

ICO guidance ‘Data protection and journalism: a guide for the media’ – Consultation summary

Introduction

This document summarises the responses to the ICO’s consultation on the ‘Data protection and journalism: a guide for the media’ (the guide) that was held between 23 January 2014 and 22 April 2014. There were 27 written responses to the consultation, and we are grateful to those that took the trouble to comment. We have carefully considered the views we received, and many are reflected in the final version of the Guide.

In particular the published version of the guide now sets out even more clearly:

- practical data protection advice for those working in journalism, and
- technical data protection advice for those with particular data protection responsibilities

The final guide is a practical reference document that we hope will be helpful to those working in a media environment.

Comments received and the ICO’s response

Many of the comments received were queries on the emphasis and nuance of the draft guide. To be clearer we have restructured the guide with more emphasis on how the principles and section 32, the special purposes exemption, interact particularly in terms of practical issues.

We have tried to address a high proportion of the comments provided to us. Below we set out some of the major themes which emerged from the consultation and the ICO’s response.

Clarity and presentation of the guide

Generally respondents found the draft guide had clear language. Some respondents commented that the draft guide was lengthy and because of this it was unlikely to be a handy reference source for journalists. Concerns were also raised over whether the structure of the draft guide presented a confusing picture and that it was not clear whether it was meant for individual journalists or the media organisation itself.

Respondents generally welcomed the idea of having a summary or quick guide to sit alongside the guide.

ICO response

It is unavoidable that the guide will be fairly lengthy in order to cover all the issues in sufficient detail. However we have produced a two-page 'Data Protection and journalism: a quick guide' which is designed to provide a brief introduction to the DPA for journalists. We have also restructured the guide to have a section on 'Practical guidance' which expands on the quick guide and is likely to be of interest to anyone working in the media. There is also a separate 'Technical guidance' section that is aimed more specifically at those with particular data protection compliance responsibilities.

Relationship between the draft guide and media industry codes of practice

There was uncertainty from some respondents as to the draft guide's relationship with industry codes of practice. Some felt there was too much emphasis on industry codes, given that compliance with the DPA is about more than just complying with such codes, and especially as some organisations are not subject to them. Others took a different view that the draft guide should more closely reflect industry codes of practice.

ICO response

As the independent regulator of the DPA, it is important that our guide stands separately from industry codes of practice. While we appreciate that not all media organisations will be subject to these industry codes, we believe it is beneficial that we make reference to them. We have made revisions to the guide to provide further clarity on this topic.

Public interest and 'public interest journalism'

There were concerns that the draft guide considered these themes too narrowly and did not take into account the public interest in freedom of expression and a free press generally. Respondents also felt that the draft guide equated 'in the public interest' to mean 'public interest journalism'.

ICO response

We have placed more emphasis on the public interest in freedom of expression generally which makes it clear that this will cover day-to-day reporting and even celebrity gossip. We are also no longer using the terminology 'public interest journalism'. We have however continued to place emphasise on proportionality and consideration of the extent of the intrusion.

Fair processing requirements

The practicalities of giving prior notice to individuals subject to investigation by journalists were raised by some respondents.

ICO response

We accept that, in the context of journalism, often it may not be practical to give prior notice to individuals and the original draft had intended to convey this. We have clarified the guide to expand on this point and to take proportionality into account.

Principle 3 (adequate, relevant & not excessive) and Principle 5 (not kept longer than is necessary)

There were concerns that Principle 3 as described in the draft guide presented an issue for journalism and that there needed to be more emphasis on the flexibility of Principle 5 as it would be inappropriate to restrict the collection and retention of personal information to what is necessary for a particular story or current purpose. Respondents advised that it is often required that journalists collect and record potentially inconsequential details for future reference and that they may not know whether it is needed until later.

ICO response

Principles 3 and 5 are flexible enough to cover the usual journalistic practices. We have slightly altered the wording of these two sections to ensure that this is clear.

Subject access

There was some misinterpretation of the section on subject access and some respondents were unclear about when the special purposes exemption could apply.

ICO response

The special purposes exemption can potentially apply to subject access requests made before or after publication of a story. As there has been some misunderstanding of this section, we have made some revisions to make it clearer.

The special purposes exemption (section 32 DPA)

'With a view to publication'

We received a number of comments on the part of the exemption that refers to 'with a view to publication'. Respondents commented that the way this section was worded was contradictory and could cause uncertainty. It was also commented that the draft guide appeared to suggest that the section 32 exemption was limited to use for pre-publication only.

ICO response

We accept that 'with a view to publication' can be interpreted more broadly and this does not have to be linked to a specific story. In particular, retention post-publication can still be with a view to publication because it is part of the end-to-end journalistic process, and also because it will likely be used as an ongoing resource. We have clarified this section of the guide.

'Compliance is incompatible'

Some respondents felt that the way in which this section was worded in the draft guide set the threshold of incompatibility too high. It was suggested that 'incompatible with the purposes of journalism' means unreasonable/impractical rather than impossible.

ICO response

We accept that there is an element of reasonableness or impracticality built into this test, however there are limits and this must be more than just inconvenience or a departure from standard practice. We have updated this section of the guide to make the position clearer.

List of respondents

Associated Newspapers
Barnsley Chronicle
Bates Wells Braithwaite
British Broadcasting Corporation
Channel 4
Dr Sally Broughton Micova, London School of Economics
Editors' Code of Practice Committee
Dr David Erdos, University of Cambridge
Financial Times
Global Witness
Guardian News and Media
Hacked Off Campaign
ITN
ITV
London Evening Standard/The Independent/i/Independent on Sunday
Media Lawyers Association
National Union of Journalists (NUJ)
News UK
Oldham Evening Chronicle
Producers Alliance for Cinema and Television
Professional Publishers' Association Limited
Schillings
Society of Editors
Steel & Shamash Solicitors
Telegraph Media Group Limited
The Newspaper Society
Trinity Mirror Plc