

Response of the Information Commissioner's Office on the consultation for Transforming the UK's Evidence Base

About the Information Commissioner's Office

The Information Commissioner's Office (ICO) has responsibility for promoting and enforcing the UK General Data Protection Regulation (UK GDPR), the Data Protection Act 2018 (DPA 2018), the Freedom of Information Act 2000 (FOIA), the Privacy and Electronic Regulations 2003 (PECR), the Network and Information Systems Regulations 2018 (NIS) and the Environmental Information Regulations 2004 (EIR).

The ICO is independent from government and upholds information rights in the public interest, promoting transparency and openness by public bodies and organisations and privacy for individuals. It does this by providing guidance to individuals and organisations, solving problems where it can, and taking appropriate action where the law is broken.

Introduction

The ICO welcomes the opportunity to respond to the committee's inquiry on transforming the UK's evidence base. We recognise the pivotal role that information, and at a more granular level research and statistics plays in society, and the benefits this can bring.

As a whole economy regulator, the ICO is responsible for ensuring any organisation using personal information does so in line with the UK GDPR and DPA 2018. The most direct answer on who seeks to protect the privacy of UK citizens, is that it is the responsibility of any organisation who uses personal information to protect it, and the ICO's responsibility to oversee this use. This includes research and statistical information which directly or indirectly identifies individuals.

Protecting information from harm and unlocking its potential should not be seen as conflicting. Organisations who put transparency, privacy and public trust at the heart of their processes will see much more effective results when using personal information for public service delivery, and will be best placed to comply with data protection law.

The current legislative landscape

When using statistical information which identifies individuals, organisations need to comply with the UK GDPR and DPA 2018. Data protection law recognises the need to use and share this type of information, and creates legal pathways for its use as well as exemptions to make it easier for those using research or statistical information to comply with the law.

The UK GDPR and DPA 2018 contains seven principles that apply to the processing of personal information. These embody the spirit of the legislation and apply to all uses of personal information. These are:

- Lawfulness, fairness and transparency
- Purpose limitation
- Data minimisation
- Accuracy
- Storage limitation
- Integrity and confidentiality
- Accountability ¹

Whilst compliance with all principles is required, both purpose limitation and storage limitation have specific references to research and statistical data.

Purpose limitation broadly states personal data shall be:

"collected for a specified, explicit and legitimate purposes and not further processed in a manner that is incompatible with those purposes; further processing for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes shall, in accordance with Article 89(1), not be considered to be incompatible with the initial purposes"

This broadly means that information can be reused for research or statistical purposes as long as it meets the criteria for one of the research related purposes. Storage limitation states personal data shall be:

¹ <https://ico.org.uk/for-organisations/uk-gdpr-guidance-and-resources/data-protection-principles/a-guide-to-the-data-protection-principles/>

"...kept in a form which permits identification of data subjects for no longer than is necessary for the purposes for which the personal data are processed; personal data may be stored for longer periods insofar as the personal data will be processed solely for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes in accordance with Article 89(1) subject to implementation of the appropriate technical and organisational measures required by this Regulation in order to safeguard the rights and freedoms of the data subject..."

All personal information should not be stored for longer than you actually need it. However, if the conditions of research related purposes are met, an exception exists within Article 5(1)(e) allowing for storage over a longer period, and potentially indefinitely if it is of continued use.

It is important to note that continued application of the other principles are required to ensure good information governance and will also demonstrate a strong ethical approach along with compliance with the UK GDPR.

Along with the principles, there is an expectation that organisations implement appropriate technical and organisation measures at the outset of their project or process, which is known as "data protection by design"². This is relevant in the design phase of any new projects ensuring that data protection forms a foundation with which the wider project or system is built. Within this we would expect organisations to conduct data protection impact assessments³, which allows them to identify the most effective way to meet their data protection obligations.

Digital Economy Act 2017

Part 5 of the Digital Economy Act (DEA) creates legal gateways to share information for public service delivery. These gateways allow important

² <https://ico.org.uk/for-organisations/uk-gdpr-guidance-and-resources/accountability-and-governance/guide-to-accountability-and-governance/accountability-and-governance/data-protection-by-design-and-default/>

³ <https://ico.org.uk/for-organisations/law-enforcement/guide-to-le-processing/accountability-and-governance/data-protection-impact-assessments/#:~:text=A%20data%20protection%20impact%20assessment%20%28DPIA%29%20is%20%E2%80%98an,risk%20to%20the%20rights%20and%20freedoms%20of%20individuals.>

data sharing to take place, including the sharing of statistical information to inform future policy interventions. The ICO has a consultative role for many of the DEA provisions, and codes of practice issued under the DEA are expected to align with the ICO's statutory data sharing code of practice. The ICO has recently undertaken a review of data sharing under the DEA, published in March this year, and found that:

- The DEA provides a robust framework for organisations looking to share information for public service delivery;
- There is strong evidence of good practice in compliance with the DEA framework, and effective data sharing as a result; and,
- Proper governance and accountability remain key to achieving this good practice in compliance.

The full report can be found here.⁴

The Role of the ICO

We deliver our regulatory function in a number of ways, from issuing broader guidance and codes of practice on data protection law to tailored guidance based on the specific needs of sectors and organisations. We also have the power to investigate and where appropriate, use a series of enforcement powers ranging from reprimands to monetary penalties. We outline our approach to enforcement in our Regulatory Action Policy⁵.

Whilst we have a range of formal powers available to us, we also seek to work with organisations to improve their compliance before it is necessary to take formal action following an incident. Ultimately once formal interventions are required, some form of harm has occurred.

When undertaking 'upstream' regulation, we provide our expert advice to organisations looking to use personal information. We offer a range of specific services, including our regulatory sandbox and innovation advice

⁴ <https://ico.org.uk/media/about-the-ico/documents/4024606/ico-review-dea-20230314.pdf>

⁵ <https://ico.org.uk/media/about-the-ico/documents/2259467/regulatory-action-policy.pdf#:~:text=This%20Policy%20sets%20out%20a%20risk-based%20approach%20to,other%20legislation%2C%20set%20out%20in%20our%20Aims%20below.>

services⁶ which help both public and private organisations work through potentially complex data protection questions as they seek to innovate. We also work closely with the UK's statistics bodies as well as the wider public sector to this end, supporting projects by reviewing data protection impact assessments or proposals at an early stage of development. Throughout this work, we emphasise the critical importance of taking a data protection by design approach to reduce risk and through this build public trust and confidence.

We have also produced detailed guidance on the research provisions within the UK GDPR & DPA 18⁷, following consultation with a wide range of stakeholders.

Changing demands for data

As the regulator, we recognise that the value of data has risen considerably, particularly in the wake of new technologies. Within this we have identified, and acted, to ensure data protection plays a central role in the design and implementation of new technologies. Some examples of this include our code of practice on data sharing⁸, our world leading work on children's code⁹, along with a series of enforcement actions in more serious cases of non-compliance¹⁰.

Conclusion

As a regulator, the ICO recognises the wider societal benefits of research and statistics, and welcomes new approaches that may help public bodies make more informed decisions. As outlined within this consultation response, the UK GDPR & DPA18 are not barriers preventing the use of personal data for research or statistical purposes. Instead the law should

⁶ <https://ico.org.uk/about-the-ico/what-we-do/ico-innovation-services/>

⁷ <https://ico.org.uk/for-organisations/uk-gdpr-guidance-and-resources/the-research-provisions/what-are-the-research-provisions/>

⁸ <https://ico.org.uk/for-organisations/uk-gdpr-guidance-and-resources/data-sharing/data-sharing-a-code-of-practice/>

⁹ <https://ico.org.uk/for-organisations/uk-gdpr-guidance-and-resources/childrens-information/childrens-code-guidance-and-resources/>

¹⁰ <https://ico.org.uk/action-weve-taken/enforcement/>

be seen as a framework for how to use personal information responsibly and effectively for better public service delivery.

Information Commissioner's Office