

Data Protection and the Press – framework consultation on proposed ICO code of practice

Summary of responses

Key issue

- The key issue for the ICO to consider is whether guidance issued in the form of a code of practice under s51 of DPA is the most appropriate way of implementing Leveson's recommendations. The responses indicate a clear preference for guidelines / good practice guidance over a code of practice.
- The ICO's position is that any guidance it issues will be based on the law as it stands. Several respondents expressed concern that the code could alter or introduce new legal obligations under the DPA, notwithstanding the ICO's position was clearly set out in the introduction of the framework consultation document.
- Similar concerns were raised about the nature of the code's interaction with established editorial guidance and regulation including the Ofcom Broadcasting Code, the Editor's Code of Practice and the BBC Editorial Guidelines. The ICO need to reiterate that any guidance it issues will complement these existing standards.

Overview

We received 16 responses to the consultation exercise, from several media companies, individuals, regulators and representative bodies.

Most respondents were positive about the ICO's engagement with the press and broadcast media in its pursuance of acting on Leveson's recommendations. Most welcomed future opportunities to assist the ICO as the project advances.

The key issues raised in the framework consultation are summarised below.

Should the guidance be issued as a code of practice under section 51 of the Data Protection Act?

- Nearly all respondents (15 out of 16) welcomed the proposals for some ICO guidance on data protection and the press. However, seven respondents rejected the proposal for a code of practice

under s51 of the DPA, expressing a clear preference for guidelines or good practice guidance.

- One media company noted that the proposed code would be distinct to the ICO's approach in existing codes of practice, which normally have a broader application; it also raised concerns about the potential legal significance of a code.
- One respondent raised concerns about publishing any before the future regulatory landscape for the press was fully developed.

Other concerns noted included:

- a code of practice implies a new set of rules or regulations;
- risk of the ICO becoming a 'mainstream de facto regulator of the press';
- risk of a proliferation of codes; and
- risk of potential confusion with existing codes such as the Editors' Code.

Proposed content

- Respondents were keenly in favour of the ICO's position that any code of practice / guidance would consider data protection law as it currently stands.
- Notwithstanding the ICO's clear position, some respondents still expressed apprehension about the potential for the code to introduce changes to current legal obligations under the DPA. One respondent said it hoped that "detailed recommendations on the special purposes exemption will not limit the activities in any way which precludes appropriately controlled and managed investigative journalism". Another expressed hope that the overview of DPA will be consistent with established definitions and existing guidance.
- One respondent questioned whether the content of the code could be decided without clarity on the future regulatory landscape.
- Three respondents requested that the content was expanded to cover the protection of the identity of confidential sources.
- One respondent hoped that the content would take into account the more ad hoc nature of journalists' collection, storage and processing of personal data – reflecting that the industry is different to more

conventional types of data controller who have information management systems.

Proposed structure

- Most respondents explicitly agreed the structure was helpful. For example, one respondent said the proposed structure was well balanced and sensible, and advocated the ICO's attempt to stress the importance of the balance of the freedom of expression and the legitimate expectations of the individuals. Another said it was difficult to comment on this at present.

Worked examples

- Not many respondents commented on this, but those who did were in favour of including relevant examples. Specific examples were requested on consequences of data breaches and when section 32 will/will not apply.

Further comments

- In 2005, the PCC produced – in consultation with the ICO – [guidance note for journalists on the DPA](#). One respondent asked if the ICO's intended new guidance would replace this note – and whether the PCC or a replacement regulator will have any role in dissemination of the new guidance.
- Any ICO guidance on what constitutes “public interest” should be consistent with the approach taken by the law and media industry guidance, including that issued by the PCC (and any successor to it), Ofcom and the BBC.
- Avoid rushing into producing a code until the regulatory landscape for the press is finalised.
- The proposal for the code to include guidance on disputes was welcomed. Another respondent considered this issue, pointing out that it is already subject to the dispute resolution process set out in its licence obligations and under Ofcom's Broadcasting Code. If additional measures required, it hopes the ICO will consider how best to complement this existing standards.
- Extend target audience to include production companies.