

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 The draft guidance also explores the special rules involving certain categories of personal data, how to deal with requests involving the personal data of others, and the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We are running a consultation on the draft guidance to gather the views of stakeholders and the public.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Q1 Does the draft guidance cover the relevant issues about the right of access?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Q2 Does the draft guidance contain the right level of detail?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?

How should we deal with bulk requests? (Page 21)

Could you give more detail on whether we can extend the deadline in these circumstances. It would seem unfair to have to delay answering other SARs whilst we deal with those sent in as part of a campaign. If it's a complex bulk request, can we extend further? How should bulk requests be prioritised in relation to BAU requests?

Can we clarify the request? (Page 23)

Could you add guidance about what 'a reasonable search' would cover for a SAR from a member of staff who does not indicate the scope of their request? As most of such requests we receive are about employment disputes, we could ask the member of staff's immediate line management to search their records for any relevant personal data. However, the danger of this approach is that the individual may not want these staff to know that a SAR has been made – it may be because of fears of bullying, or that the individual does not want their new line manager to know that they had problems previously. So, when we acknowledge the request could we say that it would be helpful if the individual could explain the scope of the data that they require, but explain what our search will include in the absence of this information.

Could we also extend the time-period if the individual does not respond until just before the deadline and wants data about a matter we weren't expecting them to ask about?

On **Page 32**, it would be helpful to expand the advice on the provision of information verbally. An individual may request information over the telephone but, if that information is not readily available, is the expectation that the customer will receive a call back with the response, unless you have agreed a suitable alternative mechanism for providing the response?

On **Page 77**, there should be more detail on the criminal offence of forcing an individual to make a SAR so that organisations are better placed to spot this and protect the data subject.

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.

Large data-heavy organisations routinely processing multiple sets of personal data about an individual and objects that they possess/own in different systems may also struggle to meet the deadline for responding to a data subject within one month if the time limit for responding starts before they have had the opportunity to clarify the individual's requirements. Whilst an individual is entitled to ask for all the information held on them, the proposed approach will inevitably result in significant amounts of nugatory work being carried out preparing a full response relating to all the personal information held when only a small subset of that information is actually required.

As a general comment, examples and case studies are useful in understanding and refining approach. More examples (or links to examples) across the board would be useful, as each section is so varied.

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).

Would it be possible to include a scenario of receiving SARs from a regular requestor, who each time requests information about different matters or timeframes. Because of this, we don't believe they can be deemed manifestly unfounded. However, the information requested can be sourced through other channels. Can the guidance include an indication as to whether it is acceptable to advise an applicant the information is available elsewhere, and redirect them to this route?

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?

On the whole the SAR guidance was clear, well written and provided clarity with many practical suggestions for organisations on how to comply. However, there were some areas to highlight/gaps in information, as detailed in our response.

There were some good additions to the guidance, such as the bullet point of 'Technical difficulties in retrieving the information' to *When is a request complex?* (**Page 18**).

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.

On **Page 16** there is advice on when the time limit starts but none of the examples provided cover the scenario regarding when additional information is required to confirm the requester's identity. Further guidance is provided on page 21 but could be better served earlier in the section to prevent any misunderstandings.

When is a request complex? (Page 18)

Suggest adding third party consultation – "Needing to ask third parties if they have concerns about disclosure and carrying out any subsequent 'balancing' acts". We have found this process to be very time consuming as this can involve lengthy correspondence with third parties. Consultation may also lead to further material that falls within scope, and may in turn require further consultation.

There may be a delay when third parties are unavailable for a time (away on a long holiday, sick leave or dealing with family problems etc).

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:

Department for Transport

What sector are you from:

Information Rights Team

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.

