

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 The draft guidance also explores the special rules involving certain categories of personal data, how to deal with requests involving the personal data of others, and the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We are running a consultation on the draft guidance to gather the views of stakeholders and the public.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Q1 Does the draft guidance cover the relevant issues about the right of access?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Q2 Does the draft guidance contain the right level of detail?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

More specific guidance is required in the section on "*Can a request be made on behalf of someone*" particularly at page 12 where it is stated that "*it is reasonable to assume that an attorney with authority to manage the property and affairs of an individual has the appropriate authority to make an SAR on their behalf.*" Based on legal advice and our experience of dealing with such requests for health and social care records, I feel it needs to be clearer that the request is 'on behalf of' the patient/client and even with power of attorney it does not provide unfettered access to someone's sensitive healthcare records. Any access provided should be limited to that information required to manage the individual's affairs and be in their best interests. In the case of sensitive health and social care records, this may be determined by the relevant professional.

In the section on '*can we clarify the request*' surely the time period for responding does not start until we have the necessary information, clarification or context (*see section on information contained in emails*) to allow us to identify and locate the required information / records (as per FOI Act guidelines). There will be circumstances where the request simply cannot proceed without this clarification or context therefore the time limit must be paused / request put on hold?

On page 14 (*if a request mentions FOI*), the 3rd bullet point should include.... (or 3 months if the request is complex).

'*Social Work data*' section makes specific reference to local authorities in Scotland however no reference is made to the circumstances in Northern Ireland where we have a joined up Health and Social Care system; including multidisciplinary teams contributing to the same record.

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.

Given the large volume of sensitive / special category information held by the NHS and the high number of SARs received as a result, I feel there could be more examples that reference health and social care records and associated issues around the release of such records, particularly within the 'Health Data Section' where the request is from a 3rd party (family member) or the records are more likely to contain 3rd party information (e.g. social services records).

In connection with my comment at Question 2 (above) an example about a request for the health records of an adult who lacks capacity would be helpful under the section on "*Can a request be made on behalf of someone*", making it clear that an attorney or personal representative does not have unfettered access but that any access provided must be in the data subject's best interests and limited to what is required to meet to his/her needs.

Some sector specific examples of 'complex' requests (where the timeframe for responding can be extended) would be helpful. Suggestions for 'complex' requests within health and social care could be:

- Significant amount of third party personal data
- Large amount of redaction required prior to release of information
- Large volume of notes held
- Historical information rather than current information
- Records that cross more than one discipline
- Records held across systems or in different formats
- Assessment as to capacity under the Mental Capacity Act required

It could also be made clear in the guidance that resource issues such as staff availability, time and conflicting priorities cannot be used to extend the response timeframe as these issues are not directly related to the request.

Suggest an example regarding 'verbal requests' : e.g. a patient known to a service phones the hospital secretary and asks for a list of dates of attendance or a copy of a letter be sent to him / her to include with an application for benefits. It is ok to accept this verbal request and send such basic information to the known address, or provide this information verbally if there is no doubt about identity; however for more detailed or sensitive information or if you are not sure about the identity of the caller, a more formal request requiring proof of ID may be more appropriate to avoid a data breach.

Page 37 – reference to exemption where "*...it would have a damaging or detrimental effect on what you are doing*" – perhaps include an example regarding HR processes such as a SAR made during an ongoing disciplinary process.

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).

A request for historical Social Care records which run to multiple volumes (e.g.20+ files) and often contain routine daily entries made over many years of care, often by professional staff who no longer work for the Trust / Authority. A more focused request, perhaps with the help of professional staff, would help the applicant to receive important and relevant information that would be of most help in providing a history of their care. This would also reduce the burden on public sector staff (social workers with a heavy caseload) having to photocopy, review and redact many files dating back over years.

Requests for 'all emails about me'. In a large organisation there will be thousands of email users with many emails sent on a daily basis. A employee may have sent, received, been copied into or been mentioned in emails which are not their personal information. More context will help identify relevant information, assisting the applicant and avoiding unnecessary work.

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

Q6 Why have you given this score?

I believe this guidance is well overdue and will be 'very useful' when finalized and issued.

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

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

At the bottom of page 18, should the word be 'unreasonable'?

Page 66 – Health data. It would be helpful if the reference to legislation that deals with requests for a deceased person's records also made reference to the Common Law Duty of Confidentiality and indicated that any such access will be limited and does not provide unfettered access to a deceased patient's confidential health records e.g. "...a third party may, in limited circumstances, be able to access relevant information...."

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:

Western Health and Social Care Trust

What sector are you from:

Health and Social Care (Northern Ireland)

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