

# ICO consultation on the draft updated data sharing code of practice

Data sharing brings important benefits to organisations and individuals, making our lives easier and helping to deliver efficient services.

It is important, however, that organisations which share personal data have high data protection standards, sharing data in ways that are fair, transparent and accountable. We also want organisations to be confident when dealing with data sharing matters, so individuals can be confident their data has been shared securely and responsibly.

As required by the Data Protection Act 2018, we are working on updating our **data sharing code of practice**, which was published in 2011. We are now seeking your views on the [draft updated code](#).

The draft updated code explains and advises on changes to data protection legislation where these changes are relevant to data sharing. It addresses many aspects of the new legislation including transparency, lawful bases for processing, the new accountability principle and the requirement to record processing activities.

The draft updated code continues to provide practical guidance in relation to data sharing and promotes good practice in the sharing of personal data. It also seeks to allay common concerns around data sharing.

As well as legislative changes, the code deals with technical and other developments that have had an impact on data sharing since the publication of the last code in 2011.

Before drafting the code, the Information Commissioner launched a call for views in August 2018. You can view a summary of the responses and some of the individual responses [here](#).

If you wish to make any comments not covered by the questions in the survey, or you have any general queries about the consultation, please email us at [datasharingcode@ico.org.uk](mailto:datasharingcode@ico.org.uk).

Please send us your responses by **Monday 9 September 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 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

Note: when commenting, please bear in mind that, on the whole, the code does not duplicate the content of existing guidance on particular data protection issues, but instead encourages the reader to refer to the most up to date guidance on the ICO website.

Q1 Does the updated code adequately explain and advise on the new aspects of data protection legislation which are relevant to data sharing?

Yes

No

Q2 If not, please specify where improvements could be made.

- We suggest that the code would benefit from a greater focus on the issue of sharing of employee data with third parties. We wholeheartedly welcome the example cited on page 102, which looks at issues around disclosure of personal data about employees with an anti-fraud body. However, we would propose that the ICO includes additional steer for employers. We are thinking in particular of sharing of employee data under TUPE. We are conscious that the [ICO's Disclosure of employee information under TUPE](#) is now five years' old. We would contend that a high number of organisations would welcome an update to this guidance document, or at least a reference to it within this draft code.
- We believe that another area of focus that would resonate with very many data controllers would be sharing of information in the course of processing Subject Access Requests (SARs). For example, an organisation may need to engage other data subjects when dealing with dealing with SARs involving other people's information. Taking the 'three-step approach to dealing with information about third parties' in line with Section 7 of the ICO's

*Subject Access Code of Practice* will require the data controller to share limited information with others, for example to assess whether a duty of confidentiality applies. As an organisation, our Data Protection Office has established some principles around this, however we would suggest that a case study illustrating the assessment of legitimate interests in data sharing within a SAR would be beneficial.

Q3 Does the draft code cover the right issues about data sharing?

Yes

No

Q4 If no, what other issues would you like to be covered in it?

We would suggest that the duty of confidentiality should feature in this code. A clear explanation for data controllers on how to gauge whether information has the necessary quality of confidentiality will help them determine whether it can be shared or not.

Q5 Does the draft code contain the right level of detail?

Yes

No

Q6 If no, in what areas should there be more detail within the draft code?

Whilst we welcome the 'myth-busting' around consent being the only valid lawful basis, we think that more detail should be provided. For example, we are sure that many data controllers would like to see a checklist or infographic for organisations to reuse, explaining clearly to data subjects the different lawful bases.

Q7 Has the draft code sufficiently addressed new areas or developments in data protection that are having an impact on your organisation's data sharing practices?

Yes

No

Q8 If no, please specify what areas are not being addressed, or not being addressed in enough detail

In particular, we welcome the focus on data ethics.

Q9 Does the draft code provide enough clarity on good practice in data sharing?

Yes

No

Q10 If no, please indicate the section(s) of the draft code which could be improved, and what can be done to make the section(s) clearer.

The draft code's focus on the 'how' of sharing – and in particular on security – is greatly welcomed. However, we think that the document would be enhanced with a case study that illustrates that data controllers should feel empowered to refuse to share data in cases where they believe that there are risks to the rights and freedoms of data subjects. It would be particularly significant if the example discussed requests from organisations who may hold more power. For instance, if the case study highlighted that an auditor or government body cannot reasonably request data to be transferred to a platform that is not compliant with GDPR Article 44, this would help controllers more confidently challenge such requests.

Q11 Does the draft code strike the right balance between recognising the benefits of sharing data and the need to protect it?

- Yes
- No

Q12 If no, in what way does the draft code fail to strike this balance?

Q13 Does the draft code cover case studies or data sharing scenarios relevant to your organisation?

- Yes
- No

Q14 Please provide any further comments or suggestions you may have about the draft code.

- We wonder if there would be scope to include more examples drawn from the private sector? In addition, we feel that the code would be improved by examples of SME organisations who may not have large budgets and legal departments and rely on guidance.
- Whilst in response to question 15 below, we agree that the code is comprehensible, we would ask the ICO to consider if the tone and language is appropriate for all sorts of data controllers.
- We would suggest that another example that would be of great assistance to a number of organisations would be sharing of data in the event of a grievance or disciplinary investigation. We are thinking in particular of sharing of witness statements in response to a SAR. We think it shines the spotlight on a number of areas that data controller need to consider: lawful basis, duty of confidentiality and guidance from other bodies such as Acas. There is not currently coverage of this within the *ICO SAR Code of Practice*, so feel it would increase the knowledge base for organisations on data sharing.

Q15 To what extent do you agree that the draft code is clear and easy to understand?

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

Q16 Are you answering as:

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

Please specify the name of your organisation:

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