

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 The draft guidance also explores the special rules involving certain categories of personal data, how to deal with requests involving the personal data of others, and the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We are running a consultation on the draft guidance to gather the views of stakeholders and the public.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Q1 Does the draft guidance cover the relevant issues about the right of access?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Q2 Does the draft guidance contain the right level of detail?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.

There should be a few more sector specific examples, in particular relating to local government. See next section for some examples.

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).

You state that organisations should have adequate information management systems given that data protection legislation has been in place since the 1980s. However, you are not considering that faced with ever increasing budget cuts, delivery of front-line statutory services has for decades trumped the upgrade/replacement of systems and databases. Most local authorities have multiple functions (KCC has several hundred separate departments) that are using a multitude of stand-alone legacy systems that don't talk to each other. Imagine the headlines if a local authority said it was spending tens of millions to replace legacy systems to facilitate SARs at the expense of care homes and repairing potholes? KCC does not have a single central database/electronic document management system that can be easily be interrogated using a name or search term and it can often take days to ascertain who may hold a data subject's information especially if the data subject refuses to clarify their request. In fact, if SARs fell under FOIA, we would be relying on section 12 FOIA (exceeds appropriate limit) 90% of the time and that is just to establish if we hold the information!

You say that volume of records alone does not make a request complex. However, subject access requests, especially for social care records can be extremely problematic and labour intensive. Often there are decades of records, both paper and electronic, and information about family members is intrinsically linked making redaction not only difficult but time consuming. Prior to GDPR, one data subject's records (she had been in care since she was a baby and was then in her 20's), took over a year to copy and send out. There is no way that one month is sufficient to locate, collate and prepare records to satisfy most subject access requests involving social care without adversely impacting on front-line services.

Many of the 500+ subject access requests we receive each year appear to just be another weapon in a complainant's arsenal to progress a complaint or dispute that they have with another team or department. One frequent complainant has submitted a number of SARs over the years, not only for her own data, but also for her children's data. The children are now submitting their SARs in their own right as well, but their parent is remaining involved in the children's SARs as she is acting 'on their behalf'. They expect a copy each, often of the same data. These SARs almost always follow a disagreement with one or more of the dozen service units that this family are involved with. Anything that KCC does is met with a complaint, which then is escalated to the ICO or any other regulatory body (ie LG&SCO). An outcome not in the data subject's favour then results in a complaint about the regulatory body. Would this be classed as manifestly unfounded or excessive?

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

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.

The guidance is comprehensive, in plain English and easy to understand. It has reassured us that we are, in the main, interpreting the legislation correctly as we already have in place all the steps you have listed in the "preparing for SARs" section.

We also noticed that this guidance states that data subjects do have a right to "ask for everything you hold about me" but this contradicts your guidance to members of the public on what not to include when making a request <https://ico.org.uk/your-data-matters/your-right-to-get-copies-of-your-data/preparing-and-submitting-your-subject-access-request/>.

Q9 Are you answering as:

- An individual acting in a private capacity (e.g. 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:

Kent County Council

What sector are you from:

Local 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.

