

## Response to ICO consultation: Data protection and journalism code of practice

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### About IPSO

The Independent Press Standards Organisation (IPSO) is the independent regulator of most of the UK's newspaper and magazine industry. We regulate over 1,500 print titles and 1,100 online titles, comprising 95% of national daily newspapers (by circulation) and the majority of local and regional newspapers.

We provide independent and effective regulation for a free and responsible press. We promote high quality journalism by enforcing editorial standards; holding publications to account; protecting the rights of individuals; and helping to maintain freedom of expression.

IPSO's framework is one of voluntary self-regulation underpinned by legally enforceable contractual agreements. It is not obligatory for publishers to join IPSO but those that have done so set themselves apart by choosing to be independently regulated and held accountable to an agreed set of standards, the Editors' Code of Practice.<sup>1</sup>

### About our response

IPSO welcomes ICO's call for views on data protection and journalism code of practice.

Journalism requires adherence to criminal and civil law as well as regulatory obligations. Many journalists produce content for use across multiple channels, for myriad platforms including print, online, audio-visual channels, plus the BBC or other public service broadcasters. In effect, they must consider their obligations under Ofcom's Code, the Editors' Code, as well as legal matters enshrined in the Data Protection Act (2018) (DPA) and other legislation.

Accessible, practical guidance that journalists can refer to is much-needed and useful. Journalists and editors often face challenging decisions and there are times when a balance must be struck, particularly between an individual's privacy and rights over personal data, the public's right to know, and what is genuinely in the public interest.

Journalists collect, use and store various forms of personal data in the course of their legitimate journalistic activities. When journalists and editors adhere to the Editors' Code, they are already in a good position in regards to compliance with their obligations under the DPA (2018).

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<sup>1</sup> <https://www.ipso.co.uk/editors-code-of-practice/> [accessed 24 May 2019]

## ICO's questions

***Q1 We are considering using our current guidance "Data protection and journalism: a guide for the media" as the basis on which we will build the new journalism code. Do you agree or disagree with this approach?***

IPSO sees no reason why this would not be a good approach.

***Q3 "Data protection and journalism: a guide for the media" is split into three sections...Do you think we should retain this structure for the code?***

IPSO sees no reason why this structure should be changed.

***Q5 Do you think ICO's existing guidance for journalists addresses the main areas where data protection issues commonly arise?***

Yes, but please see further comments below.

***Q6 If no, what additional areas would you like to see covered?***

The existing ICO guidance covers the main areas where data protection issues commonly arise in relation to the media. You may also wish to consider the availability of personal data in relation to social media.

Increased availability of individuals' personal data via the internet poses opportunities for journalists to identify stories, gather evidence and reach out to potential interviewees. The same considerations should be taken when handling this particular type of personal data as any other form of personal data. There is sometimes confusion in this area which any new guidance from ICO may wish to address specifically.

In an attempt to provide clarity on the use of information taken from social media, IPSO produced publicly available [Social Media guidance](#). It provides a framework for thinking through questions about using this material, and some examples of relevant decisions by IPSO's Complaints Committee.

The IPSO guidance asks journalists to consider issues relating to privacy and harm caused to individuals, including to what extent the material is already in the public domain, who has placed it there, and whether there are any privacy settings. It asks journalists to think about the nature of the material before publication.

We suggest that ICO might consider making reference to use of personal data from social media in their future guidance, if it is felt that there may be an area that further practical advice could be useful for journalists.

***Q7 The journalism code will address changes in data protection law, including developments in relevant case law. Are there any particular changes to data protection law that you think we should focus on in the code?***

No. However, we would encourage the journalism code and resulting guidance to make reference to IPSO's rulings and our own guidance which regularly deal with the use of personal data within a regulatory (rather than legal) context.

***Q8 Apart from recent changes to data protection law, are there any other developments that are having an impact on journalism that you think we should address in the code?***

The guidance should make reference to IPSO Complaints Committee rulings, and direct journalists towards the appropriate web page website accordingly.<sup>2</sup> The rulings on Clause 2 (Privacy) will be particularly relevant to a journalist's understanding and interpretation of how privacy is dealt with under the Editors' Code.<sup>3</sup>

There are a great many activities that are proscribed by both the law (civil and criminal) and the Editors' Code. In some areas, the alignment between the Editors' Code and the law is very close; in particular, the terms of Clause 2 (Privacy) were drafted specifically to echo the terms of the Human Rights Act 1998, with the aim of keeping the Editors' Code and the law in accord.

ICO's "Data protection and journalism: a guide for the media" says the DPA (1998) is based around eight common-sense principles, which are flexible enough to accommodate most responsible day-to-day journalistic practices. It outlines how the DPA sets out a framework of rights and duties that are designed to balance an individual's right to information privacy against the legitimate needs of others to collect and use people's details. The Editors' Code works very similarly in that there are few hard and fast rules. Rather, it balances both the rights of the individual and the public's right to know, through sixteen clauses.

For journalists whose work features in IPSO-regulated publications we would like to stress that our rulings on certain complaints could be of assistance to help understand how balances between opposing rights – especially in relation to privacy – have been interpreted by IPSO's Complaints Committee.

There have been changes within industry that may present challenges for journalists and media organisations; more freelance journalists working for numerous organisations, increasing re-publication of very similar content, smaller and more centralised newsrooms, increasing numbers of "take-down requests" around online articles, and growing numbers of hyper-local publishers.

We would suggest that guidance on data protection responsibilities should be tailored to take into account developments in the structure of the media industry which may require explicit clarification. IPSO discussed some of these changes in our submission to the Cairncross Review.<sup>4</sup>

The first issue is that increasing numbers of journalists work in a freelance capacity. This means journalists' content may feasibly be published across numerous media channels and by different media companies. As part of the practical guidance section, we would suggest further explanation and clarity on any conflicts that might potentially arise between an individual journalists' obligations under data protection legislation and any larger media organisations' obligations. This would help avoid confusion over various parties'

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<sup>2</sup> IPSO's Complaints Committee Rulings and Resolutions can be found online, here: <https://www.ipso.co.uk/rulings-and-resolution-statements/> [accessed 24 May 2019]

<sup>3</sup> See the Editors' Codebook on privacy <http://www.editorscode.org.uk/downloads/codebook/codebook-2018.pdf> [accessed 24 May 2019].

<sup>4</sup> IPSO's submission to the Cairncross Review into sustainability of high-quality journalism, available here: <https://www.ipso.co.uk/media/1570/ipso-submission-to-the-cairncross-review.pdf> [accessed 23 May 2019]

responsibilities, and clarify good practice in relation to data storage and deletion of unnecessary personal data.

IPSO provides training for journalists and editors of our member publications. A topic that is regularly brought up during training sessions is the increasing number of so-called “takedown requests” from subjects whose personal data features in online news articles. For example, we believe our member publications are being increasingly contacted with requests to remove articles covering the criminal courts. Many individuals with convictions request that news articles on their crimes are removed when the conviction becomes spent, arguing that storing and sharing this type of personal data is no longer appropriate. Such issues are further compounded by the industry’s increasing use of identical and similar stories across the media, which can cause confusion over responsibility for data protection issues.

Similarly, we are aware of confusion amongst journalists on rules and responsibilities around online news archives where individuals’ personal data may be accessible and stored. We believe that clarity in guidance around data storage, responsibilities in relation to online news archives and takedown requests could be of use.

IPSO regulates publications of different sizes; from the largest national tabloids to some very small, independent hyper-local publications. New and emerging publications would benefit from tailored guidance on their responsibilities. A hyper-local publication will lack the in-house expertise and availability of specialist legal advice around data protection which is available to those working within very large media organisations.

***Q9 Are there any case studies or journalism scenarios that you would like to see included in the journalism code?***

We would like to stress the importance of case studies and real-life examples in helping journalists in circumstances where a balance should be struck between competing rights and responsibilities. Where legislation and regulatory rules are formed around abstract principles and competing rights as opposed to very clear and definable rules, these can help journalists interpret these principles in practice.

### **Conclusion**

For further information please contact Sophie Malleson, Policy and Public Affairs Officer at

