

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 The draft guidance also explores the special rules involving certain categories of personal data, how to deal with requests involving the personal data of others, and the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We are running a consultation on the draft guidance to gather the views of stakeholders and the public.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Q1 Does the draft guidance cover the relevant issues about the right of access?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

Q2 Does the draft guidance contain the right level of detail?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

I find the content to have sufficient examples for myself but I wonder whether more casual users may benefit from further examples – your feedback from them will tell

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).

No real experience of this

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?

As general advice it is useful but we do find some bits confusing compared with previous guidance.

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 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 issue that concerns us is data held on backups. We distinguish between data held on readily accessible backups and that held offsite, never really intended to be used again. We act as a processor in a shared SaaS environment and data is deleted from our servers as determined by the controller. As is normal good practice, we retain encrypted offsite backups for up to a year. The key to the encryption is not retained with the backups. We have regarded, and the ICO has previously confirmed, this as putting the data "beyond use". It was our understanding that whilst not technically accurate, it was for all intents regarded as deleted data. It therefore comes as a surprise to find that on page 25 the ICO is effectively saying it is treated just the same as live data. Recovering such data involves travelling to the storage site, locating the relevant storage device, finding a machine on which to reload the content, searching for the relevant data and then returning the backup. If the Controller is unaware as to which date the relevant information was backed up, he may have to go through this process 52 times. All of which could cost £000s, all for data which the Controller had no intention of ever accessing again. ICO guidance refers to the fact that the Controller decided to keep the data and therefore should recover it. Not necessarily so. In a shared SaaS environment, each Controller is subject to the communal rules that the processor determines. The Controller may never have required the Processor to keep the data, but is locked into the shared system. In reality, he may have forgotten the data's existence until reminded. Furthermore, are we as a processor expected to carry out this work for Controllers with whom we no longer have a contract? It would be appropriate for ICO guidance to make it clear that such data involves disproportionate effort and is thus exempt.

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:

Confirmit Ltd

What sector are you from:

Computing – data processor

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.

