

# 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](mailto: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.

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?

**Further clarity on the lawful basis for data sharing** – whilst recognising that the code does not want to repeat existing ICO guidance on the different lawful bases, IDPE members would welcome further clarity on the difference between the lawful basis for processing data and the lawful basis for sharing data and whether more than one lawful basis can be relied on when data sharing. For example, in the context of our members, a school and parent/alumni association as joint data controllers may process data and rely on both legitimate interests and consent (to comply with PECR), however, could the lawful basis for data sharing then just be legitimate interests?

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 response to question 4.

**The length of the guidance** – IDPE member schools are concerned at the length of the code at 105 pages. Whilst the summary and 'at a glance' sections of the code are useful, they have requested whether a more practical checklist could be created to support the code and draw out key information to action, when considering data sharing.

**Repetition** - IDPE member schools also felt that in some places there was repetition within the code, which if reduced could simplify the code further. For example, pages 16-17, detail data-sharing covered by the code, and detail the examples of data sharing on a routine basis and on a one-off ad hoc basis, then on page 18, there is are further sections on this which reiterate information from pages 16-17.

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

**Ensuring compliance when already sharing data** – the code covers what to consider if two or more data controllers are looking to share data in the future, but it does not provide guidance on what to do where data is already being shared across two data controllers. For example, should the data controllers merely carry out a review of their data sharing practice? Should they carry out a DPIA to demonstrate that there is no risk to sharing such data? Can data controllers retrospectively decide which lawful basis applies to the sharing of data?

IDPE member schools have requested further clarity on how to move forward when already sharing data between two or more data controllers.

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.

IDPE member schools welcomed the clarity in the code and **the differentiation** between **legal obligations** and **good practice** in data sharing.

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?

IDPE member schools welcomed the sections on **Common concerns about data sharing** and **The benefits of data sharing**, which challenge misconceptions and demonstrate benefits.

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.

**Further examples/case studies** – whilst IDPE member schools welcomed the examples that have been included within the actual code itself as well as the case studies in the appendices, they requested further relevant examples either from the third sector and more specifically fundraising, or from education. IDPE would be willing to work with the ICO on providing such case studies, for example where a school and the parent or alumni association are data controllers and how these two entities ensure good practice in data sharing.

**Accountability** – under the section entitled Accountability, it details the role of the Data Protection Officer (DPO) in a data sharing

arrangement, however the code does not clarify who should lead on this in the absence of a DPO and what their role should be.

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:

The Institute of Development Professionals in Education (IDPE)

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