

ID. Date of interview  
date 12/02/20

ID. Time interview started  
start 11:49:37

ID.end Completion date of interview  
Date 12/02/20

ID.end Time interview ended  
14:38:02

ID. Duration of interview  
time 168.42

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Q1 Does the draft guidance cover the relevant issues about the right of access?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

In general, yes, the draft guidance does cover the relevant issues about the right of access. The draft guidance is welcomed and it will prove to be a useful practical tool for those handling data subject access requests (DSARS). It provides much needed clarification of certain points e.g. examples of factors that may, in some circumstances, add to the complexity of a request. The draft also usefully reinforces the need for adequate information management systems and effective records management policies.

Whilst the guidance does provide useful detail, there are several issues facing organisations which should be considered for inclusion:-

1. Requests from third parties The financial sector has encountered increased volumes of DSARS from claims management companies, accompanied with authority to act from the data subject. Whilst the guidance touches upon these types of requests in the section on bulk requests (consider each individually), we wish to make the ICO aware of the following issues:- We are keen to ensure that the data subject truly understands the nature of the authority provided and the extent of the information that would be disclosed. The guidance touches on this by stating that "if you think an individual may not understand what information would be disclosed, and in particular, you are concerned about disclosing excessive information, you should contact the individual first to make them aware of your concerns". Whilst this aspect is touched upon, the guidance could be expanded to address concerns, in particular, where the third party has specifically stated not to contact the data subject. These requests are often marked as DSARS and use standard letter templates. Having sought clarity of the scope of these directly with these third parties, a number of these have been established as standard "business as usual requests" for information rather than DSARS. If clarity had not been sought directly, excessive personal information would have been released. A number of these requests have been clearly issued by these third parties to a range of organisations to determine if personal information is held, with little or no detail in the initial request.
2. Seeking clarity on time limit The draft guidance states that you may ask an individual to specify the information or processing activities the request relates to before responding to

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?

In general, yes, the guidance does contain the right level of detail. There is a good combination of guidance, practical examples and signposting (to relevant provisions/further reading). That said, in some areas, greater detail would be welcomed for the following areas:-

1. Complex Requests There is a good level of detail here but the ICO may want to consider if needing to seek legal advice may be a relevant factor that may, in some circumstances, add to the justification for classifying a request as complex.
2. Charging a fee The guidance does provide some detail on charging a fee but it would be helpful for a worked example here to provide some additional clarity.
3. Efforts to find information The guidance states that there is a high expectation to provide information in response to a DSAR and you should make extensive efforts to find and retrieve the requested information. It would be useful to have more detail in this section in terms of reasonableness and proportionality. In a scenario where a DSAR has been received from an employee or former employee, retrieval of emails may produce a large volume of "business as usual" emails, in addition to information relating to the requestor. When the employment period goes back a number of years, a request with large scope can be impracticable to administer due to the volume of such emails, often numbering thousands and requiring detailed analysis.
4. Manifestly unfounded or excessive requests As currently drafted, the guidance focuses on when the request might not be considered excessive. It is noted that Q4 of this consultation is seeking some examples to be included and this is welcomed.
5. Requests for information about children or young people The guidance states that in Scotland, a person aged 12 years or older is presumed of sufficient age to exercise their right of access but whilst this does not apply in England, Wales and Northern Ireland, this would be a reasonable starting point. We would welcome more clarity on this. It is not clear what a realistic expected appropriate approach would be to assessing the maturity of a child in England, Wales and Northern Ireland. For "borderline cases" should additional detail be obtained to inform the assessment or should we only consider the information known to us (which may be limited and inconclusive)? What does the guidance mean by "in Scotland" in this instance?

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.

In general, yes, the guidance does contain a reasonable number of examples; however, further examples would be welcomed in the following scenarios: 1. Third party requests The example provided relates to an individual acting as a third party. The reality is that third party requests from companies constitute the majority of DSARS received and it would be useful to have an example of this, in particular taking account of the issues mentioned in our response to question 1. 2. DSARS from employees/former employees The draft guidance does contain some such examples and these are welcomed. It would be helpful for some further examples in terms of the applications of exemptions, for example, where there are on-going negotiations between employee and employer in the context of a settlement agreement. Also, useful examples would be in the context of emails/documents containing commercially sensitive data and advice provided by HR professionals to managers. 3. Charging a fee The guidance does provide some detail on charging a fee but it would be helpful for a worked example here to provide some additional clarity. 4. Manifestly unfounded or excessive It is noted that this guidance is seeking examples which we hope will then be reflected in the final version of the guidance note.

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).

The examples provided in the draft for manifestly unfounded requests are useful. In terms of excessive requests, we receive requests that have the same or a substantially similar scope, received from different third parties, acting on behalf of the same individual, when a reasonable period has not elapsed. It would be useful to have a practical example in the guidance. There are also circumstances where a request may be made, with a specific scope. Once issued, having considered the information provided, another request may be made, with a different scope. In this circumstance, the request does not repeat the substance of the previous request and does not overlap, but falls in quick succession to the previous request.

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 type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>

Q6 Why have you given this score?

The guidance is a useful, practical tool for handling DSARS and will be useful to a very broad audience, rather than being sector specific. The guidance clearly calls out that each request must be dealt with on a case-by-case basis, looking at the circumstances of each case.

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 type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>

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

The guidance in some places is not clear whether additional information should be sought or we should only act on the information we have, see point 5 in response to Q2. Another example being, as a non-health professional we are restricted from disclosing health data in response to a DSAR unless we have obtained an opinion from the appropriate health professional that the serious harm test is not met – is there an obligation to seek such an opinion in response to a DSAR? For example, we may have medical information in relation to an individual who has lost mental capacity where a lasting power of attorney has come into effect, where we can't be satisfied that the health data has already been seen, or is known by, the individual. Further clarity on the practical operation of this restriction (for non-health professionals) would be useful. Finally, it would be useful if the finalised guidance was supported by blogs, webinars etc. to ensure a clear understanding of the key points raised by the guidance. The guidance is welcomed and will prove valuable to data protection professionals.

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:

Prefer not to say

What sector are you from:

Financial

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: