

CYBERSECURITY: ICO DAWN RAID TASK

ANSWER TEMPLATE

(1) Introduction

Hi

This is [name] calling from [law firm], in relation to your query on ICO Dawn Raids. We have done some research and have a number of points to highlight to you.

[Introduce yourself and explain why you are calling. It is important that the start of a voicemail is clear and concise as it sets the tone for the remainder of the call.]

(2) What is an ICO Dawn Raid?

Firstly, the data protection legislation gives the ICO various investigatory powers, including the ability to enter a company's premises and inspect materials to establish whether data protection legislation is being complied with. This power is sometimes referred to as a "Dawn Raid".

Under this legislation, the ICO has the power to issue an assessment notice to request entry into a Company's premises on at least seven days' notice. Where the Company does not consent to the entry or inspection, the ICO will need to obtain a warrant, and without such warrant (where consented by the company) enter and inspect, but cannot use any powers of seizure.

Where the ICO's assessment notice states that (i) it has reasonable grounds to suspect the company has not complied with an enforcement notice, or that the company has committed an offence under the data protection legislation, and evidence of this will likely be found on the company's premises, (ii) indicates the nature of the suspected offence, (iii) does not specify that the premises in question are domestic, (iv) states with reasons that in the ICO's opinion it is necessary for the company to comply with a requirement in less than seven days, the ICO may obtain a warrant to conduct an inspection on less than seven days' notice. In fact, the warrant can even allow for the inspection to be done on no notice.

[A clear introduction to what a Dawn Raid is and why it is conducted is important. Part 5 of the Data Protection Act 2018 ("DPA") explains the role of the ICO, and Part 6 its investigatory and enforcement powers. The ICO's power to issue an assessment notice and inspect premises and equipment of an organisation is outlined in section 146 of the DPA and paragraphs 1 – 4 of Schedule 15 (Powers of Entry and Inspection). This should be explained in a manner which assumes that the Client has no background knowledge on the topic. You should not make reference to specific sections of the legislation in the voicemail. You should explain how the ICO has the ability to conduct the Dawn Raid without notice, and the grounds for being able to do so.]

(3) **What are the ICO's Power's in a Dawn Raid?**

During a Dawn Raid, the ICO inspectors have the power to:

- enter and search the company premises;
- they can inspect, review and take copies of relevant documents;
- search IT networks, including hardware, media storage, email, document servers, laptops, handheld devices etc.;
- and seize and remove documents and hardware;
- Inspectors can also require anyone on the premises to provide an explanation of any document or other material;
- or to provide any other information as may reasonably be required for the investigation;
- they can even search employees' homes if warranted by a judge; and
- use reasonable force as may be necessary to execute the warrant.

[These powers are listed in paragraphs 5 and 7 of Schedule 15 to the DPA. Explaining the ICO's powers indicates to the client what they can expect from the inspectors on a raid. You should list at least four powers.]

(4) **What information can be withheld from the ICO?**

However, inspectors cannot require the production of legally privileged information. This means any confidential communications between a lawyer and their client made for the purpose of giving or receiving legal advice **or** confidential communications between a client or their lawyers and third parties made for the dominant purpose of conducting adversarial litigation do not need to be disclosed. For example, legal advice relating to your obligations, rights or liabilities under the data protection legislation will likely be protected by legal privilege.

[Section 147 of the DPA explains the restrictions of assessment notices in relation to legally privileged information. It is important that clients are aware of their rights under legal privilege. A warrant cannot override privilege.]

In addition, inspectors cannot ask for documents which are outside of the scope of the investigation.

[The warrant will state specifically the purpose of the investigation. Requesting documents outside of this purpose is not permitted.]

(5) **Practical information on how to react**

So if you are subject to a Dawn Raid, here are a few tips on how to manage it. Key employees who need be involved in the inspection, such as senior executives, legal and IT teams, must be identified in advance as being required for the response, and should receive appropriate training. In particular, they should be aware of the data flows in the business, and where the data is stored. This will help to reduce disruption and ensure the inspection is as efficient as possible.

Employees working at the front desk and in security should have clear instructions on dealing with inspectors. The legal team and other key employees must be notified immediately when inspectors are greeted at reception, and be informed of how many inspectors are present and the name and contact number of the lead inspector.

The warrant or authorisation should be inspected to ensure that the date, location and scope of the investigation are correct.

External counsel should be notified that an inspection has begun, as they may be required on short notice if an issue arises.

It would be helpful to have a senior member of the IT team available to assist as the inspectors may need access to IT systems and inboxes.

Inspectors should be accompanied during their searches, and a member of staff should keep detailed records of the documents which have been accessed, the questions asked by inspectors, and the responses given.

Overall, organisations and their staff should be helpful and cooperative during an investigation.

[This section is important as it gives the client practical tips, for their company and staff on how to prepare for, and how to react during, a Dawn Raid. This can help to create processes that reduce disruption, and increase the efficiency of the inspection. These are some suggestions, but any logical guidance here will be correct.]

(6) **Any other information**

With respect to preparing for a Dawn Raid. It is important to provide training to employees in advance so that they are aware of what an ICO Dawn Raid is and how to react if one occurs. For example, they must be aware that they cannot inform anyone from outside the company that the inspection is taking place. Investigators have the power to interview or request information from members of staff, so prior understanding of what a Dawn Raid is will make this process more efficient.

You may also wish to develop a "Dawn Raid Response Team", and assign key employees with specific roles and responsibilities for when an inspection takes place.

[The reaction and cooperation of employees is very important during an inspection. Prior training and raising awareness are necessary for this and will form an important part of your advice.]

(7) **End call and offer your assistance going forward**

As a starting point, I hope that this information has been helpful for you and has given you some ideas on how your Company can prepare for an ICO Dawn Raid.

We would be more than happy to further assist by providing you with some written guidance on the topic, or organising a training session to be delivered to your employees.

I look forward to speak again soon and do let us know if you have any questions.

[It is a good idea to provide some suggestions of additional assistance that you can offer. As you have provided a lot of information over the phone, a written summary would be helpful to follow up with. If the client wishes, a training session would also be a great way to educate their employees about the Dawn Raid process and their roles and responsibilities.]