

ID. Date of interview
date 07/02/20

ID. Time interview started
start 09:00:10

ID.end Completion date of interview
Date 07/02/20

ID.end Time interview ended
09:17:14

ID. Duration of interview
time 17.07

new case

ICO consultation on the draft right of access guidance

Q1 Does the draft guidance cover the relevant issues about the right of access?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Q2 Does the draft guidance contain the right level of detail?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If no or unsure/don't know, in what areas should there be more detail within the draft guidance?

Q3 Does the draft guidance contain enough examples?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If no or unsure/don't know, please provide any examples that think should be included in the draft guidance.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).

Thank you for the opportunity to comment on the draft Subject Access Request (SAR) Guidance. The following response from the Pension Scams Industry Group (PSIG), responsible for the Code of Practice on Combating Pension Scams (<http://www.combatingpensionscams.org.uk/>), expands on a growing concern within the pensions industry and wider financial services sector around the abuse of SARs by claims management companies. This is something that [REDACTED] has already spoken to the ICO about and, in our response, we reiterate our calls for guidance to explicitly cover the issue of SARs being used for an improper purpose, and what the rights of data controllers in these circumstances. In more detail, the GDPR recitals are instructive; i.e. the right of access is for individuals to be aware of, and verify, the lawfulness of the processing. We have, however, experienced and been made aware of the growing practice of SARs being used in a manner contrary to the substantive policy intention; i.e. for, often highly speculative, claims purposes rather than awareness and verification of lawfulness of processing. According to page 3 of the draft SAR guidance: The right of access, commonly referred to as subject access, gives individuals the right to obtain a copy of their personal data from you, as well as other supplementary information. It is a fundamental right for individuals. It helps them understand how and why you are using their data, and check you are doing it lawfully. If this is the core purpose, then we know of one independent trustee firm, heavily involved in the fight against pension scams, that has stated 95% of their SARs (with 858 requests received since 2018) run contradictory to this principle. The same firm provided a real life example of the potential for SARs being mis-used as mentioned above. A member of a pension scheme who had been a victim of a pension scam contacted us by phone. We were appointed independent trustees to the 'scam-scheme' to try and recover funds for the members. She was cold called recently by a known claims company. Whilst it was unclear whether she misunderstood what they actually said, she told us that they asked for her benefits 'to be transferred to them'. The claims company were looking to take 25%, and stated that they would 'get her money back'. She got confused as she understood that she cannot access her funds from the scheme. The trustee explained why it is more likely that the claims company would be making a claim for compensation, using SARs, as opposed to recovery. The member was then very concerned with the nature of the cold call and how they got a hold of her data. The claims company also already knew how much she had transferred. The independent trustee explained its various concerns, and explained her rights under GDPR. In this case, the call concluded with the member asking that the trustee make a note on file not to share her data with anyone without her consent. Turning to page 11 of the draft guidance, another tactic is to get members to make General Data Protection Regulation (GDPR) Data Subject Access Requests (DSARs). Those subject to a DSAR will need to ensure they comply and take advice as deemed necessary. However, consideration can be given as to whether every document request properly falls within the scope of a DSAR. In some cases, a claims management company might attempt to obtain disclosure to which it is not entitled. For example, due diligence undertaken in looking into the prospective receiving scheme, which might prove extensive, need not be disclosed under a DSAR if the member concerned is not specifically identifiable from it and if that due diligence could just as easily relate to a transfer request made by another member. By contrast, any conclusions reached from that due diligence and relayed to the specific member might well fall to be provided. It is possible to redact information that has been gathered in the prevention of financial crime. This could apply to due diligence that highlights any suspicions, in order to avoid possible tipping off. At the moment, the purpose of SARs for 'claims purposes' is directly spoken about not once in the entire draft guidance and yet the risks are very real. The scope and jeopardy of such requests is, we feel, vastly underestimated. In consequence, we would like to ask for the sections in the draft guidance on "How do we recognise a subject access request (SAR)?" ; "What should we consider when responding to a request?" ; and "When can we refuse to comply with a request?" to be expanded to address the 'mischief' identified in this response. For completeness, we would also point out that, under DPA 2018, there is a regulation making power under the provisions on "Restrictions on data subject's rights" (sections 15 and 16) that would allow further exemptions to be introduced on DSARs.

Q5 On a scale of 1-5 how useful is the draft guidance?

		3 –		
1 - Not at all useful	2 – Slightly useful	Moderately useful	4 – Very useful	5 – Extremely useful
<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>

Q6 Why have you given this score?

See comments at Q4. The guidance is good but more is needed to address the improper use of SARs.

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.
See Q4

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:

Pension Scams Industry Group

What sector are you from:

Financial Services

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

If other please specify: