

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

Introduction

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

The Information Commissioner welcomes feedback on the specific questions set out below. If you would like further information on the call for views, please read our blog post here ([link to blog post](#)), or email journalismcode@ico.org.uk.

The call for views will be open until **Friday 17th 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](#).

Please note that we are using the platform Snap Surveys to gather this information. Any data collected by Snap Surveys for ICO is stored on UK servers. You can read their [Privacy Policy](#) here.

Section 1: Your views on the code

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?

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

Yes

No

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

The Society would wish to see the guidance provide greater recognition of the rights to freedom of expression and recognition of the positive role of the free press and media in society. In addition we believe the area of freelances and how they can be sufficiently recognised as media and avail themselves of the protections outlined for journalism exemptions.

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?

Yes. * Removal of the requirement from Article 85 GDPR and Schedule 2, Part 5, Data Protection Act 2018 that processing must be 'only' for special purposes in order to fall within the scope of the journalism exemption. We feel this is too restricting on general and accepted journalistic practices. *The right to rectification (Article 16, GDPR, and ss46-47 Data Protection Act 2018) will generally be incompatible with normal journalistic practices as it would require the amendment or removal of archive material. * Remove the requirement for media to halt investigations or remove published content simply on the receipt of a complaint. Only when an investigation into a complaint has been proved should journalistic work cease or be amended. * Right to data portability (Article 20, GDPR) would be contrary to normal journalistic practice and be unfair to media companies who would be required to make available data gathered for possible use by competitors. *Recognise explicit protection for archive material. * The guidelines should recognise the ruling NT1 and NT2 v Google LLC (2018) EWHC 799, that an individual who deliberately conducts himself in a criminal fashion will be deemed to have manifestly made public his personal data on connection with that alleged or actual criminality.

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?

Changes to many newsrooms and news organisations in recent years - and on-going - means that there are fewer journalists handling data and news at each stage of the operation. This needs to be reflected in the guidelines and recording routines and requirements must not be by their nature so onerous as to prove a liability to media practices or impossible to maintain on a meaningful basis.

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

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

The requirement to provide evidence of recorded structures for ensuring compliance with data protection and the use of data at each step of the news process is and was always going to be restrictive and if pursued over vigorously will inevitably lead to a deadening of journalistic practices and an undermining of the role of the media. When the guidelines were first created it was a time when the use of data and the gathering of information was not on the present scale. With the use of AI becoming more common in newsrooms, the flow of data will increase even further. While it is essential that personal data is not abused by the media, it is also important that the media is not stifled or silenced through too draconian a regime of recording and assessing data use during the journalistic process. The code should reflect this, emphasising where recording and action is necessary and where it is preferable but not essential. The code should also address where the media are required to inform a subject of an investigation that their data is being gathered. While it is always good journalistic practice to seek a fair and balanced approach, giving the subject of an investigation or news item sufficient time to respond, too much notification will too often result in steps taken to suppress and stifle an investigation or news event. A balance should be struck between an individual or organisation's rights regarding their data and the wider public's rights in potential wrong-doing and other matters being brought to light. The code should accept that journalists' sources are to be protected and where considered confidential should remain so unless a court is satisfied that that disclosure is necessary for certain specific purposes such as the interests of justice, national security or for the prevention of disorder and crime. The guidelines should recognise that the scope of what constitutes a journalistic purpose is too narrowly defined at present and should include material such as complaints following publication as legitimate data to be held by media organisations.

Section 2: About you

Are you?

Q11 Are you?

- 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?

Please specify:

Society of Editors is a campaigning body, campaigning for press freedom, freedom of expression, the public's right to know, diversity in the media and high standards of editorial training

Q12 How did you find out about this survey?

- ICO website
- Social media
- Conference/seminar
- Trade/professional association
- Media
- Word of mouth
- Other?

Please specify:

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.