

ICO call for views on updating the data sharing code of practice



Data sharing can bring important benefits to organisations, citizens and consumers, making our lives easier and helping to deliver efficient services. It is important, however, that organisations who share personal data have high data protection standards, sharing data in ways that are fair, transparent and accountable. We also want controllers to be confident when dealing with data sharing matters so individuals can be confident their data has been shared securely and responsibly.

As required by the Data Protection 2018, we are working on updating our data sharing code of practice, which was published in 2011. The updated code will explain and advise on changes to data protection legislation where these changes are relevant to data sharing. It will address many aspects of the new legislation including transparency, lawful bases for processing, the new accountability principle and the requirement to record processing activities.

The updated data sharing code of practice will continue to provide practical guidance in relation to data sharing and will promote good practice in the sharing of personal data. In the first instance we will address the impact of the changes in data protection legislation on data sharing and will then move on to developing further case studies. Our intention is that, as well as legislative changes, the code will also deal with technical and other developments that have had an impact on data sharing since the publication of the last code in 2011.

Before preparation of the code the Information Commissioner must consult with the Secretary of State. She is also seeking input from trade associations, data subjects and those representing the interests of data subjects. This call for views is the first stage of the consultation process. We will use the responses we receive to inform our work in developing the updated code.

You can email your response to
CentralGovernment@ICO.org.uk



Or print and post to:

Data Sharing Code Call for Evidence
Central Government Department
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire SK9 5AF

If you would like further information on the call for evidence, please email the Central Government team.

Please send us your views by 10 September 2018.

Privacy statement

For this call for evidence we will publish responses received from organisations but will remove any personal data before publication. We will not publish responses from individuals. For more information about what we do with personal data please see our [privacy notice](#).

Questions

Q1 We intend to revise the code to address the impact of changes in data protection legislation, where these changes are relevant to data sharing. What changes to the data protection legislation do you think we should focus on when updating the code?

The additional obligations on data processors under the new legislation.
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Q2 Apart from recent changes to data protection legislation, are there other developments that are having an impact on your organisation's data sharing practice that you would like us to address in the updated code?

Yes

No

Q3 If yes (please specify)

N/A

Q4 Does the 2011 data sharing code of practice strike the right balance between recognising the benefits of sharing personal data and the need to protect it? Please give details.

Yes

No

Q5 If yes in what ways does it achieve this?

NA

Q6 If no, in what ways does it fail to strike the right balance?

When it comes to data sharing, there is an inherent risk aversion in both private sector organisations and public bodies that, in general, prevents the proactive sharing of information. With the introduction of the GDPR and Data Protection Act 2018, there has been a huge increase in awareness of individual's rights when it comes to the handling of personal data, and understanding how it is being processed. Whilst this is a manifestly positive step, this increase in awareness has had a knock on effect, consciously or otherwise, on the appetite of businesses and public bodies to share information, even where the justifications for doing so are well grounded. Whilst the 2011 Code is useful, the updated Code has the opportunity to rebuff suggestions that data protection legislation prohibits data sharing, and to demonstrate how, where there is sound justification, data sharing is both necessary and beneficial. This is an opportunity to rebalance the contradiction between perception and reality on both the legal bases and practical benefits for data sharing.

The revised data sharing Code should emphasise the benefits of appropriate data sharing as well as the risks which need to be mitigated when data is shared. For example, the June 2013 Information Governance Review by Dame Fiona Caldicott noted that "*When it comes to sharing information, a culture of anxiety permeates the health and social care sector*". The National Police Chiefs' Council (NPCC) Policing Vision 2025 has identified a need to "[work] with the Government to ensure projects are not undermined by differing boundaries, multiple service providers and incompatible data sharing policies" (§4.2). These statements accord with the results of techUK's annual Civil Servant Survey, which highlighted in 2017 that almost all civil servants believe sharing more information would benefit the services they provide to citizens (just 6% indicated to the contrary). We are concerned that the publicity which has

accompanied the GDPR may contribute to civil servants' anxiety about data sharing. While it is positive that data protection requirements are receiving considerably more public attention, there have been some inaccuracies in the reporting of new GDPR requirements which may create misunderstanding of when data can and cannot be shared. Accordingly, we think it is important that the new Code should encourage appropriate data sharing (with illustrative examples of situations where data sharing has led to positive outcomes) while also explaining the limits of such sharing.

Q7 What types of data sharing (eg systematic, routine sharing or exceptional, ad hoc requests) are covered in too much detail in the 2011 code?

There is an appropriate level of information relating to routine data sharing. However, further information about data sharing within organisations, particularly large organisations that operate in different countries, would be beneficial. A case study supporting this would also be useful.

Q8 What types of data sharing (eg systematic, routine sharing or exceptional, ad hoc requests) are not covered in enough detail in the 2011 code?

Further information on ad hoc data sharing requests and arrangements would be beneficial. Case studies demonstrating this type of data sharing arrangement would be useful.

Q9 Is the 2011 code relevant to the types of data sharing your organisation is involved in? If not, which additional areas should we cover?

Yes, it is relevant.

Q10 Please provide details of any case studies or data sharing scenarios that you would like to see included in the updated code?

The Code does not provide sufficient examples of data sharing arrangements between private sector entities and public bodies. Ideally, two scenarios would be included, one where it is the private sector entity sharing their data with a public body, and a second where the public body is sharing their data with a private sector organisation.

A case study about data sharing within an organisation would also be beneficial.

Finally, it would be beneficial to include examples of data sharing initiatives that have succeeded, and resulted in public benefit. Similarly, it would be helpful to have examples of data sharing initiatives that have been unsuccessful, or have been found to be unlawful. This would prevent the same arrangements being replicated unknowingly elsewhere.

Q11 Is there anything the 2011 code does not cover that you think it should? Please provide details.

With regard to express obligations, express powers or implied powers from which public bodies derive their powers to share data, we have found that there is:

- (i) a lack of awareness that these powers exist; and
- (ii) a lack of awareness as to where these powers can be found.

Whilst we acknowledge that these powers are referred to in the 2011 Code, in our opinion, specific examples for each power would be beneficial, preferably supported by the relevant legislation. In particular, a variety of examples for implied powers would be beneficial, as these may not be immediately apparent to individuals who do not regularly deal with data sharing arrangements.

Additionally, it would be beneficial for the Code to explain what public sector bodies can do if there is no power to share data, but there is a good reason for doing so. It would be useful for the Code to outline what public bodies can do in this scenario, e.g. anonymising the data to enable sharing, or escalating to the relevant data protection officer and arranging an ad hoc data sharing agreement for the specific sharing. Providing this additional information will hopefully empower public bodies to pursue data sharing arrangements which could provide public benefit, even if there is no existing power to implement them.

Q12 In what other ways do you think the 2011 code could be improved?

None in addition to those already mentioned in this response.

About you:

Q13 Are you answering these questions as?

- A public sector worker
- A private sector worker
- A third or voluntary sector worker
- A member of the public
- A representative of a trade association
- A data subject
- An ICO employee
- Other

Q14 If other please specify:

This submission is made on behalf of techUK & Ark Data Centres Limited. techUK and Ark Data Centres Limited are developing a working group on public sector data sharing, and have commissioned [REDACTED] of Blackstone Chambers to conduct research on the area.

Q15 Please provide more information about the type of organisation you work for, ie a bank, a housing association, a school.

Ark Data Centres Limited – private limited company
techUK – trade association

Q16 We may want to contact you about some of the points you have raised. If you are happy for us to do this please provide your email address:

[REDACTED]

[REDACTED]

Thank you for taking the time to share your views and experience.