

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 The draft guidance also explores the special rules involving certain categories of personal data, how to deal with requests involving the personal data of others, and the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We are running a consultation on the draft guidance to gather the views of stakeholders and the public.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Q1 Does the draft guidance cover the relevant issues about the right of access?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

Q2 Does the draft guidance contain the right level of detail?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?

On page 11 you mention that if we have concerns about disclosing excessive information we need to contact the data subject and if they agree we send the reply to them directly. If we cannot make contact, we **should** provide the information to the third party. We think this approach may cause confusion. If we have the initial concern then why should we disclose the information anyway?

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.

- **Complexity:** we think more details and examples could have been provided to clarify complexity and highlight that context is key. Different organisations may have different levels of complexity.
- **Page 29:** "What information must we supply" – reference to supplementary information "must remember to supply this information in addition to a copy of the personal data" what does this mean? And in what format? Can it be done by simply referring to the controller's privacy policy in the SAR response or separately?
- **Disclosing third party data:** SARs are about providing information not a document so can you redact (but how does this actually work in practice)? No real worked examples or criteria from ICO here in the 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).

- It is unclear whether a controller can rely on "manifestly unfounded" point in cases where the individual is clearly being abusive to members of staff. On page 36 it looks like we should not rely on that but if we do there should be evidence. The line of what constitutes manifestly unfounded then becomes very fine, almost subjective.

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

Q6 Why have you given this score?

We think that the having a guidance on SARs is extremely important, however, the new draft guidance seems to move more towards placing great onus and burden on controllers when complying with SARs (i.e. evidence on every decision made in respect of (i) whether to disclose data, (ii) why something has been redacted in a certain way, / inconsistent approach in respect of risk to disclose excessive data but if data subject cannot be contacted then disclose anyway (see comment in Q2 above) / definition of and approach of **manifestly unfounded** concept: each case should be considered on a case by case basis and onus falls on controller to prove, which of course this type of evidence may be very subjective rather than an objective assessment of what manifestly unfounded means.)

SARs are not straightforward and a less strict approach should be considered, balancing the rights of individuals and costs / time for controllers.

More examples would be useful.

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.

- **Page 23:** guidance suggests controllers should make “extensive” efforts to find the information. Isn't this excessive in the context of a large organisations with multiple and complex systems? Shouldn't this be reasonable / appropriate? On page 24 guidance uses the word “reasonable” instead. Also on page 25 you refer to “*use the 'same' effort to find information to respond to a SAR as you would to find archived or backed-up data*” – extensive or reasonable?
- **Pages 23-24:** it would be useful to include in the guidance an example where SAR is specific to specific information. Controller respects timelines, provides that data but then individual comes back asking for additional data. What is the position there: (i) new request / new timeline? (ii) part of the same request but no timeline?
- **Proportionality:** the guidance seems to remove references to proportionality - Previously controllers would balance benefit of supplying to data subject v. effort of finding the information. So how do controllers now know how to manage responses? Guidance doesn't seem to consider time and cost burden of DSARs on organisations.
- **Providing archived data:** Guidance seems to expect processes to be in place to search back-ups / archives. But this seems to be inconsistent with the point of a SAR (to get access to data being currently processed).

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:

Telefonica UK Limited

What sector are you from:

Telecoms

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.