

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.

On the whole the code adequately explains and advises on updated aspects of DP legislation. However it is felt that the following sections require greater clarity:

- Page 18: The term 'data pooling' has been introduced. Is the ICO able to expand on this and provide some examples? It is assumed that this is to replace the DPA 1998 term: 'Data Controllers in Common'? Also should controllers be explicitly referring to 'Data Pooling' in ISAs?
- Page 25: The Code explains that the terms data sharing agreement, information sharing agreement, and information sharing protocol are interchangeable. Many local areas, like ours, have information sharing protocols which are not agreements but instead a set of standards for sharing information locally – would the ICO reconsider that a 'protocol' and 'agreement' are the same? This can often cause confusion amongst non-practitioners.

- Pages 27 + 28 and 51 + 52: Whilst this group accepts that ISAs should reflect FOI, EIR, and DPA arrangements between Partners we believe the Code's position on having one point of contact for data subjects to exercise Data Protection rights is disproportionately burdensome. Whilst this would be sensible in a data pooling exercise it is impractical for most ISAs. An ISA could involve a number of data flows and not all organisations will have access to all of the data. A better suggestion would be to provide the data subject with a list of which organisations will likely hold what data so that they are able to exercise their rights with those controllers. This, we believe, would still fulfil the requirements of Article 26 (GDPR). Either way we believe this paragraph needs more details and clarity.

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?

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

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.

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.

The proposed code was reviewed by a group of IG practitioners (see Q16) and overall it was felt that the code was clear and concise. It was also good to see that overall the code is not substantially different to the 2011 issued code.

Specific elements of the proposed code that the group liked included:

- Page 11-13: Common misconceptions about data sharing
- Page 17: Real examples of data sharing activities.
- Page 26: Statement that an ISA does not provide a form of legal indemnity is clarity that this group welcomes.
- Page 70+ : Mergers and Acquisitions
- Page 77+ : Data Sharing and Children

The group would like to request that the ICO include more examples/case studies, in relation to pp 58+59, specifically about:

- Express statutory obligations
- Express statutory powers
- Implied statutory powers

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:

This is a joint response submitted by the North Yorkshire Information Governance Practitioners Group (formed as under the Multi-Agency Information Sharing Protocol). The NY IGP group is made up of

practitioners representing local authorities, health bodies, emergency services, housing associations and other public sector organisations in the wider North Yorkshire area.

www.northyorks.gov.uk/information-sharing

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