

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 The draft guidance also explores the special rules involving certain categories of personal data, how to deal with requests involving the personal data of others, and the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We are running a consultation on the draft guidance to gather the views of stakeholders and the public.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.

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Q1 Does the draft guidance cover the relevant issues about the right of access?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

We would also benefit from updated guidance on managing SARs from employees – e.g. around large emails searches where most of the data relates to business related matters or other data subjects.

It would also be helpful to address requests for information where there is an alternative (and arguably more suitable) legal process to obtain relevant information e.g. where a legal claim of disrepair is made and we are providing information under disclosure.

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?

Whilst it is difficult to ensure the guidance and examples are useful for all sectors, the following would be useful:

- Further guidance / consideration on when the clock starts.
 - Examples of a SAR request that is 'genuinely unclear whether a SAR is being made'.
- Further guidance / examples on technical issues in relation to 'complex cases'
- Further guidance / clarity on back-up / live data.

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.

It would be useful to include:

- Examples (or clear definition) of 'Extensive efforts'. E.g. If someone asks for their 'Housing File' could you define 'Housing File' as the contents of the Customer Relationship Management system including letters and notes but not copies of call recordings or CCTV footage, confirming this to the data subject when acknowledging the request in case they wish to challenge this?
- Example around managing requests for information which contain 3rd party data in a family context – e.g. A mother asking for Anti-Social Behaviour complaints made against her property where the son is the perpetrator – It would not be reasonable to attempt to obtain consent and we would consider it appropriate to disclose this based on the impact it would have on the mother.
- It would be beneficial to provide further guidance /examples on when it is clear that a SAR has been made and the clock starts.

For example, a person may ask for 'all my repairs information'. At this stage we don't know if they require copies of surveys and reports of building defects (not personal) or whether they want a record of when they have contacted us (personal information).

Ordering extensive email searches straight away whilst we clarify would find all associated information, however, if the customer later confirms that they only wanted a list of times they called, we would have carried out potentially privacy intrusive email searches for no purpose. In this circumstance it would have been preferable to not search until we know the scope of the request, however if the clock has already started, this would put a strain on resource.

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).

An example may be:

A large number of SARs are received from members of a social media 'hate group' where they have been encouraged / agreed to put in a full SAR 'to cause disruption'.

An individual repeatedly requesting that you run email searches despite not providing suitable search terms to enable positive identification without sorting through a disproportionate number of emails (e.g. asking that we search for their initials).

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

Q6 Why have you given this score?

The guide contains useful information on the handling of SARs. It would be even more useful if there were example from more sectors and that examples showed how more complex queries would be handled.

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

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.

By way of context, as a large association with a number of tenants who have been housed by us for decades, some with fluid family compositions and some who are very vulnerable, we work hard to ensure that we uphold tenants' rights under the relevant legislation but we do have to exercise judgement in the absence of prescriptive guidelines from the ICO.

Observation around the SAR fee: As the guidance states that an organisation cannot charge for the staff time to process an unfounded or excessive request, it is more likely that an organisation will simply refuse the request. Under what circumstances would an organisation wish to charge a fee?

It would be preferable to allow a short period of time before the clock starts for clarification/verification where a request is very broad or unclear as this will ensure time is not lost gathering and redacting information the data subject doesn't want, allowing the data subject to receive the response much quicker. It would also minimise the amount of sensitive information reviewed by staff (for example in email account searches) where this is not necessary.

Q9 Are you answering as:

- An individual acting in a private capacity (e.g. 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:

Clarion Housing Group

What sector are you from:

Housing Association – 3rd Sector

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