

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 The draft guidance also explores the special rules involving certain categories of personal data, how to deal with requests involving the personal data of others, and the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We are running a consultation on the draft guidance to gather the views of stakeholders and the public.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Q1 Does the draft guidance cover the relevant issues about the right of access?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

Q2 Does the draft guidance contain the right level of detail?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 needs many more examples, and it would be helpful if those examples could be sector specific as this would provide a greater level of understanding of proportionate action.

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.

See above comment. We are a large public authority, please contact us separately if you would like us to provide some real-life examples around specific sections of the text.

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).

Despite the high volume and complexity of requests we receive, this is not something that we, as a public authority, causes us great concern. However, we have experienced occasions when applicants wish to receive 'all information held' about them and are unwilling to refine their request to clearly reference the information they actually wish to access. While we try and assist all applicants, these type of requests may fall within the grounds of excessive in certain (very few) cases, particularly where they are repeated and frequent and the level of personal data captured within the broad request is relatively small

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

- The guidance is clearly expressed and easy to follow and, on the whole, easy to understand. However, more complex sections, particularly exemptions, would benefit from more examples to create a clearer understanding of the issues involved e.g. the example on page 43 would benefit from more in depth analysis. What if the personal data is of a family member? What is the expectation of confidentiality from the applicant? Different family dynamics will lead to different assessments.
- The advice provided around the applicability of the regulatory exemption appears to be a departure from previous advice on the Data Protection Act 1998.
- The guidance around remote access requires further information and definition around what constitutes a secure system.
- In relation to the information around requests dealing with information about other individuals, the advice around consent needs to align with the GDPR approach. Specifically, if it is reasonable to disclose information anyway, these considerations should take place BEFORE asking someone for their consent. Equally, the guidance would benefit from addressing how consent should reasonably be sought from employees where there is a clear imbalance of power and requested consent may not be considered to be freely given.
- P26 references an example where personal data is stored on personal equipment and addresses scenarios where individuals have and have not permission to use such devices. It would be helpful to cross reference to other guidance specifically around breach management which would need to be initiated if a SAR activity identified non-compliant practice.
- Examples need to be provided of structured and unstructured data.
- We acknowledge that guidance has recently been updated around the need to continue to process a request when clarification has been requested. The new guidance is resource intensive, burdensome, and impractical. For example, in a large authority such as a Council which engages in multiple functions and activities which process personal data, searching across all services and systems (hard-copy and electronic) is excessive in relation to a poorly worded request which can be quickly and easily clarified. If it is not clear what information the applicant wants, it is impossible to look for it, and questionable what benefit is served in terms of public resources in initiated searches immediately based on limited or unclear information. We appreciate that clarification should be sought quickly, and not delayed, or as used as a delaying tactic but the guidance should sufficiently nuanced to enable organisations to respond appropriately to the type of information requests they receive and as a reflection of the type of personal data they hold.
- P53 highlights considerations around consideration of BBC Editorial guidelines etc. Should the Human Rights Act 1998 also be referenced?
- Definitions would be beneficial around the difference between a restriction and exemption.

Q6 Why have you given this score?

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.

In line with other ICO guidance, consideration should be given to including 'key messages' at the beginning or end of each section.

As stated previously, the guidance needs lots more examples.

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:

City of Edinburgh Council

What sector are you from:

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

