

ICO consultation on the draft updated data sharing code of practice

Data sharing brings important benefits to organisations and individuals, making our lives easier and helping to deliver efficient services.

It is important, however, that organisations which share personal data have high data protection standards, sharing data in ways that are fair, transparent and accountable. We also want organisations 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 Act 2018, we are working on updating our **data sharing code of practice**, which was published in 2011. We are now seeking your views on the [draft updated code](#).

The draft updated code explains and advises on changes to data protection legislation where these changes are relevant to data sharing. It addresses many aspects of the new legislation including transparency, lawful bases for processing, the new accountability principle and the requirement to record processing activities.

The draft updated code continues to provide practical guidance in relation to data sharing and promotes good practice in the sharing of personal data. It also seeks to allay common concerns around data sharing.

As well as legislative changes, the code deals with technical and other developments that have had an impact on data sharing since the publication of the last code in 2011.

Before drafting the code, the Information Commissioner launched a call for views in August 2018. You can view a summary of the responses and some of the individual responses [here](#).

If you wish to make any comments not covered by the questions in the survey, or you have any general queries about the consultation, please email us at datasharingcode@ico.org.uk.

Please send us your responses by **Monday 9 September 2019**.

Privacy Statement

For this consultation, we will publish all responses except for those where the respondent indicates that they are an individual acting in a private capacity (e.g. a member of the public). All responses from organisations

and individuals responding in a professional capacity will be published. We will remove email addresses and telephone numbers from these responses; but apart from this, we will publish them in full.

For more information about what we do with personal data please see our [privacy notice](#).

Questions

Note: when commenting, please bear in mind that, on the whole, the code does not duplicate the content of existing guidance on particular data protection issues, but instead encourages the reader to refer to the most up to date guidance on the ICO website.

Q1 Does the updated code adequately explain and advise on the new aspects of data protection legislation which are relevant to data sharing?

Yes

No

Q2 If not, please specify where improvements could be made.

Q3 Does the draft code cover the right issues about data sharing?

Yes

No

Q4 If no, what other issues would you like to be covered in it?

Q5 Does the draft code contain the right level of detail?

Yes

No

Q6 If no, in what areas should there be more detail within the draft code?

Clearer guidance is needed to define the Article 14 responsibilities for Data Controllers participating in data sharing arrangements. Existing ICO guidance is not clear as to when each Controller should be responsible for issuing a fair processing notice, nor the extent to which a Controller can rely on the fair processing notice issued by the party initially collecting the data. If the Controller collecting the data initially covers off the sharing of personal data and purposes of processing in their Article 13 notice, there does not appear to be any merit for the Controllers who subsequently receive the data to then issue an Article 14 notice.

There is a danger that the data subjects may receive a number of notices from organisations who they have no relationship with. This could confuse and potentially worry data subjects who are likely to only expect contact from the Controller they have a direct relationship with. This is particularly true where a Controller may receive basic personal data from another Controller, but the data processing activity conducted by that Controller will have no impact on a data subject. For example, witness details to an accident may be shared with an insurance company following an accident, and it may never be necessary for the insurance company to contact that witness.

The Article 14 requirements are not clear in the Code of Practice itself, and existing guidance on the ICO website is not as detailed as it could be. The inclusion of specific examples would be very helpful. It will be important to understand when an Article 14 notice must be provided within data sharing arrangements, and to provide clear examples as to what would be 'disproportionate effort.'

Q7 Has the draft code sufficiently addressed new areas or developments in data protection that are having an impact on your organisation's data sharing practices?

Yes

No

Q8 If no, please specify what areas are not being addressed, or not being addressed in enough detail

Q9 Does the draft code provide enough clarity on good practice in data sharing?

Yes

No

Q10 If no, please indicate the section(s) of the draft code which could be improved, and what can be done to make the section(s) clearer.

The Code of Practice would benefit from clearer guidance as to what checks should be implemented prior to any data sharing where automated decision making is present. An example focussing upon what organisations need to consider before sharing data where machine learning or automated decision-making has taken place would be helpful.

The Code of Practice also makes a statement on page 51 which does not feel workable in practice. The Code of Practice advises that, *'In a data sharing arrangement it is good practice to provide a single point of contact for individuals, which allows them to exercise their rights over the data that has been shared without making multiple requests to several organisations. However, they are permitted to choose to exercise their rights against any controller they wish.'* Where more than one Data Controller is involved in sharing of personal information, contact points are provided for individuals to contact each Controller to fulfil data subject rights which that Controller is responsible for. A single point of contact would complicate arrangements and potentially hinder the data subject receiving a direct and timely response to their request.

On page 26, the Code of Practice advises that Joint Controllers should, '*make essence of agreement,*' available to data subjects. Clearer guidance as to what the ICO expects Controllers to include when communicating the '*essence of agreement*' to data subjects is needed, as it is unclear what level of detail is required. An example as to the type of information and level of detail required would be useful.

Q11 Does the draft code strike the right balance between recognising the benefits of sharing data and the need to protect it?

Yes

No

Q12 If no, in what way does the draft code fail to strike this balance?

Q13 Does the draft code cover case studies or data sharing scenarios relevant to your organisation?

Yes

No

Q14 Please provide any further comments or suggestions you may have about the draft code.

Whilst the case studies and data sharing scenarios are useful, more private sector case studies would be beneficial. Examples included in the Code of Practice and Annex D are very public sector focussed. Greater use of private sector examples throughout the Code of Practice would really bring the guidance to life, particularly if focussed on developments in Artificial Intelligence and Machine Learning.

Q15 To what extent do you agree that the draft code is clear and easy to understand?

- Strongly agree
- Agree
- Neither agree nor disagree
- Disagree
- Strongly disagree

Q16 Are you answering as:

- An individual acting in a private capacity (e.g. someone providing their views as a member of the public of the public)
- An individual acting in a professional capacity
- On behalf of an organisation
- Other

Please specify the name of your organisation:

Direct Line Group

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