

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?

No

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

The sharing of personal data for research purposes in the case study on page 100 is unclear and should clarify whether consent is required in that example or not, rather than say "the school might wish to obtain parent' consentbut other lawful basis would be available to it". A further clarification on the requirements to sharing data for research purposes between the NHS and research institutes e.g. Universities would be useful.

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?

Some areas need more detail, for example when Data Sharing Agreements (DSAs) should be used and when they should not be used, and examples of DSA formats.

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

While the draft code states that it is good practice to have DSAs in place and sets out benefits of the DSAs, it lacks clarity on when DSAs should be used and when not, and if used what format they could take.

The draft code mentions that a DSA should contain reasons for sharing etc. If the organisation already keeps a record of processing activities and has adequate privacy notices in place, it would be a repetition to include this information in DSAs? It would also be onerous to add diagrams in DSAs, unless this was part of a process relating to a specific data sharing process or procedure. For this reason, as also mentioned below, an example of the different types DSAs would be helpful.

The draft code states there is no formal set format for a DSA and it can take a variety of formats depending on the scale and complexity of data sharing. Does this mean that there may be situations where a DSA is not necessary but a 'common sense' procedure that insures the data sharing complies with data protection law requirements is sufficient? An example of DSAs and situations where these can be used would be useful.

The draft code mentions that the DPO "should be closely involved from the outset in any plans to enter into a data sharing arrangement". This would be onerous in large organisations.

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.

More clarity is needed on situations where DSAs are necessary or alternative ways of demonstrating accountability especially where data sharing is on a routine basis. The guidance should make it clear the precise legal requirements for sharing data, and then separately, what the ICO would consider to be best practice and how sharing personal data can be documented in an alternative manner, and be legal compliant.

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.

The draft code is very repetitive, which has led to a very lengthy document; there is a risk that people may miss some of the important parts when used as a reference.

Sharing personal data for research in the NHS and University sectors has not been adequately covered.

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 or the public)
- An individual acting in a professional capacity
- On behalf of an organisation
- Other

Please specify the name of your organisation:

The University of Birmingham

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