

## The Information Commissioner's Response to the Department for Science, Innovation and Technology's consultation on 'Open Communications: a Smart Data scheme for the UK telecoms market'

### About the Information Commissioner

1. The Information Commissioner has responsibility for promoting and enforcing data protection and information rights. This includes responsibilities under the UK General Data Protection Regulation (UK GDPR), the Data Protection Act 2018 (DPA 2018), the Freedom of Information Act 2000 (FOIA), the Network and Information Systems Regulations 2018 (NIS), the Environmental Information Regulations 2004 (EIR) and the Privacy and Electronic Communications Regulations 2003 (PECR).
2. The Information Commissioner is independent from government and upholds information rights in the public interest, promoting openness by public bodies and data privacy for individuals. The Commissioner provides guidance and support to individuals and organisations, aimed at helping organisations to comply, and takes appropriate action where the law is broken.
3. The Information Commissioner's Office (ICO) sets out its strategic vision in the ICO25 plan, which highlights promoting regulatory certainty, empowering responsible innovation and safeguarding the public as key priorities.<sup>1</sup>

### Introduction

4. The ICO supports the responsible and lawful use and sharing of personal information to drive innovation and economic growth. Innovative and responsible forms of data sharing can enhance people's rights. Data sharing, when undertaken within the guardrails of UK data protection law, can also enable better consumer choice and control and has the potential to address power imbalances between those holding large scale data sets and those seeking to use them. Our ICO25 plan<sup>2</sup> sets out how we will continue to enable responsible data

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<sup>1</sup> [ico25-strategic-plan-0-0.pdf](#),

<sup>2</sup> Ibid, p. 27.

sharing through the promotion of our data sharing code of practice<sup>3</sup> and practical tools<sup>4</sup> to enable organisations to share information to improve services.

5. The ICO is a member of the Digital Regulation Cooperation Forum (DRCF).<sup>5</sup> In its 2023 – 2024 work plan, the DRCF has committed to continued engagement with the Government and other regulators to promote coherence across our regimes on topics including Smart Data.<sup>6</sup>
6. In line with our strategic objectives and commitment to work collaboratively to promote information rights, we welcome the opportunity to respond to this Department for Science, Innovation and Technology (DSIT) consultation on a '*Open Communications' smart data scheme for the UK telecoms market*. We are of the view that early and continued dialogue on data protection matters can facilitate the development of data sharing initiatives that set high standards of privacy and security, while providing greater user control over personal data.

## Data sharing schemes and data protection law

7. The ICO has engaged extensively with the Government and other regulators on data sharing scheme proposals.<sup>7</sup> We have provided support to the work of the Open Banking Implementation Entity through their collaboration with our Innovation Hub.<sup>8</sup> We have also engaged with Government on the Data Protection and Digital Information (No. 2) Bill (DPDI), which proposes new powers to establish Smart Data schemes across the economy, and sit as a member of the Smart Data Council.<sup>9</sup>

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<sup>3</sup> <https://ico.org.uk/media/for-organisations/uk-gdpr-guidance-and-resources/data-sharing/data-sharing-a-code-of-practice-1-0.pdf>

<sup>4</sup> Practical tools include case studies and examples, checklists and explanations that bust data sharing myths. See: [Data sharing | ICO](#)

<sup>5</sup> The DRCF brings together four regulators with responsibilities for digital regulation: the ICO, the Competition and Markets Authority, the Financial Conduct Authority, and Ofcom. See: [About the DRCF | DRCF](#)

<sup>6</sup> [https://www.drcf.org.uk/\\_data/assets/pdf\\_file/0018/260712/DRCF-Workplan-2023-24.pdf](https://www.drcf.org.uk/_data/assets/pdf_file/0018/260712/DRCF-Workplan-2023-24.pdf)

<sup>7</sup> Data sharing proposals we have engaged on include:

- A 2019 government consultation on smart data, which proposes introducing a 'Open Communications' initiative ([The Information Commissioner's response to the Department for Business, Energy and Industrial Strategy consultation Smart Data: Putting consumers in control of their data and enabling innovation \(ico.org.uk\)](#))
- An 2019-20 FCA call for input on open finance ([The Information Commissioner's response to the Financial Conduct Authority's call for input on open finance \(ico.org.uk\)](#))
- A 2021 CMA consultation on the future oversight of open banking ([ico-response-cma-banking-remedies-20210329.pdf](#))

<sup>8</sup> [ICO Innovation Hub Project Report](#), p. 13.

<sup>9</sup> [New Smart Data Council to drive forward savings for household bills - GOV.UK \(www.gov.uk\)](#)

8. Throughout previous engagement, the ICO has emphasised that establishing and maintaining the trust of consumers is vital to ensuring the success of data sharing initiatives, especially where people's personal information is being collected and shared. ICO research<sup>10</sup> shows that people are encouraged to share more of their data if they trust firms to store it securely and limit access opportunities. People are also more encouraged to share their data in situations where they could benefit, for example, by making a saving on a product or service.
9. Data protection law can support Smart Data schemes to be developed in ways that promote trust and transparency. Given the importance of trust when personal information is being processed, the law should be viewed as an enabler to responsible data sharing, not a barrier. Key legal requirements such as the data protection principles<sup>11</sup>, obligations relating to a 'data protection by design and by default' approach<sup>12</sup>, and the importance of mitigating risks (including through Data Protection Impact Assessments<sup>13</sup>) should inform the design of such schemes. Adherence to these legal requirements will ensure individuals' fundamental rights are respected during the development of new technology and governance procedures, and are upheld throughout the operation of Smart Data schemes.
10. There is also a clear link between data sharing schemes and individuals' Right to Data Portability under Article 20 of the UK GDPR. Article 20 gives people the right to receive personal data they have provided to a data controller in a structured, commonly used and machine readable format. It also gives people the right to request that a controller transmits this data directly to another controller.<sup>14</sup>
11. The intent of Smart Data schemes is to provide enhanced data portability that goes beyond Article 20, for example, by guaranteeing customer data in real time, or in specific useful formats.<sup>15</sup> Schemes that mandate the immediate provision of data to third-party providers – or require firms to make data available to consumers through

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<sup>10</sup> <https://ico.org.uk/media/about-the-ico/documents/4024439/accnet-data-privacy-presentation-wave-2.pdf>, p. 24.

<sup>11</sup> [A guide to the data protection principles | ICO](#)

<sup>12</sup> [Data protection by design and default | ICO](#)

<sup>13</sup> The ICO recommends that a Data Protection Impact Assessment is undertaken for any major project that requires the processing of personal data. See <https://ico.org.uk/for-organisations/uk-gdpr-guidance-and-resources/accountability-and-governance/data-protection-impact-assessments-dpias/>

<sup>14</sup> It is important to note that the Right to Data portability only applies when the lawful basis for processing information is consent or performance of a contract, and the processing is carried out by automated means (ie excluding paper files). See ICO guidance for further information: [Right to data portability | ICO](#)

<sup>15</sup> The Data Protection and Digital Information (No. 2) Bill Explanatory Notes outline the intent of smart data scheme legislative provisions. See: <https://publications.parliament.uk/pa/bills/cbill/58-03/0265/en/220265en.pdf>, pp. 21-22.

application programming interfaces (APIs) – will complement Right to Data Portability requirements if implemented in alignment with data protection law.

## Views on an Open Communications scheme

12. An Open Communications scheme intends to help consumers understand how the pricing and performance of their current telecom services (e.g. broadband and personal mobile) compares to others, supporting informed choices about better deals. The DSIT consultation also sets out that a key objective of Open Communications is to foster new and innovative services that support consumer engagement in the market. These potential benefits for consumers align with those envisaged by the Right to Data Portability.
13. We note that government has published research focussed on how to create inclusive smart data schemes.<sup>16</sup> This research identifies design principles that help consumers – including people who need extra support – to interact with Smart Data schemes. These design principles relate to themes that are central to promoting people’s information rights, such as creating consumer trust; consumer consent; and choice architecture and consumer control. The ICO considers it crucial that Smart Data schemes are developed in an inclusive way to empower all people to use their personal data for their own benefit.
14. The ICO does not have further comments on the specific questions the consultation asks about an Open Communications scheme at this time. The consultation notes that Government may seek further views on how to ensure data is handled securely, including technical standards and core privacy principles. We look forward to early and constructive engagement with Government on these topics in due course, including via the prior consultation obligation under Article 36(4) of the UK GDPR (to the extent applicable),<sup>17</sup> and will continue to engage with our regulatory counterparts and wider stakeholders on Smart Data schemes as they develop.

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<sup>16</sup> [Design principles for inclusive smart data schemes research - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/research-design-principles-for-inclusive-smart-data-schemes)

<sup>17</sup> Where it applies, Article 36(4) of the UK GDPR requires public authorities to consult with the ICO on any legislative or regulatory proposals that relate to the processing of personal data. See: [Guidance on the application of Article 36\(4\) of the General Data Protection Regulation \(GDPR\) - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/guidance/guidance-on-the-application-of-article-364-of-the-general-data-protection-regulation-gdpr)