

## 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 The draft guidance also explores the special rules involving certain categories of personal data, how to deal with requests involving the personal data of others, and the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We are running a consultation on the draft guidance to gather the views of stakeholders and the public.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](mailto: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Q1 Does the draft guidance cover the relevant issues about the right of access?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?

From our perspective the guidance does not sufficiently cover the most relevant/pressing issue about the right of access, which is the management of/response to SARs stated in very broad terms which cover a very large volume of material. We consider that there is a need in particular for more guidance on applying the "manifestly unfounded or excessive" exemption.

The major issue for us in managing SARs compliance is the "all my personal data" type SAR, especially (but not exclusively) when submitted by a current or former staff member.

*Background:* As a university we are a large organization and accept the need to devote significant resource to SARs compliance. However universities are very data-rich/data-heavy environments, and also very complex data environments. The nature of the HE sector and the way in which universities are structured mean that staff members will be simultaneously involved in teaching and associated activities (e.g. marking and assessment), bringing them into contact with students, pastoral support for students, research activity (which is often carried out collaboratively with individuals in other universities and may involve contact with individual members of the public who are research participants) and the activities involved in running the organization (administration, planning, quality control, people management). This means that searches for an individual staff member's personal data will locate information of many different types, being processed by different people for different purposes and, crucially, in a high proportion of instances linked to or surrounded by third party personal data. We think that the extent of third party data associated with data subject personal data would be significantly more than in most other settings. In addition, a substantial proportion of that personal data would be of a nature that can't automatically be disclosed in response to a subject access request (e.g. student data, junior staff data, staff data relating to confidential matters, possibly research participant data). Email accounts in particular will contain large amounts of student and other staff data, and due to the way that universities are structured and operate in practice a very significant proportion of material is processed through and held in Outlook accounts.

*Problematic requests:* Each year we process several requests from current or former staff members for “all my personal data held by the University”. Identifying where this data is held and why we are processing it is not in itself difficult, but the process of extracting it from systems, reviewing it and processing the disclosure is very resource-intensive. In general there will be 1000s of items within email accounts which fall within the scope of this type of request, including attached documents of many different kinds as well as messages. For the reasons described above they include substantial third party personal data (staff, students and others). Often the subject access request is made in the context of grievance procedures and employment claims, and the underlying purpose is to find any comments or information which could be seen as supporting aspects of the grievance/claim, so the requesters are not amenable to requests to identify specific information or processing they are interested in.

To give a flavour of the scope of these requests, to comply fully with the request would have required us to search and extract material from more than 400 staff Outlook accounts, in addition to providing material in HR files and files relating to the requester’s formal grievance. Even where such requests are limited to a specific time frame, the breadth of the scope and the nature of our data processing means that searches tend to retrieve several 1000s of Outlook items and documents which need to be reviewed so that the third party personal data within them can be considered and removed/redacted where appropriate.

We would emphasise that the difficulty with these requests is not the volume of material as such, but the volume combined with the nature of the content, particularly around third party data.

We have applied the “excessive” exemption to some of these requests on the basis that the following factors are relevant:

- The fact that the requester, as a staff member/former staff member is already aware of the type of processing of their personal information which is evidenced in the emails. The core purpose of the subject access right is to ensure that data subjects are aware of the nature, extent and purpose of the processing of their personal data which is being carried out by a data controller. Staff members already have a good understanding of the types of information that would be routinely processed by email in relation to them in their role in the organization, and are of course aware of grievance/disciplinary processes in which they were involved and type of data processing undertaken for this;
- The nature of the material requested, specifically emails (and their attachments) held within individual staff email accounts. This material will include:

- significant amounts of emails of which the requester was an original sender or recipient, which means that they will already have seen the material in the email and any attachments;
  - significant amounts of personal data of individuals other than the requester; and
  - where the scope of the request included communications and documents relating to a formal grievance process and investigation, the third party personal data will include information provided in confidence which is of a sensitive nature. Information may also be of a sensitive nature where it relates e.g. to the performance or personal circumstances of students or to performance or personal circumstances of other staff which are referenced in emails/documents in the course of people management or administrative activity.
- The scope of the searches which have to be undertaken to identify material within the scope of this sort of request and prepare materials appropriate for disclosure. Initial searches for this type of request tend to identify high numbers of emails and/or attachments, and these then need to be reviewed to identify those which do contain the requester's personal data and to remove third party personal data where required;
  - Taking these factors into account, the response to this type/scope of request is likely to provide the requester with a very limited amount of new information about the scope of their personal data processed by the University and the types/purposes of that processing, which would be disproportionate to the work and resources involved in complying with the response.

To illustrate the proportionality point, in the recent SAR referred to above, we processed the request in part and on the basis that we would not disclose material that had already been seen by the requester (as they were an original sender or recipient). The result was that the volume of material (i.e. number of pages) actually disclosed to the requester was estimated as being less than 20% of the total amount of material that was identified through initial searches and which then had to be reviewed. Even within that disclosure bundle (i.e. within the 20%) there was still a substantial amount of material which had previously been seen by the requester, but which was disclosed as it was part of a chain of emails, or as an enclosure or attachment to materials, which had not previously been seen by the requester in its entirety.

We would welcome guidance which engages with these issues and indicates whether/when the use of the “excessive” exemption on this basis would be supported and the expectation with regard to disclosure of material which has already been seen by the requester or which represents a type/purpose of processing already known to the requester.

In addition, in cases such as the one described above, rather than refusing to comply with the request at all we have taken steps to provide a proportionate response, applying the requester’s views on which aspects of the request/categories of their personal data are a particular priority. It would be helpful to have guidance on whether this is appropriate.

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 guidance provides helpful new guidance in certain areas. We welcome the more detailed treatment of third party personal data and detail in other areas, such as deleted items, information held on personal computers and devices etc. We also welcome the detail on what constitutes “complex” request.

However other areas would benefit from more detail. In particular, as outlined above, we would welcome further detail on the application of the “excessive” exemption. In addition, the guidance on specific exemptions does not add much to the plain meaning of the words in the legislation.

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.

Please see the example given above in relation to "excessive" requests.

We would find it helpful to have more examples of how to deal with third party personal data. The additional detail in the guidance recognizing the difficulties in processing requests which include significant personal data is helpful. However it would be useful for the guidance to address the reality that many SARs are made where there is or has been an internal complaint/ grievance/disciplinary process, and to confirm where the ICO accepts that duties of confidentiality to other employees, students, third parties etc. may arise in those processes.

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).

See above.

The guidance given at the moment on "excessive" could be clearer in itself. For example, we have experienced requesters arguing that it only applies where one of the first set of bullet points applies. We don't believe this is the intended scope/effect of the guidance, but it would be very helpful if this could be clarified. The statement that volume of material is not necessarily enough to make a request excessive is unhelpful in the absence of more explanation of when/how/on what basis the volume of material might be relevant at least to some extent.



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?

As noted above, the guidance is very useful on some points, but does not tackle the central issue for us as an organization. We are committed to respecting data subject rights and accept that sometimes significant resource is required to comply with the subject access rights. However we consider proportionality and the overall purpose of subject access rights are important concepts to be considered in the context of "manifestly unfounded or excessive". There are some areas where the guidance "adds value" and others where it doesn't.

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.

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:

Bournemouth University: this response is made on behalf of the University's Legal Services team and Information Office, not the University as a whole.

What sector are you from:

Higher education

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.

