

ID. Date of interview
date 12/02/20

ID. Time interview started
start 14:33:11

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

ID.end Time interview ended
15:10:10

ID. Duration of interview
time 36.98

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Q1 Does the draft guidance cover the relevant issues about the right of access?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

1. Art 15(4) provides that the right to obtain a copy of the personal data undergoing processing shall not adversely affect the rights and freedoms of others. Recital 63 explains, in the context of remote access, that the rights and freedoms of others can include trade secrets, intellectual property and copyright. Some explanation and guidance would be helpful; 2. In the section 'do we need to explain the information provided' (p.32) - but possibly also elsewhere - some guidance on providing 'meaningful information about the logic involved [in automated decision-making, including profiling] as well as the significance and envisaged consequences of such processing' (Art 15(1)(h)) would also be welcome.

Q2 Does the draft guidance contain the right level of detail?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If no or unsure/don't know, in what areas should there be more detail within the draft guidance?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 trade off between clarity, certainty and detail is difficult. For non-specialists the guidance is probably the right level of detail. But the level of detail is such that the contents of the guidance would be well-known for most data protection professionals. It would be useful if the ICO were able to stress test the guidance with data protection professionals to find out where it breaks down and in particular to expose those areas where the Board, the ICO or wider jurisprudence does not yet have a clear, operationalisable view. It is these grey areas that are likely to be of most concern to professionals and where, whilst not looking for an answer it is not possible to give, they might welcome recognition of the uncertainty and of the criteria and processes (including documentation of their own thinking) that could be followed. For example, in considering the question of what information to supply (p.29) there is clearly a distinction that could be drawn between personal data, relevant context and irrelevant context. Where to draw this line is not clear. Examples might help but guidance could include some discussion of the dilemma. Many other areas of uncertainty will arise in particular areas. To choose only one, lawyers may well consider that the concept of the duty of confidentiality owed by a professional legal adviser to his client could be elaborated. What is meant by the duty of confidentiality (is it a standard defined by professional practice and regulation or by the law of confidence)? And what constitutes 'a professional legal adviser'? Are any particular qualifications, experience or recognition by a professional body or authorisation to practise required? Is remuneration relevant?

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.

Examples are extremely helpful. Would it be possible to supplement the guidance regularly with additional examples - perhaps suitably anonymised examples from the ICO's on-going case handling experience, cases and opinions and its developing thinking? FAQs (although also much less frequently and even obscure questions and never asked questions) could also help. As an example of a quick Q&A, in the discussion of the crime and taxation exemption (p.46) are controllers under any obligation to let data subjects know that certain information (though not necessarily what information) has been withheld? If not, how can they challenge, and the ICO oversee, an incorrect decision?

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).

No views except that many data controllers will seek to exploit this exemption beyond its limits and should be discouraged from doing so.

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?

It is good guidance and will provide much help. It is only in relation to those difficult, grey areas that it falls short.

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

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

Is it worthwhile to consider the basis on which consent to being named (as a third party) in a SAR can be treated as 'real' consent. The seniority of the individual has some relevance here. 'Consent' from a junior member of staff may not be 'real' consent. Moreover, in considering whether it is reasonable to disclose without consent it may be relevant, in those cases where an organisation does not have a DPO, who is making the decision about reasonableness. A senior member of staff may effectively be deciding in relation to themselves whether or not the organisation should disclose personal data about them. Should there not be a presumption that the more senior the person the more appropriate disclosure would be? The more junior, the less appropriate?

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

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: