

Elizabeth Archer

From: [REDACTED]
Sent: 10 January 2022 17:50
To: journalismcode
Subject: ICO consultation: draft journalism code Comments of Newsquest Media Group
Attachments: ICO consultation draft journalism code - comments from Newsquest Media Group 100122.docx

External: This email originated outside the ICO.

Please see the attached comments.

Sincerely,

Simon Westrop

Newsquest Media Group

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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

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.

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.

1. While the discussion of public interest on p25 acknowledges that all forms of journalism, including day-to-day stories, contribute to the role of the free press in service of the public interest, nevertheless the point is not sufficiently emphasised and it is easily lost in this document. The point is particularly important in relation to the local press, the essential function of which is to chronicle the ordinary life of the communities in which we all live – including the sports days, the street parties, the school fetes and

so on. Most of real life is conducted at this level, and it is just as important to record it as anything else. Exposing crime and corruption is not the only measure of public interest. All journalistic content will carry some weight in the balance, though no doubt some stories will carry more than others. This must be equally true in journalistic archives as well as in original publication, lest the archives become a grotesque parody of life as it is actually lived. Please consider how this point can be highlighted.

2. There is (understandably perhaps) no attempt to address some of the oddities of the legislation. For instance, reading p45, a journalist will realise that, in relation to a story which can be covered by the journalistic exemption (and has been editorially assessed as such), any preliminary consideration of legitimate interests or other lawful basis of processing appears artificial and pointless, even though the guidance would suggest that this is what should be done.
3. P26 refers to damages claims as if they could be brought against a news publisher regardless of the journalistic exemption. It would be helpful include a clarification that damages may only be claimed where there is actually a breach of a provision of the legislation not covered by the exemption.
4. On p 27, we agree it is important to clarify that the exemption covers the entire journalistic purpose, including archiving as a social and historical record. The wording should be revised to: "...we accept that the exemption allows you to *make the published material available in print and online news archives* and retain and re-use information, even after publication.
5. The issue raised in #1 above applies equally to the discussion of public interest at pp29-30. There is a level of public interest in all journalistic content, including the trivia of daily life; it is the balance of this information against possibly conflicting private interests that is the key consideration in data protection. This ought to be stated more clearly. As presently set down, the wording leaves a misleading impression that there has to be a particular level of significance in the first place for a story to be defensible in the public interest at all. This problem is compounded by endorsement of the industry codes. The Editors' Code (IPSO) does indeed discuss public interest, but not as a concept in relation to journalistic content generally, only very specifically where the public interest is required to defend particular conduct or intrusion which would otherwise be prohibited by the Code.
6. P31 deals with the 'likelihood of harm'. In our experience, the most common objection made by data subjects, particularly convicted defendants in criminal proceedings or other wrong-doers, is that a report of their conduct causes severe embarrassment or distress. That is hardly surprising, but of course this cannot be a reason to suppress coverage. However, this section does not do enough to manage expectations in this regard and it may be seized upon by misguided complainants. It is also important to emphasise that, in order to be considered, claims of harm must in any case be objectively justified and supported by evidence where appropriate, not merely the product of subjective fears.
7. On p48, *NT1&NT2 v Google* is given as a case example, but the draft does not place that case properly in context in relation to journalism. It ought to be pointed out that Google sought to avail itself of the

journalistic exemption, which would have been a defence, but could not because it was not a journalist.

8. At the top of p55, it is said that information does not necessarily lose privacy even if a person has already disclosed personal data relating to the same or similar parts of their life. This needs a little more explanation. Does this mean, for example, that the fact a person is a publicly self-confessed philanderer would not necessarily make the next adultery a valid story as well? We can understand that, but the point is not sufficiently explained.
9. P57/58, discussion of transparency. A journalist would ask if he is entitled to assume that identifying himself and the publication he represents is sufficient in itself for a reasonable person to realise that any information exchanged will be liable to publication. Can you answer that question?
10. We disagree with the description on page 65 of retention of published material in archive as merely a "compatible purpose". It is more than that; it is an integral part of the original journalistic purpose, not something new and separate requiring fresh evaluation; ie it is part of the "end-to-end process" the draft Code discusses on p27.

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.

But some of the internal links do not appear to work yet.

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.

We wondered at first whether there was too much detail included which did not actually focus on journalism, but we concluded that it is not possible to convey an overall understanding of what is relevant to journalism without a wider

discussion of the principles. And the code needs to be a general reference source that can be dipped into for answers on specific points. So in the end we thought the draft was about right.

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.

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.

We have set out our concerns above in answer to Q1.

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

We have set out concerns above.

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).

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

- Yes
- No

Q9a If yes, please explain your answer to Q9.

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?

Mr Simon Westrop

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

Group Head of Legal, Newsquest Media Group

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?
- X 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)
- X 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?

- X 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.

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