

ICO call for views on a data protection and journalism code of practice

The Information Commissioner is calling for views on a data protection and journalism code of practice (the code).

The Data Protection Act 2018 requires the Commissioner to produce a code of practice that provides practical guidance and promotes good practice in regard to processing personal data for the purposes of journalism. Our intention is for the code to provide practical, pragmatic guidance for journalists on how to comply with data protection legislation, building on the [detailed guidance that we have already produced for this sector](#).

This call for views is the first stage of the consultation process. The Commissioner is seeking input from relevant stakeholders, including media organisations, trade associations, data subjects and those representing the interests of data subjects. For further information on the call for views, please read our blog post [here](#).

We will use the responses we receive to inform our work in developing the code.

You can email your response to journalismcode@ico.org.uk.

Or print and post to:

Journalism Code Call for Views
Policy & Engagement Department
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire SK9 5AF

The call for views will be open until **Monday 27th May 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 (e.g. academics, freelance journalists, sole traders, legal professionals) 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

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?

Agree

Disagree

Q2 If you disagree, please explain why?

Q3 "[Data protection and journalism: a guide for the media](#)" is split into three sections:

- "Practical guidance" aimed at anyone working in the journalism sector;
- "Technical guidance" aimed at data protection practitioners within media organisations; and
- "Disputes", aimed at senior editors and staff responsible for data protection compliance.

Do you think we should retain this structure for the code?

Yes

No

Q4 If no, do you have any suggestions about how we should structure the code?

Pact is of the opinion that the title of the Code using the term 'journalism' does not accurately reflect that it is intended as a guide for a wide range of media, encompassing television, film as well as print and other forms, and all television programming should fall within the definition of 'media'.

There are other codes in existence applicable to the television sector that production companies are required to comply with (including but not limited to the public service broadcaster's own codes, Ofcom's Broadcasting Code and (where applicable) the Advertising Standard Authority's BCAP Code). Given the broad remit of the ICO's Code and to ensure that there is no conflict with other codes, Pact suggests that reference be made to those in order to bridge the gap between the space that the ICO regulates and compliance with other regulators and public service broadcasters in the sector.

Pact suggests that the Code should include a wider range of content (for example, audio visual content commissioned by public services broadcasters, advertiser funded, branded, wholly owned content, both offline, online and social media platforms) and contain an awareness of both scripted and non-scripted areas, perhaps with reference to different phases and groupings of programming.

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

Agree

Disagree

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

The following sets out the additional areas on which guidance is sought:-

- the legal conditions that may be relied upon when processing personal data and special category data, taking

account of the differences between scripted and non-scripted programming, and with reference to processing for freedom of expression and information;

- the legal bases for processing personal data and special category data of minors and vulnerable persons (particularly in sensitive locations such as hospitals or medical clinics and prisons);
- examples of the challenges typically faced to the giving of consent;
- the practicalities of processing deletion requests;
- the manner and methodology that may be employed to mitigate the expense and administrative time in handling subject access requests;
- the matter of on-screen consents in local language when filming with contributors in territories outside of the United Kingdom whose first language is not English;
- the legal conditions that may be relied upon for non-obvious methods of filming (for example, the use of drones and the capture of personal data when filming in public places);
- how to refer to the journalistic exemption (if at all) within a company's Privacy Notice(s) and Data Protection policy documents.

It would be beneficial for exemplar Privacy Notice, Data Protection and Privacy Policies in clear easy to understand language to form part of the Code, perhaps as Appendices.

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?

The circumstances in which the '*manifestly made public by the data subject*' ground may be relied upon when processing special category data.

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 Online Harms White Paper and the Department for Culture, Media and Sports consultation on the new regulatory framework and statutory duty of care; how the ICO envisages regulation in the online space to touch upon and impact its work from a data protection perspective.

With respect to contributors in the television sector, whether there has been a decrease in the level of defamation and privacy claims (that an individual may historically have sought) as a consequence of the rights now available to data subjects under the GDPR.

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

Case studies or scenarios/examples of how and when the journalistic exemption can be applied in practice throughout the entire lifecycle of a production (from pre to post publication) and in relation to non-published content. If reliance is sought on the journalistic exemption, guidance from the ICO on how that should be documented in practice to demonstrate compliance from an accountability perspective would be welcomed.

Q10 Do you have any other suggestions for the journalism code?

Pact suggests that it may be useful for the Code to contain some indicative outcomes and best practice methods which if followed could go towards demonstrating compliance with the data protection legislation.

Further guidance and clarification/examples from the ICO on what it means to be a controller in common, joint controllers and independent controllers (for example, the use of experts).

About you

Q11 Are you answering these questions as?

- A media organisation?
- A trade association?
- An organisation representing the interests of data subjects?
- An academic?
- An individual acting in a professional capacity?
- An organisation that regulates press standards?

- An individual acting in a private capacity (e.g. someone providing their views as a member of the public)?
- Other?

If you answered 'other' please specify:

Q12 How did you find out about this survey?

- ICO website
- Social media
- Conference/seminar
- Trade/professional association
- Media
- Word of mouth
- Other? (Via direct email correspondence with Richard Syers at the ICO).

Q13 We may want to contact you about some of the points you have raised. If you are happy for us to do this please provide your email address:

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