

# 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](mailto: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.

The code is lengthy and technical which some smaller organisations may struggle to interpret.

There is repetition throughout and duplication of information which is already available via existing guidance, for example the updated DPA Principles and ICO Enforcement. Suggest you could link to the information already available.

The Summary section goes into a lot of the detail in the actual code and suggest this could be streamlined.

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?

The Title doesn't specifically mention it only covers controller to controller, which could be misleading.

Code should list the types of organisations it is aimed at, as it is very technical in parts.

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?

Lengthy and technical, should be able to link to information already available. Suggest it should be checked for plain language / English to make it easier to read/understand especially for smaller organisations.

Although we understand that sharing is technically disclosure we would suggest to include a clear definition between data sharing and data disclosure. For example:

- "sharing" – to mean reciprocal arrangements i.e. a back forth process to provide information e.g. within a multi-disciplinary team of different agencies or use of a joint database
- "disclosure" – to mean a one-off provision of data e.g. where the police provided the "gangs dbase" to the LA, nothing comes back.

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

Separation of sharing with data processors isn't necessary and that it would be beneficial to have all data sharing guidance in one place.

Focusing on controller to controller (which is not explicit in the code title) could give the impression that sharing with processors is less important, for example with consideration of DPIAs. Appreciate the contract requirements are different but suggest that this isn't a big enough reason to separate them out as all other considerations, i.e. risk reviews still apply.

More detail around scientific research would be useful. For example, it would be useful to highlight the pseudonymisation link/requirement. Highlighting pseudonymised data under the definition of personal data would have been useful, individuals confuse pseudonymised data with anonymised data, particularly with research.

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.

Page 57 – Other Legal Requirements – missing examples or scenarios to assist organisations with understanding this section.

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.

Page 4 – First bullet point, needs to clarify that the statutory requirement is for the ICO to produce the Code. The Code is then good practice for organisations to adopt to support compliance with DPA.

Page 13 – Misconception (first box), this could be strengthened especially to account for public sector organisations and reflect the ICO's existing guidance regarding consent.

Page 13 - There is a fairly lengthy section on the 'benefits of sharing', which doesn't necessarily promote compliance with data protection legislation. Could this be usefully covered in the foreword or form a separate briefing document that could be linked to the code? This would help streamline the code.

Perhaps this could include reference to examples of solutions / initiatives to support effective sharing of personal data; e.g. the Wales Accord on the Sharing of Personal Data (WASPI), case studies produced by the Data Sharing Centre of Excellence in England (no longer a live service but case studies available on the website).

Page 26 – Suggest this section could be the checklist with links to the supplement narrative as the information is already available.

Appendix A – It was a shame this wasn't included, as due to the current length of the code, it would be beneficial to most organisations as the starting point to understand what they need to do and when.

More examples of public interest, particularly around police disclosures, would be useful. For example, the IGA guidance which includes a confidentiality vs importance of disclosing table is a very useful as a visual aid.

**Overall comments**

Useful document for experts, however very technical throughout which might put people off.

Scenarios and examples were real life and help put elements of the code into everyday working practice.

Thank you for allowing us the opportunity to comment and should you require any further clarification regarding our comments, please do not hesitate to contact us via IGMAG.

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:

IG Professionals across NHS Organisations in Wales – as part of the  
Information Governance Management Advisory Group (IGMAG)

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