

**IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE UPPER TRIBUNAL
(ADMINISTRATIVE APPEALS CHAMBER)
[2025] UKUT 319 (AAC)**

BETWEEN:

CLEARVIEW AI INC

Appellant

- and -

THE INFORMATION COMMISSIONER

Respondent

- and -

PRIVACY INTERNATIONAL

Intervener

**RESPONDENT'S RESPONSE
TO SKELETON ARGUMENT FOR PRIVACY INTERNATIONAL
FOR HEARING ON 19-21 OCTOBER 2026**

1. The Respondent (“**the Commissioner**”¹) has previously lodged a skeleton argument in response to this appeal, dated 17 March 2026. On 17 July 2026, the Intervener (“**PI**”) was granted permission to intervene by the Court of Appeal. On 30 July 2026, the Court of Appeal directed PI to lodge its skeleton argument by 26 August 2026, and that the Appellant (“**Clearview**”) and the Commissioner were to lodge any response by 23 September 2026. PI lodged its skeleton argument on 26 August 2026. The present document sets out the Commissioner’s response.
2. Generally, and subject to the points below, the Commissioner adopts the submissions in PI’s skeleton argument. These support and complement the Commissioner’s

¹ Pursuant to the Data (Use and Access) Act 2025 and the Data (Use and Access) Act 2025 (Commencement No. 9 and Transitional and Saving Provisions) Regulations 2026, with effect from 30 September 2026 the functions and responsibilities previously exercised by the Information Commissioner will transfer to the Information Commission. Regulation 3 of the Regulations provides that anything done (or in the process of being done) before 30th September 2026, including legal proceedings, is to be treated as something done (or in the process of being done) by the Information Commission.

contentions in relation to Ground 3 of Clearview’s appeal. The Commissioner notes that PI supports the submissions of the Commissioner on Grounds 1 and 2 while not advancing detailed arguments: paragraph 32 of PI’s skeleton argument). The Commissioner also notes paragraph 8 of PI’s skeleton argument, referring to PI’s complaint to the Commissioner about Clearview, which was lodged five years ago. The Monetary Penalty Notice and Enforcement Notice in this case were served in May 2022. It is highly regrettable that, over four years later, the resulting appeals are still dealing with a preliminary issue as to jurisdiction.

3. The Commissioner makes two further points.
4. **First**, PI’s skeleton argument appears to treat Clearview’s third ground of appeal as a novel argument not previously advanced: see e.g. paragraph 31, stating that Clearview’s argument has “evolved considerably”, and paragraph 47, referring to it as a “new argument”.
5. As the Commissioner currently understands the position (and subject to hearing how Clearview develops the point in oral argument), however, Ground 3 repeats a contention that was advanced by Clearview both before the First-tier Tribunal (“FTT”) and before the Upper Tribunal (“UT”), albeit as a subsidiary part of Clearview’s case². Before the UT, the argument that is now Ground 3 was put forward as Clearview’s Additional Reason 2 as to why the FTT should uphold the FTT’s decision. Additional Reason 2 was addressed, and dismissed, by the UT at paragraphs 331-344 of its decision. Hence Ground 3 is not a new point: on the contrary, it is a point that was specifically considered by the UT and expressly rejected by it.
6. **Secondly**, before the UT it was common ground between Clearview, the Commissioner and PI that the law enforcement and national security activities of Clearview’s foreign state clients fell outside the scope of EU law and hence the GDPR and UK GDPR. There was, however, a difference between the parties as to the legal basis for this. PI argued that the legal basis was the application of international law principles, rather

² See paragraph 74 of Clearview’s Grounds of Appeal to the FTT, and paragraphs 117-118 of Clearview’s Response to the Commissioner’s Grounds of Appeal to the UT. The point was not specifically addressed in the FTT’s decision.

than Article 2(2)(a) GDPR. The Commissioner argued that the legal basis for this was Article 2(2)(a) GDPR (while also making clear that the difference in analysis between the Commissioner and PI made no difference to the outcome). The UT agreed with PI's analysis: see paragraphs 186-196 of its decision. In this appeal, the Commissioner respectfully adopts the UT's analysis of the meaning of Article 2(2)(a): see paragraph 88 of the Commissioner's skeleton argument in the present appeal. The Commissioner likewise respectfully adopts the reasoning of PI on this point, at paragraphs 38-43 of PI's skeleton argument.

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