

## ICO consultation on the draft right of access guidance

The right of access (known as subject access) is a fundamental right of the General Data Protection Regulation (GDPR). It allows individuals to find out what personal data is held about them and to obtain a copy of that data. Following on from our initial GDPR guidance on this right (published in April 2018), the ICO has now drafted more detailed guidance which explains in greater detail the rights that individuals have to access their personal data and the obligations on controllers. The draft guidance also explores the special rules involving certain categories of personal data, how to deal with requests involving the personal data of others, and the exemptions that are most likely to apply in practice when handling a request.

We are running a consultation on the draft guidance to gather the views of stakeholders and the public. These views will inform the published version of the guidance by helping us to understand the areas where organisations are seeking further clarity, in particular taking into account their experiences in dealing with subject access requests since May 2018.

If you would like further information about the consultation, please email [SARguidance@ico.org.uk](mailto:SARguidance@ico.org.uk).

Please send us your response by 17:00 on **Wednesday 12 February 2020**.

### Privacy statement

For this consultation, we will publish all responses received from organisations but we will remove any personal data before publication. We will not publish responses received from respondents who have indicated that they are an individual acting in a private capacity (e.g. a member of the public). For more information about what we do with personal data [see our privacy notice](#).

Please note, your responses to this survey will be used to help us with our work on the right of access only. The information will not be used to consider any regulatory action, and you may respond anonymously should you wish.

Please note that we are using the platform Snap Surveys to gather this information. Any data collected by Snap Surveys for ICO is stored on UK servers. [You can read their Privacy Policy.](#)

Q1 Does the draft guidance cover the relevant issues about the right of access?

- Yes
- No
- Unsure/don't know

If no or unsure/don't know, what other issues would you like to be covered in it?

Q2 Does the draft guidance contain the right level of detail?

- Yes
- No
- Unsure/don't know

If no or unsure/don't know, in what areas should there be more detail within the draft guidance?

Q3 Does the draft guidance contain enough examples?

- Yes
- No
- Unsure/don't know

If no or unsure/don't know, please provide any examples that you think should be included in the draft guidance.

Q4 We have found that data protection professionals often struggle with applying and defining 'manifestly unfounded or excessive' subject access requests. We would like to include a wide range of examples from a variety of sectors to help you. Please provide some examples of manifestly unfounded and excessive requests below (if applicable).

Q5 On a scale of 1-5 how useful is the draft guidance?

- |                          |                          |                          |                                     |                          |
|--------------------------|--------------------------|--------------------------|-------------------------------------|--------------------------|
| 1 – Not at all useful    | 2 – Slightly useful      | 3 – Moderately useful    | 4 – Very useful                     | 5 – Extremely useful     |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |

Q6 Why have you given this score?

Q7 To what extent do you agree that the draft guidance is clear and easy to understand?

Page 14: The Guidance states, "Strictly speaking, you should issue a formal refusal notice saying so. In practice, however, we do not expect you to do this if you are dealing with the request as a SAR." In Scotland, OSIC does expect organisations to issue a formal refusal notice. This expectation is a waste of time and resource. As this is UK Guidance, it would be useful if the ICO could please persuade OSIC to take the same view as the ICO.

Page 25: The Guidance states, "You should have procedures in place to find and retrieve personal data that has been electronically archived or backed up." This is not realistic and is disproportionate. Where data has been backed up to tape to protect an organisation in the event of data loss or drive failure, organisations should not be expected to have to restore or recover such data from such backups. Having to do so could cost organisations a significant amount of money. Staff may have deleted information in line with document retention policy or email retention policy but the data continues to exist on backups which may be held for say 12 months. It would not be appropriate to have to restore backups to provide data which has been deleted in line with retention periods.

Page 30: The Guidance states, "Remember that the onus is on you to provide the information to the individual (or their appointed representative). An individual should not have to take action to receive the information (eg by collecting it from your premises) unless they agree to do so." The ICO needs to bear in mind that retrieving the information via remote access, which the ICO actually recommend, requires individuals to take action to retrieve the data.

Page 60: This is UK Guidance however the guidance only quotes the staff rate at £25 per hour. In Scotland the maximum chargeable rate is £15 per hour. The Guidance should state both as it does for the cap of £600.

Not covered: The Guidance currently fails to mention requests for CCTV footage. It would be useful for the ICO to clarify what measures it expects organisations to take in relation to provision of CCTV footage e.g. pixellation/obfuscation, having to view and search hours or days of information, etc. Can transcripts be provided instead of actual footage i.e. information instead of documents? Etc.

Strongly disagree

Disagree

Neither agree nor disagree

Agree

Strongly agree

Q8 Please provide any further comments or suggestions you may have about the draft guidance.

Q9 Are you answering as:

- An individual acting in a private capacity (eg someone providing their views as a member of the public)
- An individual acting in a professional capacity
- On behalf of an organisation
- Other

Please specify the name of your organisation:

Aberdeenshire Council

What sector are you from:

Local Government

Q10 How did you find out about this survey?

- ICO Twitter account
- ICO Facebook account
- ICO LinkedIn account
- ICO website
- ICO newsletter
- ICO staff member
- Colleague
- Personal/work Twitter account
- Personal/work Facebook account
- Personal/work LinkedIn account
- Other

Thank you for taking the time to complete the survey.

