

ICO consultation on the draft updated data sharing code of practice

Data sharing brings important benefits to organisations and individuals, making our lives easier and helping to deliver efficient services.

It is important, however, that organisations which share personal data have high data protection standards, sharing data in ways that are fair, transparent and accountable. We also want organisations to be confident when dealing with data sharing matters, so individuals can be confident their data has been shared securely and responsibly.

As required by the Data Protection Act 2018, we are working on updating our **data sharing code of practice**, which was published in 2011. We are now seeking your views on the [draft updated code](#).

The draft updated code explains and advises on changes to data protection legislation where these changes are relevant to data sharing. It addresses many aspects of the new legislation including transparency, lawful bases for processing, the new accountability principle and the requirement to record processing activities.

The draft updated code continues to provide practical guidance in relation to data sharing and promotes good practice in the sharing of personal data. It also seeks to allay common concerns around data sharing.

As well as legislative changes, the code deals with technical and other developments that have had an impact on data sharing since the publication of the last code in 2011.

Before drafting the code, the Information Commissioner launched a call for views in August 2018. You can view a summary of the responses and some of the individual responses [here](#).

If you wish to make any comments not covered by the questions in the survey, or you have any general queries about the consultation, please email us at datasharingcode@ico.org.uk.

Please send us your responses by **Monday 9 September 2019**.

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 (e.g. 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

Note: when commenting, please bear in mind that, on the whole, the code does not duplicate the content of existing guidance on particular data protection issues, but instead encourages the reader to refer to the most up to date guidance on the ICO website.

Q1 Does the updated code adequately explain and advise on the new aspects of data protection legislation which are relevant to data sharing?

Yes

No

Q2 If not, please specify where improvements could be made.

The Code is accessible to experienced data protection professionals; individuals new to data sharing and data protection may find it difficult to digest and understand what controls may be necessary.

The Law Enforcement section (p63) is difficult to understand and requires simplified language and more definitive straightforward examples: language such as 'Assuming the shopkeeper had a lawful basis for the processing, she could rely on Schedule 1, paragraph 10 to process the CCTV data' is both confusing and not sufficiently clear. Providing information to police for the investigation of crime should not be something that organisations feel unable to do. This code needs to provide confidence that a common sense approach often works best, and use common place examples to illustrate the point.

If references to particular sections of the legislation and/or controls are necessary, this could be done in a consistent fashion. See suggestion for Annex D in Q10.

Much of the document highlights that consent documents will be required for accountability purposes. To ensure that organisations consider all the conditions of processing, this advice should include the caveat 'as required'. Failure to make this clear will perpetuate the practice of over reliance on consent for data sharing, and an expectation that individuals have more control in certain circumstances than they actually do.

Q3 Does the draft code cover the right issues about data sharing?

Yes

No

Q4 If no, what other issues would you like to be covered in it?

Q5 Does the draft code contain the right level of detail?

Yes

No

Q6 If no, in what areas should there be more detail within the draft code?

Examples need to be provided in the 'Other legal requirements' section (p57). Further consideration should also be given to the statement that compliance with data protection legislation will likely comply with the Human Rights Act. The Supreme Court judgement in relation to the Children & Young People (Scotland) Act found the opposite, and the issues in relation to that sharing are still not resolved. It would be useful if the Code could address the additional requirements the HRA places upon public authorities.

Moreover, examples also need to be provided in relation to data sharing and children. School apps, and Pupil Support meetings may be good examples to use.

Q7 Has the draft code sufficiently addressed new areas or developments in data protection that are having an impact on your organisation's data sharing practices?

Yes

No

Q8 If no, please specify what areas are not being addressed, or not being addressed in enough detail

As above, as a public authority, we will engage in data sharing practices where a number of conditions of processing may be relevant. It would be helpful if the code could emphasise that partners may operate under different lawful conditions, and advise on how to manage that in practice.

The explanations around sharing data with a competent authority (p64) is confusing.

Q9 Does the draft code provide enough clarity on good practice in data sharing?

Yes

No

Q10 If no, please indicate the section(s) of the draft code which could be improved, and what can be done to make the section(s) clearer.

Data sharing in an urgent situation or in an emergency (p80) appears to focus upon steps which might be taken by organisations to manage resilience situations. Equal consideration and guidance should be given in this section to sharing data in a 'one-off' emergency situation e.g. assisting police in a missing person investigation, emergency contact to NHS for employee taken to hospital. It might be helpful if examples included the one-off situation as well as large scale sharing.

In addition, sharing relevant, necessary and proportionate information in emergency situations is not given sufficiently affirmative language. The Misconceptions highlighted on p13 will not be countered by 'Not always' and 'You may be able to do so'. This requires greater direction acknowledging that sharing can happen without a person's consent if you have an alternative lawful basis for doing so; and, in an emergency, you should do whatever is necessary and proportionate. It would also be useful to emphasise within the code that documenting your decision-making process is essential.

Lawful basis for sharing personal data could benefit from a greater inclusion of restrictions provided by DPA2018 e.g. prevention and detection of crime throughout the code and not just within the LED section.

Q11 Does the draft code strike the right balance between recognising the benefits of sharing data and the need to protect it?

Yes

No

Q12 If no, in what way does the draft code fail to strike this balance?

Q13 Does the draft code cover case studies or data sharing scenarios relevant to your organisation?

Yes

No

Q14 Please provide any further comments or suggestions you may have about the draft code.

It would be useful to have a broader selection of examples throughout the document. In particular, many of the examples appear to focus on sharing arrangements which will fall under public task and this may not be applicable to many organisations using the code.

It would be helpful to provide examples of occasions where data will be shared under other conditions of processing e.g. vital interests, consent, contract, legitimate interests; and, indeed, when a number of parties might come together to share data in the same forum but will have different conditions of processing e.g. Team around a child meeting – School, NHS, and Police may attend as part of their public task; Women's Aid may attend with consent for advocacy support.

The case studies in Annex D are useful, but their presentation is slightly confused. It would be helpful if all these examples could be presented in a similar format but also highlight the lawful basis and good practice controls which would be associated with them. This will help to illustrate what actions organisations can take to achieve compliant practices and accountability, and allow them to apply them to their own situations. For example:

Supermarket loyalty scheme: Lawful basis – Contract; Expected controls – Privacy Notice

Credit Reference Agency: Lawful basis – Contract; Expected controls – Privacy Notice, Contract clauses or Data sharing agreement.

Public Sector bodies sharing for co-ordinated approach: Lawful basis – Public task; Expected controls – Privacy notice, Data Sharing Agreement, DPIA.

The Annex would also benefit from examples where data is shared under a restriction e.g. the CCTV example referenced earlier in the code CCTV request from police: Lawful basis – DPA2018 Restriction – prevention & detection of crime; Expected controls – Written request, Privacy notice.

Perhaps the above could be produced in a tabular format with ticks for ease of reference, and to reinforce the different ways accountability can be achieved.

Q15 To what extent do you agree that the draft code is clear and easy to understand?

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

Q16 Are you answering as:

- An individual acting in a private capacity (e.g. someone providing their views as a member of the public of the public)
- An individual acting in a professional capacity
- On behalf of an organisation
- Other

Please specify the name of your organisation:

City of Edinburgh Council

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

