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.

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 — NO

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

Data Traceability
Much of the consultation document concentrates on the first level of data sharing for example credit checking for a consumer transaction. Such first level data sharing relates to the direct service provision to consumers where several parties need to cooperate and exchange data in order to provide the service; or to enable the creation of an account with an age check or billing for example.
However much doubtful practice occurs when data is passed on to 3rd parties who do not play a role in primary service provision for example data brokers. This is huge area of data exploitation which according to the Sunday Times Business Section 1st September Page 8 the global market for such trading is about £200 bn pa.
In order to be able to exercise their Data Protection rights consumers need to be able to trace where their data has gone within this vast data sharing ecosystem and so traceability requirements and associated guidance for data sharing needs to be included. Further information on these requirements from the consumer perspective can be found in the Consumer Standards Representatives Privacy Guide on Data Sharing http://www.anec.eu/images/Publications/position-papers/Digital/ANEC-ICT-2015-G-040.pdf sections 10, 11, 12 and 13

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

☐ Yes

☐ No — See answer to Q2 as well as Q4 below

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

On the issue of anonymisation: much anonymisation practice focuses on the removal of names while, from the definition of personal data, data sets may contain any number of technical identifiers that can lead to identifiability risks either from direct identification or indirectly through linking with other data.

Requirements for undertaking identifiability and link-ability risk checks, and mitigation if risks are high, should be included in data sharing practices.
Ref ICO web site:
"'personal data' means any information relating to an identified or identifiable natural person ('data subject'); an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person".

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

☐ Yes

☐ No NO

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

Sharing of data bases that are open for general access (for example as being proposed for Smart Cities)

Open data sets do not necessarily have predetermined purposes and so there is a need for guidance on access requests for data where the new purpose is stated so that legal basis for processing and sharing can be checked and data subject consent obtained if necessary.

In other words such data sets should be generally available but only accessible when a legal basis has been established.

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 NO

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

An annex providing examples of data sharing records would be very helpful in providing a practical example that would allow the smaller organisation to get to grips with Data Protection data sharing.

Attached to the NCF's submission is our work in progress paper on data sharing records that we are developing [redacted]

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

☐ Yes

☐ No

no view from the NCF

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.

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

☐ Yes

☐ No

no view from the NCF

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

no view from the NCF

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

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

Agree for those who are already familiar with Data Protection law but maybe needs a simplified version for SME's

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:

The National Consumer Federation

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