

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 The draft guidance also explores the special rules involving certain categories of personal data, how to deal with requests involving the personal data of others, and the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We are running a consultation on the draft guidance to gather the views of stakeholders and the public.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Q1 Does the draft guidance cover the relevant issues about the right of access?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

Page 77 – would be helpful to include further information here about the actions which constitute a criminal offence here.

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?

In some places, it might be useful to add a link to other guidance issued by the ICO for further reading. For example:

- page 9 – include reference to possibility of SARs being made under s45 of the DPA 2018 and add a link to ICO guidance
- page 41 – could add links to guidance on matters such as “quality of confidence” or “public interest”.

In addition, it would be helpful to have more guidance on the following:

- page 16 – timescales for responding where the final date for responding is a public holiday. In Scotland, public holidays tend to be different depending on where you are in the country. It would be useful if the guidance could clarify whether this is a reference to local public holidays or whether it is a reference to bank holidays set by the Banking and Financial Dealings Act 1971
- page 17 – it would be helpful to clarify whether a data subject needs to be notified of the right to complain to the ICO where a controller extends the time limit for responding to a SAR

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.

It would be helpful to have additional examples in relation to the following:

- Page 24 – where it is “genuinely unclear” whether a SAR is being made
- Page 28 – when it is reasonable to supply information which is different from that held when the request is received

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).

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
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Q6 Why have you given this score?

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
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Q8 Please provide any further comments or suggestions you may have about the draft guidance.

Page 14 states that, if a public authority receives a SAR marked as an FOI request, the ICO don't expect an authority to issue a formal response under FOI although, strictly speaking, a formal notice should be issued.

This is not the position taken by the Scottish Information Commissioner (SIC). Given that the SAR guidance is aimed at all data controllers, including Scottish public authorities subject to the jurisdiction of the SIC for FOI matters, it is important that this point is clarified.

I would suggest adding the following to the second bullet point at the end of page 14: "If you are a Scottish public authority, you will need to take account of the guidance issued by the Scottish

Information Commissioner on this point. The guidance can be found here (see "What do I do if someone asks for their own personal data under FOISA?").

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:

Scottish Information Commissioner

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.

