

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 The draft guidance also explores the special rules involving certain categories of personal data, how to deal with requests involving the personal data of others, and the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We are running a consultation on the draft guidance to gather the views of stakeholders and the public.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Q1 Does the draft guidance cover the relevant issues about the right of access?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

1. More examples, such as guidance on call transcription requests.
  2. In terms of requesters being unable to access their data on the media provided, does this impact compliance with the one calendar month timescale? For example, data is provided within the one month timescale, but the data subject responds that they cannot access the media. If the data is resent on alternative media, does this impact the timescale? Is the receipt of the data (albeit un-accessed) classed as the fulfillment, or is the requester accessing the data classed as the fulfillment date?
  3. GDPR states "commonly used electronic format". In itself, this is vague and ill-defined, the draft gives: **"You may choose the format, unless the requester makes a reasonable request for you to provide it in another commonly used format (electronic or otherwise)."** Requesters often argue that data discs are not a commonly used format after receipt. What is the definition of a reasonable request? Paper copies cannot be encrypted, and call transcriptions are an unreliable copy of actual data. Could there be examples of reasonable requests given?
- If the SAR is submitted by other means (eg by letter or verbally) you can provide a copy in any commonly used format (electronic or otherwise), unless the requester makes a reasonable request for you to provide it in another commonly used format.** Again, what defines a reasonable request in this scenario? A request may be reasonable if the subject does not have a computer, but paper copies of personal data cannot be encrypted.

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?

There is nothing that covers the transcription of call recordings. A valid viewpoint is that a transcription is not the **exact data**; it is a copy of it, in a changed format, prone to errors via mishearing, typing errors, and it omits tone and other communication cues explicit in audio recordings.

Where a requester asks for transcripts only, there is no relevant guidance. We wouldn't expect a deaf requester asking for recorded calls to be transcribed, so there's no reasonable adjustment, as there would be no calls (due to the requester being deaf). Is the work required to transcribe hours of calls expected to be covered under the standard processing of a SAR? What guidance is available concerning the possible corruption of data when transcribing audio? For businesses with call centres and call recording functionality this is a very pertinent issue.

**"When is a request complex?**

**Whether a request is complex depends upon the specific circumstances of each case. What may be complex for one controller may not be for another – the size and resources of an organisation are likely to be relevant factors."**

Although it is understood that the term 'complex' can cover a wide area, previous ICO guidance has stated that call transcripts must be provided when asked for. Given the resources in both time and agent cost per hour to satisfy the request for this specific information, can this be classed as a complex request?

Does the act of transcription class as an administrative cost, or is it seen as merely dealing with the request? If photocopying, printing and postage are classed as administrative costs, surely the significant time taken to change data medium should be?

**Reasonable Adjustment**

In terms of reasonable adjustment, requests for written call transcripts have been requested under this umbrella. The reason given is no ownership of a computer to access a commonly used electronic format (USB/Data disc). Does this qualify as a reasonable adjustment? It does not class as a disability nor fall within the scope of anything else similar.

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).

Telecommunications provider example:

The requester stated that they had no computer so could not access a commonly used electronic format – Data CD and USB. This requester had asked for call transcripts in printed form as a reasonable adjustment, though on later calls they stated they had a computer and access to it. The caller made multiple calls on a weekly basis and also stated that were we to pay him a set sum of money he would not require the SAR. This requester made SARs for call transcripts every two months. The requester submitted a complaint to the ICO referring to an initial refusal to transcribe calls due to the time and effort required when it was the company's opinion that the requests were only placed (with an offer to withdraw) as bargaining for financial settlement. The customer used ADR mediation and did not submit any of the call transcripts that were provided. Direct communication at the time between the ICO and the company's DPO stated we had to comply with the request to transcribe, despite our insistence that this request was manifestly unfounded and that we had proof of such. We informed the requester that there would be an administrative fee to cover the many hours of work required to transcribe calls, and the requester contacted the ICO who stated this fee could not be levied (see Q3).

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?

Relevant issues that we would require guidance on as a data controller are still either quite vague or missing entirely (as detailed in the free text fields above). Direct communication with the ICO has often given contradictory advice. The advice has often varied given the ICO case handler providing it and there has been a lack of consistency in responses.

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:

Plusnet Plc

What sector are you from:

Telecommunications

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.

