

SAR guidance consultation

*Regulatory Assurance Department
Information Commissioner's Office
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By email: SARguidance@ico.org.uk*

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Dear Sir/Madam,

CONSULTATION ON THE DRAFT RIGHT OF ACCESS GUIDANCE

I wish to respond to the Information Commissioner's consultation on behalf of the Conservative Party, commenting on certain areas of the draft guidance.

Definition of excessive

Page 36 of the draft guidance seeks to interpret Section 53 of the Data Protection Act 2018 in defining what is an 'excessive' request. The draft guidance states: "It is not necessarily excessive just because the individual: requested a large amount of information".

This is a significant change in practice than the norm adopted by organisations across the country, including by government bodies. For example, I am aware that current Cabinet Office guidance states: "Requests can also be considered for refusal on this basis if the requestor is asking for very substantial volumes of information."

The draft guidance is an excessively narrow interpretation of what Section 53 of the Data Protection Act 2018 says: "(2) An example of a request that may be excessive is one that merely repeats the substance of previous requests."

This is an example – it is not exclusive. Such illustrative wording allows for other examples of what is excessive. Any reasonable interpretation of the word 'excessive' is something that is exceedingly voluminous. We believe this guidance is consequently an error in law, and the definition of excessive should include asking for very substantive volumes of information. Of course, this would not prevent the applicant then seeking to narrow their request. Indeed, this is the principle by which the Freedom of Information Act works.

The effect of this interpretation in the draft guidance would be to impose significant burdens on the public sector, private sector and voluntary sector organisations, by forcing them to process requests which are exceedingly voluminous. I note that no impact assessment has been produced by the ICO on this guidance.

Requests channelled through third party portals and bulk requests

We are supportive of the position on page 12 and 22 in relation to the use of third party portals, and bulk requests.

Political parties in particular face challenges during election periods. This is at a time when political parties are subject to extremely tight compliance requirements across electoral law, and indeed, information and data protection law, and when 'business activity' is at its most intensive. The compliance burdens would become extremely difficult to meet in face of organised voluminous requests in such a compressed period. This matter affects all political parties, not just the Conservative Party.

We would suggest that the two sections should be cross-linked: if third party portals or third party campaigns are systematically soliciting a large volume of requests (such as using social media to drive traffic to portals to make requests), then this should be taken into account by the ICO.

The solicitation of bulk requests may in itself constitute evidence of manifestly unfounded and/or excessive behaviour; in that context, it would benefit a read-across to page 35-36 of the guidance.

Retention of data

Page 7 of the guidance recommends that a log is maintained of such requests. It is not clear how long such logs (and associated data – such as emails with the applicant, and proof of ID) should be maintained for, in light of the data minimisation principle.

It is particularly pertinent when an organisation may be winding down (for example, at the end of a political campaign), but incoming access requests are made. The organisation will rightly wish to shut down its operations, and delete data that should no longer be retained. Some guidance on these issues would be beneficial.

Length of guidance

The accompanying questionnaire to the consultation asks about the length of the guidance. We would note that it is very long at 77 pages. The ICO's draft code for direct marketing also out for consultation is 123 pages. The ICO's draft framework code of practice for the use of personal data in political campaigning is 97 pages. We would politely observe that this trend of voluminous guidance will in itself create new compliance burdens and costs.

We hope these points will be useful.

Yours faithfully,



Conservative Party