

## Elizabeth Archer

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**From:** [REDACTED]  
**Sent:** 10 January 2022 09:45  
**To:** journalismcode  
**Cc:** [REDACTED]  
**Subject:** Re: Journalism code - ICO consultation closes 10 Jan  
**Attachments:** ITV response to Consultation on ICO Journalism Code of Practice 10 January 2022.pdf; journalism-code-word-202110 - response of ITV Plc.docx

External: This email originated outside the ICO.  
Dear Elizabeth

I now attach ITV's response to the Consultation, and the online survey form.

Best regards  
Chris

On Wed, 5 Jan 2022 at 15:51, journalismcode <[journalismcode@ico.org.uk](mailto:journalismcode@ico.org.uk)> wrote:

Dear Chris and Michele,

I hope you had a good Christmas break and happy new year.

We are sending out a reminder that our public consultation on the draft ICO statutory code of practice for data protection and journalism closes on **10 January 2022**. We'd be very grateful if you could let interested parties know. The code has already been shaped by industry feedback, and as we move towards completing a draft to submit to Parliament and other supporting resources, this continues to be crucial.

We look forward to hearing from you.

Best wishes,

Elizabeth Archer

Principal Policy Adviser

Regulatory Assurance

Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire SK9 5AF

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Chris Wissun  
Consultant



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# ICO consultation: Draft journalism code of practice

Start date: 13 October 2021  
End date: 10 January 2022

## Introduction

We are seeking feedback on the draft code of practice about processing personal data for the purposes of journalism. This is a statutory code under section 124 of the Data Protection Act 2018 (DPA 2018).

The code provides practical guidance about processing personal data for the purposes of journalism in accordance with the requirements of data protection legislation and good practice.

The code updates our previous guidance, [Data protection and journalism: a guide for the media](#), which was published in 2014.

It will also help us to assess compliance as part of the periodic review of processing for the purposes of journalism that the ICO must carry out under section 178 of the DPA 2018.

Before drafting the code, we launched a [call for views in 2019](#). You can view a [summary of the responses and individual responses on our website](#).

The draft is now out for public consultation. The public consultation will remain open for 12 weeks until 10 January 2022.

**Download this document** and email to: [journalismcode@ico.org.uk](mailto:journalismcode@ico.org.uk)

**Print off this document** and post to:

Journalism Code of Practice  
Regulatory Assurance  
Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF

If you have any general queries about the consultation, please email us at [journalismcode@ico.org.uk](mailto:journalismcode@ico.org.uk).

### 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 (eg 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.

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## Questions

When commenting, please bear in mind that we aim to focus on key points and practical information relevant to journalism where possible. The code does not aim to cover all of the legislation and may assume knowledge of some general data protection terms and concepts. Where relevant, the code may link to further reading such as the [Guide to the UK GDPR](#) but this does not form part of the statutory code.

Please also bear in mind that we intend to provide a 'quick guide', and perhaps other resources, to support day-to-day journalism and smaller organisations, as we did with our previous media guidance. Please let us know if you have any ideas about resources to support this code in the general comment box at the end of this survey.

**Q1** To what extent do you agree that the code is clear?

- Strongly agree
- Agree
- Neither agree nor disagree
- Disagree
- Strongly disagree

**Q1a** If the code could be clearer, please tick which section(s) could be clearer.

- Summary
- Navigating the code
- About this code
- Balance journalism and privacy
- Be able to demonstrate your compliance
- Keep personal data secure
- Justify your use of personal data
- Make sure personal data is accurate
- Process personal data for specific purposes
- Use the right amount of personal data
- Decide how long to keep personal data
- Be clear about roles and responsibilities
- Help people to exercise their rights
- Disputes and enforcement
- Annex 1

Please explain your response to Q1a.

Please see our response attached with this form.

**Q2** To what extent do you agree that it is easy to find information in the draft code?

- Strongly agree
- Agree
- Neither agree nor disagree
- Disagree
- Strongly disagree

**Q2a** If it could be easier to find information in the code, please tell us how it could be easier.

Please see our response attached with this form.

**Q3** To what extent do you agree that the code provides the right level of detail?

- Strongly agree
- Agree
- Neither agree nor disagree
- Disagree
- Strongly disagree

**Q3a** If the code could provide a better level of detail, please tell us how it could be improved.

Please see our response attached with this form.

**Q4** To what extent do you agree that the code provides practical guidance to help individuals processing personal data for the purposes of journalism to understand and comply with data protection obligations?

- Strongly agree
- Agree
- Neither agree nor disagree
- Disagree
- Strongly disagree

**Q4a** If the code could be more practical, please tick which section(s) could be more practical and tell us how it could be improved.

- Summary
- Navigating the code
- About this code
- Balance journalism and privacy
- Be able to demonstrate your compliance
- Keep personal data secure
- Justify your use of personal data
- Make sure personal data is accurate
- Process personal data for specific purposes
- Use the right amount of personal data
- Decide how long to keep personal data
- Be clear about roles and responsibilities
- Help people to exercise their rights
- Disputes and enforcement
- Annex 1

Please explain your response to Q4a.

Please see our response attached with this form.

**Q5** To what extent do you agree that the draft code covers the right issues about journalism in the context of data protection?

- Strongly agree
- Agree
- Neither agree nor disagree
- Disagree
- Strongly disagree

**Q5a** If we have not covered the right issues in the code, please tell us how it could be improved.

Please see our response attached with this form.

**Q6** Please provide details of any cases, examples, scenarios or online resources that it would be useful for us to include in the code.

Please see our response attached with this form.

**Q7** To what extent do you agree that the draft code effectively protects the public interest in freedom of expression and information?

- Strongly agree
- Agree
- Neither agree nor disagree
- Disagree
- Strongly disagree

**Q7a** If the draft code could protect the public interest in freedom of expression and information more effectively, please tell us how it could be improved (bearing in mind the need to balance competing rights in the code).

Please see our response attached with this form.

**Q8** To what extent do you agree that the draft code effectively protects the public interest in data protection and privacy?

- Strongly agree
- Agree
- Neither agree nor disagree
- Disagree
- Strongly disagree

**Q8a** If the draft code could protect the public interest in data protection and privacy more effectively, please tell us how it could be improved (bearing in mind the need to balance competing rights in the code).

Please see our response attached with this form.

**Q9** Could the draft code have any unwarranted or unintended consequences?

- Yes
- No

**Q9a** If yes, please explain your answer to Q9.



Please see our response attached with this form.

**Q10** Do you think this code requires a transition period before it comes into force?

- Yes
- No

**Q10a** If yes, please tick the most appropriate option.

- 3 months
- 6 months
- 12 months

**Q11** Is there anything else you want to tell us about the draft code?

Please see our response attached with this form.

## Section 2 About you

Please see privacy information above.

**Q12** What is your name?

Chris Wissun

**Q13** If applicable, what is the name of your organisation and your role?

ITV Plc, Consultant

**Q14** Are you acting: Please select the capacity in which you are acting.

- in a private capacity (eg someone providing their views as a member of the public)?
- in a professional capacity?
- on behalf of an organisation?
- other

If other, please specify.

**Q14a** Are you: Please select most appropriate.

- A member of the public
- A citizen journalist
- A public figure (eg individuals who have a degree of media exposure due to their functions or commitments) or individual with a public role (eg politician, public official, business people and members of regulated professions)
- A representative of a newspaper or magazine
- A representative of a broadcaster
- A representative of an online service other than those above
- A representative of the views and interests of data subjects
- A representative of a trade association
- A representative of a regulator
- A representative of a 'third sector'/'civil society' body (eg charity, voluntary and community organisation, social enterprise or think tank)
- A freelance journalist
- A private investigator
- A photographer
- An academic
- A lawyer
- Other

If other, please specify.

**Further consultation**

**Q15** Would you be happy for us to contact you regarding our consultation on the journalism code?

- Yes
- No

If so, please provide the best contact details.

**Q16** Would you be happy for us to contact you regarding our work to develop a process to review processing for journalism in accordance with the statutory requirement under section 178 of the DPA 2018?

- Yes
- No

If so, please provide the best contact details.

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

# **Response of ITV plc to the ICO consultation on the Draft Journalism Code of Practice**

## **Introduction**

ITV welcomes the opportunity to contribute to the ICO's consultation on the drafting of its new Journalism Code of Practice. We set out our view of the draft Code as a public service broadcaster and programme producer, reflecting the wide range of our output, which includes not only news and current affairs, but also factual, entertainment, drama and sport programmes, as well as extensive social media and internet content.

In line with the statutory duty set out in DPA 2018 s124, the new ICO Journalism Code should provide practical guidance in relation to processing personal data for the purposes of journalism. It should promote "good practice" in the interests of data subjects, but should also reflect the special importance of the public interest in freedom of expression and information in British cultural and political life, and the role of the media in maintaining the public's right to receive and impart information and ideas. We therefore welcome the explicit recognition in the Code that, taken together with art and literature, it is likely that the special purposes exemption for journalism covers everything broadcast on television as well as everything published in newspapers and magazines, and online journalistic activities.

We welcome that the Code recognises the ICO is not concerned with media standards in general or in press conduct, reflecting that the ICO is not a specialist media regulator. We welcome the statement in the Code that ICO will always carefully consider the impact on freedom of expression before taking any action in cases involving the special purposes. We think it would be helpful for the Code to further state that where a complaint to the ICO raises issues that are in substance within the oversight of a media regulatory body, that complaint will be referred by the ICO at first instance to that body.

We recognize that the draft Code contains a number of other very helpful statements relating to the vital role of journalism in society, the public interest in the protection of sources and the preservation of news archives, the wide scope of the special purposes exemption, and that the exemption covers data that is not eventually included in any publication, as long as there remains a "view to publication".

However, given that journalists will inevitably be employing the special purposes exemption regularly in their work, we think there could be greater focus in the Code on the exemption and how journalists can employ it lawfully, therefore disapplying other DPA requirements.

We therefore do have some suggestions on the draft Code:

### **1) Structure & clarity of the Code**

Overall, we think that the current draft is too long, too detailed and too repetitive. The draft states that lawyers, data protection officers and senior editorial staff are most

likely to benefit from using the Code. We think that any journalism Code ought to be of some practical assistance to journalists, and not just to specialist advisors in large organisations who will already be familiar with data protection law.

We note that the ICO's previous Guide for the media was much shorter, and was helpfully divided between "practical" advice for journalists, and "technical" guidance on the law aimed at those with specific data protection responsibilities. The draft Code in effect abolishes this distinction. The many references to the detail of data protection law and case law in the current text will be of limited help to busy journalists, who need "at a glance" guidance. Whilst the ICO intends to supplement the Code with other supporting Guidance material, we have not seen this material or how it will support the lengthy text of the new Code.

We therefore think the Code should be much shorter, simpler and more principles-based. Technical legal and precedent material would be better placed in separate "further reading" guidance documents that could be regularly updated by the ICO, rather than in the main body of the Code.

## **2) Accountability, record keeping and demonstrating compliance**

There are numerous references throughout the Code to the need for record keeping, and for having policies in place around data protection decisions eg making decisions involving the special purposes, fact checking, sources and research, dealing with inaccuracy complaints, retention, and data sharing with third parties. We consider that these numerous references make the Code overly prescriptive in tone and may lead to data subjects and even the court inferring that a lack of record-keeping of itself therefore constitutes a failure to take account of the law or the Code.

This approach is also impractical, since for most journalists outside of large organisations, and even those within them, it would not be practical to comply with all of these cumulative suggestions, leading to uncertainty as to whether or not they are working lawfully. Modern journalism requires many quick decisions to enable fast moving news to be reported in a timely manner, often involving input from numerous individuals before broadcast or publication. Some journalistic investigations involve confidential sources that are too sensitive (or even dangerous to the source) to document formally. Not all or even most of these editorial decisions can be reviewed by legal, compliance or data protection advisors before broadcast.

For example, a TV newsroom will produce several broadcast bulletins a day plus a constant online output of text and video articles, and therefore is dealing continuously with multiple stories, and will constantly process and retain personal data 'with a view to publication' without keeping contemporaneous records of how and why the information has been processed in each case. We would like to see more recognition in the Code that a requirement for record keeping of such decisions in such circumstances is both impractical and disproportionate, and places an unreasonable burden on any journalistic team with limited financial and human resources.

We also consider this emphasis on record keeping is excessive because (with a few exceptions) the law does not expressly require records or policies, simply that the

controller is able to demonstrate compliance with data protection principles. Most media organisations will already have standard procedures in place to ensure compliance with their own regulator's editorial standards, which is likely to also enable them to demonstrate compliance with data protection law.

We consider that generic practical examples for how compliance can be demonstrated, and non-exhaustive examples of high-level policies which would help demonstrate compliant reliance on the special purposes exemption, may be helpful. For example, every news organization will have an archive, retention of which has a strong public interest in itself, but it may not currently have a formal archive policy; in relation to requests for erasure, the Code helpfully states that there is a strong public interest in preservation of news archives (p72), but it would be helpful for the Code to also make this clearer in the "demonstrating compliance" section. Greater recognition of standard editorial policy and procedures would incentivise organisations to proactively consider best practice and staff training.

It is important that the Code reflects the real-world practice of journalism, and should not set the administrative bar too high or too prescriptively. We therefore welcome the Code suggesting that a DPIA is not needed each time there is 'high risk' processing. The Code acknowledges that journalistic work is done at a fast pace, and that documentation should be proportionate to demonstrate compliance. Whilst the Code clearly cannot spell out what would be proportionate in every circumstance, and proportionality itself is necessarily an imprecise concept and a matter of judgement, it could state more clearly that record keeping is not always a requirement of the accountability principle in order to demonstrate compliance with the law.

### **3) The special purposes exemption and editorial discretion**

We think editorial discretion and decision-making should be given greater recognition in the Code, as it is in UK case law. This should be further emphasized in the introduction to Section 1 and in relation to both limbs of the special purposes exemption (ie reasonable belief that publication would be in the public interest, and reasonable belief in the incompatibility of the various GDPR provisions with the purposes of journalism). A simple non-exhaustive list of examples when the exemption could apply would be helpful.

### **4) Public interest**

We think the Code could give more emphasis to the fact that the ICO is not the arbiter of "public interest" in relation to journalism, and that it therefore will not seek to replace editorial decisions with its own view in relation to public interest.

We also think that the public interest in freedom of expression itself, referenced on page 29, should be given greater emphasis. It should be stated that the journalism exemption is not only available where the subject matter of the journalism involves investigative exposure of wrongdoing or factual matters that are of self-evident public interest in themselves. Journalism is protected by the exemption where the editorial subject matter is less "serious", when the requirements of the exemption are met.

## **5) Other industry codes/guidance**

The draft Code helpfully says that meeting other industry codes may assist with meeting GDPR /DPA requirements. We think there should also be a clear statement that the ICO will not seek to determine compliance with these other industry Codes or Guidelines, which of course is a matter for those regulators/self-regulators.

## **6) Case examples**

On balance, we do not think it is helpful to cite first instance decisions in the body of the Code, since these may be superseded or even reversed as case law develops, and this may then require more frequent revisions of the Code. For example, we do not think it helpful to include the reference to the *True Vision* case in the body of the Code itself. Links to the full text of case decisions could be better placed in a separate technical Annex or Guidance note.

We think the Code could helpfully include more generic non-exhaustive examples demonstrating where the special purposes exemption could be relied on eg background searches, research, covert filming or surveillance, as well as other examples of processing data in newsrooms.

## **7) “With a view to publication”**

We suggest the explanation of this term should include publication to the public or to a section of the public. We consider that the last line of this section at page 27 is potentially confusing. Addressing a complaint about a published story will often necessarily affect “the publication of material”, given that a decision will need to be made on continued publication when responding to a complaint (eg correction, retraction, apology, take down, or simply confirmation that the material will continue to be made available to the public). The potential cost of responding to some data subject requests also means that it may be reasonably considered to be incompatible with journalism to do so.

## **8) “Incompatible with Journalism”**

We consider the explanation at page 32 - “it is necessary to not comply with data protection law to achieve your journalistic purpose”, does not properly reflect the test as established in *Campbell v MGN Ltd (2003)*, and should read that “it is impractical to comply with data protection law”.

## **9) “Criminal allegations”**

We consider the section of the draft at page 52 is slightly confusing by referring to “allegations”, since suspects have a reasonable expectation of privacy regarding

criminal investigations prior to being charged, not “allegations” per se. The Code could helpfully confirm that the special purposes exemption can apply when criminal convictions are being reported beyond contemporaneous court reporting at the time of the conviction.

## **10) Personal data**

Unlike the 2014 Guidance, the current draft Code does not make clear that data protection legislation does not cover anonymized records, information about dead people, or journalists’ unstructured handwritten notebooks (that is not intended for transfer to a structured filing system). This is useful practical information for working journalists, and should be included. Likewise, the reference to “notebooks” on p41 should presumably refer only to electronic notebooks.

## **11) Lawful bases for processing**

Further guidance on the special purposes exemption and the disapplication of Article 6 (requirement to satisfy a lawful basis) may be helpful. For example, when the exemption could be relied on for processing activities where a lawful basis (such as consent or contract) already exists in relation to part of the activity.

## **12) Complementary resources**

We note that further resources are referenced. Links to these resources could be provided in an Annexe to the Code.

We hope that these comments are helpful, and that once the ICO has considered all consultation submissions it will provide stakeholders with an opportunity to see any proposed revisions to the draft Code, and any complementary guidance materials, before proceeding to the next stage of parliamentary approval.

**10 January 2022**

