

Call for views – Information Commissioner’s Office application for powers under the Proceeds of Crime Act 2002

The Information Commissioner invites views on her office being granted access to investigation and other associated powers under the Proceeds of Crime Act 2002 (POCA).

Personal data has a monetary value and is increasingly being recognised and treated as a commodity which is stolen and traded for financial gain. It is an asset exploited by criminal gangs, which can lead to significant financial losses and illegal monetary gains.

The General Data Protection Regulation (GPDR) has introduced increased financial penalties for civil breaches of the Data Protection Act 2018 (DPA18). Criminal offences under the DPA18 are now recordable. However, the only sanction available to the courts following a criminal conviction is a fine, which in some cases will be much less than the financial gains made by the offender. This will inevitably lead to a greater disparity between the deterrent and punitive effects of sanctions imposed in relation to civil breaches and criminal offences.

The courts can make POCA confiscation orders against convicted individuals for payment to the state of an equivalent value to their benefit from crime. POCA investigation and other associated powers would enable the ICO to assist the court in the identification of assets and to determine the value of a criminal’s proceeds from crime.

The ICO previously worked in partnership with other agencies which conducted financial investigations on our behalf and assisted the courts with these cases. To date the ICO has prosecuted and convicted a number of individuals who were later stripped of assets by the courts using POCA confiscation powers. However, these partner agencies are no longer able to provide assistance to us.

There has been significant growth in the number of cases involving financial gain and should the ICO not be granted financial investigation and other associated powers under POCA, an ever-increasing number of offenders will be able to retain what can amount to significant criminal proceeds. In some cases these gains can illegally fund lavish lifestyles.

POCA provides financial investigation powers to Accredited Financial Investigators (AFI). To have access to the POCA powers, AFIs must currently be a member of staff of a public body, designation by order by the Secretary of State, and trained and accredited by the National Crime Agency. It is proposed there will be one AFI based within the ICO’s Investigations Department who will consider asset recovery in all cases where offenders have benefited from criminal conduct.

The powers the Information Commissioner is seeking at this time are:

* To apply to the court for Restraint Orders (under Part 2 of POCA);
* To apply to the court for Confiscation Orders (under Part 2 of POCA);
* Cash seizure, detention and forfeiture from premises (under Part 5, Chapter 3 of POCA);
* Asset seizure and forfeiture from premises (under Part 5, Chapter 3A of POCA);
* To undertake investigations (including search and seizure warrants) to support the proceedings sought above (under

Part 8 of POCA); and

* Access to information relevant to the investigation of money laundering offences.

The ICO is also seeking relevant authorisation powers that will enable them to exercise the powers referred to above.

The powers sought will enable the ICO to apply to the court for restraint of any asset or realisable property when there is evidence to show that a defendant in criminal proceedings has benefited from his conduct. The confiscation powers sought will enable the ICO to apply to the court for confiscation when a defendant is convicted of a criminal offence and has benefited from their conduct.

The powers sought in relation to seizure and forfeiture of cash and assets will enable the ICO to recover items that are derived from or intended for the use in criminal conduct.

Wider investigation powers are being sought to enable the ICO to respond to the changing nature of criminal activity involving the misuse of personal data.

The powers sought will enable the ICO to undertake confiscation investigations and apply to the court for restraint of any asset or realisable property when there is evidence to show that a defendant in criminal proceedings has benefited from his conduct.

The powers sought in relation to seizure and forfeiture of cash and assets will enable the ICO to investigate and recover items that are derived from or intended for the use in criminal conduct.

Access to information relevant to the investigation of money laundering offences is being sought to enable the ICO to respond to the changing nature of criminal activity involving the misuse of personal data, and to engage with other law enforcement agencies more effectively in cases which may involve offences of money laundering.

Where applicable, the ICO is seeking the equivalent powers in Northern Ireland. The ICO may amend the powers sought in light of the responses received.

Please send us your response by 17:00 Friday 6 December 2019.

Privacy statement

We may publish individual responses or a summary of responses. All personal information will be redacted. For more information about what we do with personal data see our privacy notice.

Please note, your responses to this survey will be used to help us with our work on the Proceeds of Crime Act only.

Please note that we are using the platform Snap Surveys to gather this information. Any data collected by Snap Surveys for ICO is stored on UK servers. You can read their Privacy Policy.

# Q1 Do you consider that there is currently sufficient deterrent for criminal activity involving the unlawful use of personal data?

Yes No

Unsure

# Can you explain why?

Q2 Do you think the ICO should seek the powers outlined (“financial investigation powers”)?

Yes No

Unsure

# Can you explain more?

Q3 Do you think that financial investigation powers will improve and strengthen the ICO’s powers in protecting individuals’ personal data and information rights?

Yes No

Unsure

# Can you explain more?

Q4 If you disagree, what others steps do you think the ICO could take to tackle the issue of offenders convicted of criminal offences under the Data Protection Act benefitting financially from criminal activity?

Q5 Are you responding as an individual or as an organisation?

Individual Organisation


# What kind of organisation are you from?

What is the name of your organisation?

Thank you for taking the time to respond to our survey.