

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 current code of practice mentions joint controllers only once (in the definition of a data controller in Annex 2).

The CJEU's decisions in C210/16 Unabhängiges Landeszentrum für Datenschutz Schleswig-Holstein v Wirtschaftsakademie Schleswig-Holstein GmbH (the "Facebook Case") and C25/17 Tietosuoja-valtuutettu (the "Jehovah's Witnesses Case") appear to substantially widen the concept of joint controllership under data protection law, particularly in the UK where the Data Protection Act 1998 also referred to the concept of controllers in common. The Facebook and Jehovah's Witnesses Cases, apply a joint controller relationship to arrangements where one of the party has little if

any access to or control over the personal data being processed by the other party.

This combined with the new requirement under Article 26 of GDPR for joint controllers to determine their respective responsibilities for compliance with GDPR means that detailed guidance is urgently required from the ICO on:

- The factors for determining the existence of a joint controller relationship (with practical examples) and how to distinguish this from an independent controllers relationship
- How the CJEU's comments in the Facebook and Jehovah's Witnesses Cases in relation to joint controllers not being equally responsible is to be reconciled with Article 82 of GDPR.
- Whether the concept of controllers in common still exists under GDPR/following the Facebook and Jehovah's Witnesses Cases
- The level of detail required when documenting responsibilities under Article 26 of GDPR

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)

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?

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

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?

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?

See above re joint controllership arrangements.

The use and approach to providing information notices under Articles 13 and 14 of GDPR, where organisations are sharing personal data (or are jointly processing personal data), in particular the situations in which it is appropriate for a controller to rely upon Article 14(5) and what steps the ICO considers are necessary to make "the information [required under Article 14] publicly available."

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?

N/A

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

See above re joint controllership arrangements. None of the current examples identify the relationship between the parties involved. We suggest that different scenarios are used to help controllers identify where a joint controllership arrangement exists and where it does not.

We note that the ICO's previous guidance on key definitions under data protection law (previously available at <https://ico.org.uk/for-organisations/guide-to-data-protection/key-definitions/>) used the scenario of a database provided by a central government department to enable local authorities to share personal data as an example of controllers in common.

In contrast, paragraph 177 of the explanatory notes to the Data Protection Act 2018

(http://www.legislation.gov.uk/ukpga/2018/12/pdfs/ukpgaen_20180012_en.pdf) uses the Police National Computer as an example of joint controllership (between the chief constables).

It is not clear why one example is considered to be controllers in common and the other joint controllership.



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

The relationship between a controller and the Royal Mail/a courier service including the ICO's expectations in terms of the controller's responsibility for a loss of personal data in the hands of the courier and why the ICO's guidance (<https://ico.org.uk/media/for-organisations/documents/1546/data-controllers-and-data-processors-dp-guidance.pdf>) states that the Royal Mail and couriers are neither controllers nor processors, yet providers of cloud hosting services (who equally have no control over the data that a customer stores in their systems) are processors. In particular, how this is reconciled with the Facebook and Jehovah's Witnesses Cases on joint controllership.

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

Examples of when the ICO would expect to see a data sharing agreement in place and the ICO's expectations in terms of content for different types of data sharing arrangements.



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:

Data protection law advisors

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

Solicitors

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]

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