

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 The draft guidance also explores the special rules involving certain categories of personal data, how to deal with requests involving the personal data of others, and the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We are running a consultation on the draft guidance to gather the views of stakeholders and the public.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Q1 Does the draft guidance cover the relevant issues about the right of access?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

It is not clear who the user of the guidance is intended to be.

We also consider it would be sensible to point out the significant changes to SARS that were made by the GDPR somewhere near the beginning.

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?

The document is a mixture of basic guidance; detailed guidance for public sector bodies; and some guidance on esoteric issues for big data companies (presumably ad-tech).

We wonder if it would be possible to draft a basic guide for organisations and then drill into each area in more detail for larger organisations which have sophisticated information management systems. Although the guidance contains an 'in brief' section, it could also be helpful to incorporate links to the more detailed parts of the ACOP.

We also consider that it would be helpful to refer to the [BMA Guidance](#) in the Accessing Health Data section.

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.

The ICO could consider providing a template SAR response letter which would helpfully set out headings detailing the information required in addition to the provision of a copy of the information. This would complement the template letter made available to data subjects.

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

Q8 Please provide any further comments or suggestions you may have about the draft guidance.

Information management systems

We find the reference to ‘information management systems’ along with an expectation that organisations should have one unhelpful. Many smaller organisations will understandably not have a system that they recognise as an ‘information management system’ and it may be better to point out that having some way to organise and categorise your data may assist and be beneficial to the organisation rather than chastising organisations for not having a system when it is not a legal requirement and when it is a difficult term to define.

Data ownership

We query whether it is helpful to say “who it belongs to” on page 4. Ownership of data is a concept that is not usually helpful. Would it be better to refer to information that you hold as a data controller.

It should be made clearer that the obligation only applies to controller and not data processors.

Emails and personal data

There is often a misunderstanding about emails being personal data just because someone has been copied into one. This has caused issues and it might be worth clarifying this point in the section on page 26.

Legal professional privilege

Page 48: there is reference to the legal professional privilege (LPP) exemption but additional guidance is needed to explain that the exemption goes beyond information to which LPP applies and also relates to information where there is a duty of confidentiality between the lawyer and the client.

Educational records and time limits

Page 68: it appears that the time limit for a school responding to request for a copy of an educational record is paused during school holidays. However, it appears that the time limit for responding to a SAR is not paused. It is therefore unclear whether there would be an expectation that the educational record would be provided in response to an SAR anyway or whether, where an SAR is made at the start of the summer

holidays, the educational record would not require to be disclosed until 15 days after school starts again, but the other data would require to be disclosed during the holidays.

Miscellaneous amendments

We believe there is a typo at the bottom of page 18: it should say 'reasonable' rather than 'excessive'.

Page 28: it would be worth adding in the word 'criminal' before the word offence to emphasise that this should NOT be done.

We would expect the section on 'How should we supply the information ... ' to include reference to transferring the data securely whether provided electronically or in paper form.

Page 37: where it states "Not all of the exemptions apply in the same way ..." we consider that should only apply to 'the relevant data' rather than 'the SAR'.

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:

The Law Society of Scotland

What sector are you from:

legal

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.