

ID. Date of interview
date 11/02/20

ID. Time interview started
start 12:10:37

ID.end Completion date of interview
Date 11/02/20

ID.end Time interview ended
13:12:50

ID. Duration of interview
time 62.22

new case

ICO consultation on the draft right of access guidance

Q1 Does the draft guidance cover the relevant issues about the right of access?

Yes

No

Unsure / don't know

If no or unsure/don't know, what other issues would you like to be covered in it?

Q2 Does the draft guidance contain the right level of detail?

Yes

No

Unsure / don't know

If no or unsure/don't know, in what areas should there be more detail within the draft guidance?

More detailed guidance for organisations required on several areas, particularly on how to respond to complex and burdensome SARs (see response to Qs 4, 6 and 8 for more detail).

Q3 Does the draft guidance contain enough examples?

Yes

No

Unsure / don't know

If no or unsure/don't know, please provide any examples that think should be included in the draft guidance.

See response to Q4 and 8 for more detail.

Q4 We have found that data protection professionals often struggle with applying and defining 'manifestly unfounded or excessive' subject access requests. We would like to include a wide range of examples from a variety of sectors to help you. Please provide some examples of manifestly unfounded and excessive requests below (if applicable).

As DPO the organisations we support often come to us with burdensome access requests from former/disgruntled employees. Scenario one: an employee submitted a SAR prior to agreeing settlement terms, then agreed to withdraw the SAR for a benefit (although he did not 'offer' as per the guidance, to do this, he agreed to it and ultimately it was part of the settlement/exit deal). He then resubmitted the exact same SAR a couple of weeks after receiving his settlement payment and signing the settlement agreement. It would be useful to understand if an organisation can rely on the 'excessive' reason or if this individual can be deemed 'malicious' in intent in these or similar circumstances. Scenario two: it would be useful to understand where an employee has agreed settlement terms, compromising all rights against the company/employees etc, the extent to which an organisation can rely on a 'malicious intent' defence on the basis that the SAR has been submitted purely for the purpose of causing disruption - in one situation that we encountered upon being asked to clarify his request, an individual specified that his purpose for submitting the SAR after he had signed a settlement agreement and been paid was essentially 'to sue' the organisation. The legal advice was that the settlement agreement was watertight, so the scope for litigation was nonexistent, therefore we concluded that as his stated purpose could not be achieved, the purpose must have been malicious/to cause disruption (this was also supported by the individual's behaviour).

Q5 On a scale of 1-5 how useful is the draft guidance?

1 - Not at all useful	2 – Slightly useful	3 – Moderately useful	4 – Very useful	5 – Extremely useful
<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Q6 Why have you given this score?

There are some areas that we would have liked to have seen clarified. On the whole, we feel that the new guidance is not particularly sympathetic to small/med sized businesses who do not potentially have the resources to compliantly deal with a subject access request which relates to thousands of documents in a timely manner. Whilst we recognise the importance of upholding individual rights, we feel that, based on recent experience it should be recognised that individuals and their advisers are becoming more adept at using the SAR process to frustrate an organisation and cause inconvenience, which is not within the spirit of the GDPR legislation.

Q7 To what extent do you agree that the draft guidance is clear and easy to understand?

Strongly disagree	Disagree	Neither agree nor disagree	Agree	Strongly agree
<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>

Q8 Please provide any further comments or suggestions you may have about the draft guidance.

Further to reading this guidance the outstanding questions we have are as follows: - p.30 clarifies that individuals are entitled to their PD rather than copies of documents, therefore would it be acceptable for an organisation to supply an excel spreadsheet (for example) with the personal data extracted from the documents in question? this would be helpful where a SAR search throws up several thousand hits. - see above re question regarding the effect signing a settlement agreement might have on an organisations ability to infer that a data subject's intentions are malicious. - the new guidance appears to deliberately omitted a line from v.1.2. (p.28) which specifies that where a controller asks a data subject to clarify the scope of a SAR they 'need not comply with a SAR until they receive it'. Has this been deliberately withdrawn? This was quite a useful tool for organisations when receiving a SAR which relates to several thousand documents. - it would be useful to have more information about when an organisation is able to rely on 'management information' - the only example in the new guidance relates to a redundancy scheme which appears to place the threshold very high - what about other sensitive commercial information, customer lists etc, which a former employee may be able to exploit?

Q9 Are you answering as:

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

Please specify the name of your organisation:

What sector are you from:

Data Protection Officer - Lawpoint

Q10 How did you find out about this survey?

- ICO Twitter account
- ICO Facebook account
- ICO LinkedIn account
- ICO website
- ICO newsletter
- ICO staff member
- Colleague
- Personal/work Twitter account
- Personal/work Facebook account
- Personal/work LinkedIn account
- Other

If other please specify: