

## 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 <a href="https://example.com/here/">here</a>.

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 <a href="mailto:datasharingcode@ico.org.uk">datasharingcode@ico.org.uk</a>.

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 <u>privacy notice.</u>

## **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.

Overall, we consider that the document is inaccessible: it is over-long and confusingly arranged. We are concerned that readers will find it off-putting and it may therefore fail in its objective to support appropriate sharing of personal data. We consider that as law enforcement processing is very much a niche activity the code could be simplified by having law enforcement data sharing covered in a separate document. Similarly, it may be helpful to provide separate guidance for public and private sector organisations.

In our view the Guidance mixes up the requirements where sharing takes place between 'controllers in common/separate controllers' and joint controllers. This is confusing: there should be a separate section for joint controllers.

We also note that there is a section on data ethics and data trusts but it is not clear why these are deal with together as no clear connection is made between them.



See further comments below.	
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?
on p sect "rea sect cont Inde	rall, we consider that there is too much focus in the draft guidance public sector sharing and not enough on what private for/commercial organisations should be thinking about. (See, eg the all life examples" on page 17, only one of which refers to non-public for sharing and that example is arguably more likely to be a croller/processor relationship than a controller/controller one.) seed, it may be preferable for the ICO to consider publishing guidance non-public sector organisations.
with Verb	also note the recent decisions about websites being joint controllers social media platforms ( <i>Fashion ID GmbH &amp; Co. KG v braucherzentrale NRW eV</i> (Case C-40/17)). This type of data sharing need to be addressed.
shar	Illy, we consider that the guidance could be clearer about what ring is <b>not</b> covered, ie sharing with a data processor. This area is fusing and again the explanation would be bolstered by examples.
Q5	Does the draft code contain the right level of detail?
QJ	☐ Yes
	No     No
Q6	If no, in what areas should there be more detail within the draft code?



See comments in response to question 4 above.

 $\bowtie$  No

We are concerned that there is little mention of exceptions and exemptions in the guidance which would allow data to be shared in certain circumstances where compliance with some of the DPPs is not required. This appears to us to be a significant omission as much of the day-to-day sharing that takes place is based on those exceptions and exemptions.

We also consider that the section on mergers and acquisitions is too brief. In particular, it should cover how to share personal data in advance of a merger happening; we are aware that this is an issue which lawyers commonly encounter.

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

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

The transparency requirements can adequately be dealt with on a collective basis where parties to a data sharing agreement agree to collective privacy statements covering all parties to the agreement. This makes for a more efficient process and one which avoids data subjects being bombarded with multiple privacy statements relating to the same activity. However, the code does not address this.

The code makes references to consent throughout, without recognising that much data sharing takes place under other legal bases.

In the section on individual rights, the part relating to rights in terms of law enforcement processing notes that there are exemptions and restrictions applicable. There are also exemptions and restrictions in terms of GDPR individual rights but these are not signposted in the same way.



Q9	Does the draft code provide enough clarity on good practice in data sharing?  □ Yes	а
	⊠ 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.	) (
an o	he political party section, we note the reference to sharing data with organisation that sends out campaign material; in our view this is a troller to processor arrangement but it does not seem to be treated such in the guidance as it is mentioned separately. It might be arer to merely use this scenario as an illustrative example within one he standard sections to make it clearer that the general guidance lies in a party-political context also.	
con is a secon the agree out	he security section, we note that information security covers fidentiality, integrity and availability of information but the narrative lmost exclusively in relation to confidentiality. We also note that urity must cover data at rest, data in motion and data in use. Again code only covers data in use. In our experience a good data sharing eement will cover all of these parameters and is a useful place to set practical matters such as the agreed secure method by which data actually be exchanged.	, g
pracider pracin a on I	umber of the case studies quoted are actually examples of bad ctice rather than good. For example, the case study on page 35 ntifies an example where things went wrong but does not give ctical advice as to how relevant parts of data could have been shared appropriate manner in the same scenario. Likewise, the example page 63 identifies a case of the police asking for excess information. consider it would be more helpful to focus on good practice as an irmative model for those seeking to comply.	
Q11		
	□ Yes	
	⊠ No	



Q12	If no, in what way does the draft code fail to strike this balance?
	rall we consider that the code if reasonably balanced but there could aps be greater focus on the benefits of data sharing.
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.
As su sepa helpt	oted above, the majority of the examples are public sector-based. uggested in response to Q4, it may be helpful to consider a rate code for private sector organisations but if not it would be ful if the examples covered a broader range of scenarios to assist public-sector organisations.
altho peop try a situa	section on sharing in urgent situations is a welcome addition, bugh we think it would benefit from inclusion of a warning that ble may use the existence of a major incident as an opportunity to and obtain information unlawfully. The existence of an urgent ation should not remove the need for at least some sort of validation k before releasing sensitive information.
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:



The Law Society of Scotland	
	Please specify the name of your organisation:
	□ Other
	□ On behalf of an organisation
	$\ \square$ An individual acting in a professional capacity
	☐ An individual acting in a private capacity (e.g. someone providing their views as a member of the public of the public)

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