ID.date	Date of interview 12/02/20
ID.start	Time interview started 13:52:32
ID.endDate	Completion date of interview 12/02/20
ID.end	Time interview ended 13:53:51
ID.time	Duration of interview 1.32

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Q1 Does the draft guidance cover the relevant issues about the right of access?

- [x] 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Q2 Does the draft guidance contain the right level of detail?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If no or unsure/don't know, in what areas should there be more detail within the draft guidance?

The draft guidance does not cover what is meant by “reasonable to disclose” sufficiently. Since reasonableness is a variable concept, I think the “What should we do if the request involves information about other individuals?” in step 2 (“is it reasonable to disclose without consent?”) should be much more informative. When dealing with requests, my colleagues and I differentiate between those in a senior position and those in junior positions when deciding if the information is disclosable. For instance, if you have a more junior position, and you are not expressing information in a professional capacity, you have a greater expectation of privacy. For those in more senior positions, statements made by virtue their senior role in correspondence which is held by the organisation, may have a greater impact on the data subject than the more junior staff members. In which case, we think this should be disclosed (left unredacted) because the data subject has a greater interest in learning that information as it will have impacted them professionally. The guidance should have more practical guidance on how to treat various position holders within organisations and whether this would change the presumption of reasonableness. This is somewhat covered for health and social workers in Schedule 2 of the DPA 2018, but I think it needs to be interpreted for a more corporate work space. Furthermore, we have encountered many occasions where a junior employee has expressed an opinion in an email or some form of correspondence. Since the opinion is personal data in itself (correct me if I’m wrong), would the opinion need to be redacted or the identity of the third party who expressed the opinion? Should disproportionate effort ever be included in a consideration of reasonableness? If the third party in the DSAR results is mentioned a significant number of times, but is perhaps not particularly integral to the requester’s information and is more junior in the organisation, can the fact that the amount of time that would be spent to ensure their privacy is protected be a persuading factor in leaving their name unredacted? The guidance does explain the basic principles of legal and litigation privilege, but it takes further research to fully understand how these concepts work in practice. The prejudicial aspect of litigation privilege has proved to be a difficulty for my colleagues and I in the past. The ICO should provide further guidance on the time periods necessary to consider when applying this exemption because litigation could be started at any time by any interested party. Disclosure of certain information may inform a letter before action. Litigation privilege also includes this concept of the ‘litigation being in contemplation’ – the guidance should adress to what extent does this apply to DSARs? Should both the controller and the data subject be aware that litigation may arise as a result of the information contained in the DSAR or can the fact that one party may be considering it be enough to warrant a restriction of access? My firm would particularly benefit from some very specific examples as opposed to the principle-based approach that seems to be taken. I would appreciate some anonymised examples from past cases where redactions have been removed and/or applied. Another area that has proved a difficult conflict in the past, is the ‘serious harm’ test which is, practically speaking, vaguely unworkable when applied to third parties. To what extent can a controller request a doctor’s note about a third party’s mental state when they have no strict legal basis (from Article 9 GDPR as it would be classed as special category data) to access a note from a third party’s doctor? This reliance on a medical professional could perhaps get in the way of common sense. For instance, where you are dealing with a requester who has allegedly

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 answer to Q2 above – I think more practical examples regarding email correspondence within organisations should be included as this, from my experience, is likely the most common type of source used in DSAR responses.

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).

Where the requester is asking for every email containing their personal information over the course of their employment. I think it should be a pre-requisite of all DSAR requests that the controller is allowed to ask the requester what they are attempting to achieve by making the request. I understand that the right of access should not be impeded but think that perhaps the 30-day countdown should not start until the requester had given a reason for the request. This can be broad if the request is intentionally broad. But I think it would minimise the number of requests made just to cause an issue for compliance teams in organisations.

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
○	○	☑	○	○

Q6 Why have you given this score?

While it provides useful incite into the right of access and the reasons for it as well as how it is applied in practice, I am still left with questions on how to best serve requesters. I think the guidance should be updated with a view from previous complaints/queries the ICO has received regarding the right of access should be incorporated. Many times, when my team has undertaken a redaction exercise we are often left referring to the guidance but not quite finding the answers we are looking for. I think it needs more practicality and examples of how you've interpreted the word of the Data Protection Act as opposed to just reciting it.

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
○	○	○	☑	○

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

The wording is clear and both the layout and structure are methodical.

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:

Legal

Q10 How did you find out about this survey?

- ( ) ICO Twitter account
- ( ) ICO Facebook account
- ( ) ICO LinkedIn account
- (x) 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: