

# 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 are encouraged by the draft COP provided for consultation and consider that there are opportunities to further develop the document to provide clearer support for organisations and individuals in relation to this complex subject.

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 structure and content (in particular the level of detail included) is variable throughout the document. It is very high level in places and detailed in others and as a COP, it is suggested that there would be benefit from consistency on the level of content throughout the document.

Further detail on the subject of DPA Part 3 (law enforcement) information sharing and in particular the sharing of information for alternate processes (i.e. Part 3 to Part 2) processing is necessary. There are gaps in these areas that are evident in comparison to the content of the COP in relation to GDPR

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?

In addition to response to Q4 above, it is suggested that the worked examples throughout the document lack sufficient detail to allow them to be used effectively to understand the considerations that will be required in each instance. Therefore, whilst useful in principle, they are too broad and open to misinterpretation to be of particular value.

In addition, it would be useful if the COP included clarification on whether the worked examples have been tested against the various legislatures in the UK. It is noted that this is UK-wide COP, however references are to FOIA not FOISA or other equivalent legislation

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

It is suggested that the section(s) on law enforcement processing and references to it needs to be expanded. When compared against the COP content for GDPR, LE processing is fragmented and lacks equivalent detail or information. It may be worthwhile considering a much larger single section in the COP on this subject, bringing all elements together to create a more focussed, detailed section, under the wider and more general COP. As an example, pg51 highlights that there is a difference in relation to the rights of an individual; the COP then provides the detail in relation to DPA Pt2, but is silent on DPA Pt3 until Pg55 which gives only minimal details, demonstrating a lack of consistency in the draft COP

Pg40 "The first case"

It is suggested that a worked example in relation to consent by the data subject to data sharing for LE purpose would be useful, particularly if it also addressed the imbalance of power

p63 - confusing example? Sharing with Social Work is under GDPR (Part 2 to Part 3) although Police will provide extra detail under Part 3. As a general point on examples, some (e.g. p66) would benefit from more detail to show workable steps to sharing and possible alternative routes to compliance.

p65 (para 3) - "if you are not a competent authority" - indicates an expectation that a non-law enforcement reader will be reading the Part 3 section of the Code of Practice? Does this section not then need to be moved to, or replicated in the general Part 2 section?

p65 - is there a requirement to spell out the different circumstances in which DPA Schedule 2, paragraph 2 (1) may apply rather than Schedule 1 (and vice versa).

p66 - as above, the example doesn't clarify things. Cites sharing under Schedule 1, but considered it may be more likely to be under Schedule 2, paragraph 2 (1) in this particular example.

p66 - hyperlink to general ICO website. Could a more specific hyperlink be provided to a relevant section? (I assume it will be <https://ico.org.uk/for-organisations/guide-to-data-protection/guide-to-law-enforcement-processing/> )

p67 - gang database example, we have concerns around using an example that appears to suggest sharing an unredacted intelligence database with a local authority. Unclear what the aim of the example is.

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.

Pg23 'Are we allowed to share the information'

This section focuses on whether there are any restrictions on sharing, but there is no counter-measure to check what allows/facilitates sharing – i.e. what is the enabler; this is not addressed until pg27. A more structured relationship between the two sections would be easier for the reader to understand.

Pg27 Lawful basis for sharing

We are unsure why public sector organisations are being directed to define legal powers to share in an agreement (which we are in agreement with), but this direction is not extended to other organisations

Pg27 Access and Individual Rights

We found para 2 of this section particularly confusing; it can be read to suggest that one individual has responsibility for all shared data where there is no joint controller relationship. We do not think this is intended

Pg38 Information Governance

We do not agree that common rules for retention and deletion of share data are necessary except in joint controller relationships or instances where the shared data forms a single dataset or collaborative working area. Therefore it is suggested that rules are required.

Similarly, we do not agree that common technical and organisation security arrangements are required, rather that technical and organisational security arrangements appropriate to the nature/content of the information being shared are required of all parties to a sharing agreement.

We found this section confusing and suggest that clarity is required, perhaps by indicating that different options will be required for sharing agreements based on joint controller relationships from those that are based on controller to controller relationships

Pg31 Data Protection principles

It is suggested that there is an opportunity to be clearer in this section that each of the principles must be satisfied every time information is shared and that a sharing agreement is a framework to meeting that requirement

In general terms, it is suggested that the practice of developing examples in the draft COP on a piecemeal basis causes confusion. Examples that are only part worked will suggest to the reader who does not read the whole document each time, that certain aspects (that are developed in other sections of the COP) are valid, when in fact another section of the SOP expands on them. Therefore an alternative would be to provide fully worked examples that address all issues at the end of the COP

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?

Pg52 – bullet point 3

We do not consider that this is workable, nor does it allow for different controllers to make different (legitimate) decisions regarding individuals' rights. It is also questioned as to whether it could be legal in some circumstances.

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.

Pg35 Example

We did not find this to be a useful example and suggest that its base scenario requires revision. In addition, it does not appear to link to link well to the content it follows in the document

p57 - "Most private and third sector organisations do not need to identify a specific [legal] power to share data" - considered that an additional word is required for clarification or something to underline that they will still need to identify a lawful basis.

p59 - last sentence considered a bit confusing, perhaps definition of "overriding public interest" is required?

p77 - section mentioning children would benefit from referring to Part 3 to show that there are exemptions (either here, or in the Part 3 section).

p81 - example is of sharing under the GDPR, but one of the examples given is a terrorist incident (which obviously is criminal), perhaps confuses the issue to include a criminal act.

p99 - first example on CCTV - possibly inconsistent with the CCTV example on p66? Annex D doesn't appear to be referenced anywhere else in the document and it isn't clear if these are intended as examples of good practice.

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:

Police Service of Scotland

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