

Elizabeth Archer

From: [REDACTED]
Sent: 10 January 2022 13:11
To: journalismcode
Subject: Chartered Institute of Journalists' submission to the ICO consultation on the Journalism Code of Practice
Attachments: CloJ submission on ICO consultation on journalism-code - Jan 2022.docx

External: This email originated outside the ICO.

Dear Sir/Madam,

Please find attached, the Chartered Institute of Journalists' submission to the ICO consultation on the Journalism Code of Practice.

Should you need anything else from us please do not hesitate to get in touch.

With kind regards,

dominic

Dominic Cooper
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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

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.

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.

For more information about what we do with personal data please see our [privacy notice](#).

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.

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.

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.

It should be recognised, however, that a 93 page document will be difficult to navigate for big media organisations who employ legal teams to digest and process this information. For freelance journalists the process will be much more difficult and time consuming. It could also be argued that some of the detail is somewhat excessive; particularly in regard to court precedents; some of which are subject to appeal. Working professional journalists and indeed the educational and professional training of journalists are going to have to come to terms with a considerable new and expanding level of regulation- in addition to Ofcom, IPSO, Impress and primary media law from statute and court/tribunal case law. We are also concerned about overlapping in regulation by ICO; particularly in the area of privacy. This could certainly apply to the use of digital recording techniques in news and documentary coverage. The reasonable expectation of privacy issue in competition with freedom of expression, purposes of journalism and scope of the GDPR journalism exemption is likely to be a source of contention and the Code will be engaged by courts and tribunals as a result of the Section 12 of the Human Rights Act.

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.

Again we highlight the position of freelance journalists. Although the section on helping people exercise their rights is comprehensive, it fails to demonstrate, or understand the limitations of, how this will impact freelance journalists. Issuing a SAR will have a significant impact on the working life of a freelance journalist. Even if they rely on the special exemption rule, the subject may appeal the decision to the IO, which would equally impact the working life of a freelance journalist.

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.

It could be argued that more needs to be explained and defined in respect of the ECtHR and domestic legal protection for journalists' sources and confidential data that relates to journalists' sources.

Data Protection law in the UK certainly raises additional obligations on journalists and their publishers on the implications of failing to secure data the release of which might reveal or lead to the identification of sources.

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

We would be cautious about the inclusion of scenarios and cases as something intended to be instructional and educational risks becoming a source of precedent and jurisprudential engagement with the function under Section 12 of the HRA 1998 to engage with journalism codes.

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).

Greater clarity might be welcome when it comes to obligations towards information where freelance journalists and publishers of their material are concerned.

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).

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

- Yes
- No

Q9a If yes, please explain your answer to Q9.

An imbalance in the application of rights where journalism is concerned may have a dramatic impact on freedom of expression. However, this will, in all likelihood, only come to light when the ICO and the courts are called on to adjudicate in this area. Since journalism, by its very nature, may cause individuals to feel aggrieved, whether that feeling is baseless or not, it may cause an unprecedented increase in workload which would have an additional impact on stifling and disabling dynamics in the journalism industry.

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?

See comments above when it comes to the potential impact on freelance journalists.

Section 2 About you

Please see privacy information above.

Q12 What is your name?

Dom Cooper, General Secretary and Chief Executive, and Professor Tim Crook President (2020-22) and Chair of Professional Practices Board.

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

The Chartered Institute of Journalists

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.