

Information Commissioner's Office

Consultation:

Direct Marketing Code

Start date: 8 January 2020

End date: 4 March 2020

Introduction

The Information Commissioner is producing a direct marketing code of practice, as required by the Data Protection Act 2018. A draft of the code is now out for public consultation.

The draft code of practice aims to provide practical guidance and promote good practice in regard to processing for direct marketing purposes in compliance with data protection and e-privacy rules. The draft code takes a life-cycle approach to direct marketing. It starts with a section looking at the definition of direct marketing to help you decide if the code applies to you, before moving on to cover areas such as planning your marketing, collecting data, delivering your marketing messages and individuals rights.

The public consultation on the draft code will remain open until **4 March 2020**. The Information Commissioner welcomes feedback on the specific questions set out below.

You can email your response to directmarketingcode@ico.org.uk

Or print and post to:

Direct Marketing Code Consultation Team
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire SK9 5AF

If you would like further information on the consultation, please email the [Direct Marketing Code team](#).

Privacy statement

For this consultation we will publish all responses received from organisations except for those where the response indicates that they are an individual acting in a private capacity (eg a member of the public). All responses from organisations and individuals acting in a professional capacity (eg sole traders, academics etc) will be published but any personal data will be removed before publication (including email addresses and telephone numbers).

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

Q1 Is the draft code clear and easy to understand?

Yes

No

If no please explain why and how we could improve this:

Q2 Does the draft code contain the right level of detail? (When answering please remember that the code does not seek to duplicate all our existing data protection and e-privacy guidance)

Yes

No

If no please explain what changes or improvements you would like to see?

We respectfully submit that it would be helpful for the draft code to provide more worked examples of specific situations where the code will apply to change current practice.

For example: Lead Generation From Third Parties.

Data brokers usually update their databases on a rolling cycle which they provide to companies for direct marketing purposes on an access basis. We respectfully submit that it would be helpful for the code to provide clarification on whether the one-month period to notify individuals operates from the date of available access to the database or when data is downloaded from a database.

We respectfully submit that it would be helpful for the code to clarify what an entity should do if that entity receives a complaint from an individual that has been subjected to direct marketing by the same entity who bought in their details from a third party. In the circumstances where the entity who bought in the list has complied with all applicable law, including but not limited to Article 13 GDPR, then we respectfully submit that the complaint should be directed to the data broker who had an obligation to collect their details for dissemination in a legally compliant manner.

Q3 Does the draft code cover the right issues about direct marketing?

Yes

No

If no please outline what additional areas you would like to see covered:

We respectfully submit that it would be helpful for the code to reinforce to the market that direct marketing is permissible, legitimate and an effective means to advertise and conduct business if done in accordance with applicable law. As such we respectfully submit that the guidance should explicitly endorse direct marketing as an appropriate channel for companies to engage in to market their products.

We respectfully submit that it would be helpful for the code to clarify the situation where data is provided to an entity via a data broker and the entity then contacts an individual via email and whether an opt-in is required on that email as opposed to an opt-out for ongoing communication. From the draft code, it would appear that the entity using a bought in list cannot rely on the 'soft-opt in' exception but only on consent from the individual to make the direct marketing email on the basis that the individual has given their original consent to the third party broker. In other words, we would request that the code clarifies whether a 'soft opt in' can ever be a basis for an entity to rely on, where that entity directly markets to an individual, whose details the entity received from a bought in list.

Q4 Does the draft code address the areas of data protection and e-privacy that are having an impact on your organisation's direct marketing practices?

Yes

No

If no please outline what additional areas you would like to see covered

Q5 Is it easy to find information in the draft code?

Yes

No

If no, please provide your suggestions on how the structure could be improved:

Q6 Do you have any examples of direct marketing in practice, good or bad, that you think it would be useful to include in the code

Yes

No

If yes, please provide your direct marketing examples :

Q7 Do you have any other suggestions for the direct marketing code?

We respectfully submit that it would be helpful for the code to include graphical "decision making trees" that entities could easily follow when making determinations on their compliance with direct marketing activities.

We respectfully submit that it would be helpful for the code to outline in more detail the circumstances where not contacting individuals within one month of receipt of their details would be acceptable i.e. where to do so would have a 'disproportionate effect'.

We respectfully submit that in the majority of circumstances of direct marketing in a commercial context, the processing would have a minor effect on the individual and as such we consider this to be a wide exemption. Consequently, we respectfully submit that it would be helpful for the code to clarify the extent and scope of this exemption.

About you

Q8 Are you answering as:

- An individual acting in a private capacity (eg someone providing their views as a member of the public)
- An individual acting in a professional capacity
- On behalf of an organisation
- Other

Please specify the name of your organisation:

QA Limited

If other please specify:

Q9 How did you find out about this survey?

- ICO Twitter account
- ICO Facebook account
- ICO LinkedIn account
- ICO website
- ICO newsletter
- ICO staff member
- Colleague
- Personal/work Twitter account
- Personal/work Facebook account
- Personal/work LinkedIn account
- Other

If other please specify:

Thank you for taking the time to complete the survey