

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 The draft guidance also explores the special rules involving certain categories of personal data, how to deal with requests involving the personal data of others, and the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We are running a consultation on the draft guidance to gather the views of stakeholders and the public.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Q1 Does the draft guidance cover the relevant issues about the right of access?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Q2 Does the draft guidance contain the right level of detail?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

- Greater clarity is required in regards to when the statutory time limit starts and stops. A flowchart or section specifically addressing this with scenarios would help explain this clearly.
- There is not enough detail on how organisations should act when a requestor does not respond to a follow-up query. For example, if a requestor makes a subject access request and we query the method of sending the information but receive no response from the data subject, is the data controller still obligated to send out this request within the statutory timeframe?
- On page 27 where it states:

*“Similarly, if you process data from a range of data sources, including unstructured data, this can pose difficulties when producing all of the data you hold on one individual. This can be further complicated if you make use of observed data or inferred data – data that an individual has not provided to you directly. For example, if you generate insights about an individual’s behaviour based on their use of your service, where this data is identified or identifiable (directly or indirectly) then it is personal data and subject to the right of access.”*

This is not sufficiently clear and does not address a situation where a data subject requests for all data which may directly or indirectly reference them, even if not by name. A clear example/scenario would be useful.

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).

Our organisation receives a number HR-related subject access requests and usually in the run up to an employee relations case. Follow-up requests are also common. It is clear that the employee is looking for evidence within the content of the disclosure to help their case. We would define this as being manifestly unfounded if we feel the original disclosure of information was complete and comprehensive.

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?

It clarifies a number of areas such as the level of ID that should be requested when logging a request and includes a wide variety of examples in relation to "manifestly unfounded or excessive" subject access requests.

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.

One of the issues we come across in the team is a matter that is putting our actual team at risk. Due to the nature of our organisation, some of our data subjects can be aggressive and will at times not react well to decisions we have made about their records (even after the completion of a Serious Harm Test). The guidance focuses solely on the rights of the data subject and ignores instances where staff members may be at risk due to aggressive data subjects. For example, data subjects showing up to our building demanding a follow up etc. An exemption in the cases of the SAR Officers feeling unsafe or not comfortable interacting with certain data subjects will not fall under the current exemptions of 'manifestly unfounded' or 'excessive'.

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:

West London NHS Trust

What sector are you from:

Healthcare

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.