

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

The Information Commissioner is calling for views on a data protection and journalism code of practice (the code).

The Data Protection Act 2018 requires the Commissioner to produce a code of practice that provides practical guidance and promotes good practice in regard to processing personal data for the purposes of journalism. Our intention is for the code to provide practical, pragmatic guidance for journalists on how to comply with data protection legislation, building on the [detailed guidance that we have already produced for this sector](#).

This call for views is the first stage of the consultation process. The Commissioner is seeking input from relevant stakeholders, including media organisations, trade associations, data subjects and those representing the interests of data subjects. For further information on the call for views, please read our blog post [here](#).

We will use the responses we receive to inform our work in developing the code.

You can email your response to [journalismcode@ico.org.uk](mailto:journalismcode@ico.org.uk).

Or print and post to:

Journalism Code Call for Views  
Policy & Engagement Department  
Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire SK9 5AF

The call for views will be open until **Monday 27th May 2019**.

### **Privacy statement**

For this consultation we will publish all responses except for those where the respondent indicates that they are an individual acting in a private capacity (e.g. a member of the public). All responses from organisations and individuals responding in a professional capacity (e.g. academics, freelance journalists, sole traders, legal professionals) will be published. We will remove email addresses

and telephone numbers from these responses but apart from this we will publish them in full.

For more information about what we do with personal data please see our [privacy notice](#).

### **Questions**

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

Disagree

Q2 If you disagree, please explain why?

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

No

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

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

Agree

Disagree

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

- Clarification on the legal conditions relied on when processing personal data and special category data in different genres of programming (such as drama, documentaries, expose, reality TV or light entertainment) and with reference to the public interest exemption;
  - the legal bases for processing personal data and special category data of minors and vulnerable persons (particularly in sensitive locations such as hospitals or medical clinics and prisons);

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?

- *Changes to the rules around consent and the requirement to specify one lawful basis and not to change this – see further comments in question 9 on this.*
  - *The circumstances in which the 'manifestly made public by the data subject' ground may be relied upon when processing special category data, both (i) during filming (i.e. before broadcast) and (ii) after broadcast (particularly given that production companies have contractual undertakings with broadcasters to provide footage).*

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?

- *Increasingly, the media and journalists make use of non-scripted programming. The provisions dealing with journalistic, academic, artistic & literary purposes in the GDPR and Schedule 2, Part 5 of the Data Protection Act 2018 are also relevant to this type of content. This is recognised in the current ICO guidance (e.g. p.29 references Top Gear).*

*Producing content of this type raises very different challenges to investigative journalism. To give one example, the current guidance addresses the requirements for covert data collection which sometimes apply to investigative journalism. However, for non-scripted shows it is particularly important to engage clearly and openly about what personal data will be processed.*

*It will be important to ensure that these differences are borne in mind when the guidance is updated, to ensure that it takes account of the different needs of different parts of the media industry.*

- *To consider the Age appropriate design code on children accessing journalistic websites which are aimed at providing them with news and educational content.*

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

*Non-Scripted TV show scenario*

*Non-scripted shows sometimes involve collection of special category data. By way of example, this could be information about medical conditions or sexual orientation or preferences and could be collected either before filming (for example, to ensure the safety and suitability of participants) or could be part of the filmed content.*

*Participants would always know that such content is being collected and, to meet the Ofcom Broadcasting Code, would give informed consent to this. Once filming has started, it would not be*

*possible to apply GDPR standards of consent, as revocation of consent could mean that footage of many individuals, potentially obtained over substantial periods of time, would have to be destroyed.*

*The current guidance and the DPA 2018 place significant emphasis on industry codes. One approach would be to recognise that processing which meets the Ofcom Broadcasting Code could – in this type of situation – rely on the exemption from Art.9 under Schedule 2, Part 5, para 26 of the DPA 2018. This would be a similar approach to that taken with clinical trials, where data protection authorities recognise that consent to participate in the trial and to use confidential health information does not equate to consent under the GDPR and that alternative lawful bases for processing may be more appropriate.*

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

About you

Q1 Are you answering these questions as?

A media organisation?

A trade association?

An organisation representing the interests of data subjects?

An academic?

An individual acting in a professional capacity?

An organisation that regulates press standards?

An individual acting in a private capacity (e.g. someone providing their views as a member of the public)?

Other?

If you answered 'other' please specify:

Q12 How did you find out about this survey?

ICO website

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:

Janine McKelvey (SVP, Legal and Business Affairs - Warner Bros.)

Thank you for taking the time to share your views and experience.