

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 The draft guidance also explores the special rules involving certain categories of personal data, how to deal with requests involving the personal data of others, and the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We are running a consultation on the draft guidance to gather the views of stakeholders and the public.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Q1 Does the draft guidance cover the relevant issues about the right of access?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

We would appreciate further guidance about information we are obliged to provide in a subject access request which may put other people at risk.

For example, one of our customers requested confirmation of whether particular staff members had accessed their personal data. Under this guidance we understand we would be required to share this. However, in these circumstances there was a risk to the staff member as a result of sharing this information. The risk was likely and consisted of physical violence.

The advice we were given at the time by the ICO was that we were best placed to make this decision. We agree with this but think it should be referenced in the guidance.

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?

We agree with the level of detail and consider this necessary. However, we prefer how you structure guidance on your website, for example the Guide to the General Data Protection Regulation. We think the Right of Access Guidance would work well in this format where there are headings with summary information and links to more detailed guidance where required.

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.

We think there should be examples wherever there is room for ambiguity or where you are asking organisations to exercise judgment. This will assist us in our decision-making process. Sections we feel would benefit from examples include:

- 'When is a request complex?', particularly around technical difficulties in retrieving the information, and
- 'What does manifestly unfounded mean?', particularly around where a request contains unsubstantiated accusations against employees, and the individual is targeting an employee whom they have some personal grudge.

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).

We have never defined any requests as manifestly unfounded or excessive.

Based on the bullet-point list examples of what is considered manifestly unfounded, we cannot think of any real-life examples where we would be able to apply these without asking the individual's motivation for making their subject access request and assessing whether it is valid. This conflicts with other guidance from the ICO, which states that subject access requests are designed to be 'purpose-blind', and we cannot query the reason for an individual or their representative requesting the information.

For example, our staff members sometimes have to make difficult decisions regarding the termination of a customer's tenancy. This frequently triggers complaints about our decision-making process, and these complaints often contain subject access requests for all personal data held on the individual. It is clear that the individual is trying to find out what a certain member of staff has said about them or trying to find reasons to bring a claim, rather than reviewing what data we hold about them.

Following this guidance, we think that the subject access request would be manifestly unfounded. However, we feel that this conflicts with the 'purpose-blind' principle, and in reality if challenged we would be required to provide the information requested.

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?

Overall, the guidance is clear and provides additional and relevant information. However, there are some areas, mentioned in this response, that would benefit from further clarity and examples.

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.

We think on page 18 under the section 'When is a request complex?' there should be further information on what type of technical difficulties would be accepted as complex. For example, we struggle with extracting data in a format which the individual would be able to receive and read, particularly personal data contained in emails. This is a characteristic of our current system's capabilities and technological abilities. This is likely to apply to every subject access request we receive until a completely new system is implemented, which is planned but will take a number of years.

On page 40 under heading 'Step 1 – Does the request require the disclosure of information that identifies another individual?' we think this section should include information about tools such as redaction. This allows organisations to comply with requests without revealing information about other individuals, which makes it relevant to this section.

On page 4, para 1 under the heading 'Are individuals only entitled to their own personal data?' there is the following sentence: *They are not entitled to information relating to other people (unless their data also relates to other individuals)*. We do not understand the meaning of this sentence. There is a suggestion that an individual is entitled to information relating to other people where their data also relates to other individuals. This is not explained in the guidance and we are unclear about what 'relates to' means in this context.

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:

West Kent Housing Association

What sector are you from:

Third sector – social housing

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.

