this to the Commissioner in the 13 July 2023 Letter

¹⁵ 13 July 2023 Letter

¹⁶ Paragraph 19.2.5 of the written representations

(c) guidelines designed by Snap for the operation of My AI (referred to by Snap as “rules” or “prompts”¹⁷). This includes guidelines for how My AI should provide responses to Snapchat users, including: [REDACTED] and [REDACTED] [REDACTED]”¹⁸.

21. OpenAI’s GPT technology applies its LLM to these combined inputs and provides an output response¹⁹. The first four iterations of the DPIA relating to My AI provided the example of a Snapchat user wanting to know where to find the best Mexican food in their town, and My AI responding with local recommendations (based, in part, on the user’s city level location).
22. In Schedule 1 to its written representations, Snap provided further detail of the processing operations that are performed in order to generate My AI’s responses. Snap explained that it checks OpenAI’s output against its [REDACTED] list to determine whether the output contains any terms on the list and, if so, responds to the user with an error message rather than OpenAI’s output. User queries containing certain [REDACTED], such as those relating to [REDACTED], trigger a response containing vetted information and self-help resources.²⁰
23. In its written representations Snap also explained that where a user shares an image, or “Snap,” with My AI, Snap scans the image using moderation models to detect content which is deemed “[REDACTED] [REDACTED] in which case the user receives a generic response. [REDACTED] [REDACTED]

¹⁷ 13 July 2023 Letter; SNP-0000049

¹⁸ SNP-0000049

¹⁹ 13 July 2023 Letter

²⁰ Schedule 1 to the written representations

[REDACTED]

21

24. In its written representations, Snap explained how Snapchat+ users who send a “Snap” to My AI can receive a “Snap” in response.

[REDACTED]

[REDACTED] Snap responds to the user with OpenAI’s generated caption and the image it has generated.²²

25. Snap explained to the Commissioner that it uses an internal model to detect [REDACTED]

[REDACTED].²³ Snap explained in its written representations that where commercial intent is detected, the query, the user’s age bucket, a unique ID for the user and other metadata is shared with its advertising processor, Microsoft Corporation (“**Microsoft**”), which then generates a “contextual advertisement,” which is incorporated within the response provided by My AI.²⁴

C. The Commissioner’s Investigation

26. Snap initially requested a meeting with the Information Commissioner’s Office (“**ICO**”) in March 2023,²⁵ and included My AI on the draft agenda. The meeting was held on 20 April 2023, the

²¹ Schedule 1 to the written representations

²² Schedule 1 to the written representations

²³ Letter from Snap to the ICO, 1 March 2024

²⁴ Schedule 1 to the written representations

²⁵ Email from [Snap employee] to the ICO, 17 March 2023 (17:36)

day after all UK Snapchat users were granted access to My AI and almost two months after it was initially launched for Snapchat+ subscribers.²⁶

27. Following the meeting, the ICO informally asked²⁷ Snap to share its responses to the eight questions posed to developers and users of generative AI by the ICO's Executive Director of Regulatory Risk in a blog posted on 3 April 2023.²⁸ This was followed by a further informal request for Snap to share its DPIA relating to the My AI feature,²⁹ in response to which Snap stated that its DPIA was a *"live document, which continues to be updated as [Snap was] learning from My AI's recent launch"* and, on that basis, Snap *"was not minded to share it at this stage"*. Snap further stated that it *"would rather respond to [the ICO's] blog questions and see if this provides the level of understanding and assurance being sought by the ICO first."*³⁰
28. The Commissioner issued an Information Notice to Snap on 19 May 2023 (the **"May Information Notice"**), in which he formally requested the provision of all versions of Snap's DPIA relating to the My AI feature. On 26 May 2023, Snap partially responded to the May Information Notice by providing a copy of its DPIA dated 26 May 2023 (the **"Fourth DPIA"**). On 31 May 2023, following a further informal request by the Commissioner,³¹ Snap provided three earlier versions of its DPIA relating to My AI in redacted form, dated:
- (a) 24 February 2023 (the **"First DPIA"**);
 - (b) 13 April 2023 (the **"Second DPIA"**); and

²⁶ Email from [Snap employee] to the ICO, 12 April 2023 (12:56)

²⁷ Email from the ICO to [Snap employee], 20 April 2023 (17:04)

²⁸ [Generative AI: eight questions that developers and users need to ask | ICO](#)

²⁹ Email from the ICO to [Snap employee], 17 May 2023 (12:31)

³⁰ Email from [Snap employee] to the ICO, 12 April 2023 (12:56)

³¹ Email from the ICO to [Snap employee], 20 May 2023 (05:45)

(c) 19 May 2023 (the “**Third DPIA**”).

29. On 2 June 2023, the Commissioner informed Snap that compliance with the May Information Notice required the provision of unredacted copies of Snap’s DPIAs, as well as the disclosure of the documents listed in Section 1.1 (Resources) of the First, Second, Third and Fourth DPIAs. Snap has since explained to the Commissioner³² that these documents constitute the “*Quips*” which, according to Snap, contained its detailed privacy and risk assessments in relation to My AI.³³ In response, Snap stated that it “*redacted... business sensitive and confidential links to [its] internal resources and privacy by design reviews. Broad disclosure of internal links could put [the] company’s data security at risk. Unfortunately, [Snap] recently suffered an example of this in a different regulatory submission for a different regulator.*” Snap concluded its response to the request for unredacted copies of its DPIAs relating to My AI by stating that it “*did not believe that the redacted information [was] material or substantive to the ICO’s inquiry.*”³⁴ Following further email correspondence with the ICO,³⁵ Snap provided unredacted copies of the First, Second, Third and Fourth DPIAs on 5 June 2023.
30. On 23 June 2023, the Commissioner informed Snap that his office was investigating whether Snap had infringed Articles 35 and 36 UK GDPR when launching the My AI feature on Snapchat and Snapchat+.³⁶ On the same date, the Commissioner issued Snap with a second Information Notice (the “**June Information Notice**”), which requested copies of specified documents and information relating to the introduction of the My AI feature and the

³² Paragraph 22 of the written representations

³³ Email from the ICO to [Snap employee], 2 June 2023 (08:55)

³⁴ Email from [Snap employee] to the ICO, 2 June 2023 (16:26)

³⁵ Email from the ICO to [Snap employee], 5 June 2023 (15:18)

³⁶ Letter from the ICO to [Snap employee] and [Snap employee], 23 June 2023

associated risk assessment process. The information requested included copies of specified documents listed under the heading “Resources” in the First, Second, Third and Fourth DPIAs.³⁷

31. On 6 October 2023, following careful consideration of all the information provided by Snap, the Commissioner issued the PEN to Snap and Snap Group Limited. The PEN set out the Commissioner’s provisional conclusion that Snap had infringed:

(a) Article 35 UK GDPR by failing to carry out a DPIA which complied with the requirements of Article 35(7) UK GDPR prior to launching My AI, specifically on the basis that Snap failed to:

(i) systematically describe the nature, scope and context of the processing operations performed in connection with My AI (Article 35(7)(a));

(ii) assess the necessity and proportionality of its processing activities, specifically in relation to the use of generative AI technology and how this changed the nature of the personal data processed and the processing operations performed by Snap (Article 35(7)(b));

(iii) assess the risks posed to the rights and freedoms of users of My AI, specifically in respect of the targeting of users aged 13-17 for marketing purposes, the processing of special category data on a large scale and the effect of the use of new technologies on users’ understanding of how their personal data is processed (Article 35(7)(c)); and

(iv) identify measures which Snap envisaged would address the risks resulting from the processing operations performed in connection with My AI, including a failure to

³⁷ Annex 1 (Information Required to be Provided to the Commissioner) of the June Information Notice

set out measures designed to address the “*compounded*”³⁸ risks posed to users aged 13-17 and the risk that the content of conversations with My AI could be intentionally or inadvertently tracked, along with the failure to explain the removal of Snap’s in-app warning against sharing confidential and sensitive information with My AI (Article 35(7)(d));

and

- (b) Article 36 UK GDPR by failing to consult the Commissioner before commencing processing activities which Snap had found would result in a high risk to the rights and freedoms of users in the absence of measures taken by Snap to mitigate that risk.
32. At this stage, the Commissioner had not reached a final conclusion that there had been an infringement of Articles 35(1) and 36 UK GDPR, and invited Snap to submit its representations on the provisional views set out in the PEN.
33. On 3 November 2023, Snap provided its written representations in response to the PEN. On 22 November 2023, Snap sent the Commissioner a copy of the Fifth DPIA relating to My AI. On 11 December 2023, Snap’s written representations were supplemented by a “*skeleton argument*” provided in advance of an oral hearing. Snap indicated that this skeleton argument was intended, among other things, to reiterate a number of its headline points in response to the PEN and set out Snap’s view as to the key implications of the Fifth DPIA on the investigation.
34. On 14 December 2023, an oral hearing was held at the Commissioner’s offices, with representatives of the Commissioner, Snap executives and Snap’s legal representatives in attendance. On

³⁸ Section 6 (Risk Reduction) of the First, Second, Third and Fourth DPIAs

15 January 2024, the Commissioner wrote to Snap requesting responses to further questions arising from the oral hearing.³⁹ Snap responded to these additional questions on 2 February 2024.⁴⁰

35. On 13 February 2024, Snap wrote to the Commissioner to inform him of further changes that had recently been made to its Privacy Policy, the just-in-time (“**JIT**”) notice (which is displayed to users when they first interact with My AI), its “*Family Centre*” and the Fifth DPIA.⁴¹

D. The Commissioner’s Decision

36. For the reasons set out below, the Commissioner has decided that:
- (a) the Fifth DPIA complies with the requirements of Article 35 UK GDPR, and that consequently there are no grounds for the Commissioner to issue an Enforcement Notice which would require Snap to take specified steps to bring its processing operations into compliance with the UK GDPR; and
 - (b) Snap did not infringe Article 36 UK GDPR by failing to consult the Commissioner prior to commencing the processing of personal data in connection with My AI.
37. The Commissioner has carefully considered the Fifth DPIA and the representations made by Snap. However, the analysis set out in this Decision does not purport to address every element of the Fifth DPIA, nor every argument made by Snap in its representations.

III. RELEVANT LEGAL FRAMEWORK

38. Chapter IV of the UK GDPR sets out the obligations imposed on controllers and processors in relation to the processing of personal

³⁹ Letter from the ICO to Baker McKenzie LLP, 15 January 2024

⁴⁰ Letter from Baker McKenzie LLP to the ICO, 2 February 2024

⁴¹ Letter from Baker McKenzie LLP to the ICO, 1 February 2024

data.

39. Article 35(1) UK GDPR provides that *“Where a type of processing, in particular using new technologies, and taking into account the nature, scope, context and purposes of the processing, is likely to result in a high risk to the rights and freedoms of natural persons, the controller shall, prior to the processing, carry out an assessment of the impact of the envisaged processing operations on the protection of personal data. A single assessment may address a set of similar processing operations that present similar high risks.”*
40. Article 35(7) UK GDPR provides that a DPIA must contain:
 - (a) *“a systematic description of the envisaged processing operations and the purposes of the processing, including, where applicable, the legitimate interest pursued by the controller;*
 - (b) *an assessment of the necessity and proportionality of the processing operations in relation to the purposes;*
 - (c) *an assessment of the risks to the rights and freedoms of data subjects referred to in [Article 35(1)]; and*
 - (d) *the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of personal data and to demonstrate compliance with [the UK GDPR] taking into account the rights and legitimate interests of data subjects and other persons concerned.”*
41. Article 36(1) UK GDPR provides that *“The controller shall consult the Commissioner prior to processing where a data protection impact assessment under Article 35 indicates that the processing would result in a high risk in the absence of measures taken by the*

controller to mitigate the risk.”

42. Other relevant provisions of the UK GDPR and the DPA 2018 are referenced below in paragraphs 45, 51 – 53, 81, 110, 112 – 114 and 152.

IV. THE COMMISSIONER’S FINDINGS OF NON-INFRINGEMENT

A. Controllership and Jurisdiction

43. In the PEN, the Commissioner provisionally concluded that both Snap and Snap Group Limited are controllers in respect of the personal data of UK Snapchat users which is processed in connection with My AI, because they determine, either jointly or separately the purposes and means of the processing of that personal data.⁴²
44. However, having considered the representations made by Snap on the matter and for the reasons outlined below, the Commissioner has concluded that Snap is the sole controller of the personal data of Snapchat users in the UK which is processed in connection with My AI.
45. Article 4(7) UK GDPR and s.3(6) DPA 2018 define “*controller*” as “*the natural or legal person, public authority, agency or other body which, alone or jointly with others, determines the purposes and means of the processing of personal data.*” The Commissioner’s published guidance on the meaning of “*controller*” states that “*controllers make decisions about processing activities. They exercise overall control of the personal data being processed and are ultimately in charge of and responsible for the processing.*”⁴³ In its written representations, Snap stated that it is the sole controller

⁴² Paragraph 4(a) of the PEN

⁴³ <https://ico.org.uk/for-organisations/uk-gdpr-guidance-and-resources/controllers-and-processors/controllers-and-processors/what-are-controllers-and-processors/#2>

of personal data of Snapchat users in the UK which is collected and processed in connection with My AI because it alone determines the means and purposes of the processing.⁴⁴

46. Sections 1.7 and 3.1 of the Fifth DPIA states that *“Snap Inc. is the only entity which makes decisions regarding the processing of user data in Snapchat, including the My AI feature. It alone determines the purposes and means of the processing of personal data of Snapchat users in relation to My AI.”* Section 3.1 of the Fifth DPIA also states that Snap Group Limited *“plays no role in deciding: what product or features are offered to users; what processing should be undertaken in respect of those products/features and for what purposes; or further what means should be used to effect the processing. All of these decisions are taken exclusively by Snap Inc.. [Snap Group Limited] merely acts as a reseller of Snapchat to end users in the UK.”*
47. The PEN referred to Snap Group Limited’s Annual Report for the year ending 31 December 2021,⁴⁵ which stated that the company generates revenue primarily through advertising. The Commissioner provisionally found that this indicated that Snap Group Limited played an active role in the sale of online advertising on Snapchat.⁴⁶
48. However, Section 3.1 of the Fifth DPIA explains that *“My AI’s advertising is provided by Snap’s advertising processors”* and that *“advertisers do not procure advertising directly from Snap Inc. or Snap’s local entities (such as [Snap Group Limited]).”* Section 3.1 of the Fifth DPIA states that *“Snap’s local entities – including [Snap Group Limited] – are not involved in this arrangement and do not*

⁴⁴ Paragraph 6 of the written representations

⁴⁵ Snap Group Limited’s Annual Report for the year ended 31 December 2022 has subsequently been published and contains the same content under the heading *“Review of the Business”*

⁴⁶ Paragraph 54 of the PEN

determine the purpose or means of processing personal data of Snapchat users in relation to My AI.”

49. Snap’s assertion that it is the sole controller in respect of the processing of personal data in connection with My AI is supported by the fact that in the course of its response to the June Information Notice, Snap listed the senior executives and teams involved in the consideration of the commercial rationale for and decision to introduce the My AI feature, all of whom were employees of or teams within Snap.⁴⁷ This supports Snap’s assertion that the key decisions relating to the essential means and purposes of the processing operations performed in connection with My AI were taken by representatives of Snap, not Snap Group Limited.
50. In light of the representations made by Snap and the explanation of controllership in the Fifth DPIA, the Commissioner has concluded that Snap is the controller in respect of the personal data processed in connection with My AI, as it determines the means by and purposes for which such processing operations are performed.
51. The UK GDPR applies to the processing performed by Snap in connection with My AI by virtue of Article 3(1) UK GDPR, as it is a controller which processes personal data in the context of the activities of its establishment in the UK.
52. The Commissioner has found that Snap is, for the purposes of Article 3(1) UK GDPR, established within the UK either by virtue of its London office⁴⁸ or its UK subsidiary, Snap Group Limited. The Commissioner has found that Snap processes personal data in the context of its UK establishment, as Section 3.1 of the Fifth DPIA states that Snap’s *“local entities support the delivery of My AI to users through local legal, policy, comms, etc support.”* Section 3.1

⁴⁷ Letter from Baker McKenzie to the ICO, 14 July 2023 – Snap’s response to Question 1 of Annex 1 of the June Information Notice

⁴⁸ [Snap Inc. Careers | Offices](#)

of the Fifth DPIA also states that Snap “*understands that the processing of personal data of Snapchat users in relation to My AI occurs in the context of the activities of Snap’s local/UK entities and that, accordingly, GDPR requirements in the UK and EU will apply to the processing undertaken in the context of My AI by virtue of [Article 3(1) UK GDPR].*”

53. Alternatively, and as accepted in Section 3.1 of the Fifth DPIA, “*Snap Inc.’s processing activities in the context of My AI are related to offering goods and services [Snapchat and, more specifically, My AI] to data subjects in the UK*” meaning that the UK GDPR applies to Snap pursuant to Article 3(2)(a).
54. Notwithstanding the Commissioner’s conclusion in respect of Snap’s role as the controller, as the PEN was issued to both Snap and Snap Group Limited, this Decision has also been issued to both parties.

B. Non-Infringement of Article 36 UK GDPR

55. The Commissioner has concluded that Snap did not infringe Article 36(1) UK GDPR in failing to consult him prior to commencing the processing of personal data in connection with the My AI feature. This is due to the fact that, despite Snap’s First, Second, Third and Fourth DPIAs recording that Snap had accepted that My AI posed a high-risk to the rights and freedoms of 13-17 year-old users, the Commissioner has accepted Snap’s explanation that this was an error and did not reflect Snap’s true assessment of the risk posed to such users once its mitigatory measures were taken into consideration.
56. The Commissioner has concluded that Snap had formed the view when carrying out the first four DPIAs for My AI that the risks to data subjects were not high, with mitigations in place.

Legal Framework

57. Article 36(1) UK GDPR imposes an obligation on controllers to “consult the Commissioner prior to processing where a DPIA under Article 35 indicates that the processing would result in a high risk in the absence of measures taken by the controller to mitigate the risk.”

Background and Analysis

58. In Section 5 (Risk Assessment) of the First, Second, Third and Fourth DPIAs, Snap recorded that the risks it had identified in respect of users of My AI generally would be “compounded” if exerted upon users aged 13-17. In respect of 13-17 year-old users being exposed to a greater level of risk, in each of the First, Second, Third and Fourth DPIAs Snap assessed the “likelihood of harm” as “probable”, the “severity of harm” as “significant” and the “overall risk” as “high”.

59. Section 6 (Risk Reduction) of the First, Second, Third and Fourth DPIAs (as extracted below), stated that the risks to 13-17 year-old users were “accepted”, despite the “residual risk” being marked as “high”. However, despite the apparent identification of a high residual risk, Snap did not consult the Commissioner prior to commencing the processing of personal data in connection with My AI, as required by Article 36(1) UK GDPR.

6. Risk Reduction				
Risk.	Options to eliminate/reduce risk	Effect on risk ⁴	Residual risk ⁵	Measure approved ⁶

<p>My AI will be available to 13-17s (a vulnerable population). The risks identified above will be compounded if exerted on this age group.</p>	<p>The risk reduction measures noted above apply equally to 13-17s.</p> <p>Snap also passes an age flag to OpenAI for U18 users in an effort to provide age-appropriate responses.</p> <p>Snap's Family Center also includes transparency for parents about whether their teen has been interacting with My AI.</p> <p>Snap is also continuing to iterate to prevent My AI from providing inappropriate responses based on user feedback.</p>	<p>Accepted</p>	<p>High</p>	<p>Yes</p>
---	---	-----------------	-------------	------------

Source: Section 6 (Risk Reduction) of the First, Second, Third and Fourth DPIAs.⁴⁹

60. The Commissioner has considered Snap's Representations in response to his provisional finding of an infringement of Article 36. In its Representations, Snap stated that the conclusion recorded in the DPIAs that the residual risk posed to teen users of My AI was "high" was made in error and did not reflect Snap's substantive conclusions.⁵⁰ This was repeated in a witness statement, supported by a statement of truth, given by a senior Snap executive, which stated that, at a series of meetings held between 22 – 24 February 2023, Snap determined that *"all high risks identified to users – including child users – had been effectively mitigated so that the feature was no longer high risk, whether to child users or older users."*⁵¹ The witness statement stated that *"the conclusion that the risk posed to child users was medium was not correctly recorded in the first DPIA, and unfortunately this mistake was then iterated, without anyone in the team noticing, in the subsequent versions."*⁵²

⁴⁹ The table above has been extracted from Snap's broader risk assessment, as documented in the First, Second, Third and Fourth DPIAs. It has been reproduced here as a means of evidencing the reasons why the Commissioner initiated his investigation.

⁵⁰ Paragraphs 2.7 and 84 of the written representations

⁵¹ Paragraph 17 of the witness statement of [Snap employee] (SNP-0000105)

⁵² Paragraph 18 of the witness statement of [Snap employee] (SNP-0000105)

61. There was some inconsistency in the details provided by Snap during the course of the Commissioner’s investigation regarding the nature of its DPIA process and the erroneously recorded conclusion that the risks posed to users aged 13-17 by My AI were “*high*”. Snap explained that it adopted a “*careful, thorough and rigorous*”⁵³ DPIA process. Despite the rigorous nature of the process, it appears that an error of this importance was repeated on four separate occasions, without it being identified or corrected.
62. However, following careful consideration of Snap’s Representations, the Commissioner has accepted that Snap’s substantive conclusion at the time when the First, Second, Third and Fourth DPIAs were carried out, was that the residual risk posed to 13-17 year-old users of My AI was “*medium*” rather than “*high*.”
63. This error has been addressed in the Fifth DPIA which records that Snap’s risk assessment indicates that there are no residual risks that remain high⁵⁴. For this reason, the Fifth DPIA does not engage the requirement to consult the Commissioner under Article 36(1) UK GDPR.

C. Non-Infringement Findings - Article 35 UK GDPR

64. For the reasons set out below, the Commissioner has concluded that Snap has, as of 22 November 2023, carried out an assessment of the impact of the envisaged processing operations on the protection of personal data relating to My AI that complies with Article 35 UK GDPR. Consequently, there are no grounds to issue an Enforcement Notice which requires Snap to cease processing the personal data of Snapchat users in the UK for any purpose connected to My AI, as proposed in Annex 1 of the PEN.

⁵³ Paragraph 2.2 of the written representations

⁵⁴ Section 9.4 of the Fifth DPIA

65. The Commissioner is satisfied that the Fifth DPIA complies with the requirements of Article 35 UK GDPR. The detailed background and analysis documented within the Fifth DPIA demonstrates that Snap has now undertaken an assessment of the impact on the protection of personal data of the processing operations performed in connection with My AI which complies with the requirements of Article 35(7) UK GDPR. The Commissioner's conclusion rests upon the significantly greater depth of Snap's description and analysis of the processing activities performed in connection with My AI within the Fifth DPIA, including but not limited to:

- (a) the systematic description of the processing operations performed by Snap and its processors within Section 1.5 of the Fifth DPIA (Article 35(7)(a) UK GDPR);
- (b) the consideration of the necessity and proportionality of the processing performed in connection with My AI, particularly in light of the use of generative AI technology (Article 35(7)(b) UK GDPR);
- (c) the consideration within Sections 7.3 and 7.4 of the Fifth DPIA of the potential impact of the processing on users' rights and freedoms and the risk of any resulting harm or damage (Article 35(7)(c) UK GDPR); and
- (d) the identification and analysis within Sections 7.3 and 7.4 of the Fifth DPIA of both general and child-specific mitigatory measures intended to address each of the risks Snap identified in respect of My AI (Article 35(7)(d) UK GDPR).

(a) Article 35(7)(a): Systematic Description of the Processing Operations

66. The Commissioner has concluded that, for the reasons set out below, the Fifth DPIA systematically describes the processing

operations carried out by Snap and its processors in connection with My AI and therefore satisfies the requirements of Article 35(7)(a) UK GDPR. Specifically, the Fifth DPIA describes the nature of the processing performed by Snap and its processors in the course of using OpenAI's GPT technology to generate My AI's responses to user queries; considers the wider context in which the processing takes place, including the emergence of generative AI and public concerns regarding its use; outlines the scope of the processing carried out in connection with My AI by reference to specific user statistics; and sets out the purposes for which the processing is performed, which are defined as *"providing a personalised My AI experience, improving the service, delivering contextual advertisements and providing a safety and security-oriented feature."*⁵⁵

Legal Framework

67. Article 35(7)(a) UK GDPR makes it clear that a DPIA must contain a *"systematic description of the envisaged processing operations and the purposes of the processing, including, where applicable, the legitimate interest pursued by the controller."*
68. The Commissioner's view, as set out in his published guidance on DPIAs (the **"DPIA Guidance"**),⁵⁶ is that *"a systematic description of the envisaged processing operations"*, for the purposes of Article 35(7)(a) UK GDPR, requires the controller to outline *how* and *why* it plans to use the personal data it collects. This must include details of the nature, scope, context and purposes of the processing. Whilst the Commissioner's guidance on DPIAs is not legally binding, it is intended to assist controllers to comply with their obligations under Articles 35 and 36 UK GDPR, in indicating how the Commissioner

⁵⁵ Section 1.2 of the Fifth DPIA

⁵⁶ [How do we do a DPIA? | ICO](#)

interprets these Articles. Therefore, it is referred to throughout this document to support the explanation of the reasoning underpinning the Commissioner's conclusions.

69. The DPIA Guidance explains that a DPIA must contain a description of the *nature* of the processing and elaborates on this by indicating that a DPIA should include details of how the controller *collects, uses* and *shares* the personal data it collects. In respect of the *scope* of the processing, the DPIA Guidance explains that this should explain what the processing covers, including, but not limited to the nature, volume and sensitivity of the personal data that is processed and the geographical area in which the processing takes place. Finally, the DPIA Guidance states that a description of the *context* of the processing should include consideration of the wider picture in which the processing takes place, including internal and external factors which may affect individuals' expectations in relation to the use of their data and the impact the processing may have upon them.

Decision on compliance with Article 35(7)(a) UK GDPR

70. For the reasons set out below, and with reference to each relevant component of the DPIA Guidance, the Commissioner has concluded that the Fifth DPIA contains a systematic description of the processing operations performed by Snap and its processors for the purposes of providing the My AI feature to Snapchat users, and is therefore compliant with the requirements of Article 35(7)(a) UK GDPR.

(i) Nature of the Processing

71. The Commissioner has found that the Fifth DPIA's description of the nature of the processing operations performed in order to generate My AI's responses, specifically the description of how data is

collected, used and shared, is consistent with the DPIA Guidance.

72. At paragraph 69 of the PEN, the Commissioner provisionally concluded that, within the First, Second, Third and Fourth DPIAs Snap had failed adequately to describe how it intended to process personal data in connection with My AI and, in particular, it had failed to:
- (a) adequately explain how Snap uses personal data and/or OpenAI's GPT technology to display advertisements to users;
 - (b) explain how information or inferences extracted from user queries sent to My AI are used for the purposes of personalisation or to serve targeted advertisements on My AI and across other parts of the Snapchat platform;
 - (c) clearly identify the categories of personal data that are used for the purposes of advertising; and
 - (d) clearly identify the retention periods for the different categories of personal data identified as being processed in connection with My AI.
73. An explanation of how Snap collects, uses and shares personal data processed in connection with My AI is now included in Section 1.5 of the Fifth DPIA through the inclusion of a step-by-step breakdown of the processing operations which are performed by Snap, OpenAI and Microsoft Corporation (Snap's advertising processor) in order to generate My AI's responses. This includes a list of the personal data which is collected and subsequently shared with OpenAI for the purposes of generating My AI's responses, specifically: the My AI Bio information, the previous [REDACTED] messages that the user had sent to My AI in the previous [REDACTED], My AI's "Memories"⁵⁷, the user age bucket and the user's non-granular geolocation. The Fifth

⁵⁷ Short summaries/records of a user's previous interactions with My AI (Section 1.3 of the Fifth DPIA)

DPIA also states that, where relevant, user voice notes⁵⁸ and “Snaps” which are sent to My AI are also shared with OpenAI.

74. Section 1.5 of the Fifth DPIA differentiates between the processing activities which are performed by Snap and OpenAI depending on whether My AI is responding to a text query with a text response, a “Snap” with a text response, or a “Snap” with a “Snap”. This section of the Fifth DPIA includes further details of the processing activities that are performed in connection with My AI, including how Snap’s internal models categorise My AI queries, how its ALD is applied, how Snap creates a text description of “Snaps” sent to My AI and how the prompt sent to OpenAI is configured. This level of detail helps to demonstrate that the Fifth DPIA contains an assessment of the nature of the processing performed and ensures that the assessment of the impact of the processing operations has taken into account how Snap collects, uses and shares the personal data it collects.
75. Section 1.5 of the Fifth DPIA details the sharing of different categories of personal data with Snap’s advertising processor, Microsoft, to facilitate the inclusion of advertisements within My AI’s responses to user queries. This states that Snap shares user queries which indicate commercial intent, the response generated by OpenAI’s LLM, user metadata⁵⁹ and a [user identifier] with Microsoft. Microsoft is prohibited from using the [user identifier] for retargeting or profiling users of My AI.
76. Section 1.5 of the Fifth DPIA explains, step-by-step, how this data is processed in order to incorporate advertisements within My AI’s responses. Section 1.5 also refers to the express prohibition on Microsoft using the data it collects from My AI for profiling

⁵⁸ The Commissioner understands that the ability to send voice notes to My AI was introduced at some time between the production of the Fourth and Fifth DPIAs

⁵⁹ Country code, locale, IP address and OS-type

purposes.⁶⁰

77. Furthermore, Snap has adapted its approach to the documentation of the retention periods applied to the personal data collected in connection with My AI in the Fifth DPIA compared to the previous iterations. The DPIA Guidance on how to describe the nature of the processing within a DPIA states that such a description should include details of the retention periods applied to the personal data that is being processed.
78. Section 1.6 of the Fifth DPIA sets out the retention periods applicable to the different categories of personal data processed in connection with My AI. For example, all interaction data (other than voice notes) are retained until deleted by the user or for the lifetime of their account, whereas the metadata associated with user queries is held for 180 days, or until a user deletes their account.
79. Section 1.6 of the Fifth DPIA also documents the retention periods applicable to personal data, which is shared with Snap's processors, and which are imposed by Snap under the terms of the applicable data processing agreements.
80. The Commissioner has found that this more detailed explanation of the applicable retention periods applied to the personal data processed in connection with My AI is consistent with the DPIA Guidance and helps to demonstrate that the Fifth DPIA contains a systematic description of the processing. It is the Commissioner's view that Snap could not conduct an assessment of the risks associated with the processing related to My AI if the assessment did not include an adequate consideration of the retention periods being applied to personal data. The more detailed explanation of the applicable retention periods in the Fifth DPIA has addressed this

⁶⁰ Microsoft Products and Services Data Protection Addendum as updated 1 January 2023, incorporated into the License Agreement for Microsoft Chat Ads API between Microsoft Online, Inc. and Snap Inc., dated 12 May 2023

issue, in line with the requirements of Article 35(7)(a) UK GDPR.

81. Whilst the Commissioner has found that the Fifth DPIA describes, in adequate detail, the retention periods applied to the personal data processed in connection with My AI for the purposes of Article 35(7)(a) UK GDPR, the Commissioner has not assessed and makes no findings in respect of Snap's compliance with the storage limitation principle in Article 5(1)(e) UK GDPR. In particular, the Commissioner makes no finding in relation to Snap's claim that its retention of certain types of personal data accords with user expectations in the context of online messaging and camera platforms.
82. The recommendations within the DPIA Guidance concerning how to describe the nature of the processing within a DPIA states that the description of the nature of the processing should cover who has access to the data, including any data processors used by the controller. The Commissioner notes that Sections 1.5(a) and 1.5(b) of the Fifth DPIA identify the personal data that is shared with Snap's processors OpenAI and Microsoft and describes how access to personal data collected through My AI is limited within Snap itself. Section 4.3(e) of the Fifth DPIA now explains that, in respect of access to data collected through My AI, "*access within Snap to user content exchanged with My AI... is granted on an individual basis to a limited number of employees through access requests that are managed and approved by administrators from both Snap's Privacy and Engineering teams for approved use cases*", with access "*only granted for a short period of time,*" and being "*logged and regularly audited*", whilst it is also "*automatically revoked at the end of the granted access period.*"
83. On this basis, the Commissioner has found that the Fifth DPIA contains a systematic description of an essential element of the nature of the processing operations, namely who has access to the

personal data collected and/or how such access is regulated. The inclusion of such information contributes to and supports the Commissioner's overall conclusion that the Fifth DPIA contains a systematic description of the processing operations performed in connection with My AI as required under Article 35(7)(a) UK GDPR.

(ii) Scope of the Processing

84. The Commissioner has concluded that the description of the scope of the processing performed in connection with My AI within the Fifth DPIA is consistent with the DPIA Guidance and supports his conclusion that the Fifth DPIA contains a systematic description of the processing operations as required by Article 35(7)(a) UK GDPR.
85. The DPIA Guidance also states that the description of the scope of the processing should cover, amongst other factors, the sensitivity of the personal data processed.⁶¹ At paragraph 70 of the PEN, the Commissioner provisionally concluded that Snap had failed to describe the scope of the processing it performs in connection with My AI, including the volume, variety and sensitivity of the personal data processed. Specifically, the Commissioner provisionally found that, despite Snap processing special category data through My AI, including, but not limited to, personal data relating to users' racial or ethnic origin and sexual orientation,⁶² the First, Second, Third and Fourth DPIAs had failed clearly to describe the special category data that was, or was likely to be, processed in connection with the operation of the feature. The Commissioner also provisionally found that Snap had failed to describe within the First, Second, Third and Fourth DPIAs whether special category data processed in connection with My AI was shared with its advertising partners.
86. As stated above, the DPIA Guidance explains that a description of

⁶¹ [How do we do a DPIA? | ICO](#)

⁶² SNP-0000044: Daily Log of Issues with My AI Responses (April – June 2023)

the scope of the processing should include details of the nature of the personal data that is processed.⁶³ The Commissioner has found that this is now addressed in Section 1.3 of the Fifth DPIA, which identifies the specific nature of the personal data which is collected in connection with My AI. As stated at paragraph 18 above, this includes the user's My AI Bio, the user's age bucket, My AI interaction data and associated metadata, non-granular geolocation data, keywords extracted from user queries and "Memories" (summaries of previous interactions between the user and My AI).

87. In Section 1.3 of the Fifth DPIA, Snap recognises that interactions with My AI may, by virtue of it being a free-text user query-based service, contain special category data and criminal offence data.⁶⁴
88. The DPIA Guidance states that the description of the scope of the processing should cover the volume of the personal data processed, the geographical area in which the processing takes place and the number of data subjects affected.⁶⁵ Unlike the general reference to an unspecified number of users who could access the My AI feature in the first four iterations of Snap's DPIA,⁶⁶ Section 1.4 of the Fifth DPIA provides detailed statistics on the average number of daily and monthly active My AI users on a global, EU and UK level, whilst also highlighting how other individuals may be referred to or included within My AI conversations, resulting in their personal data

⁶³ [How do we do a DPIA? | ICO](#)

⁶⁴ Section 1.3 of the Fifth DPIA states that "*in principle* [the special category data processed through My AI] *could include: health data, data concerning the user's sexual life and/or sexual orientation, data concerning their race or ethnicity, data concerning their political views, data concerning their religious or philosophical beliefs and data concerning the user's membership of a trade union.*"

⁶⁵ [How do we do a DPIA? | ICO](#)

⁶⁶ The Commissioner notes that the Fourth DPIA (Section 2.8: Number of Data Subjects) referred only to the staggered launch of My AI to all Snapchat users and indicated that the "*most up to date numbers*" were available from Snap's Data Science Team. However, this information was not included in the Fourth DPIA itself, nor in any of the materials referenced therein.

being processed.

89. In light of this, the Commissioner has found that the Fifth DPIA contains a systematic description of the processing, as it adequately describes the scope of the processing performed in connection with My AI.

(iii) Context of the Processing

90. The Commissioner has concluded that Snap is now compliant with the requirements of Article 35(7)(a) UK GDPR as the systematic description of the processing performed by Snap in connection with My AI in the Fifth DPIA includes consideration of the wider context in which the processing takes place, with this being consistent with the relevant recommendations set out in the DPIA Guidance.
91. At paragraphs 73–76 of the PEN, the Commissioner provisionally concluded that Snap had failed to describe the wider context in which it processed personal data in connection with My AI. Specifically, the Commissioner provisionally found that Snap had failed to consider issues of public concern relating to the use of generative AI and individuals’ expectations in respect of the use of geolocation data. The Commissioner directed Snap to a Financial Times article which explored concerns relating to the reliability and accuracy of AI-generated outputs, over-reliance on such outputs and the potential impacts on employment and copyright,⁶⁷ as well as a warning from the National Cyber Security Centre that use of LLMs could enhance the capabilities of cyber criminals.⁶⁸
92. Section 1.9 of the Fifth DPIA contains Snap’s assessment of the wider context in which it processes personal data in connection with the My AI feature. This includes consideration of the relative novelty

⁶⁷ [Generative AI: how will the new era of machine learning affect you? \(ft.com\)](#)

⁶⁸ [ChatGPT and LLMs: what's the risk - NCSC.GOV.UK](#)

of generative AI technology (specifically ChatGPT), public concerns around the use of generative AI, the similarities and differences between generative AI and traditional query-based online services, free speech considerations and user expectations regarding the delivery of contextual advertising.

93. In the DPIA Guidance, the Commissioner states that a description of the context of the processing should cover any advances in technology which are relevant to the processing. Section 1.9(1) of the Fifth DPIA addresses the emergence and relative novelty of ChatGPT technology, stating that ChatGPT *“has been developed by OpenAI through an intensive... research process unfolding over a number of years”*, with Snap having *“waited until the release of ChatGPT 3.5”* before considering introducing a generative AI-powered feature on Snapchat. The Fifth DPIA indicates that Snap’s decision was motivated by its desire to *“ensure that the technology had evolved to a point that, in Snap’s view, there was a reasonable prospect of such technology both delivering effective results for users and being deployed in a way that ensured served their interests overall.”* Nonetheless, Section 1.9(1) of the Fifth DPIA recognises the *“relative novelty”* of such technology, adding that this requires a *“particularly considered and assiduous”* approach to the risk assessment process.
94. The DPIA Guidance also states that consideration of the context of the processing should cover relevant issues of public concern. Section 1.9(2) of the Fifth DPIA addresses public concerns regarding the use of generative AI technology, including OpenAI’s ChatGPT and the relevance of those concerns to the My AI feature.
95. The DPIA Guidance also states that a description of the context of the processing should include individuals’ previous experience of the relevant type of processing. Section 1.9(3) of the Fifth DPIA expands upon Snap’s previous comparisons in the earlier DPIAs

between My AI and traditional online search engines and chatbots.⁶⁹ Consideration is given to how and to what extent the personal data which users share with My AI may differ from the personal data which they disclose when using traditional online query-based services. This includes whether My AI is more likely to result in users sharing sensitive or confidential information, with Snap ultimately concluding that *“users are likely if anything to be more tentative when using My AI.”* Whilst the Commissioner has not made any determination as to the reasonableness or validity of this conclusion, he regards this consideration of users’ approach to sharing their personal data with a generative AI powered chatbot as evidence that Snap has documented its assessment of the wider context in which it processes personal data in connection with My AI.

96. The DPIA Guidance also states that a description of the context of the processing should cover individuals’ expectations in relation to the processing. Section 1.9(5) of the Fifth DPIA considers user expectations specifically in relation to contextualised advertising.
97. The Commissioner makes no finding in respect of the conclusions reached by Snap in relation to the public’s expectations as to how their personal data is processed by the providers of free online services. The Commissioner acknowledges that Section 1.9(5) of the Fifth DPIA does provide evidence that Snap considered the public’s expectations relating to how their personal data may be used for advertising purposes in an online environment as part of its broader assessment of the context in which Snap processes personal data in connection with the My AI feature.
98. The Fifth DPIA indicates that Snap took public concerns regarding the use of geolocation data into account and explicitly referred to

⁶⁹ Paragraph 61.4 of the written representations

the use of information shared with My AI for the purpose of personalising the user's experience, (including the service of advertisements) within the JIT Notice presented to users when they first interact with My AI.⁷⁰ The Fifth DPIA therefore documents how Snap assessed the risks emanating from the processing of non-granular location data and responded to this assessment in a manner which complies with the requirements of Article 35(7)(a) UK GDPR.

99. Having taken account of the factors set out above, the Commissioner has found that the Fifth DPIA contains an adequate description of the context of the processing, with this contributing to his overall conclusion that the Fifth DPIA systematically describes the processing operations performed in connection with My AI in accordance with Article 35(7)(a) UK GDPR.

(b) Article 35(7)(b) UK GDPR: Necessity and Proportionality

100. For the reasons set out below, the Commissioner has concluded that the consideration of the extent to which Snap's use of generative AI technology (in the context of My AI) differs from its existing processing activities, and the impact that this has on the nature of the personal data processed, means that the Fifth DPIA contains an assessment of the necessity and proportionality of the processing performed in connection with My AI which satisfies the requirements of Article 35(7)(b) UK GDPR.

Legal Framework

101. Article 35(7)(b) UK GDPR requires that a DPIA shall contain "*an assessment of the necessity and proportionality of the processing operations in relation to the purposes*" for which they are

⁷⁰ Sections 1.9(5) and 2.3 of the Fifth DPIA

performed.

102. The Commissioner's view, as set out in the DPIA Guidance,⁷¹ is that an assessment of the necessity and proportionality of the processing requires a controller to consider if it will achieve its purposes and whether there are any other reasonable means of achieving the same result. This should include details of, amongst other factors, the lawful basis for the processing, how privacy information will be provided to individuals, the measures taken to ensure that processors comply with their obligations under the UK GDPR and DPA 2018, and the safeguards implemented in respect of international transfers of personal data.⁷²
103. The High Court has previously stated that the assessments a controller is required to make when carrying out a DPIA, including in respect of the necessity and proportionality of the processing, require it to "*exercise reasonable judgment based on reasonable enquiry and consideration. If it is apparent that a data controller has approached its task on a footing that is demonstrably false, or in a manner that is clearly lacking, then the conclusion should be that there has been a failure*"⁷³ to discharge the controller's obligations.

Decision on compliance with Article 35(7)(b) UK GDPR

104. At paragraphs 77-79 of the PEN, the Commissioner provisionally concluded that Snap had inadequately assessed the necessity and proportionality of the processing operations performed in connection with My AI. The Commissioner's provisional conclusions

⁷¹ [How do we do a DPIA? | ICO](#)

⁷² [How do we do a DPIA? | ICO](#)

⁷³ *R (Bridges) v Chief Constable of South Wales Police* [2019] EWHC 2341 (Admin) per Haddon-Cave LJ and Swift J at [146]. This case concerned s.64 DPA 2018 which replicates the obligations imposed by Article 35 UK GDPR in the context of processing performed for law enforcement purposes.

were based on Snap's alleged failure to consider, in the course of its necessity and proportionality assessment, how the processing performed in connection with My AI differed from the processing performed in the context of Snapchat's "Search" function and traditional online query-based services and how this may affect the nature of the personal data shared with My AI.

105. In Section 1.9(3) of the Fifth DPIA, Snap "*considers the extent to which the processing entailed on My AI will in real, concrete terms differ from the data processing that is entailed on traditional (non-GAIT-reliant) query-based online services.*"
106. In Section 1.9(3) of the Fifth DPIA, Snap refers to its consideration of whether "*My AI may result in users being inclined to share more and indeed more sensitive data than would be the case with traditional query-based services.*"
107. The Commissioner makes no findings in respect of the conclusions reached by Snap regarding individuals' likely approach to interactions with generative AI and My AI in particular.
108. However, the Commissioner has found that, as part of its assessment of the proportionality of the processing performed in connection with My AI, Snap has now considered and documented how it considers the use of generative AI will affect the nature of the personal data that it processes. Whilst this Decision should not be considered an endorsement of the conclusions reached by Snap, the Commissioner accepts that Snap has now considered, in the course of producing the Fifth DPIA, how the use of a new and innovative form of technology will affect the proportionality of the processing performed in connection with My AI.
109. The Commissioner has concluded that this further consideration of necessity and proportionality as documented within the Fifth DPIA is sufficient to find that the Fifth DPIA contains an adequate

assessment of the necessity and proportionality of the processing performed in connection with My AI.

110. As referred to above, the DPIA Guidance states that an assessment of necessity and proportionality should include relevant details of the lawful basis for the processing. In this respect, in addition to explaining Snap's reliance on Article 6(1)(a), (b) and (f) UK GDPR as its lawful bases for processing, Section 3.3(2) of the Fifth DPIA now identifies, in the alternative, Article 9(1)(a) and (g) UK GDPR as its condition(s) for the processing of special category data, whilst also indicating that Snap considers the exemption set out in paragraph 26 of Part 5 of Schedule 2 to the DPA 2018 to be applicable.
111. In the course of the investigation, the Commissioner has not assessed the legality of Snap's reliance on the lawful bases cited in Section 3.3 of the Fifth DPIA. However, the Commissioner has concluded that, for the purposes of demonstrating that the Fifth DPIA contains an assessment of the necessity and proportionality of the processing operations in relation to the purposes pursued, pursuant to Article 35(7)(b) UK GDPR, Snap has satisfied the obligation to include relevant details of the lawful basis relied upon for its processing operations.

(c) Article 35(7)(c) UK GDPR: Assessment of Risks

Legal Framework

112. Article 35(7)(c) UK GDPR states that a DPIA shall contain "*an assessment of the risks to the rights and freedoms of data subjects referred to in [Article 35(1)].*"
113. Article 1(2) UK GDPR, as amended,⁷⁴ provides that "*This Regulation*

⁷⁴ The Data Protection (Fundamental Rights and Freedoms) (Amendment) Regulations 2023 (S.I. 2023/1417), Reg. 2(2)

contributes to the protection of individuals' fundamental rights and freedoms." In addition, Recital 2 to the UK GDPR states that *"The principles of, and rules on the protection of natural persons with regard to the processing of their personal data should... respect their fundamental rights and freedoms, in particular their right to the protection of personal data."* This indicates that the fundamental rights and freedoms the UK GDPR is intended to protect should be interpreted as the general rights and freedoms of individuals, not just their right to the protection of their personal data.

114. This is supported by Article 4(28) UK GDPR, as amended, which states that *"references to fundamental rights or freedoms (however expressed) are to the [European Convention on Human Rights] rights within the meaning of the Human Rights Act 1998."*⁷⁵

115. Therefore, the Commissioner's view, as set out in the DPIA Guidance,⁷⁶ is that an assessment of the risks to the rights and freedoms of data subjects requires the controller to consider the potential impact on individuals and any harm or damage which its processing may cause, with specific reference to any impact the processing may have on the rights and freedoms protected by the European Convention on Human Rights. This should include consideration of the source of the risk, as well as both the likelihood and severity of the possible harm and requires the controller to make an objective assessment of the risks posed by its processing activities.⁷⁷

Decision on compliance with Article 35(7)(c) UK GDPR

116. The Commissioner has concluded that the assessment carried out

⁷⁵ The Data Protection (Fundamental Rights and Freedoms) (Amendment) Regulations 2023 (S.I. 2023/1417), Reg. 2(3)

⁷⁶ [How do we do a DPIA? | ICO](#)

⁷⁷ [How do we do a DPIA? | ICO](#)

by Snap of the risks associated with the processing of personal data in connection with My AI within the Fifth DPIA now complies with the requirements of Article 35(7)(c) UK GDPR.

117. At paragraph 80 of the PEN, the Commissioner provisionally concluded that Snap's DPIAs did not contain an assessment of the risks to the rights and freedoms of data subjects in relation to:

- (a) the targeting of users aged 13-17 for advertising purposes;⁷⁸
- (b) the processing of special category data on a large scale;⁷⁹ and
- (c) the impact of the use of generative AI technology and the risk that, due to its novelty and complexity, users, particularly those aged 13-17, would be less likely to understand the manner in which and the purposes for which their personal data is processed.⁸⁰

118. In accordance with the DPIA Guidance regarding how risks should be identified and assessed, Section 7.3 of the Fifth DPIA sets out Snap's assessment of the origin, nature, likelihood and severity of the risks which Snap deems My AI to pose to the rights and freedoms of its users. Snap describes each of the seven risks it identified, specifically that:

- (a) My AI may provide biased, inappropriate, potentially harmful or misleading responses (Section 7.3.1);
- (b) users may share special category and / or criminal offence data with My AI, resulting in a higher likelihood of harm in the event of the unauthorised use, access to or disclosure of such data (Section 7.3.2);
- (c) content submitted to My AI, and its responses, may be intentionally or inadvertently accessed and used without

⁷⁸ Paragraphs 81-84 of the PEN

⁷⁹ Paragraph 85 of the PEN

⁸⁰ Paragraph 86 of the PEN

authorisation (Section 7.3.3);

- (d) My AI is available to users aged 13-17 who may be more inclined to overshare information with and / or place excessive reliance on the responses received from My AI for emotional support, authoritative answers and entertainment, potentially leading to isolation or loneliness (Section 7.3.4.);
- (e) non-Snapchat+ subscribers, who are unable to remove My AI from the top of their chat feed, may mistakenly assume that their personal data is processed for the purposes of My AI regardless of whether or not they choose to interact with it (Section 7.3.5);
- (f) the processing of even “non-granular geolocation data” can result in privacy implications for users, especially where it is combined with the content of My AI queries to further identify a user, which could potentially expose users to a threat of physical harm (Section 7.3.6); and
- (g) My AI may result in the processing of personal data relating to third parties who have not specifically chosen to interact with My AI (Section 7.3.7).

119. In respect of each identified risk, Snap applies the structured matrix recommended in the DPIA Guidance (see below) for conducting an objective assessment of risks posed by the processing of personal data.

Severity of impact	Serious harm	Low risk	High risk	High risk
	Some impact	Low risk	Medium risk	High risk
	Minimal impact	Low risk	Low risk	Low risk
		Remote	Reasonable possibility	More likely than not
		Likelihood of harm		

120. In accordance with this matrix, Snap assesses the likelihood of the risk occurring, considers the potential severity of that risk and designates an overall risk level. Snap also sets out the mitigatory measures that it has applied, the effect of such measures on the relevant risk and the resulting residual risk level. Finally, Snap sets out the alternative measures that it has considered and explains why it does not consider such measures to be necessary, appropriate or feasible in the circumstances.

121. The description of the alternative measures which Snap has considered as possible mitigations was not included in the First, Second, Third and Fourth DPIAs. Furthermore, the Commissioner has found that this element of the risk assessment within the Fifth DPIA provides evidence of the extent of Snap’s analysis of the risks posed by the processing performed in connection with My AI and how Snap envisaged they could be addressed in light of its assessment of the nature and severity of such risks and the

likelihood of them occurring.

122. This approach is replicated in Section 7.4 of the Fifth DPIA, which specifically assesses the risks Snap has identified as relevant to users aged 13-17, with Snap separately considering the implications of the processing it performs in connection with My AI by reference to each of the 15 principles set out in the Commissioner’s Age Appropriate Design Code.⁸¹
123. The Commissioner has found that Snap’s assessment of the risks posed by the processing of personal data in connection with My AI in the Fifth DPIA is significantly more detailed and features a greater depth of analysis than that contained in the earlier iterations of its DPIAs. In contrast, the First, Second, Third and Fourth DPIAs contained a cursory and higher-level risk assessment, in tabular format, which failed to include any explanation of the basis for its conclusions in respect of the likelihood and severity of harm, and the overall risk level. For example, the risk assessment at Section 5 of the Fourth DPIA was as follows:

5. Risk Assessment			
Risk. Describe the risk and potential impact on individuals	Likelihood of harm ¹	Severity of harm ²	Overall risk ³
My AI provides responses that are biased, inappropriate, harmful, misleading.	Probable	Significant	High

⁸¹ [Age appropriate design: a code of practice for online services | ICO](#)

Sensitive / special category data may be processed in chats with My AI.	Probable	Significant	High
Messaging data can be intentionally or inadvertently tracked and expose Snapchatters to targeting, attacks and other uses for which the use of My AI has not been intended.	Remote	Significant	High
My AI will be available to 13-17s (a vulnerable population). The risks identified above will be compounded if exerted on this age group.	Probable	Significant	High
My AI cannot be unpinned from Chat (i.e., it sits at the top of the Chat feed) except for Snapchat+ subscribers.	Remote	Minimal	Low

Source: Section 5 (Risk Reduction) of the Fourth DPIA.⁸²

124. In contrast, Sections 7.3 and 7.4 of the Fifth DPIA set out the reasoning underlying Snap’s conclusions in respect of the severity and likelihood of each risk being realised, as well as an explanation as to how it believes its mitigatory measures impact upon these initial conclusions. The Commissioner has found that the inclusion of this level of detail within the Fifth DPIA, in contrast to the single-word, unexplained conclusions in Section 5 of the earlier iterations of the My AI DPIA, constitutes evidence that Snap has complied with its obligation, pursuant to Article 35(7)(c) UK GDPR, to assess the risks posed by its processing activities to the rights and freedoms of users of My AI.
125. Therefore, for the reasons set out above, the Commissioner has concluded that Sections 7.3 and 7.4 of the Fifth DPIA contain an assessment of the risks posed to the rights and freedoms of users of My AI by the processing of their personal data which is consistent with the applicable recommendations within the DPIA Guidance and which satisfies the requirements of Article 35(7)(c) UK GDPR.

⁸² The table above has been extracted from Snap’s broader risk assessment, as documented in the Fourth DPIA. It has been reproduced here as a means of evidencing the reasons why the Commissioner initiated his investigation.

Protecting individuals, in particular vulnerable groups such as users aged 13-17, from any adverse impact as a result of rapid technological changes to the way their data is collected and used is a strategic priority for the Commissioner and a detailed risk assessment is central to ensuring that individuals' rights and freedoms are protected.

(i) Targeting users aged 13-17 for advertising purposes

126. In respect of the Commissioner's provisional conclusion that Snap failed to consider the risks arising from displaying advertisements to users aged 13-17, the Commissioner notes that Section 7.4.3 of the Fifth DPIA sets out Snap's assessment of the risk that users of My AI in this age bracket may be served age-inappropriate content by My AI, including advertisements. Snap notes that, without mitigations, such users could "*become exposed to content which may have an adverse impact on their safety and wellbeing*". In accordance with the structured matrix recommended by the Commissioner in the DPIA Guidance for the purposes of assessing the likelihood of harm and its severity,⁸³ Snap assessed the likelihood of this risk occurring to be "*probable*", the severity to be "*significant*" and the overall risk to be "*high*", albeit that Snap concludes that, after taking into account its mitigatory measures, the residual risk is "*medium*."
127. In Section 7.4.12 of the Fifth DPIA, Snap further assesses the risk that "*excessive or unsafe profiling by My AI may have a negative impact on vulnerable teenagers, for example, through inappropriate content recommendations and micro-targeted adverts*." However, Snap states that whilst the potential severity of this harm is "*significant*" and the overall risk is "*medium*", the likelihood is "*remote*", as Snap and its advertising processor

⁸³ [How do we do a DPIA? | ICO](#)

Microsoft do “not conduct or enable any profiling in support of the delivery of adverts within the My AI service to users.” In light of this, Snap concludes that the residual risk is “low”.

(ii) *Processing special category data on a large scale*

128. The Commissioner’s provisional conclusion that Snap failed to consider the risks associated with the processing of special category data on a large scale was based on his assessment that, whilst Snap has always recognised that the operation of My AI will result in the processing of special category data, the First, Second Third and Fourth DPIAs failed to explicitly explore the risks associated with the processing of such sensitive types of personal data.
129. The Commissioner has found that Section 7.3.2 of the Fifth DPIA now addresses not just the risk of processing special category data, but the risks which stem from the processing of this type of personal data in connection with My AI, specifically in light of its greater sensitivity, as required by Article 35(7)(c) UK GDPR.
130. As stated above, Snap recognises that “users may choose to submit queries that contain special category data” and that such data “has, by its nature, a higher likelihood of being sensitive”, meaning that, “if it is disclosed without authorisation or used without the user’s consent, then there is a higher likelihood of harm, in terms of the user’s privacy being undermined.”
131. Overall, in Section 7.3.2 of the Fifth DPIA, Snap concludes that it is “probable” that it will process special category data through My AI, that the severity of the risks associated with such processing is “significant” and that both the overall and residual risk levels are “medium.”
132. The Commissioner has found that Section 7.3.2 of the Fifth DPIA demonstrates that Snap has, in accordance with Article 35(7)(c) UK GDPR, and as explained within the DPIA Guidance, considered the

security risks associated with the processing of special category personal data in connection with My AI, specifically, how the processing of special category data may increase the potential impact of a security breach. Specifically, the Fifth DPIA recognises that the nature of My AI, as a generative AI powered chatbot intended to operate as an “AI best friend,”⁸⁴ may result in users sharing special category data. Furthermore, the Fifth DPIA recognises that Snap’s processing of such special category data may impact upon the risks posed to the rights and freedoms of My AI users in the event of the unauthorised use, access to, or disclosure of their data. This indicates that Snap has, in the Fifth DPIA, considered the impossibility of avoiding the processing of special category data in connection with My AI. The Fifth DPIA also evidences Snap’s consideration of why this constituted a risk to users, and this assessment was used to inform the mitigatory measures that Snap sets out in Section 7.3.2.

(iii) Users aged 13-17 failing to understand how their personal data is processed in connection with My AI

133. The Commissioner has found that Section 7.4.4 of the Fifth DPIA demonstrates that Snap has now assessed the risk of 13-17 year-old My AI users failing to understand how their personal data is processed in connection with My AI due to the use of a relatively new and innovative form of technology with which they are unlikely to be familiar.
134. At paragraph 86 of the PEN, the Commissioner provisionally concluded that Snap failed to consider the risk that, as a result of the use of generative AI technology, users, particularly those aged 13-17, would fail to understand the manner in which and purposes for which their personal data is processed. The DPIA Guidance

⁸⁴ SNP-0000003: Generative AI Update April 2023

states that Article 35(7)(c) UK GDPR requires controllers to consider the potential impact their processing activities may have on individuals and any harm or damage which may be caused, including the loss of control over their personal data. The risk of individuals losing control over how their personal data is used arises where they are not provided with sufficient information, either in terms of the level of detail or its comprehensibility, to enable them to understand the implications of allowing their data to be processed by a specific controller for the purposes that it is pursuing.

135. In Section 7.4.4, Snap identifies that “*users aged 13-17 may not understand how My AI will process their personal data, nor the limitations of AI chatbots*” and that, in the absence of age-appropriate transparency information, this may lead to such users “*misunderstanding the implications of using My AI,*” whilst also potentially resulting in users being less likely to exercise their individual rights. Section 5 of the DPIA Guidance states that when completing a DPIA, controllers should consider the potential impact of the processing activities on individuals and any harm or damage which may be caused, including whether the processing could contribute to individuals losing control over the use of their personal data.⁸⁵
136. Following the structured matrix recommended in the DPIA Guidance, Snap assess the likelihood of this risk to be “*probable*”, the severity of the possible harm to be “*significant*” and the overall risk to be “*high*”, albeit that this is deemed to be “*strongly reduced*” to a “*low*” residual risk once Snap’s mitigations are taken into account.
137. The Commissioner has found that this element of the risk

⁸⁵ [How do we do a DPIA? | ICO](#)

assessment within the Fifth DPIA demonstrates Snap's awareness of its user base's lack of familiarity with generative AI, particularly those aged 13-17, the likelihood for this to impact upon how such users interact with My AI, and the risks which this poses, specifically in respect of the potential for users to be deprived of the opportunity to make a fully informed decision as to whether to permit Snap to process their personal data in connection with My AI. Snap's recognition of this general lack of awareness amongst users of how their personal data would be processed informed Snap's approach to the transparency measures it implemented, with the Fifth DPIA indicating that Snap focused on ensuring that users aged 13-17 were provided with sufficient information to enable them to understand the implications of using My AI.

(d) Article 35(7)(d) UK GDPR: Mitigatory Measures

138. The Commissioner has concluded that the revised explanation of the steps taken by Snap to mitigate the security risks posed by My AI within the Fifth DPIA complies with the requirements of Article 35(7)(d) UK GDPR.

Legal Framework

139. Article 35(7)(d) UK GDPR states that a DPIA shall contain "*the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of personal data and to demonstrate compliance with [the UK GDPR] taking into account the rights and legitimate interests of data subjects and other persons concerned.*"
140. It is the Commissioner's view that Article 35(7)(d) UK GDPR requires a controller, within its DPIA, to consider the options available for reducing each of the risks that it has identified as resulting from its envisaged processing activities. The DPIA must

record the effect of the risk reduction measures that the controller identifies, including whether they reduce or eliminate the relevant risk. The controller may take into account the costs and benefits of each of the mitigatory measures it considers when determining whether they are appropriate.⁸⁶

Decision on compliance with Article 35(7)(d) UK GDPR

141. At paragraph 87 of the PEN, the Commissioner provisionally concluded that Snap's DPIAs failed to comply with the requirements of Article 35(7)(d) UK GDPR as some of the mitigatory measures listed by Snap were inaccurate and / or did not address the risks that Snap had identified. Specifically, the Commissioner provisionally concluded that:

- (a) the First and Second DPIAs, which were completed prior to the launch of My AI for Snapchat+ subscribers and its subsequent extension to all Snapchat users respectively, stated that the risks Snap had identified would be "*compounded*" if exerted on 13-17 year-old users,⁸⁷ yet identified no additional child-specific measures to address the heightened level of risk posed to this cohort;
- (b) the First, Second and Third DPIAs stated that the JIT notice displayed to users when they first interact with My AI contained an instruction not to share confidential or sensitive information. The Fourth DPIA stated that the JIT notice indicated to users that "*My AI is an experimental chatbot*" and referred to the instruction on the My AI Safety Support page not to share confidential or sensitive information.⁸⁸ However, prior to the issuance of the PEN, this instruction was removed from the JIT

⁸⁶ [How do we do a DPIA? | ICO](#)

⁸⁷ Section 5 (Risk Assessment) of the First, Second, Third and Fourth DPIAs

⁸⁸ Section 6 (Risk Reduction) of the Fourth DPIA

notice, without Snap providing any rationale for its removal and despite evidence that users were sharing special category data with My AI; and

- (c) the First, Second, Third and Fourth DPIAs stated that Snap's data minimisation and purpose limitation policies virtually eliminated the risk of the content of conversations with My AI being intentionally or inadvertently tracked, but failed to explain what these policies were or how they eliminated the risk.⁸⁹

142. The Commissioner's provisional conclusions regarding the absence of any child-specific mitigatory measures arose from the disparity, within the First and Second DPIAs between the level of risk identified in respect of 13-17 year-old users of My AI and the mitigatory measures identified. The Commissioner found this to be a particularly notable omission due to the number of users within this age range amongst Snapchat's userbase. For example, Snap informed the Commissioner that in March 2023, the first full month following My AI's launch, there were, on average, ██████ daily active Snapchat+ subscribers in the UK, of whom ██████ (approximately 25.5%) were aged 13-17.⁹⁰

143. However, the Commissioner has found that this disparity has now been addressed by Section 1.8(b) of the Fifth DPIA, which identifies the child-specific mitigatory measures that Snap has implemented and which it considers directly address the additional risks posed to users of My AI aged 13-17. These measures include:

- (a) attributing an age range to each user, based on the lower of their declared and inferred age. This user "*age bucket*" is then shared with OpenAI and is used to instruct My AI to respond in a safe and age-appropriate manner when discussing

⁸⁹ Section 6 (Risk Reduction) of the First, Second, Third and Fourth DPIAs

⁹⁰ Letter from Baker McKenzie LLP to the ICO: Annex 1, 9 May 2024

sensitive topics and adult behaviour (such as alcohol consumption);

- (b) designing Snap's JIT notice to be accessible to 13-17 year-olds and instructing them to speak to an adult if they are unsure about the information provided by My AI;
- (c) allowing parents to see whether their teenager is interacting with My AI through Snap's "Family Centre". Snap subsequently informed the Commissioner that it is now possible for parents to toggle My AI on and off on their teenager's account through the Family Centre;⁹¹ and
- (d) dedicated controls aimed at limiting the risk that 13-17 year-olds may use My AI as a substitute for completing their school homework.

144. These measures are extensively referred to by Snap in Section 7.4 of the Fifth DPIA as evidence that it has mitigated the risks identified therein as being posed to 13-17 year-old users of My AI. For example, in Section 7.4.3 of the Fifth DPIA, Snap references OpenAI's use of the user's age bucket to ensure that My AI responds in a safe and age-appropriate manner, whilst also referring to the transparency information relating to a teenager's use of My AI provided within Snap's Family Centre. The Fifth DPIA indicates that these measures, amongst others, are intended to address the risk that My AI will expose teenagers to harmful and inappropriate content.

145. In Section 7.4.5 of the Fifth DPIA, Snap highlights how My AI will refuse to write essays and how [REDACTED] has been used to make it less useful for assisting with such tasks. This is stated as being designed to address the risk that My AI's responses will be plagiarised and that reliance upon My AI by 13-17 year-olds will

⁹¹ Letter from Baker McKenzie LLP to the ICO dated 13 February 2024

prevent them from developing independent research skills.

146. In light of the above, the Commissioner has concluded that Snap has now identified within the Fifth DPIA, and subsequently implemented, child-specific mitigatory measures in addition to those generally applied for all users of the feature. This indicates that Snap has now addressed as part of its risk assessment the “*compounded*” level of risk posed to 13-17 year-old users of My AI through the identification and implementation of additional, targeted mitigatory measures which it envisages will address the specific level and nature of the risks posed to this cohort of users.
147. As stated above, Snap has confirmed to the Commissioner that the revised version of the JIT notice was implemented on iOS devices on 18 December 2023 and on Android devices on 22 December 2023.⁹² Accordingly, Section 7.3.2 of the Fifth DPIA refers to the JIT notice as one of the measures which Snap has identified and implemented in order to “*reduce the likelihood that Snapchatters will share identifiable special category / criminal offence data with My AI.*”
148. Therefore, the Commissioner has concluded that, as a result of the amendments which have been made to the wording of the My AI JIT notice since the PEN, the Fifth DPIA now reflects what is displayed to users. This contrasts with the position in the First, Second and Third DPIAs, which referred to the JIT notice’s instruction not to share sensitive and confidential information with My AI as a mitigatory measure, but which were not updated to explain Snap’s reasoning for the removal of this wording from the JIT Notice to the My AI Safety Support page between May and December 2023. The Fourth DPIA referred to the warning in the JIT Notice (as it read at the time) that “*My AI is an experimental*

⁹² Letter from Baker McKenzie LLP to the ICO, 1 March 2024

chatbot” and the instruction not to share confidential or sensitive information on the My AI Safety Support page.⁹³

149. In relation to the provisional finding that Snap had failed to explain within its DPIAs how its policies “*effectively eliminated*” the risk that the content of Snaps and Chats would be intentionally or inadvertently tracked, the Commissioner has found that this is now addressed within Section 7.3.3 (Security) of the Fifth DPIA. In contrast with the unexplained references to internal policies within in previous iterations of the DPIA, section 7.3.3 now contains an explanation of the specific steps which Snap has taken to address this risk.
150. Section 7.3.3 identifies that there is a risk that “*content submitted to My AI, and its responses, could be intentionally or inadvertently accessed without authorisation.*” Section 7.3.3 specifically identifies the measures which Snap envisages will address this risk. This includes Snap’s “*robust engineering-first information security platform*”, technical and organisational restrictions on access to data processed by My AI, [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] improve the output of My AI.
151. Furthermore, Section 7.3.3 of the Fifth DPIA identified a number of measures which are intended to limit the amount of personal data that is collected in connection with My AI in order to reduce the risks that may result from any security breach that Snap may experience. This includes:
- (a) My AI being *off by default* (meaning that data is only collected if a user interacts with the feature);

⁹³ Section 6 (Risk Reduction) of the Fourth DPIA

- (b) users being able to delete their data which has been processed in connection with My AI;⁹⁴ and
- (c) My AI having been designed to limit the amount of personal data that is processed, such as by not collecting data about users' activities from other parts of Snapchat or third party websites or applications, and the moderation of content to exclude "*certain sensitive topics*" from long-term storage, or from being used for secondary purposes.

152. In light of the above, and in contrast to the brief and unexplained references to Snap's internal policies in the First, Second, Third and Fourth DPIAs, the Commissioner is now satisfied that the Fifth DPIA contains a description of Snap's internal security measures which complies with the requirements of Article 35(7)(d) UK GDPR and accords with the DPIA Guidance. The Fifth DPIA sets out not only how Snap seeks to comply with the data minimisation principle in Article 5(1)(c) UK GDPR, but contains the specific measures implemented in order to address the risks associated with the intentional or inadvertent tracking of the content of users' interactions with My AI, including the restrictions placed on its processors, internal restrictions on access to user data and systems intended to limit the sensitivity of the data stored by Snap.

V. CONCLUSION

153. For the reasons set out above, the Commissioner has concluded that Snap has carried out a revised DPIA which complies with the requirements of Article 35 UK GDPR. Consequently, there are no grounds for the Commissioner to issue an Enforcement Notice which requires Snap to take, or refrain from taking, specified steps in order to bring its processing operations into compliance with

⁹⁴ This is referred to by Snap as the "*Delete My Data*" option, whilst Snap also offer the ability for users to delete individual messages sent to My AI

Article 35 UK GDPR.

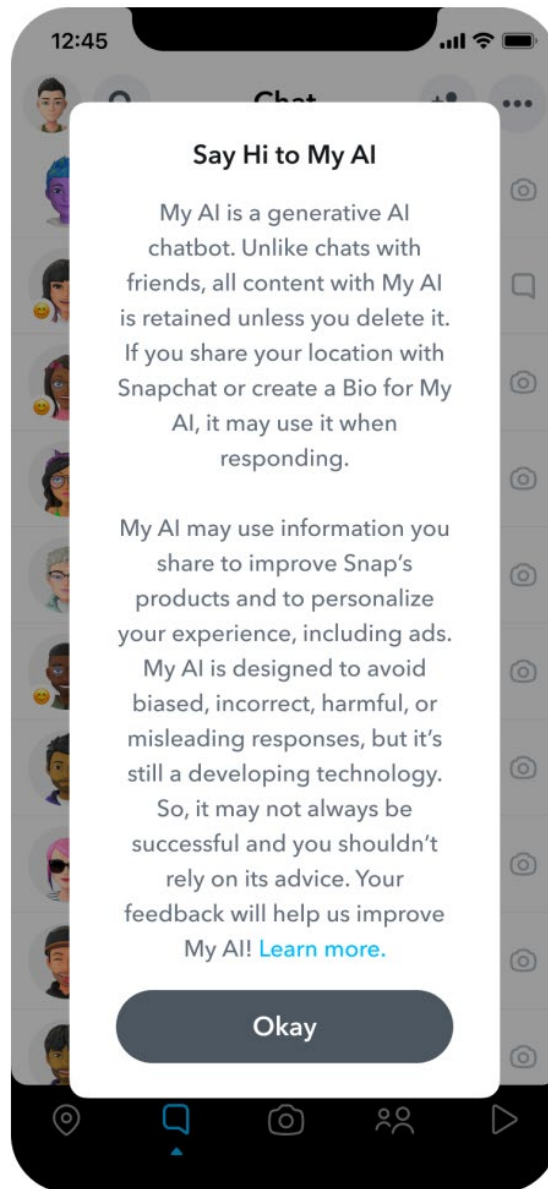
154. Furthermore, after reviewing Snap's representations, including a witness statement accompanied by a statement of truth from a senior Snap executive, the Commissioner has concluded that Snap did not infringe Article 36(1) UK GDPR by failing to consult the Commissioner prior to commencing the processing of personal data in connection with My AI.

Dated 21 May 2024


Stephen Almond
Executive Director – Regulatory Risk
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

ANNEX
My AI JIT Notice

JIT Notice (as of late September 2023)



Revised JIT Notice (as of late December 2023)

TODAY

Say Hi to My AI

Here's what you need to know before you use My AI:

- It's built on generative AI technology. My AI is designed with safety in mind, but may give responses which are biased, incorrect, harmful, or misleading. Don't rely on its advice.
- My AI uses information such as content you share and [location](#) to personalize its responses. Content you share is retained until you delete it.
- We use My AI information to improve our products and ads, as described in our [Privacy Policy](#) and [support pages](#).
- Don't share [sensitive or confidential information](#). If you do, it will be used by My AI.
- We share information with our service providers and advertising partners.

[Learn More](#) (including how to [delete your information](#))

Okay