

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 The draft guidance also explores the special rules involving certain categories of personal data, how to deal with requests involving the personal data of others, and the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We are running a consultation on the draft guidance to gather the views of stakeholders and the public.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Q1 Does the draft guidance cover the relevant issues about the right of access?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

The majority of SARs received by my organisation (a trade union) are from members under investigation and this is not covered in this guidance. The ICO has published guidance called Access to information Held in complaints files but this is very consumer orientated and doesn't address specific issues to confidential membership investigations.

Trade unions work in an environment that can sometimes make retrieving relevant information for a SAR difficult. Trade unions and employers are joint controllers. Through recognition/facilities agreements trade union volunteers use their employer's facilities such as the phone, office, photocopiers, storage facilities and computer systems. An employee can be both an employee and a union representative and therefore there is a joint controller relationship between the employer and the trade union. Because of this we sometimes encounter difficulties obtaining relevant information for data subjects. Further guidance on this joint controller relationship that is very specific to a trade union/employer situation would be appreciated.

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 41 under the heading "What about confidentiality" there needs to be more information and guidance. For a membership organisation such as the one [REDACTED] for, a national union, we deal with mostly SARs from people who are involved in investigations that, whilst the investigation is ongoing, are confidential. This is not covered here. Our investigation and complaints procedures are set out in our rulebook, disciplinary rules, investigation procedures sanction guidance. It would be helpful to expand on this area and give examples that are relevant to trade unions.

When someone makes a complaint about a member or another colleague then generally their complaint is confidential. This is not addressed at all in this part of the draft guidance or anywhere else

There are 100s of membership organisations, not just unions, that carry out investigations into their members conduct. Unions and professional bodies should be included in the list of relationships that carry a duty of confidence.

On page 42 I would like to suggest that you add a section for special category data and provide examples that are relevant to trade unions.

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.

As mentioned above, the issues specific to trade unions and our organisational structure and governance are not addressed and if you could rectify this it would be greatly appreciated by our trade unions and the others that deal with their members and their employers.

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).

More guidance on overlapping requests and repeated request for information that exemptions apply would be helpful.

There seems to be genuine confusion the data subjects when we lawfully apply exemptions and they struggle to understand why the exemptions apply. This guidance should be written not just with data controllers in mind but also the data subject. We refer our data subjects to your guidance to explain how we have applied the exemptions. This is why we feel it is important to expand guidance to include examples with membership organisations.

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?

Please see below

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.

Despite trade union membership being special category data there is conspicuous lack of guidance for trade unions and their members from the ICO. It would be beneficial to both trade unions and the employers alike.

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:

UNISON

What sector are you from:

Trade Union

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