

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 The draft guidance also explores the special rules involving certain categories of personal data, how to deal with requests involving the personal data of others, and the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We are running a consultation on the draft guidance to gather the views of stakeholders and the public.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Q1 Does the draft guidance cover the relevant issues about the right of access?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?

What is personal data. It is very common for access requests to be made in the context of the employment relationship and it would be helpful for further guidance and examples of what constitutes personal data in this context. There are some areas in the guidance that appear contradictory and it would be helpful to have some clarity.

For example, take the example of an email between colleagues setting out details relating to a project they are working on. Perhaps this is an order for machinery or discussion on how the project is going generally. The ICO guidance suggests that information which could be used to learn/decide/influence something about the individual will be personal data even if it is not its primary purpose. This would, arguably, result in all work emails (including the example above) being personal data from the outset as, whilst they are primarily used to facilitate communication and for the performance of duties, they could be used to learn/decide something at some stage e.g. to investigate performance/conduct concerns if issues are raised with the data subject's actions/performance. However, the ICO guidance then gives an example involving legal advice stating that, when given, this would not be the personal data of the lawyer but that it would become personal data if the lawyer's performance was criticised and the letter was used to investigate this. This suggests that documents may not be personal data at the outset just because they 'could' be used to learn something and that they will only become personal data when they are so used. It would be helpful to have clarity here as clearly the former approach could result in all work emails being personal data even where the focus of the emails is not on the individual themselves but on work they are involved with. This would result in organisations having to sort through huge volumes of data and would also result in a data subject receiving a lot of personal data that they have no interest in.

Extension of time for response . It would be helpful to have further guidance on what is meant by complex. For example, in the employment context access requests can be enormous, spanning thousands of documents over decades of employment. Most of this personal data is found in emails which always contain third party data. Therefore, it often takes a substantial amount of time to retrieve, review, redact and send the personal data. Would this redacting of third party data fall into the point "Applying an exemption that involves large volumes of particularly sensitive data"? Sensitive data is not defined. If a company goes to a third party/lawyer for redactions and assistance would this fall within the last point "Any specialist work involved in redacting information or communicating it in an intelligible form" or would this only apply where data is sent off to a specialist due to technical issues (for example where CCTV has to be redacted before it can be sent)? Is there any guidance available for companies who process such a large volume of data that they are unable to retrieve, review, redact and send this as necessary within the one month deadline? It is common for data subjects to refuse to provide information to help focus their requests and many insist on all their personal data, as they are entitled to do. Therefore, guidance here is needed.

Manifestly unfounded or excessive. There is still little guidance on what this means and some of the examples given are unlikely to arise in practice. For example, data subjects may well make malicious requests, but it is rare they would admit this in their request. Often, data subjects will make a request as a pre-cursor to a legal claim and offer to drop this if settlement can be reached and thus the intention is to put pressure on the employer and encourage it to settle (as the employee is aware of the administrative burden on the employer here). Correspondence in this regard is usually 'without prejudice' and so cannot be referenced. Is an employer able to refuse to comply with such an access request in these circumstances? Is there any guidance to deal with this situation as it is a very common?

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?

See Q1 above. Access requests are now increasingly common in the employment context and it would be useful to have more specific practical examples to assist organisations in complying with their obligations.

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.

See Q1 and 2 above.

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).

See Q1 point above.

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 checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

Q6 Why have you given this score?

It is useful to have all the guidance pulled into one document and to have more examples to work with. However, many of the examples provided are straightforward and it would be helpful to tackle some of the trickier areas. This is particularly so in the employment context. It would be helpful to have more practical examples. It would be really helpful, for example, to have examples of emails/documents with the ICO showing what they feel constitutes personal data within these and how they would redact them to remove third party data. Examples specific to employment would be really helpful, particularly those involving more generic work emails.

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 |
| <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |

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

The guidance is easy to read and follow but there are parts that require further clarification, as set out above, and more practical examples to allow organisations to understand how the law works in practice. As the guidance recognises that most organisations will find it easier to send copies of documents it would be useful to have a few case-study examples showing various documents and identifying what information would be classed as personal data and how the documents should be redacted to ensure only the subject's personal data is revealed. A focus on emails would be preferable given how common they are to all organisations. It would be extremely useful to have a case study set in an employment context.

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:

Clarkslegal LLP

What sector are you from:

Employment

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.

