

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 The draft guidance also explores the special rules involving certain categories of personal data, how to deal with requests involving the personal data of others, and the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We are running a consultation on the draft guidance to gather the views of stakeholders and the public.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Q1 Does the draft guidance cover the relevant issues about the right of access?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

The draft guidance covers most of the relevant issues very well, but there are some issues which it does not address fully. In particular, there is a lack of guidance about how to handle data which does not *directly* relate to the data subject making the request but is (or may be) personal data relating to that person nonetheless. For example, an organisation may process information about residential properties in such a manner that the information amounts to personal data. In these circumstances, providing information relating to the property in which the individual lives may reveal information about other occupants of that property. The ICO may wish to expand the section headed "*What should we do if the request involves information about other individuals?*" to cover such situations more clearly.

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.

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 have no particular suggestions on this point.

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?

The guidance generally provides helpful, practical guidance which clarifies GDPR requirements rather than merely restating them. Organisations should be able to find answers to most of their questions about the right of access in this document.

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.

We have the following additional comments about the draft guidance:

1. Page 4 says that "*for information to be personal data, it must relate to a living person who can be identified from that information (directly or indirectly)*". This appears to be a relatively narrow definition of personal data. Personal data includes data relating to individuals who are identifiable, not just those who are identified. Additionally, the individuals do not have to be identifiable solely from the data in question; it is sufficient if they are identifiable from other data if that is a means reasonably likely to be used to identify them. The link to further guidance on the definition of personal data is helpful, but perhaps the statement quoted above should be rephrased into an example rather than an absolute statement of what personal data is.

2. Page 7 suggests examples of steps that controllers could take to ensure security of personal data. It says *“Have measures in place to securely send information. For example, by using a trusted courier or having a system to check email addresses before sending.”* The reference to use of a trusted courier may be taken to suggest that the ordinary postal service is not considered sufficiently secure. Is that the ICO’s view? Additionally, we are not sure what kind of *“system to check email addresses”* the ICO is referring to; it would be helpful if the ICO could explain what kind of checks on email addresses it has in mind here.
3. In the section on *“Can we ask for ID?”* starting on page 19, we suggest that the ICO should make clear that where a request is being made by a third party on behalf of a data subject, it may be necessary to identify both the data subject and the third party. If the third party’s identity is not verified then another person could impersonate a third party who has authority to submit the request.
4. Under *“What efforts should we make to find information?”* on page 19, the new guidance seems to have departed from the position under the old code of practice. The requirement to make *“extensive efforts”* was previously qualified with *“Even so, you are not required to do things that would be unreasonable or disproportionate to the importance of providing subject access to the information.”* We consider that this language continues to be valid and to provide an illustrative counterbalance to the (otherwise open-ended) *“extensive efforts”* requirement.
5. Page 21 indicates that the time for responding to a subject access request does not begin until the controller has received any necessary evidence of identity. Pages 23 and 24 indicate that the time for responding to a subject access request continues to run while the controller is waiting for any clarifications from the data subject about their request. It is difficult to reconcile these positions in practice. In particular, as noted on page 20, the level of identity checks that a controller should perform depends on the harm and distress that may be caused if the personal data is disclosed to the wrong person. That in turn depends on what personal data is to be disclosed, and that will sometimes need to be clarified with the data subject. Accordingly, it seems logical to seek any required clarifications to the data subject’s request before asking them for evidence of identity. This seems inconsistent with the suggestion that the time for responding to the subject access request runs while the controller is seeking clarifications but does not begin until evidence of identity has been received. It would be helpful if the ICO could clarify its position on this point.
6. Page 25 refers to the obligation to search electronic archive and backup systems. In many cases the information stored in those systems is likely to be identical to the information stored in live systems. We recommend that the guidance makes clear that it would not be proportionate to spend significant effort searching archive and backup systems where the information in it is likely to be the same as the information retrieved from live systems (especially where the information in archive and backup systems is not used for anything that has any impact on data subjects).
7. Page 31 suggests that *“If an individual can download a copy of their personal data in a commonly used electronic format, then this satisfies the requirement to provide a copy, as long as the individual does not object to the format.”* In our view, the last part of this sentence is misleading. If the information has been provided in a commonly used electronic format, then the requirement to provide access has been complied with. Data subjects are not given a right to specify what format the subject access response must be provided in, provided that the format is (objectively) reasonably accessible. To give an example, if a controller were to provide a response in PDF format, there is no basis for the data subject to object and require it in (say) Word or jpeg format instead.
8. Page 61 is very brief. The ICO may wish to include a link to its existing guidance on *“Credit”* (<https://ico.org.uk/your-data-matters/credit/>) and/or *“Credit Explained”* (<https://ico.org.uk/media/your-data-matters/documents/1282/credit-explained-dp-guidance.pdf>) for data subjects who wish to read more about this topic.
9. On page 61, *“Consumer Credit Act”* should be followed by *“1974”*.

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:

TransUnion Information 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

Thank you for taking the time to complete the survey.

