

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 The draft guidance also explores the special rules involving certain categories of personal data, how to deal with requests involving the personal data of others, and the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We are running a consultation on the draft guidance to gather the views of stakeholders and the public.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Q1 Does the draft guidance cover the relevant issues about the right of access?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Q2 Does the draft guidance contain the right level of detail?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

In the 'How should we supply information to the requester?' section, it would be helpful if you could also include advice on what to do if a requester asks for the data in more than one format, e.g. electronic and hard copy.

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.

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).

The guidance states that a request may be excessive where it "repeats the substance of previous requests and a reasonable interval has not elapsed", however is not necessarily excessive where an individual "wanted to receive a further copy of information they have requested previously (instead you can charge a reasonable fee for the administrative costs of providing this information again)".

We have a data subject who has submitted one SAR every year for the past four years. Our approach to date has been to supply them with all material from the date of the previous SAR to the date of the new request. However, on our reading of the guidance as it stands, they could now decide to request everything they've ever had again, and we have to provide this to them because we can charge them for the administrative costs. This doesn't in our view take account of the staff resources required to provide data to subjects which they have previously been provided with.

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?

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 – “How long do we have to comply” – you seem to have reduced the time organisations have to respond to SARs by a day by counting the time from the day the request is received, whereas in the past it has been from the day after date of receipt. As the time to respond has already been reduced from 40 days to one month, it seems unfair to reduce it by a further day. It also seems odd that you have already updated your current guidance on this point – before the consultation has taken place.

Also on this point, the guidance says you calculate the time from “the day you receive the request, fee or *other requested information...*” although on page 23 where you cover “clarifying the request” you say the time limit starts even if you are seeking clarification. These two points seem to contradict each other.

On page 23, you cover “clarifying the request”, which you are now saying does not affect the time scale for responding – another change. But if we cannot wait for the requester to respond to a request for more information, wouldn’t this constitute disproportionate effort to start searching for their data without the further information requested? Your example, if slightly reworded, would illustrate this perfectly. If the employee had said their request **was** limited to information about the complaint, the supermarket could have put in a lot of resources to locating other data that wasn’t actually required. We have examples where requesters ask for data relating to a complaint about them. The data may stretch back over a number of years, while clarification may result in a request only for data from the past year.

Also in such cases, would it not also be reasonable to ask requesters to prioritise the data they want, if it does go back over a long period, particularly if the data cannot all be provided within one month and an extension is needed?

On page 36 “What does excessive mean?” you say it is not ‘necessarily’ excessive if the individual asks for a further copy of information they have requested previously, and that instead an organisation could charge a reasonable fee to provide another copy. But it isn’t clear whether an organisation has to do this, or whether they can refuse the request.

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:

General Council of the Bar

What sector are you from:

Legal

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.