

ICO call for views on a data protection and journalism code of practice

To: journalismcode@ico.org.uk.

Date: 24 05 19

Please see below STV's response to the ICO consultation.

In summary, the Code should:

- Be fully informed by the core public interest served by journalism and the right to freedom of expression and information
- Have a clear and accepted definition of journalism
- Support compliance, not hinder journalism
- Be aligned with the Broadcasting Code (and other appropriate codes) and consistent with ECHR and other relevant rulings
- Reflect the necessary operational processes employed by modern newsrooms
- Maintain a principles-based approach

and our detailed responses to the specific questions are as follows:

Q1 We are considering using our current guidance "Data protection and journalism: a guide for the media" as the basis on which we will build the new journalism code. Do you agree or disagree with this approach?

Agree

STV is supportive of using the current guidance, with necessary amendments post GDPR and DPA 2018, as the basis of the new journalism code. We welcome guidance which remains principle-based, flexible, and capable of adapting with the dynamics of linear and non-linear multi-media. In addition, we welcome a Code which provides guidance for those gaps in legislation which is essential to support journalists apply the exemptions, and otherwise, to be able to readily identify where it cannot be applied.

Q2 If you disagree, please explain why?

N/A

Q3 "Data protection and journalism: a guide for the media" is split into three sections:

- "Practical guidance" aimed at anyone working in the journalism sector;
- "Technical guidance" aimed at data protection practitioners within media organisations; and
- "Disputes", aimed at senior editors and staff responsible for data protection compliance.

Do you think we should retain this structure for the code?

Yes

Q4 If no, do you have any suggestions about how we should structure the code?

N/A

Q5 Do you think the ICO's existing guidance for journalists addresses the main areas where data protection issues commonly arise?

Disagree

Q6 If no, what additional areas would you like to see covered?

Journalism and media is generally exempt from the majority of GDPR and DPA 2018 due to its fundamental right to freedom of expression and information. There will be some instances where the exemptions will not apply, and it would be beneficial to have some

realistic examples to help avoid unnecessary and onerous work-streams, particularly where live news and programme production is concerned, which are not already addressed, or likely to be addressed in Ofcom's Code. For example:

- *Gathering Information: public places, bystanders, special category, criminal records*
- *Retaining research data: indefinitely. Not all research is for publication but is essential to the journalism or programme making process. It should be clear the exemption will apply to the processing of all.*
- *Decision Makers: Journalism by its very nature is dynamic. The definition of decision maker needs to reflect reality and to capture on the spot decisions needing to be made on a day to day basis by the 'man on the ground'. Delays in referring to others and recording those decisions will, in some instances be onerous and unrealistic and incompatible with journalistic reality.*
- *Relevant journalistic examples should be used, including: True Visions Productions (10 04 19) – unlawful filming in maternity clinic.*

Q7 The journalism code will address changes in data protection law, including developments in relevant case law. Are there any particular changes to data protection law that you think we should focus on in the code?

The law has changed in the area of children, special category data, and criminal records. The exemption in these areas would benefit from further clarification in relation to equality, diversity as well as data retention expectations in relation to journalism and broadcasting generally. In addition, further clarity on the exemption as it applies to data subject rights, specifically, access, erasure, and restriction, which are generally incompatible with journalistic purposes.

Q8 Apart from recent changes to data protection law, are there any other developments that are having an impact on journalism that you think we should address in the code?

Journalism and media generally (including programme-making) is dynamic and any statutory code and/or guidance must be capable of moving with the times as development of new technologies and data subject consumption changes. Level playing fields, across all media platforms, together with flexibility and pragmatism are essential to support and maintain the rights of journalists, broadcasters and publishers alike.

Q9 Are there any case studies or journalism scenarios that you would like to see included in the journalism code?

A regular review and reflection on recent adjudications (both upheld and not upheld) within the Code is always useful.

Q10 Do you have any other suggestions for the journalism code?

The ICO Code should be aligned with the other media regulatory body Codes.

About you

Q11 Are you answering these questions as?

A media organisation

Q12 How did you find out about this survey?

ICO website

Other? (email)

Q13 We may want to contact you about some of the points you have raised. If you are happy for us to do this please provide your email address: