

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 The draft guidance also explores the special rules involving certain categories of personal data, how to deal with requests involving the personal data of others, and the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We are running a consultation on the draft guidance to gather the views of stakeholders and the public.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Q1 Does the draft guidance cover the relevant issues about the right of access?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

Q2 Does the draft guidance contain the right level of detail?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?

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.

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).

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

Q6 Why have you given this score?

The draft guidance is relevant to my role, but I've only recorded a return of 'very useful' as the draft merely reflects my current understanding of the obligations place on organisations and subject access rights of individuals.

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

Q8 Please provide any further comments or suggestions you may have about the draft guidance.

I have added comments as an additional page, at the end, as this textbox is too small.

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:

HM Treasury

What sector are you from:

Central Government

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.

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Additional Comments

Page 4: Are individuals only entitled to their own personal data?

Under the right of access, an individual is only entitled to their own personal data. They are not entitled to information relating to other people (unless their data also relates to other individuals). Before you can respond to a SAR, you need to decide whether the information you hold is personal data and, if so, who it belongs relates to.

Comment: To say, '*belongs to*' might be misunderstood to suggest you mean who '*owns*' the personal data (i.e. data controller) and not the data subject. I think '*relates to*' makes this clearer.

Page 15: Can we deal with a request in our normal course of business?

It is important to draw a practical distinction between formal requests for information and routine correspondence that you can deal with in the normal course of business. For example, if an individual requests copies of letters which you have sent to them previously, it is unlikely that you need to deal with this as a formal SAR. You should consider such correspondence on a case by case basis.

Comment: This needs to make clear that although dealing with a request as normal business is permissible, the data controller still needs to be mindful of the requestor's right to their personal data within one month.

Page 40: What should we do if the request involves information about other individuals?

Step 2 – Has the other individual consented?

In practice, the clearest basis for justifying the disclosure of third-party information in response to a SAR is that the third party has given their consent. It is therefore good practice, where possible, to ask relevant third parties for consent to the disclosure of their personal data in response to a SAR. However, you are not obliged to ask for consent. Indeed, in some circumstances, it may not be appropriate to do so, for instance if it would involve a disclosure of personal data about the requester to the third party.

Comment: While I no longer handle subject access requests, I've always been of the view that the making of a SAR should be a private matter (between the data subject and the data controller). For this reason, I would not want to identify a data subject (who has made the SAR) when trying to secure consent from a third party as described above. However, depending on the nature of the request (and the relationship between the data subject and the third party):

- the very act of seeking consent from a third party may (inadvertently) identify the data subject and the fact that s/he has made a SAR (which, I feel, the third party isn't necessarily entitled to know)
- in cases where there is a dispute between the data subject and third party (which the data controller may not be aware of) or the nature of the data subject's relationship with the third party, the data subject may not want a data controller to contact the third party on the basis that, even if attempts are made to anonymise the data subject, contacting the third party and identifying the information in scope of the request will inevitably identify the data subject

- the third party may choose to ask the data controller who the data subject is before making their decision about whether they will provide consent. For example, they may be happy for one person (e.g. such as a close work colleague) to have sight of their personal data, but not someone who they barely know or with whom they may have experienced a difficult or abusive relationship.

I think it would be useful to have clarity on such potential conflicts in this guidance.

Page 40: Management information

An exemption applies to personal data that is processed for management forecasting or management planning in relation to a business or other activity. Such data is exempt from the right of access to the extent that complying with a SAR would be likely to prejudice the conduct of the business or activity.

Comment: If you take the ICO's example:

Example

The senior management of an organisation are planning a reshuffle. This is likely to involve making certain employees redundant, and this possibility is included in management plans. Before the plans are revealed to the workforce, an employee makes a subject access request. In responding to that request, the organisation does not have to reveal their plans to make the employee redundant, if doing so would be likely to prejudice the conduct of the business (perhaps by causing staff unrest before the management's plans are announced).

In this scenario, it is reasonable to assume that by making a data subject *aware* that his/her personal data has been withheld under this particular exemption is likely to suggest to the data subject that there are plans to make employees (possibly him/her) redundant.

I've not had to apply this exemption, but it would be helpful if the guidance explained whether a data controller is required to inform a data subject if it has applied this exemption.