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.

No response

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?

No response

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?

1) **Mergers and acquisitions:** We note that the section on mergers and acquisitions is shorter than in the pre-GDPR code of practice. This is a common activity so it would be useful to see more guidance, here. For example, more content could be useful in the M&A context in respect of: - responsibility for direct marketing databases / PECR rules and third-party consents - sharing with *prospective* purchasers before the merger / acquisition takes place - reasonable expectations of data subjects Private sector examples could help. **2) Basis for processing** More discussion of basis for processing for private sector data sharing would be useful.

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

No response

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.

1) Compliance guidance versus best practice guidance

We recommend making it clearer in the final code which sections / components are 'compliance guidance' and which are 'good practice recommendations'.

The draft code specifically states that certain components are 'good practice'; this suggests that other components which are not specifically labelled as 'good practice' are in fact compliance guidance (ie: guidance on GDPR requirements).

However, several sections of the code which are not labelled 'good practice' do not in fact appear to be directly related to GDPR obligations. For example, there is no mention of 'good practice' in the section on Data Ethics, despite these components not being directly part of GDPR.

Similarly, the list of steps firms should take when receiving data from another controller (pages 73-75) is certainly good practice but might not be the only way to ensure compliance in some situations of data receipt. The list appears to be best practice guidance with the purchase of marketing lists in mind. In other situations of data sharing, other approaches to ensuring compliance could be more appropriate.

2) Ongoing versus ad hoc data sharing

It would be helpful for the final code to recognise that not all the content relating to data sharing agreements would be relevant for ad hoc transfers / sharing. In particular, the controller sending data in an ad hoc transfer would not normally impose / agree the details of ongoing security arrangements or data retention periods for the recipient controller.

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?

See comments above under question 6.

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.

No response

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:

UK Finance – UK Finance is the collective voice for the banking and finance industry. Representing more than 250 firms, we act to enhance competitiveness, support customers and facilitate innovation.

If you have any questions, please contact:

[redacted]

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