Promoting openness by public bodies and data privacy for individuals

An information rights strategy for the Information Commissioner's Office

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1) Our goal, our mission and our vision

The ICO's goal is to achieve a society in which:

- all organisations which collect and use personal information do so responsibly, securely and fairly;
- all public authorities are open and transparent, providing people with access to official information as a matter of course;
- people are aware of their information rights and are confident in using them; and
- people understand how their personal information is used and are able to take steps to protect themselves from its misuse.

The ICO's mission describes our role, as the UK's information rights regulator, in bringing about movement towards this goal. It is:

> "To uphold information rights in the public interest, promoting openness by public bodies and data privacy for individuals".

This mission is at a very high level. The purpose of this information rights strategy is to develop it further.

The ICO's vision describes we see ourselves working if we are successfully and effectively undertaking our mission. It is:

> "To be recognised by our stakeholders as the authoritative arbiter of information rights, delivering high quality, relevant and timely outcomes, responsive and outward looking in our approach, and with a committed and high performing staff – a model of good regulation, and a great place to work and develop".

This vision is also at a high level and the outward facing elements of it are expanded on in this strategy.

2) Our statutory duties and beyond

Our goal, our mission and our vision are derived from the statutory duties we are given in the Data Protection Act 1998, the Freedom of Information Act 2000 and the other information rights legislation that we oversee. There is an overriding obligation on us to ensure that we meet these statutory duties. These are, in summary:

- to promote the following of good information rights practice. This is practice, whether in relation to openness or data privacy, that appears to us to be desirable in the public interest without necessarily being limited to compliance with the law;

- to provide information and advice not only to organisations but also to the wider public on good information rights practice and on the rights we set out to uphold;

- to consider and rule on complaints that information rights law has been breached; and

- to ensure compliance with the requirements of information rights law. This includes the use of formal enforcement powers.

In addition, as a public body, we have a general statutory duty to have due regard to the need to eliminate discrimination, advance equality of opportunity and foster good relations in the course of developing our policies and delivering our services.

We also believe that we have a duty, albeit not a statutory one, to inform, influence and respond to the legal, technical, economic, social and political climate within which we operate. Only by doing this can we truly encourage the development of our society in a way that is consistent with good information rights practice, ensure that information rights continue to be upheld and move towards our goal.

In short our duties require us variously to:

- Educate
- Empower
- Engage
- Enable
- Enforce

3) This strategy

This information rights strategy explains how the ICO goes about maximising movement towards its goal. The strategy is concerned with ensuring our long term effectiveness in bringing about good information rights practice at a time when the ICO and its stakeholders face many challenges and opportunities. These range from the impact of developing technologies and globalisation of information systems through to growing public concern about information rights issues, an increasing emphasis on transparency and the pressure all public bodies are under to deliver "better for less".

This high level strategy is aimed at our stakeholders so that they can be clear about what the ICO is seeking to achieve and the strategic approach we will adopt to achieving it. It also provides a point of reference for our staff.

In particular this strategy sets out to:

- explain the information rights outcomes we are seeking;
- outline how we go about achieving these outcomes; and
- clarify how we set our priorities within the limited resources available to us.

This strategy is being introduced in the light of our commitment to integrate our data protection and freedom of information activities wherever we can. It is designed to make this commitment a reality and replaces our former, separate data protection and freedom of information strategies.

This strategy is part of the governance arrangements for the Information Commissioner's Office. It develops our high level mission and vision statements and sets out, in more depth, how we set about our information rights work. It provides the strategic approach which our corporate and business planning then follows. It also provides a framework on which to hang more specific policies such as our enforcement policy and our case handling policy.

Annex 1 illustrates the place of this information rights strategy in the ICO's corporate governance arrangements.

4) The outcomes we are seeking

To achieve the greatest possible movement towards our goal we need to be clear about the more immediate outcomes that we are seeking. How far we succeed in delivering these outcomes will be a measure of our

effectiveness. At the very least we must be able to show that, judged against these outcomes, a sustained reduction in risks to the upholding of information rights has been achieved. If we are truly effective we must be able to show not only a reduction in risk but a sustained and positive movement towards these outcomes.

The outcomes are:

1. a high proportion of individuals with a basic awareness of their information rights coupled with ready access to information on how to exercise those rights;

2. development of people's understanding of information rights and risks embedded as an output of the formal education system;

3. organisations routinely meeting their legal obligations in the way they respond to people exercising their rights;

4. a high level of awareness in organisations of all their wider obligations under information rights law with those obligations routinely met in practice;

5. good information rights practice embedded into the culture and day-to-day processes of organisations and into emerging technologies and systems;

6. good information rights practice and the upholding of information rights being demonstrably driven by ICO's casework and secured and underpinned by the use of ICO's regulatory tools;

7. organisations and individuals aware of the ICO's investigatory and enforcement powers and the consequences of failing to meet the requirements of information rights law;

8. a legislative framework for information rights that is integrated and consistent, underpins good information rights practice, furthers the upholding of information rights and enables the ICO to be an effective regulator;

9. the law, technology and public policy developed and deployed consistently with ICO's goal, but without imposing disproportionate burdens on organisations; and

10. the public confident in information rights law as necessary, serving the public interest, effective in practice and properly enforced.

5) Achieving our outcomes

5.1 A model of good regulation

Our vision commits us to being a model of good regulation. This means that our regulatory activities will be informed by the Five Principles of Good Regulation determined by the Better Regulation Executive. These are that regulation should be:

- "transparent;
- accountable;
- proportionate;
- consistent; and
- targeted – only at cases where action is needed."

We will have regard to the Regulators' Compliance Code not only where we are required to do so by law, but also more generally. This means that we will adopt a positive and proactive approach to ensuring compliance by:

- helping and encouraging organisations to understand and meet their information rights obligations more easily; and

- responding proportionately to breaches of information rights law.

One way in which we will demonstrate our commitment to exercise our regulatory functions in a proportionate and common sense way is through the undertaking we have given in our own framework of values that we will not ask others to do what we are not prepared to do ourselves.[1]

5.2 Independence

Our independence is essential if we are to be an effective regulator and we will work hard to preserve it. Not only does our independence help build public trust and confidence in our decisions. It also helps ensure that we can be truly influential. We nevertheless recognise that we need to be accountable for the efficiency and effectiveness of our activities, that we spend public money and that we must act in the public interest. This does not prevent us remaining independent in the decisions we take. Being independent means not only being independent of government.

[1] http://www.ico.gov.uk/~/media/documents/library/Corporate/Notices/values framework.ashx

We need to listen to commercial, political and media voices to help us understand where the public interest lies but we must not be unduly influenced by the pressures they bring. The upholding of information rights, using the law as our foundation, must remain our guiding principle.

5.3 Setting priorities

We cannot address all risks to the upholding of information rights equally nor should we attempt to do so. We will make choices where we can whilst acknowledging that the legislative framework imposes certain obligations on us particularly in relation to our casework. We have to recognise that there is a legitimate expectation that we will enforce the law, that the decisions we take will be robust ones and that we have to provide good customer service but this does not mean that we cannot make choices.

Our choices will be driven by the external outcomes we are seeking – how can we deploy our effort and the effort of those we regulate in a way that makes the maximum long term and sustained contribution to the outcomes we are seeking and does not just provide short term fixes? Put simply – how do we deliver best value for money in the upholding of information rights?

Making these choices requires us to consider:

- what are the greatest risks to and opportunities for furthering the outcomes we are seeking;

- how likely is it that these risks and opportunities will materialise; and

- where and how can we have the greatest impact in mitigating risks and exploiting opportunities.

This means we have to take account of factors such as the volume, nature and sensitivity of information involved and the number of people whose information rights might be impacted on in any situation.

Using this approach and the evidence available to us from our casework and elsewhere we will identify four or five priority sectors or activities for particular regulatory attention. These priority sectors or activities will change from time to time. The identification of these sectors or activities will guide the application of our discretionary effort. We will be open about what these priority sectors or activities are, publishing details on our website and reporting on work we have done. A review of these

priority areas will be undertaken at least annually and more frequently if circumstances require it.

Annex 2 provides, by way of illustration, a list of our priority areas as at the date of publication of this strategy.

5.4 Risks and opportunities

In making our choices we need to evaluate risks and opportunities. Only by doing this can we ensure that we concentrate on protecting and promoting the most significant aspects of data privacy and openness by public bodies. We are committed to working in the public interest which means that we have to focus our discretionary effort on activities that best serve the interests of society as a whole. This means weighing what can be the competing interests of individuals, of groups, of organisations, of public authorities and of others.

In assessing where the public interest lies we will work hard to understand the importance the public attach to the different aspects of information rights and will factor this in to our choices. This does not mean that we will always adopt positions that are universally popular. We take the view that sometimes the public interest will be best served by us acting to protect the information rights of minorities or by us drawing attention to the downsides of new developments that might otherwise appear attractive.

We also have to look at the consequences should public authorities fail to be open or organisations fail to respect data privacy and how likely these consequences are to arise in practice. In doing so we will bear in mind the key role that access to information can have in unlocking a broad range of rights including other information rights. We will concentrate the application of resources, whether in our casework or more generally, on situations where there is a genuine opportunity for us to defend or promote:

- The principle that public authorities should be open and accountable in particular where they are spending public money or taking decisions that significantly impact on the public.

- The principle that organisations should protect information about individuals and not collect, use or disclose it in a way that is likely to be detrimental to them

- The principle that individuals should have access to information that affects their lives whether this is personal information held

by any organisation or more general information held by a public authority.

This is, in essence our risk based approach to upholding information rights. As far as we can we will base this approach on sound evidence and analysis. However we know from our experience that there is inevitably an element of subjective judgement involved in the assessment of information rights risks. What is important is that this judgement is, as far as possible, informed by evidence, analysis and experience.

When considering information about individuals we recognise, particularly in the context of data privacy, that detriment will not always be tangible and quantifiable. There may be obvious damage or distress but often detriment will be less defined, involving, for example, harm to personal relationships or social standing. Furthermore distress or even damage may be intangible but nevertheless real, for example the fear of identity theft is a form of distress that comes from knowing that the security of one's financial information has been compromised even though such identity theft might not actually materialise.

5.5 Maximising our impact

When we make our choices we will not only evaluate risks and opportunities and the likelihood that these risks and opportunities will materialise. We will also assess how far our intervention is likely to make a real difference. We will make our choices with the aim of getting as big a return in furthering delivery of our desired outcomes as is possible for the resources we and those we regulate invest.

In line with good regulatory practice we will work on the basis that "prevention is better than cure". We will devote resources to ensuring that organisations get it right in the first place and that people know what their information rights are and how to exercise them. This is how we can maximise our impact. Education, awareness raising and the provision of guidance are therefore key activities for us.

We are confident that this approach will minimise both the need for us to intervene and any burden on responsible organisations. Ultimately much of our work on educating and guiding organisations in good information rights practice and on influencing public policy is aimed at reducing our caseload. Where we do intervene we will seek to maximise our impact. This means using our casework and enforcement activities as opportunities to educate organisations, set an example and drive wider good practice. It also means that when individuals contact us we will use this as an opportunity to raise their awareness of information rights and their confidence in using these rights.

Other ways in which we will seek to maximise our impact include:

- working in partnership with others who share our goals or who are otherwise able, sometimes more effectively, to contribute to achieving the outcomes we are seeking eg other regulators, other providers of advice and guidance;

- actively influencing the development and deployment of public policy, the law, business practices and technology so that they contribute to the outcomes we are seeking;

- encouraging effective redress mechanisms, self regulation and accreditation;

- developing our understanding of how those we regulate operate and the effect our interventions have on them;

- deploying our enforcement tools in a way that provides incentives to organisations to get it right first time;

- engaging with civil society and consumer organisations to help us understand and respond to public concerns;

- engaging with the developers of information in technology to ensure proper regard for information rights principles;

- promoting and supporting the work of information rights officers in public authorities and other businesses through ICO events and other means; and

- encouraging and supporting the raising of information rights awareness through the formal education system and through informal channels such as social networking.

Annex 3 provides, by way of illustration, further examples of ways in which this strategy will be translated into the practices of the ICO.

5.6 The international dimension

In maximising our impact we need to work internationally. This is because our ability to deliver our desired outcomes can be affected by relevant events worldwide. We must work within the legislative framework we are given but we can influence how this framework develops to help ensure that it is proportionate and effective in delivering its regulatory aims. If we are to be influential in this we have to recognise that much of our legislative framework, particularly but not exclusively in

relation to data privacy, is derived from EU and other international instruments and be engaged where these instruments are developed.

We also have to recognise that in an era of global data flows and universal deployment of new technologies risks to the upholding of information rights neither come exclusively from within the UK nor are capable of being addressed by the ICO alone. We need to work, not just within the EU but also more widely at international level, most particularly with other information rights regulators, to ensure that, in so far as it makes sense to do so, we take a consistent and harmonised approach to the application of information rights law. Any unnecessary divergence of approaches across national borders will not only impose unnecessary burdens for organisations. It will also undermine the upholding of information rights by confusing people about their rights and businesses about their obligations.

We are also part of a growing international community of information rights regulators. We have to keep abreast of developments around the world and play our part in this community. This involves not only supporting our counterparts where we can and helping to build competence amongst newer members of the community but also benefiting ourselves from the ideas and experience of others.

6) Measurement and evaluation

We need to know if we are succeeding in delivering our desired outcomes and adapt if we are falling short. We will therefore do all we can to measure our effectiveness. We do though recognise that not all our desired outcomes can easily be measured and that in some cases, even where they can be measured, our intervention may be only one of the factors that influences their delivery.

Ways in which we will measure our effectiveness will include:

- annual track research, which monitors awareness and understanding of information rights by individuals and organisations:
- stakeholder perception studies;
- customer satisfaction surveys;
- analysing the volume and nature of complaints referred to us;
- monitoring our media coverage;

- feedback from civil society and other organisations with an interest in promoting openness by public bodies and data privacy for individuals;

- counting the number and understanding the nature of visits to our website;

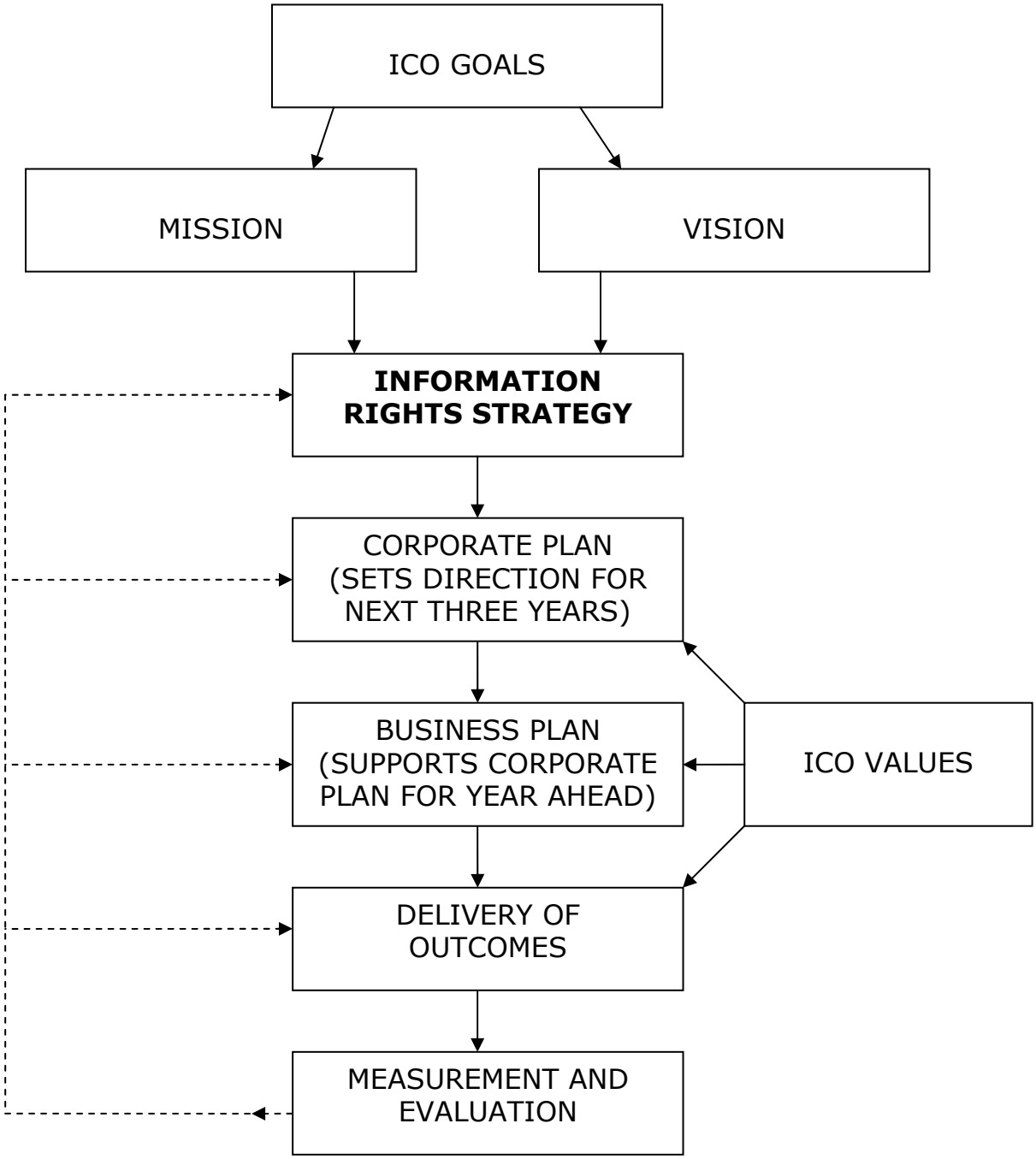
- monitoring the extent to which our decisions are upheld or overturned on appeal; and

- developing a narrative about our achievements in influencing developments in the law, technology and public policy.

Evaluating our effectiveness will enable us to learn from experience and improve the delivery of our desired outcomes. We will review this strategy at least every two years in the light of changing expectations of us as well as our experience and update it as necessary.

ANNEX 1

THE PLACE OF THE INFORMATION RIGHTS STRATEGY IN ICO's CORPORATE GOVERNANCE



ANNEX 2

INFORMATION RIGHTS PRIORITY AREAS
(AS AT NOVEMBER 2011)

1) Health
2) Credit and finance
3) Criminal justice
4) Internet and mobile services
5) Security

ANNEX 3

THIS STRATEGY IN PRACTICE

These are some of the ways in which this strategy will be translated into the practices of the ICO.

1. we will neither be exclusively an educator nor exclusively an enforcer. We are both, even though we prefer to deliver our desired outcomes through help and encouragement rather than force. This means we are primarily a facilitator and will do what we can to help and encourage organisations that seek to live up to their information rights responsibilities but nevertheless act firmly with organisations that do not;

2. we will devote effort to educating and empowering people about their information rights and how to use them as well as educating public authorities and other organisations about their obligations;

3. we will identify our key stakeholders – those whose activities have the greatest impact on the delivery of our desired outcomes – working most closely with them and their representative bodies and using their influence to help deliver these outcomes more widely;

4. we will establish priority areas for our attention based on our assessment of where we can have the greatest impact on reducing risks and promoting information rights. We will keep these areas under review and develop and implement action plans within them;

5. we will be vigilant in keeping a watch out for and responding to developments in public policy, the law, business practices and technology that impact on information rights;

6. we will be forward looking, flexible and adaptable so that we can respond quickly and effectively to risks and opportunities as or even before they arise and address issues of emerging public concern;

7. we will continue to be a source of direct advice, support and assistance to the public with a focus on helping individuals to exercise their own information rights rather than taking on the task ourselves: we will nevertheless

support those people who struggle to exercise their information rights on their own;

8. we will recognise the importance of our website as a primary source of advice and support to individuals and organisations and ensure that it is fit for this purpose;

9. we will consider the information rights, needs and concerns of all individuals in all our work, taking care not to give undue weight to those who are best able to access our services or those who shout the loudest and watching out for those who might be vulnerable or disadvantaged;

10. we will treat all cases that come to us fairly and properly but not necessarily pursue them with equal vigour. In handling cases we will ensure that public authorities and other organisations retain responsibility for resolving information rights problems that are of their own making;

11. we will devote particular effort to investigating, analysing and ultimately enforcing in those cases that we see as contributing most to the delivery of our desired outcomes and not just those presenting the biggest risk;

12. we will use our casework to best advantage, learning from it and using it as an opportunity to influence and educate organisations in good information rights practice;

13. we will give positive feedback to organisations that get it right and build case studies of good information rights practice;

14. we will promote the need for effective records management as a foundation for good information rights practice;

15. we will actively seek out situations where organisations significantly fail to live up to their information rights responsibilities and use the full range of our powers to address these;

16. we will make efforts to better understand the impact our interventions have on those we regulate and take this into account in ensuring we act proportionately in the demands we make of them;

17. we will use our offices in Northern Ireland, Scotland and Wales to ensure that we are equally alert to risks to information rights and opportunities for promoting such rights throughout the UK;

18. we will actively participate in the Article 29 Working Party of EU data protection commissioners to encourage an approach to the application of data protection law that is consistent across the EU and in line with the aims of this strategy;

19. we will develop and publish more detailed policies explaining how we deliver this strategy in practice in areas such as casework and enforcement;

20. we will be as open as we can about our information rights work, recognising the educational value this can have and that we are regulating in the public interest. In doing so we will take the necessary steps to preserve the integrity of our regulatory functions and ensure that those who seek our advice and assistance can do so confidentially.