

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.

- Whilst the document is 105 pages in length, a significant amount of this is high level information that would not be of significant benefit to individuals who are already aware of/working with the GDPR/DPA 2018
- Page 39-40 – There is no guidance on when it would be appropriate to share data on the basis of the substantial public interest conditions in Part 2 of Schedule 1 of the DPA, in particular under Paragraph 6 which requires processing to be “necessary” for a statutory function, and “necessary for reasons of substantial public interest” and in accordance with an “appropriate policy document”. Also, there is no guidance how an appropriate policy document should properly address data sharing.

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?

- International transfers – Whilst we appreciate that guidance on this matter may change depending on how Brexit may progress, the CoP currently offers no specific detail on transfers outside of the EEA and instead refers the reader to the ICO website. In our view this element should be contained with the CoP (e.g. detail of appropriate safeguards and how these specifically relate to controller to controller sharing).
- The CoP takes a very high level approach with regard to the potential lawful bases under which sharing could be considered. Whilst these bases are listed, there are no specific details, for example, of scenarios where it may be appropriate (or inappropriate) to share data with another controller via contract, or via legitimate interests. Practitioners will most likely be aware of the legal obligations under the law in this regard – the code should, rather, consider their practical application. It would be helpful to consider each Article 6 lawful basis in turn in this respect and provide examples of where sharing would/would not be considered appropriate.

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?

- The CoP needs to include significantly more examples. As of the present time, examples heavily revolve around health and social care and these should be more varied. Examples should be included within the relevant section of the CoP rather than as an Annex, so as to enable quick reference.
- In particular, the sections on 'Sharing personal data in databases and lists' and 'Data ethics and data trusts' contain no examples. In the case of the former, this would be particularly helpful, as the section is only three pages long, and the summary section contains, in large part, the same wording as the actual chapter itself. It is not particularly helpful 'the data protection legislation allows you to do this as long as you comply with the law'.
- There should also be examples of good and bad practice, and these examples should be realistic. For example, p.35 provides an example of data sharing between the Police and a local authority in respect of a gangs database. It immediately states that 'the council went on to share it inappropriately with a number of organisations', however, merely stating that the sharing was inappropriate isn't of much assistance. The example should explain *why* the sharing was inappropriate in this context
- P. 59 makes reference to public authorities being able to rely on implied statutory powers (under public task) and states 'You can rely on this power to share data so long as it is sufficiently foreseeable and transparent'. There is no further information, however, of when this would be the case (and where it might not). Again, we feel this should have specific examples.

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 per Q.6 above, p.85 –Data ethics and trusts could be expanded in this regard.

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.

- Please see previous responses. We are also of the view that what is good practice can be helped considerably by the provision of realistic examples of what is bad practice.

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 per our previous response, the examples provided are, in the main, very much health focused. There should be a range of different industry scenarios and processing conditions.

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:

Leeds City Council

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