



Response to the ICO's Consultation on the Draft Updated Data Sharing Code of Practice

Submitted by

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Horizon is a Research Institute centred at The University of Nottingham and a Research Hub within the UKRI Digital Economy programme. Horizon brings together researchers from a broad range of disciplines to investigate the opportunities and challenges arising from the increased use of digital technology in our everyday lives, specifically related to opportunities and challenges in personal data use.

5 September 2019

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.

- While the draft code of practice has covered most of the new aspects of the current data protection framework, the following issues should be further highlighted, either by providing additional explanation in the code or by referring to other relevant ICO documents:
- (1) Conditions of valid consent (Article 7 GDPR), especially on cases where consent is not valid for data sharing that is not necessary for the performance of a contract (Article 7(4)).
- (2) Separate or joint controllers: While the draft code has emphasised the necessity of a data sharing agreement as required by Article 26 GDPR, it should also clarify when controllers are acting separately or jointly, as this would have significant implications for clear definition of shared responsibilities, as well as joint liabilities.

- (3) The right to data portability (Article 20): Specific reference should be made to the relevant section of the ICO's Guide to the GDPR on the right to data portability, as this represents a new right of particular relevance for the design and implementation of data sharing systems.

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?

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?

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

- Please see response to Q12 below.

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.

- We fully understand the ICO's statutory duty to prepare a code of practice on data sharing, which would inevitably have a large amount of overlaps with its other guidance documents (notably, the Guide to the GDPR). As a result, we agree the code should primarily serve to encourage the reader to consult the relevant documents that specifically address the issues concerned.
- However, the draft code often fails to specify a particular document, not to mention pinpointing a specific section within that document, and instead, only provides a general statement "For more details, you should refer to the ICO website at www.ico.org.uk." Although making precise references to other documents may involve additional work for updating the code, this would significantly enhance the usability 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?

- We welcome the ICO's general approach in the draft code to reconcile the benefits of sharing data and the need to protect personal data. What should be further stressed, however, is the promise that emerging technologies hold in promoting these ends. Such technologies include edge computing and personal information management systems (PIMS), and the duties for data controllers to consider such possibilities.
- More generally, while the draft code has repeatedly encouraged data controllers to carefully consider whether data sharing is necessary and how to share data fairly, the ICO should also point out alternative, privacy-preserving models of utilising personal data. One such model is characterised by allowing a data controller to offer software ("an app"), that can access personal data from another controller, but where the data is only stored and analysed on the user's device and no data is transferred to the former's server. This model shares some underlying ideas with

“data trusts” as highlighted by the draft code but features a different technical approach.

- Our ongoing research project, Databox,¹ has proved this approach is both technically and commercially feasible in an IoT setting, and we do not see any reason this model cannot be followed in other data sharing scenarios (e.g. media²).

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.

- There are two areas of intense data sharing that we find particularly important but unfortunately not covered by the draft code:
- (1) Internet of Things (IoT): As automated exchange and sharing of data collected with smart home devices are becoming increasingly commonplace, there should be further guidance on best practices for data controllers (manufacturers, software developers, third-party service providers) to fulfil their data protection obligations. Importantly, in many use cases data sharing between these organisations do not necessarily involve a formal legal arrangement but is simply made possible with technical protocols or standard architectures. Such routine data sharing may have significant implications for data subjects.
- (2) Online advertising: Following the ICO’s investigation into real-time bidding and adtech, it has become clear that the level of compliance with data protection law by the online marketing sector is highly questionable. Further clarification is thus needed particularly for smaller participants in the advertising ecosystem with regard to compliance with data protection law. We understand this might be covered in greater depth by the ICO’s

¹ <https://www.horizon.ac.uk/project/databox/>

² For instance, see BBC Box: <https://www.bbc.co.uk/rd/blog/2019-06-bbc-box-personal-data-privacy>

upcoming Direct Marketing Code, but before the publication of such a code, it is crucial to also address online marketing from a data sharing perspective.

- Considering the increasing ubiquity of these two scenarios in both the online and offline world, and in the absence of comprehensive, up-to-date guidelines on these matters at the moment, we urge the ICO to consider addressing these two use cases at least briefly in the final version of the code, so as to highlight the importance of adhering to data protection principles in these contexts.

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:

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