

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.

The heading on page 48 **Are we still responsible after we've shared the data?** is potentially misleading. Some of the charities that we spoke to were concerned that this suggested data exporters would continue to be liable for the actions of data importers after they have shared personal data. We agree with the ICO's recommendations in this section but we think the wording could make it clearer that, as long as the data exporter takes the recommended "reasonable steps" in advance of disclosure, they will not be liable under the data protection legislation for the actions of the data importer following the transfer.

On page 70 (under the heading **How does data sharing apply to mergers and acquisitions?**), the Code cautions organisations to "take care" if there is a change in the controller as a result of a merger or acquisition. We think it is important to spell out that valid consent under the GDPR requires third parties to be specifically named so, if a merger results in a change of controller, the new controller will not be able to rely on consents given to the previous controller. This is particularly important in the charity sector where consent to receive marketing and fundraising communications can be extremely valuable assets – charities considering a merger need to understand that a new controller will not be able to rely on those consents.

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?

Intra-group data sharing – the Code should include a section on data sharing between group companies. The current draft only refers in passing to sharing between sister organisations in the bullet point list on page 74 (under the heading **How does data sharing apply to the acquisition or transfer of databases and lists?**). We would welcome more detailed guidance on intra-group sharing and, in particular, we think it would be helpful if the Code highlighted that personal data processed on consent grounds cannot be shared between group companies unless the consent statements named each company or entity within the group that intends to rely on the consent.

Change of service provider – many charities deliver services under contract from a public authority such as the NHS or Local Council. These contracts are regularly put out to tender and a change of service provider can result in the transfer of significant amounts of personal data. We think it would be helpful if the Code explicitly referred to data sharing in these situations.

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?

Ad hoc/one-off data sharing – the Code draws a distinction between regular data sharing and ad hoc or one-off sharing. The implication is that a Data Sharing Agreement will not be required in all cases but it is not clear how organisations should make this decision. For example, it would clearly be disproportionate to negotiate a detailed Data Sharing Agreement with a third party in order to share a minimal amount of low-risk personal data on a one-off basis. Nevertheless, we suspect the ICO would still expect the data exporter to take some steps to ensure that the personal data will continue to be protected (e.g. asking the data importer to confirm that they will only use the personal data for specific purposes, agreeing between the parties that the personal data will be deleted when a specific task has been completed). It would be helpful if more detail could be added to the Code to clarify what is expected of controllers undertaking low-risk data sharing activities.

We also think that the references to “one-off” data transfers are potentially misleading as the impression is that one-off transfers require less rigorous advance planning by controllers than regular data sharing activities. However, there could well be circumstances in which a Data Sharing Agreement would be justified for a one-off transfer

of personal data, for example, one that involves sharing a large amount of confidential and/or special category personal data. We suggest that it would be more helpful to refer to higher- and lower-risk data sharing, as opposed to one-off/ad hoc versus regular sharing. We also think that it would be helpful to remind controllers to ensure they correctly distinguish between an ad hoc request from a third party for personal data and a subject access request made under Article 15 of the GDPR.

Security – the security section (pages 47-49) seems lacking in detail. While we understand that the ICO would not wish to prescribe specific security measures in a statutory Code such as this, we would have expected the security section to include references to common types of technical security measures (e.g. encryption, password protection) and organisational measures (e.g. pseudonymisation, limiting staff access to documents and/or systems, keeping paper files in locked cabinets).

Page 48 also states that controller must undertake an “information risk analysis” and document its conclusions but it is unclear whether this analysis needs to be carried out in addition to a Data Protection Impact Assessment and, if so, what additional considerations should be addressed in an information risk analysis.

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

See answers to Question 2 (data protection issues relating specifically to consent in the context of mergers) and Question 4 (intra-group sharing) above.

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.

See answer to Question 6 above – it would be helpful to have more clarity in the Code around what is considered to be good practice for ad hoc, one off and/or low-risk data sharing situations where a full Data Sharing Agreement would be disproportionate.

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.

It would be helpful to include more case studies from the private sector which involve high risk and/or special category personal data being shared, for example, a case study from the charity sector.

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:

Russell-Cooke Solicitors. The responses reflect feedback on the Code which we received at two roundtable discussions attended by representatives from thirteen charities of varying sizes and working in various sectors.

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