

Information Commissioner's Office

Consultation:

Direct Marketing Code

Start date: 8 January 2020

End date: 4 March 2020

Introduction

The Information Commissioner is producing a direct marketing code of practice, as required by the Data Protection Act 2018. A draft of the code is now out for public consultation.

The draft code of practice aims to provide practical guidance and promote good practice in regard to processing for direct marketing purposes in compliance with data protection and e-privacy rules. The draft code takes a life-cycle approach to direct marketing. It starts with a section looking at the definition of direct marketing to help you decide if the code applies to you, before moving on to cover areas such as planning your marketing, collecting data, delivering your marketing messages and individuals rights.

The public consultation on the draft code will remain open until **4 March 2020**. The Information Commissioner welcomes feedback on the specific questions set out below.

You can email your response to directmarketingcode@ico.org.uk

Or print and post to:

Direct Marketing Code Consultation Team
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire SK9 5AF

If you would like further information on the consultation, please email the [Direct Marketing Code team](#).

Privacy statement

For this consultation we will publish all responses received from organisations except for those where the response indicates that they are an individual acting in a private capacity (eg a member of the public). All responses from organisations and individuals acting in a professional capacity (eg sole traders, academics etc) will be published but any personal data will be removed before publication (including email addresses and telephone numbers).

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

Questions

Q1 Is the draft code clear and easy to understand?

Yes

No

If no please explain why and how we could improve this:

IDPE members welcomed the revision of the Direct Marketing Code of Practice, providing a clear framework for compliance with GDPR and PECR legislation when carrying out direct marketing practices.

However, IDPE members have identified specific areas within the direct marketing code of practice, where further clarity is sought which have been detailed in the responses to Questions 2 and 3.

Q2 Does the draft code contain the right level of detail?
(When answering please remember that the code does not seek to duplicate all our existing data protection and e-privacy guidance)

Yes

No

If no please explain what changes or improvements you would like to see:

Direct marketing definition

IDPE members welcomed the definition of what constitutes direct marketing practices, i.e. promoting the aims and objectives of an organisation and that this also includes the processing of personal data for direct marketing purposes. However, IDPE members fed back that there is often small nuances in language between what is seen as providing information and what is seen as

direct marketing, as evidenced by the example in the Code on flu vaccinations. Such a prescriptive approach, could potentially have a detrimental effect on schools who may avoid sending information out for fear of breaching data protection regulations.

Within the context of schools, the majority of direct marketing practice will be to an audience with an existing relationship with the school, i.e. pupil, parent, alum, etc, and therefore arguably not promoting the aims and objectives of the school. Segmenting the database based on whether communications are information-only or direct marketing along with sending out more e-mails, will undoubtedly require additional resource and potentially increase confusion – based on the flu vaccination example provided, an 'update' from the head could be seen as purely informative or as direct marketing. Likewise, parents, alumni, and other members of the school community are likely to get confused by consents that will undoubtedly be complex and by being bombarded by e-mails.

Principle-based code

The purpose of the Code is to interpret the law. Whilst IDPE members welcomed the inclusion of practical advice and further examples, including those from the charitable sector, there was concern that in some cases these are presented as the 'right' and 'only' way to comply with GDPR and PECR, through references to good practice, thus limiting organisations themselves from evolving their own fair and lawful, principle-based approach to data protection.

Examples

IDPE members have requested that all examples demonstrate how direct marketing activities may be fairly and lawfully carried out, as well as demonstrating what activities are not compliant, e.g. under data matching and data profiling only non-compliant examples are included. This allows for comparisons to be made between what is compliant and what is not. It will also minimise schools taking a more risk-adverse approach to direct marketing than is necessary.

Q3 Does the draft code cover the right issues about direct marketing?

Yes

No

If no please outline what additional areas you would like to see covered:

Consent as good practice

IDPE members have raised concern about the Code stating that to gain consent for all direct marketing activity is good practice, re-enforced by references to how hard it will be to justify legitimate interests.

Whilst members recognise the need for consent to comply with PECR, consent is only one lawful basis for processing personal data under GDPR, such as

legitimate interests. Including 'good practice' sections particularly in relation to consent, 'Get consent for all your direct marketing regardless of whether PECR requires it or not.' is somewhat confusing and will potentially limit direct marketing practices in schools as they seek to comply with what is good practice rather than legislation.

Gaining consent

PECR requires consent for sending all electronic communications. GDPR also requires consent for processing personal data, i.e. profiling, etc. As these are two different processes, this implies that consent is needed for profiling and a separate consent is needed for sending an e-mail for example. As consent must be granular, having more tick boxes for different forms of processing will undoubtedly be confusing but is necessary to comply with consent being specific, informed and unambiguous. Members have requested examples to demonstrate how they can ensure they gain the relevant consent whilst retaining necessary simplicity.

Social media

IDPE members have expressed concern regarding the social media section of the Code, which essentially groups together all social media platforms and states that consent is needed when using these for direct marketing purposes. However, there are significant differences between what different platforms offer, and the different interactions and engagement with people across a range of platforms. Whilst we appreciate that it would not be appropriate to list every social media platform and area of activity, providing schools with a framework of what to consider when using a social media platform or similar online engagement platform, would be more useful.

Members have questioned whether consent is needed for direct marketing on social media as suggested in the Code. For example, if direct marketing by the school appears on an alum's individual feed, and said alum has a relationship with their old school, this is no unexpected or intrusive, therefore is it not enough to clearly detail this in the schools' privacy notice.

Likewise, as with businesses who will undoubtedly use social media to develop profiles of their customers, many major donors would expect such profiling via these platforms and would expect schools to have done their homework before approaching them.

Consent for use by third parties

The Code suggests that when sending direct marketing through a third party, a school must not rely on consent given more than six months ago. The use of good practice rather than concentrating on interpreting the Code, i.e. giving it a timeframe, is not helpful and in many cases impractical for schools who wouldn't have the resource or the need, given the relationships they have with their constituents, to request consent so frequently.

Q4 Does the draft code address the areas of data protection and e-privacy that are having an impact on your organisation's direct marketing practices?

Yes

- No

If no please outline what additional areas you would like to see covered:

Tell a friend (refer a friend) campaigns

Whilst IDPE members recognise the need to minimise viral marketing, there was considerable concern raised about the limitations outlined in this section of the Code, Tell a friend campaign, which would be hard to justify under PECR. Whilst we accept an alum sharing contact details of another alum with their school would require consent, within a school community, many individuals share direct marketing information with others for example to encourage fellow alumni not connected to the school, to attend a reunion event or to support the new careers' programme, and it is unlikely another alum, with a connection to the school, would see this as intrusive. Such limitations would undoubtedly limit engagement and/or fundraising opportunities within a school, and IDPE members have requested further clarity and examples as to how to make decisions on such campaigns.

Data matching

IDPE members have expressed concern that the Code states, it is unlikely that schools will be able to justify tracing an individual to send direct marketing to a new address. Alumni will change their addresses multiple times during their lives and in many cases, it is an expectation from alumni that the school will contact them. Likewise, requesting consent to update alumni addresses could significantly reduce the numbers of potential supporters they have and will have a major impact on schools and their capacity to develop successful engagement and fundraising programmes. If this is clearly detailed in a privacy notice, and given the long-standing relationship between an alum and their school, would this not be sufficient to comply with current legislation?

Profiling

Whilst some prospect research may be seen as intrusive, research on the expectations of donors, particularly major donors, demonstrates that they expect a school to have done their homework on them. Likewise, the time taken between carrying out the prospect research and contact with a potential major donor may be more than the suggested month. This need to carry our prospect research to enable major gift fundraising and the reality of a one-month period to inform the potential donor, should be re-considered.

Q5 Is it easy to find information in the draft code?

- Yes

No

If no, please provide your suggestions on how the structure could be improved:

IDPE members felt the Code provides a clear framework for compliance although would welcome a dynamic online version that would allow them to search for the specific information they were looking for.

Q6 Do you have any examples of direct marketing in practice, good or bad, that you think it would be useful to include in the code?

Yes

No

If yes, please provide your direct marketing examples:

Please see suggestions outlined in comments above and we would be more than willing to provide further examples for specific areas of the Code as required.

Q7 Do you have any other suggestions for the direct marketing code?

About you

Q8 Are you answering these questions as:

(Please select the one that is most appropriate)

An individual acting in a private capacity (eg someone providing their views as a member of the public)

An individual acting in a professional capacity

● **On behalf of an organisation**

Other

Please specify the name of the organisation you are representing:

Institute of Development Professionals In Education