

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

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

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?

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?

There are several areas in code which have a wealth of information e.g. section on 'data sharing agreements'. However, other parts of the code do not have the same level of detail in relation to the subject area.

An example where more detail would be helpful is in the 'security' chapter. This is a key aspect of data sharing and the term will mean different things to different organisations. This chapter could include for example, more detail on why organisational and technical measures are important in data sharing arrangements to emphasise how this links to compliance with data protection law and in particular the accountability principle. This section also touches on the importance of a culture of privacy, but it would be helpful for it to also reference data protection by design (although reference is made in the 'accountability' section). This chapter may also benefit from further details on how to evaluate security measures in relation to data sharing.

The 'security' chapter includes the heading 'are we still responsible after we've shared the data?' – however the resulting section does not provide a clear answer to the question and where the lines may lie for when a provider of data is responsible for compliance in relation to processing by the recipient. It indicates that the provider organisation has some responsibility for ensuring the continued protection of the

data but doesn't explain where responsibility lies as between the parties should something go wrong with processing by the recipient e.g. a personal data breach. This is an area where some practical examples of responsibilities of providers and recipients of data in relation to particular data sharing arrangements would be helpful. This is likely to be a key concern for many organisations when entering into data sharing agreements.

Further examples are mentioned below in response to other answers e.g. Q8 and Q10.

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

The code would benefit from more detail on auditing and monitoring and its importance in relation to the accountability principle.

The 'accountability' chapter suggests reviewing accountability measures regularly, however it would be helpful if it also mentioned that 'reviewing' is itself an accountability measure.

The 'accountability' section should be more explicit regarding monitoring data sharing agreements, for example to ensure they up-to-date and accurate. Monitoring would also include reviewing legal basis and other legal considerations, as well as monitoring the effectiveness of data sharing processes and arrangements.

This section should also include the importance of staff awareness and training on particular data sharing arrangements, particularly where there is little or no dedicated data protection/privacy resource. Staff should feel confident in their understanding of when they can and cannot share data under particular arrangements.

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.

There are some good examples of best practice and the 'data sharing agreements' section in particular contains a good level of detail and practical support. There are also good examples of organisational and technical measures set out in the 'security' chapter (however see above our comments regarding linking these with specific compliance obligations).

This approach could be extended more throughout the code to bring more practical elements to complying with the law. There is references to large organisations, or organisations with complex processing seeking legal advice on restrictions and legal powers for data sharing. However, it would be helpful to set out how smaller organisations can identify these powers and restrictions e.g. through the work they may have done already on their Article 30 records, through industry specific guidance etc and link to other ICO guidance on this. This would help a wider range of organisations implement good practice data sharing processes with a focus on the practical 'how to' elements and be more aligned with the statement made at p10 of the code that 'the majority of the code applies to all data sharing, regardless of its scale and context'.

There appears to be some repetition in sections of the code e.g. last bullet on p4 relates to lawful basis as does the 4th bullet on p5.

The code is quite lengthy, partly due to some repetition and the substantial introduction. The length of the code and the introduction may reduce engagement and subsequently limit its effectiveness. There are for example several references throughout the code on sharing in emergency situations and use of DPIAs which could perhaps be consolidated and be more concise. It may therefore be helpful to review the length.

The code may also benefit from some sector specific sections which would allow some organisations to identify specific sections most relevant to them.

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?

It is clear that the code attempts to strike a balance, however there are statements in the code, particularly in relation to emergencies, which could result in decisions being made without due consideration of the entire data sharing framework e.g. confidentiality, human rights, other legal requirements.

P14 and 15 of the code provides some examples of the benefits of certain arrangements which are all health care examples. However, the examples don't set out the full context, including the lawful basis and the safeguards which would be required to ensure the arrangements were appropriate and that privacy rights are respected. The examples could therefore be misleading without providing more information about the safeguards etc.

We recommend that the list of 'misconceptions' on p12 – 13 regarding data sharing and the responses to each of these is carefully reviewed as the examples may be better addressed more fully in specific sections of the code or by way of separate guidance. Some of the responses also do not appear quite right e.g. "This code helps you to balance the risks and benefits and implement data sharing if it is:

- in the public interest; or
- proportionate, in the case of sharing for commercial reasons."

However, many public sector data sharing arrangements will take place because there are legal powers and duties which permit or require data sharing and the question of proportionality is not limited to data sharing for commercial reasons.

The use of the words 'urgent' and 'emergency' should be defined to prevent broad interpretation, particularly in relation to special categories data and public sector organisations. P80 – 81 describes disaster type scenarios, but it should also cover e.g. data sharing to protect an individual's vital interests and safeguarding issues, which are scenarios organisations are likely to recognise and deal with.

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 would welcome the 'at a glance' section being explicit that a data sharing agreement is not in itself a legal basis to share data.

'information risk analysis' (p48)- clarification required on whether this means a DPIA or a broader information risk assessment.

It isn't clear what the purpose of the 'data ethics and data trusts' section is. This section is quite vague and it is not clear to what extent it is applicable to GDPR compliant data sharing as it using phrases such as 'bear in mind'. As this is an emerging area it may be more appropriate to address this with reference to separate guidance, which can be updated and expanded as this area develops, rather than by including it in the code. The code focuses on compliance and introducing ethics into this statutory document may cause confusion.

It may be helpful to set out in relation to the section on DPIAs (p21) what the benefits of carrying out a DPIA are, other than where required by law, and expanding how the output from the DPIA eg risks and mitigations should be addressed in the data sharing arrangements.

P22 makes reference to 'anonymising' and 'anonymous' data but does not provide details on how this is defined.

P57 – 58 consider including references to a 'power to receive data' as well as power to share data.

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:

NHS Digital (Health and Social Care Information Centre)

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