

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.

Although quite comprehensive, the code does not draw on the scenario where a public authority shares data with a private company for the same lawful basis. For example, a local authority will use the fostering regulations as the lawful basis for processing the special category information of young people in care. Independent fostering agencies have been created in response to legal statute and process special category information of young people and foster carers for the same lawful basis. The data relationships are many-to-many; the local authority will share information with many fostering agencies and fostering agencies will share information with many local authorities. Therefore, the position is one of 'joint controllers' where the sum of the combined information is collected, controlled, managed and processed by both parties for the same lawful basis.

The scenarios that you have presented allow for public to public data sharing and private body to private body data sharing, but do not make clear the relationships between public and private bodies sharing information for the same lawful basis.

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?

Our experience is that social and health care, which although an area mentioned is not explained in sufficient detail. Local authorities do not manage information, contract or sharing agreements in a uniform manner, which presents a significant challenge to their private body partners to manage information under their control in a uniform way. Consequently, guidance which sets out that similar types of information derived from different sources must be managed in compliance with the strongest required controls would not only be exceedingly helpful but would clarify the required approach where such relationships exist.

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?

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 stated above, the relationships between public and private bodies controlling the same information for the same lawful basis is underrepresented in the code.

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.

In the section relating to security, the code makes no reference to appropriate certifications. The UK Government's National Centre for Cyber Security runs the Cyber Essentials certification scheme, which would be useful to mention as a desired minimum standard. A reference to ISO 27001 certification (Information Security Management) for larger organisations would also indicate good practice.

Either obtaining these certifications or seeking them from data sharing partners would provide useful assurance indicators of robust data management and that cyber security is taken seriously.

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.

As stated above, more guidance around joint controllers and the data sharing activities between public and private bodies would prove useful. The core elements you have covered such as marketing, consent, DPIAs etc are very well explained but the less common use cases as outlined above would be of significant benefit in untangling a complex area of data sharing.

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:

Guardian Saints CiC

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