

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 The draft guidance also explores the special rules involving certain categories of personal data, how to deal with requests involving the personal data of others, and the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We are running a consultation on the draft guidance to gather the views of stakeholders and the public.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Q1 Does the draft guidance cover the relevant issues about the right of access?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

The reference on Page 25 to deleted information is helpful. Whilst this matches the assumptions and approach I have taken, it is good to have this as a reference point regarding the ability to recover material with specialist tooling. I note the reference to "deleted Email" folders, which I understand and agree with – but note that there is no statement regarding treatment of desktop recycle bins.

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?

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.

On page 23 there is reference to requests for "all the information you hold". We often see these under the guise of a SAR but in relation to renewable installations. In this case, we will respond under both SAR and EIR. The SAR will release any personal information, and the EIR will cover any information about the renewable installation.

There are likely to be other public bodies who need to respond under multiple regulations, and we would be willing for the ICO to use our scenario as an example if helpful.

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).

Not applicable, but we would like to share a confidential comment regarding Bulk Requests.

There have been historic examples where solicitors were making bulk requests in relation to domestic heating installation arrangements, and we had concerns regarding their legitimacy, and the belief that they were "ambulance chasing" without any current relationship with the Data Subject. We are always cautious to ensure that there is a valid authority for such requests, and we are sharing for ICO awareness.

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 material is comprehensive, and gives us additional confidence that we are applying the correct processes and considerations.

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.

We note that the ICO is moving away from a position of “pausing the clock” where organisations are seeking additional information to support their responses. This does give us some concerns:

- Ofgem have no control over how quickly a requester responds to a clarification request, and a delayed response could put a SAR in breach despite Ofgem’s best efforts;
- Clarification requests can materially affect the scope of the request, and the current approach of pausing assists us to manage those scenarios for what might essentially be a “new” request, but managed within the scope of the original request to ensure a positive and holistic customer experience;
- Clarification requests are made for a reason; to ensure the requestor is getting the information they actually want. The lack of pause will encourage the authority to progress with a request without asking for or receiving clarity, meaning the requestor may not receive what they are looking for;
- Many requests come through law firms or claims companies, and it can take them over one month to respond to us.

Whilst we can understand the ICO’s desire to ensure that organisations take their responsibilities seriously, we do feel that the change will have an adverse impact.

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:

Ofgem

What sector are you from:

Public

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.

