

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 The draft guidance also explores the special rules involving certain categories of personal data, how to deal with requests involving the personal data of others, and the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We are running a consultation on the draft guidance to gather the views of stakeholders and the public.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Q1 Does the draft guidance cover the relevant issues about the right of access?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Q2 Does the draft guidance contain the right level of detail?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

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.

Further examples around the exemptions would be helpful. Especially around 'negotiations' and how this can and can't be used in relation to employment records (disciplinary etc.).

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).

We would welcome more detail on how to define 'manifestly unfounded or excessive' subject access requests.
We have previously received requests from parents or foster carers who only want their own information from within a substantial sized social care files (or sometimes multiple social care files), when they are not the main subject. This can be a very time-consuming processes to sometimes find a very small amount of information. Is this excessive?
Also, where subjects have previously not collected information and then ask for more?

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

Q8 Please provide any further comments or suggestions you may have about the draft guidance.

1. The guidance reads as though we should be providing a copy or link to the privacy notice in every SAR response we provide. But Article 13 (Privacy Notice) paragraph 4 says that we don't have to provide a Privacy Notice where the data subject has already had the information (a copy of the notice has been previously provided). In reality, it's no real extra work for us to add a copy of the link, but it just contradicts the actual legislation and I think it needs clarifying in the guidance.
2. The guidance makes it clear that as a public authority unstructured manual personal data does fall within the scope of a SAR, but the request must contain a description of the data and, because this has its roots in FOI, we can apply the FOI cost limit of 18 hours and refuse to provide it if it will take longer than this to locate, retrieve and extract it. What is not clear is whether the cost limit applies to the unstructured data only or to the whole request (I would suggest it's just to the unstructured data) so it would be useful to have that clarified.
3. Some clarification regarding school deadlines would be helpful. Our understanding was that school holidays are working days and that the ICO think that schools generally have some staff working through all/part of the holidays so requests should not be left until schools return. However, there are some who think that if the school puts an out of office message on to say the school is closed, and no staff at all work during the holiday, that this somehow lets them get around the deadline issue. I can see how schools could struggle if a request comes in and no-one is working, but there's nothing in this guidance which clarifies this matter.
4. Pg. 13 & 54: Duty of confidence owed to the child / child abuse. Clarity needed when request is made by a parent requesting on child's behalf; under what category we take this information out
 - a. 3rd party or
 - b. under exemption.
5. Pg.73 Court docs. Clarity on the second point needed: - "Supplied in a report or evidence given to court in the course of proceedings." Court bundles can include LA everyday documents as appendix i.e. contact visit, assessments. Does this mean these types of documents are exempt, or is it solely referring to documents that have specifically been produced for court i.e. SW court statement?

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:

Staffordshire County Council

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.

