

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?

All routine data sharing is covered by our privacy notice – this helps us to meet the obligation of transparent processing. It would be useful to know whether the fact that data sharing is transparent by inclusion in a privacy notice impacts whether a separate DSA is required.

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Information Commissioner's Office

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?

The foreword provides details of such an assessment. The CPS considers this on a case by case basis where the data sharing is not part of our statutory function and bears the 2011 guidance in mind when doing so.

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?

We do not consider that either type of data sharing is covered in too much detail. We welcome the fact that the code is largely concise and to the point.

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?

The types of data sharing outlined in the code could benefit from examples describing the scenarios in which different types of data sharing are likely to occur, and further clarity around some of the terms used would be of use. Section 3 of the 2011 guidance talks about systematic sharing, and how 'established rules and procures' or 'routine agreement' should be in place for processing of this nature. However, in practical terms, what should we ensure is in place as a data controller? If each and every strand of processing should be covered off by a DSA, even where the sharing is required by statute, the work required to maintain these and ensure accuracy would be a huge challenge to maintain.

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?

The types of data sharing mentioned in the code are relevant to our organisation. As with the response to Q8 – a practical steer of what is expected would allow us to ensure we apply the guidance as it is intended.

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

Case studies around when a DSA is required would be of use. The CPS would always produce a DSA where ad-hoc data sharing takes place. However the task of maintaining agreements for all agencies with whom we share data in order to deliver our prosecutorial function would be an onerous one, and risk of them becoming out of date would inevitably be high.

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

We would welcome guidance on the following areas:

-Data sharing and sub-processors: Further guidance on this point particularly in the following scenario would be much appreciated –

Are there any obligations on a data controller to account for data sharing between a processor and sub-processor within a data sharing agreement? The data controller discloses data to the processor, who then chooses to use a sub-processor to complete the data analysis, for example. What are the obligations of the data controller to ensure the sub-processor is DPA 2018 compliant? Is it sufficient simply to set out that we expect them to, and the processor should be responsible for any detailed DSA that is deemed necessary?

- Differences between MOUs and DSA's: There appears to be little guidance on the differences between the two arrangements and it is unclear in what circumstances either would be appropriate. In fact, in a lot of cases the terms seem to be used interchangeably. Practical examples of when an MOU or DSA is most appropriate would be helpful.

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

If another section of the guidance is relevant to a specific topic, ad hoc sharing for example, then references would be useful to allow us to swiftly consider the relevant sections of the guidance.

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:

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

Crown Prosecution Service.

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:

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