

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?

p34: Documentation. Aside from the record of processing activities, records of consent and breaches the code indicates the requirement 'to document other things' but gives no practical guidance on what acceptable or appropriate documentation is likely to be.

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.

pp16: the reference to 'sharing data with employees' is unhelpful given the definition of sharing between controllers.

pp17: the example of a retailer providing payment details to a payment processing company is likely to be a controller – processor arrangement; the code states that controller – processor processing (that fall within the scope of GDPR, Article 28) fall outside the scope of the code.

pp28 - 29: the list of information governance arrangements overlaps significantly with the considerations on pp26 – 27. These sections could usefully be simplified for clarity, particularly because the code does not include a template data sharing agreement. Organisations will therefore have to rely on close reading of this section to ensure their agreements are compliant.

pp73 – 76: the title implies a far wider scope for the section than indicated by the examples of organisations involved. It is likely that much data sharing will involve personal data from databases.

pp77 – 78: the order of these bullets is not intuitive. The ninth bullet – not sharing data unless there is a compelling reason to do so – provides a more over-arching principle than others before it, e.g. default settings.

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.

pp 80-81 Data sharing in an urgent situation or emergency: the GDPR notes that a controller can also be a natural person. Many public sector authorities have lawful cause to share personal data about individuals with family members when personal emergencies arise, such as a university student being taken to hospital (vital interests); or in extreme cases a person going missing. The code is silent on data sharing in such circumstances, notably when the impact may affect the personal life of family members. Clarity on data sharing in such emergency circumstances is important to help all individuals concerned.

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:

Scottish Higher Education Information Practitioners Group

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