ICO consultation on the draft right of access guidance

The right of access (known as subject access) is a fundamental right of the General Data Protection Regulation (GDPR). It allows individuals to find out what personal data is held about them and to obtain a copy of that data. Following on from our initial GDPR guidance on this right (published in April 2018), the ICO has now drafted more detailed guidance which explains in greater detail the rights that individuals have to access their personal data and the obligations on controllers. The draft guidance also explores the special rules involving certain categories of personal data, how to deal with requests involving the personal data of others, and the exemptions that are most likely to apply in practice when handling a request.

We are running a consultation on the draft guidance to gather the views of stakeholders and the public. These views will inform the published version of the guidance by helping us to understand the areas where organisations are seeking further clarity, in particular taking into account their experiences in dealing with subject access requests since May 2018.

If you would like further information about the consultation, please email SARguidance@ico.org.uk.

Please send us your response by 17:00 on **Wednesday 12 February 2020**.

Privacy statement

For this consultation, we will publish all responses received from organisations but we will remove any personal data before publication. We will not publish responses received from respondents who have indicated that they are an individual acting in a private capacity (e.g. a member of the public). For more information about what we do with personal data see our privacy notice.

Please note, your responses to this survey will be used to help us with our work on the right of access only. The information will not be used to consider any regulatory action, and you may respond anonymously should you wish.

Please note that we are using the platform Snap Surveys to gather this information. Any data collected by Snap Surveys for ICO is stored on UK servers. You can read their Privacy Policy.

Q1 Does the draft guidance cover the relevant issues about the right of access?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

The Archives and Records Association of the UK and Ireland (ARA) considers that in general the draft guidance is clear and comprehensive. However, there is at least one significant gap in the chapter on exemptions, which starts on page 46. This chapter explains what are considered the main exemptions but completely omits any reference to certain exemptions permitted under GDPR Article 89 and specified in Schedule 2 part 6 to the UK Data Protection Act 2018. The exemptions for processing for the purposes of research and for archiving in the public interest are extremely important to members of ARA. All parties - data controllers, data processors, individuals employed by them, and data subjects - should be made aware of the limitations on rights of subject access under these provisions and have access to guidance on how and in what circumstances they may apply. ARA's preference would be for some guidance to be included in this chapter, but at the very least the exemptions which are not described in detail should be listed so that their existence is clear.

The other significant gap relates to the approach needed in some cases. There are times when the context and purpose of the request are relevant to how it should be handled, including what information is provided and how it is provided. An impersonal approach will work for most requests but for the few involving vulnerable requesters something more empathetic may be required that takes account of personal circumstances. One example is cared for children, who subsequently seek details of their time in care to add to their own memories so as to create their life history. For them, excessive redaction with minimal explanation of why it was needed will have an ongoing effect. Those handling such requests need to ask themselves whether details really must be redacted, given the context of the request and the impact of the response on requesters and, if so, explain the reasons.

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, but it would be useful to include more internal cross-references. For example, on page 23 under 'Can we clarify the request' we are told that any delays caused by awaiting the clarification does not affect the timescale for response. However, there are slightly different provisions for unstructured manual records, on page 59, and a cross-reference to them would be helpful.

On page 37 there is text on exemptions under 'What are exemptions and how do they work'. Cross-references to the separate chapters on exemptions and on special cases are needed here.

Also, there are several references to retention and deletion policies but we suggest you add something about processes to apply them. Having the policies is one thing, applying them consistently and documenting their application is also necessary.

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 you think should be included in the draft guidance.

ARA recommends addition of examples covering the human angle, ie the approach that may sometimes be needed, as noted at Q1.

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).

ARA has none to add.

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?

The draft guidance is admirably clear but please note ARA's response at Q1 and Q2 in particular.

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 guidance is aimed at DPOs and others responsible for data protection and is fit for purpose, notwithstanding ARA's other comments. However, many data subjects will seek guidance too and ARA hopes you will provide companion guidance aimed at the general public.

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:

Archives and Records Association of the United Kingdom and Ireland (ARA)

What sector are you from:

Archives and records and information management

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

Thank you for taking the time to complete the survey.