

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 The draft guidance also explores the special rules involving certain categories of personal data, how to deal with requests involving the personal data of others, and the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We are running a consultation on the draft guidance to gather the views of stakeholders and the public.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Q1 Does the draft guidance cover the relevant issues about the right of access?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

The draft guidance is largely comprehensive. However, as set out in this response, some areas have not been covered that we feel should be covered to create a more effective guide to the process.

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?

The draft does not provide guidance on certain exemptions to the right of access, notably the exemptions permitted under Article 89 of the GDPR (research, statistics, and archiving in the public interest), which are enacted in UK law under Part 6 of Schedule 2 to the Data Protection Act 2018. These are crucial exemptions, for the research and archival sectors and for the population more widely, as the existence of these exemptions can have a significant bearing on the exercise of the right of access and on a receiving organisation's obligations in response to a request. It is noteworthy that these exemptions relate specifically to *activities* rather than to the nature of controllers (ie the exemptions relate to data processed for the purposes of research or archiving in the public interest, activities which may be carried out by a wide range of controllers). It is imperative that controllers and data subjects are aware of these exemptions and provided with adequate guidance on how to apply these in practice. We would strongly welcome the inclusion of guidance on these exemptions in the document, for example alongside the existing section on the journalism, academia, art and literature exemptions on pages 53-54.

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.

We are satisfied with the examples provided in the draft.

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 response provided

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

☐

Q6 Why have you given this score?

Beyond the information we have noted as unhelpfully omitted from the guidance under Q2 above, we find the guidance to be helpful and largely comprehensive. In particular, we find the guidance on health data in the draft to be useful and clarifying.

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

☐

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

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:

National Library of Scotland

What sector are you from:

Cultural heritage institution; Non-departmental public body

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

