

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.

Forbes Solicitors welcomes the draft code as overall it is written very clearly and is easy to follow, without requiring a legal background. However, we believe our client's would benefit from further explanation of how to determine a lawful basis, particularly in respect of sharing special category and criminal offence data. Given the complex nature of the legislation, our client's need to be aware that when sharing special category data they need a lawful basis under Article 6, plus a lawful basis under Article 9 (or 10 for criminal offence data) plus a condition from Schedule 1 of the Data Protection Act 2018. We feel that this could be expanded on in the draft code and made clearer by providing examples of lawful basis' for sharing information.

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?

Forbes Solicitors welcomes the addition of the section of the code dealing with data sharing in an urgent situation or in an emergency. The common misconception that personal data cannot be shared without consent is something we see on a regular basis and are often contacted about for advice from public sector clients. The draft code makes it clear that the DPA does not prevent organisations from sharing personal data where necessary but this guidance is limited to 2 pages and appears towards the end of the code (page 80).

We believe that our clients would benefit from more comprehensive guidance about information sharing in an urgent situation or in an emergency. In particular, examples of legitimate information sharing in an urgent situation or in an emergency would assist client's in their decision making processes. For example, the Department for Education Information Sharing Guidance makes it clear that the Data Protection Act 2018 includes 'safeguarding of children and individuals at risk' as a condition for processing special category data in the public interest and therefore a similar example could be included within the draft code.

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?

Please see comments above – we would welcome further detail in respect of sharing special category and criminal offence data and further guidance relating to information sharing in an emergency or urgent situation.

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

Forbes Solicitors welcomes the addition of the section of the code dealing with data sharing in an urgent situation or in an emergency. As the GDPR introduced the specific safeguarding of children's data, our public sector clients would welcome the section in the draft code headed 'Data Sharing and Children' to be expanded. We suggest it should be made clear in this section of the draft code that the DPA does not prevent organisations from sharing personal data where necessary, including where this is to safeguard and promote the welfare of children at risk of abuse or neglect and confirm that the DPA includes the 'safeguarding of children and individuals at risk' as a condition for processing special category data in the public interest.

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.

See comments above – Overall the draft code is very clearly written and is easy to follow but we would welcome more examples.

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?

Yes – we believe that there is a need to make clear that there is a benefit to sharing information but this needs to be done in a way that ensures the information is protected. The use of the 'Gangs Database' example at page 35 is useful to highlight how information sharing can be in the public interest but the way in which it was done was inconsistent with the data protection principles.

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.

There are no specific examples relating to the legal sector. Whilst there are a number of public sector examples, we would welcome further examples of information sharing in the public interest (e.g. to safeguard children) as discussed above.

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:

Forbes Solicitors

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