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.

While the Code does clearly explain the legal requirements, there is some concern over the practical implementation of the Codes requirements particularly in the section on Data Sharing Agreements. For example, it is not clear whether it will be feasible and practical for organisations to adhere to all the requirements outlined in this section. Also, the guidance does not recognise that there will be situations where companies will share data with partners on a more routine basis in order to provide or deliver a service.

Also the term "data pooling" is used in the Code. It would be useful if there was clarity on what is meant by this term in the Code itself and some examples to illustrate the points being made here within the Code.

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?

The Code adequately outlines the requirements under GDPR, particularly for public sector bodies. However, the Code does not provide enough practical assistance and guidance for how organisations should approach data sharing issues that could arise in new and more complex commercial scenarios. For example, in commercial situations where data is shared to be used for research purposes, particularly in innovative areas such as AI. There is also no guidance for organisations on how to address issues raised by intergroup data sharing.

It is also suggested that the Code's section on acquisitions or transfer of databases and lists could provide further guidance. In particular, to guide organisations looking to acquire databases of the need to ensure the necessary consents are in place for the data to be shared/transferred. It would also be useful if the Code could highlight the importance of ensuring the obligation to collect appropriate consent is contained in the contract to ensure transparency and clarity when databases are being sold, acquired or transferred. It is suggested that these additions could be included by adding extra detail to the bullet point on checking the records of consent to cover these points.

Another aspect of the Code where further details would be useful is in situations where data is shared between controllers. It would be useful if the code provided data sharing examples to offer clear guidance on what is needed when sharing occurs in situations where there are joint controllers and between other controllers to controllers.

Finally, while the Code highlights the need for organisations to make plans to cover "ad hoc data sharing", it does not provide any details or examples of the steps that should be taken. It would be useful if the Code could offer guidance, or an example, on the type of steps organisations might take if and when ad hoc data sharing may take place.

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?

The Code does not provide any information or guidance to organisations that may be subject to data protection laws in other international jurisdictions such as the United States. It is suggested that the draft Code should be amended to include links to additional ICO guidance on how the rights of the Code on data sharing relate to requirements under non EU law.

Another area where more detail would be useful is in the section on data ethics and data trusts. For example, it may be useful to include more details on how the requirements of GDPR relate to the issues in this section and also some practical examples and case studies to help organisations in this area.

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 will be useful to organisations looking to understand their legal requirements under GDPR. However, it is felt that the Code could go further by providing organisations with more advice and guidance on how to practically address some of the more complex issues arising from new and emerging commercial uses of data. As organisations increasing adopt and deploy more innovative, data driven technologies this is likely to raise new data sharing issues and questions particularly in relation to the sharing of data with an increasing number of partners, data segmentation and ownership of outcomes derived from projects enabled by the sharing of different data sets.

It would have been useful for the Code to offer practical examples and case studies of more innovative scenarios of where data sharing is happening and how key issues around data use that may arise might be

addressed. This could have included guidance on issues of rights and responsibilities for data created by a new product or service that has been developed based on data that has been shared between organisations. These are the complex issues being faced by organisations where the Code could have provided useful support and guidance.

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.

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?

As raised in our previous input, when it comes to data sharing there is an inherent risk aversion in both private sector organisations and public bodies. This prevents the proactive sharing of information. The Code was an opportunity to emphasise the benefits of appropriate data sharing, as well as the risks which need to be mitigated when data is shared. It is felt that the draft Code could still be strengthened further to raise greater awareness of the potential positive benefits of data sharing particularly by public sector bodies.

While the inclusion of additional case studies and examples in the Code are a welcome step forward, it is suggested that additional examples would be useful to help support the sections of the Code that relate to public sector bodies, particularly in relation to the Digital Economy Act.

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.

More practically it would be useful if there was an index page (in addition to the contents page) at the start of the Code to help organisations find information on specific issues more quickly and easily.

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:

techUK

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