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 The draft guidance also explores the special rules involving certain categories of personal data, how to deal with requests involving the personal data of others, and the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We are running a consultation on the draft guidance to gather the views of stakeholders and the public.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Q1 Does the draft guidance cover the relevant issues about the right of access?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Q2 Does the draft guidance contain the right level of detail?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

It would be really good to have some more practical examples e.g.

- Template wording for covering letters responding to SAR.
- What we can ask of suppliers as often we need their help – this can be covered in our contract with them although at a price. Also DC to DC how to deal with SARs jointly
- Also guidance on timescales – it now seems that time runs from the date of receipt regardless of whether we ask for more information – is this the case if we don't have the right details ie the data subject gives us a different address or name or its an employee who has worked for us for 30 years but is also a client/member/patient/dismissed employee……

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.

The more examples the better as it really helps us to ensure compliance in practice e.g. See above comments.
P25 – lots of useful information about how to deal with deleted information/emails we always struggle with this in practice given the amount of email traffic there is now a days.
P56 - employee reference letter the position has been changed ie confidential works both ways. This is a big difference for us and in the past we have been required to hand over reference letters regardless of the potential harm to the referee.
P62 - Interesting section about Health Data – perhaps you could have industry specific examples e.g. as an appendix.
P66 – some info on Access to Medical Records although it states firmly that this is not something within the ICO remit. This is often however an area which can be confusing what we are required to do by the various relevant pieces of legislation so more examples would help.
It would also be good to have advice on what to do with SARs which are a precursor or part of a complaint or disciplinary or redundancy process or other employee related issue – very separate process but guidance on what can be excluded in these circumstances.

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).

Agreed we do struggle and previously took the view it could never be really relied upon – we have contacted the ICO about this in the past and this was effectively the guidance given even when the SAR request letter states that 'if you settle then we will withdraw the SAR'. The advice from the ICO was that 'SARs are purpose blind'.

The 'Manifestly Unfounded' guidance in p35 seems to have changed the position and seem to suggest that if a complainant/claimant offered to withdraw if we settle (as stated above we have had this) we could then refuse. It would be good to know if this is really the case.

We have had SARs which have taken weeks to complete with multiple people involved where the data held is complex and from multiple sources e.g. in multi service healthcare companies the data subject could be an employee, a patient, a gym member, have physio services etc…

Also p39 seems to suggest that we can refuse disclosure more easily if third party information is included because of the rights of a third party e.g. balancing the effect of disclosure on that third party – this seems to be a shift from previous advice from the ICO.

Again further clear examples would help.

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?

Any guidance is good and you have included a number of great examples although I do think there could be more e.g. even if its in an appendix and perhaps add some that are industry specific. I would happily come up with some scenarios that are common to healthcare companies.

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.

I always find the guidance from the ICO very clear and helpful – this is complex law and guidance on how to apply it in practice is always helpful. It may be helpful to meet with representatives from some of the business sectors to understand better how the law works in practice. [redacted]

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:

Nuffield Health

What sector are you from:

Health care including hospitals, gyms, physio, Occupational Health ….

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.