

## Elizabeth Archer

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**From:** [REDACTED]  
**Sent:** 10 January 2022 14:28  
**To:** journalismcode  
**Subject:** ITN submission on the journalism code of practice  
**Attachments:** Journalism code-ITN submission.pdf

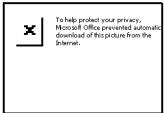
External: This email originated outside the ICO.

Dear Madam / Sir,

Please find attached ITN's submission on the consultation of the journalism code of practice.

Yours faithfully,

Daniel Whiting



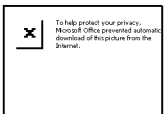
**Daniel Whiting**  
**Data Privacy Manager**

200 Gray's Inn Road  
London  
WC1X 8XZ  
United Kingdom

[www.itn.co.uk](http://www.itn.co.uk)



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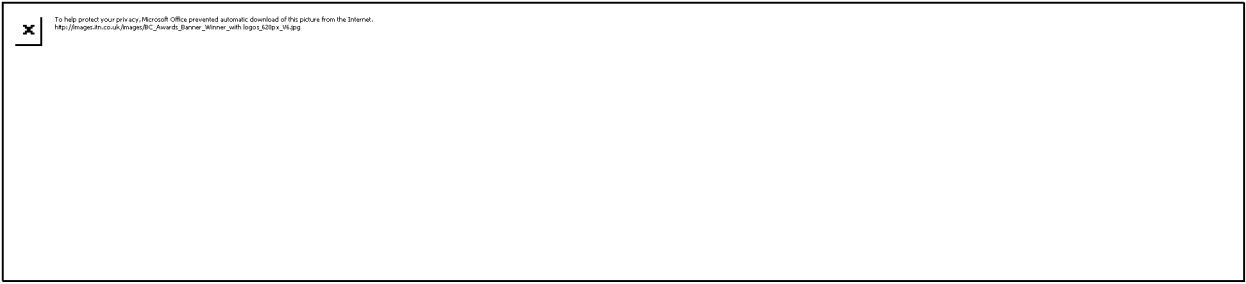


**Daniel Whiting**  
**Data Privacy Manager**

200 Gray's Inn Road  
London  
WC1X 8XZ  
United Kingdom



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# ICO consultation: Draft journalism code of practice

Start date: 13 October 2021  
End date: 10 January 2022

## Introduction

We are seeking feedback on the draft code of practice about processing personal data for the purposes of journalism. This is a statutory code under section 124 of the Data Protection Act 2018 (DPA 2018).

The code provides practical guidance about processing personal data for the purposes of journalism in accordance with the requirements of data protection legislation and good practice.

The code updates our previous guidance, [Data protection and journalism: a guide for the media](#), which was published in 2014.

It will also help us to assess compliance as part of the periodic review of processing for the purposes of journalism that the ICO must carry out under section 178 of the DPA 2018.

Before drafting the code, we launched a [call for views in 2019](#). You can view a [summary of the responses and individual responses on our website](#).

The draft is now out for public consultation. The public consultation will remain open for 12 weeks until 10 January 2022.

**Download this document** and email to: [journalismcode@ico.org.uk](mailto:journalismcode@ico.org.uk)

**Print off this document** and post to:

Journalism Code of Practice  
Regulatory Assurance  
Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF

If you have any general queries about the consultation, please email us at [journalismcode@ico.org.uk](mailto:journalismcode@ico.org.uk).

### 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 (eg a member of the public). All responses from organisations and individuals responding in a professional capacity 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

When commenting, please bear in mind that we aim to focus on key points and practical information relevant to journalism where possible. The code does not aim to cover all of the legislation and may assume knowledge of some general data protection terms and concepts. Where relevant, the code may link to further reading such as the [Guide to the UK GDPR](#) but this does not form part of the statutory code.

Please also bear in mind that we intend to provide a 'quick guide', and perhaps other resources, to support day-to-day journalism and smaller organisations, as we did with our previous media guidance. Please let us know if you have any ideas about resources to support this code in the general comment box at the end of this survey.

**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.

Independent Television News Limited (ITN) makes news programmes for ITV, Channel 4 and Channel 5, reaching around 10 million people every day and providing comprehensive and impartial news to the British public.

ITN welcomes the opportunity to respond to the draft journalism code of practice (the draft code) produced by the Information Commissioner's Office (the ICO).

ITN supports the Media Lawyers Association's (MLA) submission in response to the consultation, to which it was a leading contributor.

The balance of the draft code needs to be weighted in favour of, or at least give parity to, the editorial capacity of professional journalists to express freedom of expression as enshrined in Articles 8 and 10 of the European Convention on Human Rights and the UK's Human Rights Act, 1998.

It's ITN's view that the draft code would benefit from substantial revision. This could be achieved through a fundamental change in its perspective. Rather than viewing journalistic compliance through the lens of privacy compliance it would serve a wider range of journalists, and be more adaptable to developments in modern journalism, to look at it the other way around; compliance through a lens of journalism. The draft code should be rooted in recognition of journalists' ability to apply editorial discretion and the assumption that professional journalists, with their editorial knowledge and experience, are best placed to rationalise what's in the public interest and to justify publication.

**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.

The structure of the draft code, in terms of its format (pdf) and lay out of contents, is suitable and easy to navigate. However, the draft code is too detailed and over long. The complexity obstructs the process of finding relevant accurate information quickly and timely, particularly for non-privacy professionals.

ITN suggests the draft code should be simplified and focus on principles-based advice, with the removal of examples and practical guidance into a separate and supplemental document. The draft code could reflect the structure of the existing [Ofcom Broadcasting Code](#).

This format would make it easier for journalists to navigate and find relevant principles-based information on which to base editorial decisions timely and accurately. It would have the advantage of permitting practical advice with examples to be separately maintained and updated as case law develops. It could better reflect the real life circumstances of journalists, without over

prescribing burdensome requirements that may not apply to all types of journalism or journalistic scenarios.

**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.

In its current format the draft code is too prescriptive, with excessive reliance on maintaining policies and record-keeping, which are time and resource heavy. The final draft code needs to apply to a wide range of journalists, from individual bloggers and freelancers to international broadcasters. The administrative burden the final code prescribes should be limited as far as possible, or sufficiently flexible to cater to the resources of individuals and smaller organisations as well as large broadcasters. (It's a given that a responsible data controller would have appropriate policies, procedures and mechanisms in place to create the correct climate and framework within which for journalists and media colleagues to work.)

The dynamic nature of reporting can create natural barriers to evidencing compliance with the draft code case-by-case every time. Reporting can be highly reactive and in response to developing situations. It can be a 24-hour operation, across time zones, in a range of territories with different legal regimes and with tangible personal risks to journalists. This needs to be reflected in the draft code which must be scalable to reflect real life journalistic practices. It's understood the balance is a fine one, and the ICO are attempting to help create a "framework" rather than a mandate a system for individual "record keeping". It would be helpful for the draft code to clarify this approach and state clearly that it recognises that it's not always possible, necessary or even desirable to positively evidence accountability for each and every story, particularly if it would have an impact on the ability to report or on personal safety, for example. Alternative accountability procedures could be suggested or given greater legitimacy, such as compliance with existing broadcasting codes or evidence through subsequent personal narrative, for example.

**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 draft code is aimed at individuals with specific privacy knowledge, whereas the users and those at the sharp end of compliance are likely to be the journalists. To be most effective the code needs to speak to these professionals. It should be simplified and shortened to reflect their practical requirements (separating principles-based information and practical guidance and examples, as discussed). It should limit references to legislation, case examples and citations of legal decisions. It needs to be a trusted and familiar document. For example, it should explain the concept of "personal data" in the context and language of journalism. When explaining where personal identifiable information could be found and where compliance needs to be considered, it would be useful to use journalistic terms such as: audio, sound bites, video, images (with or without captions), contacts books, file footage, rushes, stock or archive material and vox pops. The further the code reflects the day-to-day realities of journalists, the more likely and more frequently it will be used for editorial and compliance reference and become a useful and reliable tool.

**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.

The considerable weight of existing editorial guidance provided by existing regulators should be highlighted. An introductory paragraph could be included that acknowledges that media organisations already have considerable obligations via industry codes and that compliance with those are likely to cover off many relevant data protection considerations. It should explain that the ICO is not seeking to be a media regulator and it will give prominence to relevant industry codes where appropriate.

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

N/A

**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 should give stronger emphasis to the special importance of public interest in freedom of expression itself. It should seek to promote the importance of freedom of expression and the practical effect of the special purposes exemption, particularly the journalism exemption, starting with that as the priority.

A significant proportion of the draft code's compliance obligations depend on the application of data protection principles, for example around accountability and record keeping. It would be a clearer starting point for journalists to begin with the application of special purposes exemption in respect to those principles.

For example, currently in the "at a glance" summary of each section the journalistic exemption is consigned to the final bullet point. It might be preferable to explain the wide range of scenarios where the exemption applies in

the first instance, and subsequently detail any compliance obligations or considerations.

**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).

As discussed, the draft code focuses too heavily on mandatory compliance requirements. It would better serve journalism in all its varieties to start from the point of principles and the application of the journalism exemption.

The code should seek to manage the expectations of data subjects and make it clear what they might reasonably expect when asserting rights under privacy law against media organisations; to minimise abusive or frustrating journalistic investigations or seek removal of inconvenient but lawful content.

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

- Yes
- No

**Q9a** If yes, please explain your answer to Q9.

There's a risk that the final code would not offer sufficient flexibility to enable and encourage individual journalists of all types to express freedom of expression and practice press freedom as enshrined in Articles 8 and 10 of the European Convention on Human Rights and the UK's Human Rights Act, 1998.

Emphasising the necessity for unreasonable and unrealistic bureaucratic obligations could serve to hinder rather than help journalists who are seeking act in accordance with data protection legislation.

**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?

ITN explicitly requests for there to be a further opportunity to have a substantive consultation on the revised draft code once it has been redrafted as a result of the current consultation process.

## Section 2 About you

Please see privacy information above.

**Q12** What is your name?

Daniel Whiting

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

Data Privacy Manager, ITN

**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.

N/A

**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.

N/A

### 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.

Email: [REDACTED]

**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.

Email: [REDACTED]

Phone: [REDACTED]

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