

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 The draft guidance also explores the special rules involving certain categories of personal data, how to deal with requests involving the personal data of others, and the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We are running a consultation on the draft guidance to gather the views of stakeholders and the public.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Q1 Does the draft guidance cover the relevant issues about the right of access?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Q2 Does the draft guidance contain the right level of detail?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

On the whole the guidance adequately explains and advises on updated aspects of rights of access. However it is felt that the following sections require greater clarity:

- Page 12: Only one type of attorney is referenced. If other types of attorney also have authority, would it be possible for this to be specifically stated. Furthermore, would be possible to provide some more specific guidance around the issue around power of attorneys. North Yorkshire County Council has previously been in communication around the issue of those who hold financial power of attorneys receiving health and social care information through a SAR despite not holding a health power of attorney. Whilst the ICO maintained the position of it being lawful to release the information further guidance was provided at that time. In particular, the ICO made it clear that it was a matter of discretion for the data controller and that if it was felt that the information released under SAR would be used to help make specific decisions about health then perhaps disclosure would not be appropriate. It would be helpful if this section could be updated to clarify the position.
- Page 13: In relation to children, and the considerations before responding, what used to be a two-stage test (with a logical "and") is now two alternatives – with a logical "or". Is that correct? If not please could this be clarified? Furthermore, the guidance states that parents can exercise a right to make a SAR on behalf of a child. Can the guidance make plain whether that means that one apparently made to further the parent's interests would not be valid (e.g "I need the child's data to go to court to increase my right of access")
- Page 16: The detail around the clarification of when the time should start for responding to a request is helpful, however, further clarification is required. For example, there is a clear difference in receiving a request on 26<sup>th</sup> February compared to 26<sup>th</sup> July.
- Page 18: Complex requests. It would be helpful to have some further guidance as to what this means in practice. For example, if an organisation has a number of specialist members of staff away from work who are required to the redacting, can there be an extension?
- Page 21/23: The guidance states that the clock will no longer stop when clarification is sought. This will be hugely problematic for many data controllers who quite often receive requests which are very difficult to determine without further explanation from the data subject. The communication with the data subject can sometimes take a long time meaning that even with an extension, the data controller's ability to demonstrate compliance with timeframes will be severally affected. Would be possible to receive more specific guidance on this point, for example, what happens if a data subject does not respond?

- Page 25: Is it possible to clarify exactly what is meant by technical expertise. Also, what is mentioned about "deleted" data is at odds with the following paragraph regarding deleted emails. Further clarification would be helpful.
- Page 33: The list provided here is different to the one earlier on. It is also unclear what needs to be provided about the data subject's own request. Further clarification would be helpful.
- Page 40: Some clarification around consent would be helpful. If you have taken no steps to gain consent does this mean you need to learn towards disclosure rather than refusal? If the individual has refused but without explanation does that lean towards disclosure rather than refusal. Meanwhile, can an employer really rely on consent from an employee?
- Page 67: A pupil's data held by a teacher for his or own use is not part of an educational record. It is however accessible under SAR? Clarification would be helpful.

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.

Page 15: More detailed example would be helpful here.

Page 18: Any specialist work involved in redacting information or communicating it in an intelligible form – some clarification/details examples would be helpful

Page 46: In general, this whole section would be a lot more helpful with more detailed examples provided that are applicable to a wide audience.

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).

Public Sector: It is very usual for applicants to make repeated requests for information that is slightly different. For example, one requesting all records and then later for a specific referral document, then everything since last request whilst also putting in other requests such as for erasure etc. Some requests seem the same but are actually different. It has been difficult to determine whether these are excessive. The guidance has made it easier to determine this but more step by step examples would be very helpful.

Law Enforcement: Due the lack of extension, it would be helpful to have some guidance around how this might work in practice.

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?

The guidance is detailed and provides good explanation in many areas. At this stage however, there are numerous places where further detail/explanation is required to ensure that as data controllers, we truly understand the position that needs to be taken.

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:

This is a joint response submitted by the North Yorkshire Information Governance Practitioners Group (formed as under the Multi-Agency Information Sharing Protocol). The NY IGP group is made up of practitioners representing local authorities, health bodies, emergency services, housing associations and other public sector organisations in the wider North Yorkshire area.

[www.northyorks.gov.uk/information-sharing](http://www.northyorks.gov.uk/information-sharing)

What sector are you from:

Public Sector

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.



