ICO consultation on the draft updated data sharing code of practice

Data sharing brings important benefits to organisations and individuals, making our lives easier and helping to deliver efficient services.

It is important, however, that organisations which share personal data have high data protection standards, sharing data in ways that are fair, transparent and accountable. We also want organisations to be confident when dealing with data sharing matters, so individuals can be confident their data has been shared securely and responsibly.

As required by the Data Protection Act 2018, we are working on updating our data sharing code of practice, which was published in 2011. We are now seeking your views on the draft updated code.

The draft updated code explains and advises on changes to data protection legislation where these changes are relevant to data sharing. It addresses many aspects of the new legislation including transparency, lawful bases for processing, the new accountability principle and the requirement to record processing activities.

The draft updated code continues to provide practical guidance in relation to data sharing and promotes good practice in the sharing of personal data. It also seeks to allay common concerns around data sharing.

As well as legislative changes, the code deals with technical and other developments that have had an impact on data sharing since the publication of the last code in 2011.

Before drafting the code, the Information Commissioner launched a call for views in August 2018. You can view a summary of the responses and some of the individual responses here.

If you wish to make any comments not covered by the questions in the survey, or you have any general queries about the consultation, please email us at datasharingcode@ico.org.uk.

Please send us your responses by **Monday 9 September 2019**.

Privacy Statement

For this consultation, we will publish all responses except for those where the respondent indicates that they are an individual acting in a private capacity (e.g. a member of the public). All responses from organisations

and individuals responding in a professional capacity will be published. We will remove email addresses and telephone numbers from these responses; but apart from this, we will publish them in full.

For more information about what we do with personal data please see our privacy notice.

Questions

Note: when commenting, please bear in mind that, on the whole, the code does not duplicate the content of existing guidance on particular data protection issues, but instead encourages the reader to refer to the most up to date guidance on the ICO website.

Q1   Does the updated code adequately explain and advise on the new aspects of data protection legislation which are relevant to data sharing?

☒ Yes

☐ No

Q2   If not, please specify where improvements could be made.

Q3   Does the draft code cover the right issues about data sharing?

☒ Yes

☐ No

Q4   If no, what other issues would you like to be covered in it?

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Q5   Does the draft code contain the right level of detail?

☐   Yes

☐   No

Q6   If no, in what areas should there be more detail within the draft code?

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Q7   Has the draft code sufficiently addressed new areas or developments in data protection that are having an impact on your organisation's data sharing practices?

☐   Yes

☐   No

Q8   If no, please specify what areas are not being addressed, or not being addressed in enough detail

We suggest adding more detail on how organisations can rely on the public tasks lawful basis, and their statutory powers, as this has become a more complex issue when discussing data sharing with other bodies.

In particular we suggest adding more clarity on how a disclosing party can rely on the recipient's public/statutory functions. The GMC often obtains personal data from other public bodies on the basis that the data is needed for the GMC's statutory functions (set out in the Medical Act). Conversely, the GMC is asked to disclose data in support of other bodies' statutory functions in ways which might be outside the GMC's own public tasks. We typically process on the basis that the disclosure is still required for the performance of a public function but not all organisations take this approach and it would be helpful for the Code to provide some clarity.

Similarly, the section on disclosing to the police mentions the need for a lawful basis. It would be helpful to have further guidance on how this works in practice when using the crime and taxation exemption – does a public body disclosing to the police need to identify a basis in its own statutory functions, and if not what functions do the police rely on to permit the disclosure?

Q9   Does the draft code provide enough clarity on good practice in data sharing?

☐ Yes

☐ No

Q10   If no, please indicate the section(s) of the draft code which could be improved, and what can be done to make the section(s) clearer.

The scope of the section on Sharing personal data in databases and lists is not clear. The wording of the guidance in that section suggests it is really intended to cover marketing databases. However the title of the section would suggest that the guidance covers any database (e.g. the use of administrative datasets for research purposes). This could be clarified

The section on Data ethics and data trusts is a useful addition to the code. Our only observation is that 'data trusts' are more of a technical solution to existing data protection risks, not an ethical decision making

tool, so the guidance on trusts might be better placed in a different part of the code.

Q11 Does the draft code strike the right balance between recognising the benefits of sharing data and the need to protect it?

☒ Yes

☐ No

Q12 If no, in what way does the draft code fail to strike this balance?

Q13 Does the draft code cover case studies or data sharing scenarios relevant to your organisation?

☒ Yes

☐ No

Q14 Please provide any further comments or suggestions you may have about the draft code.

Q15 To what extent do you agree that the draft code is clear and easy to understand?

☐ Strongly agree

☒ Agree

☐ Neither agree nor disagree

☐ Disagree

☐ Strongly disagree

Q16 Are you answering as:

☐ An individual acting in a private capacity (e.g. someone providing their views as a member of the public of the public)

☐ An individual acting in a professional capacity

☒ On behalf of an organisation

☐ Other

Please specify the name of your organisation:

General Medical Council

Thank you for taking the time to share your views and experience.