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From: [REDACTED]
Sent: 09 January 2022 21:33
To: journalismcode
Subject: RESPONSE TO ICO CONSULTATION ON THE DRAFT JOURNALISM CODE OF PRACTICE
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External: This email originated outside the ICO.

Dear Sirs

Please find attached our response to the consultation on the draft journalism code of practice.

Should you have any queries in relation to our response, please do not hesitate to contact us.

Regards

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**RESPONSE TO ICO CONSULTATION ON THE DRAFT
JOURNALISM CODE OF PRACTICE
JANUARY 2022**



About us

At Handley Gill, we combine cost-effective, pragmatic and robust advice with the in-depth technical knowledge and expertise necessary to provide quality data protection, privacy and wider legal advice, compliance and assurance services to our clients.

Our consultants have significant experience across the public and private sectors, working in-house as well as in professional services organisations, spanning a number of industries, including:

- Regulated industries, such as law firms and other legal services, financial institutions, insurers and insurance intermediaries;
- Retail, branding, advertising and marketing;
- Technology start ups;
- Content providers, including publishers, broadcasters, social media platforms and, online and editorial content creators;
- Political parties and lobbying groups;
- Law enforcement entities;
- Charitable organisations;
- Employment agencies;
- The public sector;
- Sport; and,
- Health care.

Our consultants hold relevant qualifications, including the International Association of Privacy Professionals Certified Information Privacy Professional/Europe (CIPP/E) certification, and the accredited OU Introduction to Cyber Security and the University of Michigan Data Science Ethics course, so you can be assured of our expertise.

Our consultants also have expertise in developing policy and legislation, particularly in the data protection, technology regulation, media and content spheres, and have developed position papers and lobbying documents, as well as engaging in lobbying activity, on behalf of clients and in the wider interests of industry.



INTRODUCTION

The Code shall, once approved having been submitted to the Secretary of State and laid before Parliament, have the effect of not only providing guidance to organisations but, as a consequence of its admissibility in evidence in civil and criminal proceedings and the requirements that both the courts and the Commissioner take into account the provisions of the Code (see s.127 Data Protection Act 2018), will set a precedent for the interpretation and application of the Data Protection Act 2018 in the context of journalism. This will apply to journalism across all mediums and conducted by individuals and entities from journalistic sources, to freelancers through to multi-national publishers and broadcasters. It is therefore imperative that the Code:

1. Appropriately reflects the balance to be drawn between the competing fundamental rights of freedom of expression and information, and privacy and data protection rights;
2. Is comprehensible by data subjects and journalists, whether or not they have readily available access to legal advice;
3. Does not seek to replicate regulatory requirements or operational measures developed in response to those regulatory requirements in the broadcasting industry, which is highly regulated, and impose those on the range of journalism (not all of which will be subject to any her ofform of regulation) as an expectation of compliant conduct to which the Code shall apply;
4. Is clear about the circumstances in which the exemption at Schedule 2, Part 5, para.26 Data Protection Act 2018, the 'special purposes exemption', can apply and how this affects the obligations under the UK GDPR; and,
5. Is not unduly restrictive and retains flexibility as to the manner in which data protection principles might apply to journalistic scenarios.

We consider it would be beneficial if, where the Code makes reference to principles drawn from legislation, the relevant legislation could be referenced.

We are concerned that, as currently drafted, the Code fails to meet the above objectives and therefore requires wholesale review and revision, including on the basis that it mis-states the law in certain respects, often in a manner which diminishes the right to freedom of expression and information, and seeks to impose more stringent requirements than the existing guidance. In particular, elements of the guidance effectively codify a privacy law, including in ways which go beyond decisions of the courts.

This indicates that the Information Commissioner's Office continues to misunderstand the content and application of data protection legislation to the practise of journalism and lacks the knowledge necessary to appropriately regulate the processing of data protection in the context of journalism having regard to the importance of protecting the fundamental right to freedom of expression and information. This has been demonstrated previously in the decisions and actions of the Information Commissioner which have often involved the replacement of editorial decision making with that of the Information Commissioner.

SPECIFIC COMMENTS ON THE CONTENT OF THE DRAFT CODE

	PAGE	DRAFT CODE	COMMENT
1.	4 & 22	<i>“Journalism should be balanced with other rights that are also fundamentally important to democracy, such as data protection and the right to privacy.”</i>	The draft Code refers to balancing journalism against other fundamentally important rights, but should refer to the fundamental right of freedom of expression and information.
2.	5 & 22	<i>“The special purposes are journalism, academic, artistic or literary purposes. This code is about journalism, however parts of this code will help you to consider the other special purposes.”</i>	The draft Code should explicitly state that, while it may be of interest, it is not applicable to the processing of personal data in the context of other elements of the special purposes exemption.
3.	6	<i>“Security is a key principle of data protection law. It involves protecting personal data against unauthorised or unlawful processing and accidental loss, destruction or damage.”</i>	This section does not make clear that the security principle must always be complied with and the special purposes exemption can never apply to it.
4.	7	<i>“It helps you to make sure that individuals are treated according to commonly accepted general standards, in a way that is free from dishonesty and injustice”</i>	It is not clear what relevance these concepts have to the application of the data protection principles of the application of the exemption and this reference should be removed.
5.	7	<i>“You can process personal data lawfully using one of the lawful bases provided by the UK GDPR. You can process special category or criminal offence data if you can also satisfy one of the conditions concerning this type of personal data”</i>	It is also possible to process personal data lawfully in reliance on the special purposes exemption. This should be made clear throughout the draft Code.
6.	7	<i>“One of the conditions concerns the disclosure of information for the purposes of journalism in connection with unlawful acts and dishonesty. This condition allows controllers to disclose these types of sensitive personal data to journalists in some circumstances”</i>	The draft Code should make clear that a controller in this context can include a whistleblower who has become a de-facto controller on account of disclosing information without the controller’s consent, and is entitled to rely on this condition or alternatively on the special purposes exemption, in addition to the defences available to any criminal proceedings which might arise in relation to such conduct.
7.	7	<i>“You can comply with people’s right to be informed by providing privacy”</i>	Fails to reflect that it is not always necessary to provide privacy information when collecting data

		<i>information when you collect their personal data”</i>	and that the special purposes exemption is also applicable.
8.	7, 32, 43, 57	<i>“If you have collected personal data about an individual from someone else, you do not have to provide privacy information if doing so would be impossible or would seriously impair your work”</i>	<p>This inappropriately conflates the provisions of the UK GDPR, which provides is it not necessary to provide information if it is impossible or would involve disproportionate effort (Article 14(5) UK GDPR), and the Information Commissioner’s new proposed definition of “incompatible” in the context of the special purposes exemption.</p> <p>Furthermore, the Information Commissioner’s new proposed definition of incompatible is unduly restrictive and resiles from the definition in the existing ‘Data protection and journalism: a guide for the media’, which variously refers to the incompatibility as meaning “unreasonable”, “an obstacle”, and/or “impractical or inappropriate”. The existing definitions should be maintained.</p>
9.	8	<i>“You can comply with the accuracy principle by taking reasonable steps to correct or erase personal data where necessary.”</i>	The accuracy principle is also capable of being complied with by clarifying the relevant data.
10.	8 etc	<i>“Where necessary, the special purposes exemption specifically protects journalism.”</i>	The threshold for the application of the special purposes exemption is not one of necessity.
11.	9	<i>“Carrying out appropriate checks when third parties share personal data with you that you want to use for journalism will help you to be confident that you are complying with data protection law. Relevant checks include confirming the source, how and when the data was collected, and checking that it is accurate.”</i>	The draft Code fails to reflect that data may be, legitimately, received anonymously and therefore as fact specific approach must be applied.
12.	9	<i>“You are required to keep personal data for no longer than is necessary. This principle helps you to reduce risks and comply with other aspects of data protection law.”</i>	It may be helpful to reflect that an appropriate retention period is likely to be at least as long as any applicable limitation period, as well as to reference the retention of personal data in the context of

			news archives, including online archives, which is addressed more fully later in the draft Code.
13.	11, 85, 91	<i>“The ICO may offer assistance to claimants in cases of substantial public importance.”</i>	S175 DPA 2018 provides for the provision of assistance to any party, not merely to claimants.
14.	16 - 17, 23	<i>“Some online services include journalistic material that is produced by someone else. Such services may exert a degree of editorial control over the material’s content, presentation, and the decision to publish it that goes beyond moderation. The more editorial control exerted, the more likely it is that the service is processing personal data for the purposes of journalism.”</i>	References to the purposes of journalism fail to reflect the totality of activities that form part of the purpose, as set out in the Supreme Court’s judgment in Sugar, and this should be reflected.
15.	17	<i>“This is different to third party user-generated content, which is any form of content posted by individuals using online platforms, where there is usually no or little editorial control other than moderation.”</i>	It may be appropriate to reflect that such content may be covered by other elements of the special purposes exemption, which are not the subject of the draft Code.
16.	19	<i>“Considering whether processing is “fair” under the fairness data protection principle is similar to considering whether a “reasonable expectation of privacy” exists under the tort of misuse of private information. However, it is important to note that not all personal data is necessarily private.”</i>	This contrasts with the ICO’s general guidance to complying with the obligation of fairness which states “This means you must not process the data in a way that is unduly detrimental, unexpected or misleading to the individuals concerned.” It is not appropriate to conflate consideration of whether an individual has a reasonable expectation of privacy, having regard to the Murray v Big Pictures (UK) Ltd [2008] EWCA Civ 446 factors of taking into account “all the circumstances of the case. They include the attributes of the claimant, the nature of the activity in which the claimant was engaged, the place at which it was happening, the nature and purpose of the intrusion, the absence of consent and whether it was known or could be inferred, the effect on the claimant and the circumstances in which and the purposes for which the information came into

			the hands of the publisher”, and the principle espoused in <i>Mosley v News Group Newspapers Ltd</i> [2008] EMLR 20 that “whether the intrusion, or perhaps the degree of the intrusion, into the claimant’s privacy, was proportionate to the public interest supposedly being served by it”.
17.	24	<i>“Non-media organisations may process personal data for journalism as well as other purposes, such as campaigning (see Steinmetz v Global Witness [2014] EWHC 1186 (Ch)). As with private individuals, it is helpful to consider this on a case-by-case basis, taking into account similar factors to those set out above.”</i>	The draft Code should also reflect that whistleblowers and other journalistic sources may be entitled to rely on the exemption in respect of their activities.
18.	25		Conflates the right to privacy with data protection rights which are not necessarily the same.
19.	28, 29, 33	<i>“Firstly, you simply need to demonstrate that you considered whether publication is in the public interest and formed a view (a subjective belief). Keeping a record can make this easy to do.”; “In the most significant cases, it may be helpful to draw up a list showing the arguments on both sides. This will help you to assess their relative weight and decide what is proportionate.”</i>	References to record keeping requirements fail to reflect that it is likely that such material would be protected by legal professional privilege and/or protection from disclosure to the ICO under s143(3) Data Protection Act 2018. The Code appears to create an expectation that non-privileged versions of such documents should be produced and/or privilege waived, which is inappropriate. Furthermore, it is unrealistic for the draft Code to expect that detailed records will be maintained in respect of every published item.
20.	28	<i>“It may be helpful to consider defamation law when considering whether a belief is objectively reasonable. The Defamation Act 2013 includes a defence when there is a reasonable belief publication is in the public interest. For example, it may be relevant to consider: • attempts made to verify the truth of what is being published; • the nature of the sources of information; and • the extent to</i>	This section doesn’t fully reflect the content of the relevant legislative provision (s.4 Defamation Act 2013), but in any event it is appropriate for the Information Commissioner to determine through inclusion in the Code, and thereby impose an obligation on itself and the courts, that regard should be had to legislation which is inapplicable to the personal data in question and

		<i>which the individual was given an opportunity to respond or comment.”</i>	is intended to apply to a specific subset of journalistic material which has the capacity to cause particular harm. Court judgments to date do not go as far as the draft Code.
21.	29	<i>“Although not listed in the DPA 2018, it is appropriate for members of IMPRESS to take the IMPRESS Standards Code into account.”</i>	It is inappropriate for the Information Commissioner to seek to usurp Parliament’s authority by explicitly referencing the IMPRESS Code of Practice, since only the Secretary of State can amend the list of regulatory codes by regulation (see Schedule 2, Part 5, para.26(7) DPA 2018).
22.	30	<i>Public interest</i>	While stated to be non-exhaustive, the stated definition of the public interest is unduly narrow.
23.	31 – 32 etc		When referring to judgments in the context of cases which addressed not only data protection law, but also the misuse of private information, the guidance should be clear about the context of any determinations made by the courts and not conflate the two.
24.	32	<i>“There may be a public interest in presenting a full picture to increase public understanding or to remove any suspicion of manipulating the facts or spin. If information is already in the public domain that is misleading or misrepresents the true position, this may increase the public interest in publication of the full picture. There may be a weaker public interest in publication if similar information is already available and the information you wish to publish would not significantly add to it.”</i>	The draft Code appears to suggest that, in the event that one publication has published a story regarding a particular individual, this may diminish the public interest in other media organisations publishing it. This has no basis in law regulation or practice and is contrary to the fundamental right to freedom of expression and information.
25.	32	<i>“You can rely on the exemption by demonstrating a reasonable belief that complying with a particular provision is incompatible with the purposes of journalism. In other words, it is necessary to not comply with data protection law in order to achieve your journalistic purpose.”</i>	As set out at comment 8 above, the Information Commissioner’s new proposed definition of incompatible is unduly restrictive and resiles from the definition in the existing ‘Data protection and journalism: a guide for the media’, which variously refers to the incompatibility as meaning “unreasonable”, “an obstacle”,

			and/or “impractical or inappropriate”. The existing definitions should be maintained.
26.	34	<i>“Most, if not all, journalistic organisations already have suitable broader policies and procedures which can be easily adapted if necessary to include data protection considerations. This is because there are similar requirements in industry codes. One of the most obvious ways to demonstrate your compliance is to keep a record of decisions you have taken and why. Whilst this may not always be necessary, doing so will help you to demonstrate your compliance more effectively.”</i>	<p>While the statement that journalistic organisations already have policies and procedures in place due to industry codes may be true in relation to highly regulated broadcasters, it may be less so in the case of news publishers and certainly inapplicable to the wide range of individuals and smaller entities which are entitled to rely on the special purposes exemption.</p> <p>Furthermore, the impact of the draft Code and the expectations it will set in relation to record keeping is demonstrated by the case of <i>Sicri v Associated Newspapers Ltd</i> [2020] EWHC 3541 (QB), despite the fact that the Judge accepted that such decisions do not need to be made formally or recorded.</p>
27.	34	<i>“Using risk as a guiding factor can help you to exercise your judgement to keep proportionate records of your decisions. In cases where there is less risk, it may be appropriate to keep a brief record of key points, or details of who made the decision and when. Where there is a greater risk, it is more likely to be appropriate for you to keep a record of your decision to rely on the special purposes exemption and the factors that support it. For example, there are greater risks when processing special category or criminal offence data. Ideally, keep a record around the time you make your decision to rely on the exemption. Doing this means that it will be easier for you to recall the facts and show that you considered the public interest at the time. We recognise that urgency and public interest may mean that this is not always possible at the time of decision, but you could consider</i>	<p>The draft Code creates an inappropriate expectation that in respect of every single article or news item, there will be a record of decision making and data protection compliance.</p> <p>The reference to the higher risk relating to criminal conviction and offence data, which includes data relating to the public verdict in court cases or references in Parliament for example, fails to reflect the privileges which apply to such information and the fact that these will routinely be published without the legal or regulatory requirement for additional detailed consideration.</p>

		<i>recording your decision at a later stage when it is more appropriate. The key point is that you are able to account for the action that you took."</i>	
28.	37	<i>"All of the data protection principles are legal requirements."</i>	The draft Code fails to reflect the impact of the special purposes exemption on compliance obligations.
29.	43	<i>"You can process personal data fairly by considering what a person would reasonably expect in the circumstances and whether the processing would cause any unwarranted harm."</i>	These are not the only relevant factors and the draft Code should reflect that the special purposes exemption can apply.
30.	46	<i>"People can withdraw their consent at any time and you must make it easy for them to do so. If someone withdraws their consent, this does not affect the lawfulness of the processing up to that point. However, you will need to stop any processing that was based on consent. Media organisations, particularly broadcasters, may rely on 'written releases' from actors and contributors to programmes. If your processing is based on consent, bear in mind that an individual could withdraw their consent at any point, including at a late stage. Consider relying on a different lawful basis from the start if this may cause problems, such as the contract lawful basis. For example, there may be financial consequences for a broadcaster if a contributor withdraws consent at a late stage."</i>	The draft Code conflates broadcast regulatory compliance with consent for the purposes of data protection compliance, and fails to reflect the impact of the exemption on being entitled to continue to process journalistic material in the event of the withdrawal of consent, or interaction with the right to erasure which has an exemption for processing necessary to exercise the right to freedom of expression.
31.	47	<i>"whether they were they a child when it was put on social media."</i>	The draft Code should also reflect a further factor of whether there is any evidence that the individual has taken steps to remove such material since becoming an adult.
32.	51	<i>"The general starting point regarding criminal allegations is that a suspect has a reasonable expectation of privacy regarding investigations, including the fact that there is an investigation. This is the case both in relation to police</i>	The draft code over-simplifies the judgment in Sir Cliff Richard OBE v the BBC [2018] EWHC 1837 (Ch), in which the Judge stated "I respectfully agree with Garnham J that whether or not there is a reasonable expectation of privacy

		<i>investigations (see Sir Cliff Richard OBE v the BBC [2018] EWHC 1837 (Ch) para. 251) and investigations by “an organ of the state” (see ZXC v Bloomberg LP [2020] EWCA Civ 611 para. 82).”</i>	in a police investigation is a fact-sensitive question and is not capable of a universal answer one way or the other” at para.237 and, at para.251 “I do not find, that there is an invariable right to privacy.”
33.	52	<i>“When dealing with allegations about someone with a public profile, it may be relevant to consider that individuals with a public profile may be more vulnerable to false allegations (see Sir Cliff Richard OBE v the BBC [2018] EWHC 1837 (Ch) para. 244).”</i>	This was not a finding of the judgment. The Judge referenced a separate report, but did not adopt its content as representing the law.
34.	54	<i>In Sir Cliff Richard OBE v the BBC [2018] EWHC 1837 (Ch), the judge said: “...the very act of making certain aspects of oneself public means...that there is a corresponding loss of privacy in those areas which are made public. However, it does not follow that there is some sort of access the board diminution of the effect of privacy rights...It depends on the degree of ‘surrender’, the area of private life involved and the degree of intrusion into the private life.”</i>	There is a typographical error in this extract, which should state: In Sir Cliff Richard OBE v the BBC [2018] EWHC 1837 (Ch) para.284, the judge said: “...the very act of making certain aspects of oneself public means...that there is a corresponding loss of privacy in those areas which are made public. However, it does not follow that there is some sort of across the board diminution of the effect of privacy rights...It depends on the degree of ‘surrender’, the area of private life involved and the degree of intrusion into the private life.”
35.	55	<i>“Before doing so, it is helpful to consider whether it is necessary to use these methods.”</i>	There is no legal or regulatory requirement of necessity, as opposed to reasonable justification, for the use of the identified techniques.
36.	58	<i>“You may find it helpful to consider the BBC’s Editorial guidelines on offering a right to reply.”</i>	In respect of many legitimate journalistic publications there is no obligation to provide a ‘right of reply’. The BBC’s Editorial Guidelines are more stringent than even the Ofcom Broadcasting Code and should therefore not be considered a baseline for compliance by other individuals and organisations processing personal data in the context of journalism.
37.	61	<i>“There may be circumstances where you decide that it is in the urgent</i>	The draft Code fails to reflect that not only in urgent cases will

		<p><i>public interest to publish personal data without carrying out your normal accuracy checks. This may be a challenge when broadcasting live, for example. You still need to be able to show that thought was given by someone at an appropriate level to whether the publication is reasonable. Relevant factors may include: • what checks might be possible; • whether publication could be delayed; and • the nature of the public interest at stake.”</i></p>	<p>matters be legitimately published which are in the substantial public interest but which may nevertheless be inaccurate.</p>
38.	80	<p><i>“The special purposes exemption may apply to SARs made before or after publication of a story. For example, providing information may undermine a story by tipping someone off to forthcoming publication. Resource implications may also be a relevant factor. If so, consider the nature of the request and what would be proportionate in the circumstances.”</i></p>	<p>The draft Code should reflect that it is acceptable, as a matter of policy, to neither confirm nor deny the processing of personal data pre-publication to avoid effectively confirming processing of personal data in certain cases.</p>
39.	82	<p><i>“It’s helpful to restrict your processing of the personal data while you check its accuracy. This is regardless of whether the individual has exercised their right to restriction (see Right to restriction).”</i></p>	<p>The draft Code fails to reflect that the right to restriction of processing of personal data can be subject to the special purposes exemption and that it will often be appropriate to apply the exemption as otherwise this would have the effect of securing a non-judicial injunction to prevent the publication of material.</p>
40.	82	<p><i>“To make sure your records are clear, you may need to add a note about a mistake or a correction. This may take a variety of forms, for example, an advisory line at the top of an online article, or a printed correction area in a newspaper.”</i></p>	<p>It is inappropriate for the draft Code to dictate where a correction or clarification should be published.</p>
41.	89		<p>In the context of exercising its enforcement powers, there is no reference to the requirement for the Information Commissioner to give consideration to the impact on the fundamental right of freedom of expression and information of any penalty notice it is considering implementing.</p>



RESPONSES TO SET CONSULTATION QUESTIONS

Q1 To what extent do you agree that the code is clear?

- Strongly agree
- Agree
- Neither agree nor disagree
- Disagree
- Strongly disagree

Q1a If the code could be clearer, please tick which section(s) could be clearer.

- Summary
- Navigating the code
- About this code
- Balance journalism and privacy
- Be able to demonstrate your compliance
- Keep personal data secure
- Justify your use of personal data
- Make sure personal data is accurate
- Process personal data for specific purposes
- Use the right amount of personal data
- Decide how long to keep personal data
- Be clear about roles and responsibilities
- Help people to exercise their rights
- Disputes and enforcement
- Annex 1

Please explain your response to Q1a.

The draft Code fails to make clear how compliance should be approached in relating to processing in the context of journalism and the manner in which the special purposes exemption may be applied. Processing personal data in reliance on the special purposes exemption is as lawful as processing in compliance with the relevant principles, but the manner in which the draft Code is presented and written undermines this. There is also significant duplication throughout the draft Code.

Q2 To what extent do you agree that it is easy to find information in the draft code?

- Strongly agree
- Agree
- Neither agree nor disagree
- Disagree
- Strongly disagree

Q2a If it could be easier to find information in the code, please tell us how it could be easier.



There is significant and unnecessary duplication in the draft Code and insufficient cross-referencing between sections.

Q3 To what extent do you agree that the code provides the right level of detail?

- Strongly agree
- Agree
- Neither agree nor disagree
- Disagree
- Strongly disagree

Q3a If the code could provide a better level of detail, please tell us how it could be improved.

The draft Code often makes assertions based on legislation or judicial decisions out of context and without appropriate balancing statements, losing the necessary nuance which is imperative in balancing the right to freedom of expression and information against data protection rights.

Q4 To what extent do you agree that the code provides practical guidance to help individuals processing personal data for the purposes of journalism to understand and comply with data protection obligations?

- Strongly agree
- Agree
- Neither agree nor disagree
- Disagree
- Strongly disagree

Q4a If the code could be more practical, please tick which section(s) could be more practical and tell us how it could be improved.

- Summary
- Navigating the code
- About this code
- Balance journalism and privacy
- Be able to demonstrate your compliance
- Keep personal data secure
- Justify your use of personal data
- Make sure personal data is accurate
- Process personal data for specific purposes
- Use the right amount of personal data
- Decide how long to keep personal data
- Be clear about roles and responsibilities
- Help people to exercise their rights
- Disputes and enforcement
- Annex 1



Please explain your response to Q4a.

The guidance provided is often drawn from policies applied by the most highly regulated, largest and well-resourced media organisations on all individuals and entities which are processing personal data in the context of journalism. This is impractical and inappropriate and the imposition of such requirements has a chilling effect of freedom of expression.

The draft Code is unclear as to how decision making in relation to the application of the principles of the UK GDPR and the special purposes exemption operates in practice, and suggests that 'lawful' processing requires compliance with the principles of the UK GDPR, which is inaccurate and confusing. This is compounded by the fact that in various places the draft Code states "Where necessary, the special purposes exemption specifically protects journalism". This not only misstates the threshold for the application of the special purposes exemption but fails to provide practical guidance to organisations on the interaction of the exemption and circumstances in which it may apply. Where examples are given, these tend to be in an overly prescriptive manner and are not clear that they are intended to be indicative and non-exhaustive.

The draft Code fails to identify relevant provisions of the UK GDPR and Data Protection Act 2018 being referenced which impedes the ability to fully understand its content.

The draft Code states that "people most likely to benefit from using this code will be staff with defined roles and responsibilities, such as lawyers, data protection officers and senior editorial staff", but in practice the individuals and entities most in need of guidance will be those without access to individuals with legal or data protection experience. In reality, having regard to the terms of the draft Code, and the approach taken by the ICO in its previous regulatory enforcement action, it will be necessary for individuals and entities engaging in the processing of personal data in the context of journalism to obtain advice on their general obligations and compliance in specific circumstances.

Q5 To what extent do you agree that the draft code covers the right issues about journalism in the context of data protection?

- Strongly agree
- Agree
- Neither agree nor disagree
- Disagree
- Strongly disagree

Q5a If we have not covered the right issues in the code, please tell us how it could be improved.

Q6 Please provide details of any cases, examples, scenarios or online resources that it would be useful for us to include in the code.



Wider engagement with a range of entities and individuals processing personal data in the context of journalism would be welcomed in identifying what compliance looks like, to provide the baseline for the content of the draft Code.

Q7 To what extent do you agree that the draft code effectively protects the public interest in freedom of expression and information?

- Strongly agree
- Agree
- Neither agree nor disagree
- Disagree
- Strongly disagree

Q7a If the draft code could protect the public interest in freedom of expression and information more effectively, please tell us how it could be improved (bearing in mind the need to balance competing rights in the code).

The draft Code inaccurately states relevant law in a number of places, as detailed in our response to specific sections of the draft Code above, and selectively references and often over states the impact of judicial decisions as well as importing cases relating to the misuse of private information and treating them as being directly applicable to the processing of personal data.

Q8 To what extent do you agree that the draft code effectively protects the public interest in data protection and privacy?

- Strongly agree
- Agree
- Neither agree nor disagree
- Disagree
- Strongly disagree

Q8a If the draft code could protect the public interest in data protection and privacy more effectively, please tell us how it could be improved (bearing in mind the need to balance competing rights in the code).

The draft Code over-protects the public interest in data protection and effectively codifies a privacy law in a way which exceeds the remit granted to the Information Commissioner by Parliament.

Q9 Could the draft code have any unwarranted or unintended consequences?

- Yes
- No

Q9a If yes, please explain your answer to Q9.

In addition to the matters set out above, the draft Code effectively imposes best practice measures adopted by the most highly regulated, largest and well-resourced media organisations on all



individuals and entities which are processing personal data in the context of journalism, which is unnecessary and inappropriate.

Q10 Do you think this code requires a transition period before it comes into force?

- Yes
- No

Q10a If yes, please tick the most appropriate option.

- 3 months
- 6 months
- 12 months

Q11 Is there anything else you want to tell us about the draft code?

Section 2 About you
Please see privacy information above.

Q12 What is your name?

Q13 If applicable, what is the name of your organisation and your role?

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Q14 Are you acting: Please select the capacity in which you are acting.

- in a private capacity (eg someone providing their views as a member of the public)?
- in a professional capacity?
- on behalf of an organisation?
- other

If other, please specify.

Q14a Are you: Please select most appropriate.

- A member of the public
- A citizen journalist
- A public figure (eg individuals who have a degree of media exposure due to their functions or commitments) or individual with a public role (eg politician, public official, business people and members of regulated professions)



- A representative of a newspaper or magazine
- A representative of a broadcaster
- A representative of an online service other than those above
- A representative of the views and interests of data subjects
- A representative of a trade association
- A representative of a regulator
- A representative of a 'third sector'/'civil society' body (eg charity, voluntary and community organisation, social enterprise or think tank)
- A freelance journalist
- A private investigator
- A photographer
- An academic
- A lawyer
- Other

If other, please specify.

Further consultation

Q15 Would you be happy for us to contact you regarding our consultation on the journalism code?

- Yes
- No

If so, please provide the best contact details.

Q16 Would you be happy for us to contact you regarding our work to develop a process to review processing for journalism in accordance with the statutory requirement under section 178 of the DPA 2018?

- Yes
- No

If so, please provide the best contact details.

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



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