

## Questions

When commenting, please bear in mind that we aim to focus on key points and practical information relevant to journalism where possible. The code does not aim to cover all of the legislation and may assume knowledge of some general data protection terms and concepts. Where relevant, the code may link to further reading such as the [Guide to the UK GDPR](#) but this does not form part of the statutory code.

Please also bear in mind that we intend to provide a 'quick guide', and perhaps other resources, to support day-to-day journalism and smaller organisations, as we did with our previous media guidance. Please let us know if you have any ideas about resources to support this code in the general comment box at the end of this survey.

**Q1** To what extent do you agree that the code is clear?

- Strongly agree
- Agree
- Neither agree nor disagree
- Disagree
- Strongly disagree

**Q1a** If the code could be clearer, please tick which section(s) could be clearer.

- Summary
- Navigating the code
- About this code
- Balance journalism and privacy
- Be able to demonstrate your compliance
- Keep personal data secure
- Justify your use of personal data
- Make sure personal data is accurate
- Process personal data for specific purposes
- Use the right amount of personal data
- Decide how long to keep personal data
- Be clear about roles and responsibilities
- Help people to exercise their rights
- Disputes and enforcement
- Annex 1

Please explain your response to Q1a.

### Summary

A concise executive summary would help draw attention to key aspects in the Code without duplication.

### Navigating the code

A reader with limited knowledge of data protection simply wants signposting to the relevant section. They can read about what they need to do or consider once there.

The use of visual aids to the sections might be helpful. For example, using infographics or a mind map identifying where to find information on 'Special Purposes Exemption', 'Accountability', 'Security', 'Criminal Data', 'Transparency'.

#### About this code

The 'further reading' and 'key legal provisions' parts could be moved to an appendix for those readers that wish to conduct further research.

When reference is made to 'complementary resources' in the 'At a glance' section, the ICO needs to show the reader where it can find those.

The references to 'we' in the 'How does this code reflect the special public interest in freedom of expression and information' subsection need to be clear that those are to the ICO rather than the media organisation.

#### Balance journalism and privacy

Whilst important and useful reference for Lawyers and data protection officers, the case examples will not be read by senior editorial staff and other lay people in organisations that due to time constraint/pressure will be looking for answers.

Media organisations will want to know in bullet point form: when the special purpose exemption applies (with a non-exhaustive list of examples) and how it can be relied on, which provisions in data protection legislation it disappplies.

A media organisation relying on the exemption will want to know in bullet point form: specifically which policies and procedures it needs to have and what evidence it needs to retain of decisions made and for how long.

The ICO refers to '*using risk as a guiding factor*' and '*keep[ing] a record*' when helping to exercise judgement and deciding to rely on the exemption. It would be clearer if the ICO could provide guidance on how best to do that.

#### Be able to demonstrate compliance

Accountability is one of the overriding factors. It would be clearer if the ICO placed guidance on how to demonstrate compliance to a heading titled 'Accountability'. Links to example templates and checklists that media organisations could refer to and adopt would be helpful.

#### Justify your use of personal data

Considering the Government's proposal to create a limited, exhaustive 'whitelist' of situations for legitimate interests, the ICO might want to caveat page 45 of the Code and make it clear that the legitimate interest grounds are (at the time of writing) the subject of review.

Media organisations do not rely on the consent ground in 'written releases' rather, in practice, they use contract as the lawful basis for processing. It would be helpful if the ICO could make that clear in its Code.

Regarding the 'manifestly made public' condition, can the ICO provide clear guidance on who it is that needs to make the information public and how it can be relied on by media organisations. For instance, can that ground be relied on

for a television production to process health data of a potential contributor for a reality show where the individual or a third party has made that information accessible to that media organisation? Does the ground apply when a contributor reveals their political opinion in an interview and the data subject has been made aware/knows that that information is to be made public by prospective transmission of the programme by a broadcaster to the public?

The ICO's section on 'Covert surveillance' is discrete and does not purely apply to processing special category data which its location in the Code suggests. Can the ICO make it clear what public interest defences are available for investigative journalism, rather than refer to the criminal offences.

The ICO may want to consider having a standalone section on Transparency (like that on demonstrating compliance/accountability) to make its importance clear.

#### Help people to exercise their rights

It would be clearer for media organisations to be shown methods for compliance; for example, transparency in a data protection/privacy policy on the organisation's website (letting individuals know how they can exercise their rights).

#### Disputes and enforcement

As this section arguably follows directly on from the latter, it would be clearer if the ICO merged the two and focused on the steps and measures media organisations can take to prevent complaints and disputes. Some guidance from the ICO on alternative dispute resolution would be helpful.

**Q2** To what extent do you agree that it is easy to find information in the draft code?

- Strongly agree
- Agree
- Neither agree nor disagree
- Disagree
- Strongly disagree

**Q2a** If it could be easier to find information in the code, please tell us how it could be easier.

For many media organisations, particularly SMEs, that do not have inhouse legal counsel or data protection officers it would help if key sections were easier to find. For example, a small television production company wants to know how it can lawfully process special category data of interviewees at a hospital for a documentary programme about Covid-19. That company is not going to know to look at the section titled 'Be able to demonstrate compliance' and scroll to pages 46 and 47. It would be beneficial if the navigation section pinpointed where to look for processing 'Special Category Data'.

Can the ICO's complementary resources for SMEs be annexed to/hyperlinked in the Code.

The table of contents should display the subsections within each chapter of the Code to make those easier to find.

**Q3** To what extent do you agree that the code provides the right level of detail?

- Strongly agree
- Agree
- Neither agree nor disagree
- Disagree
- Strongly disagree

**Q3a** If the code could provide a better level of detail, please tell us how it could be improved.

Some media organisations do not have sufficient knowledge of data protection terms and concepts so will find it tricky to use the Code in practice. Please refer to the suggestions on how the Code could be improved in response to Q1a and Q2a.

**Q4** To what extent do you agree that the code provides practical guidance to help individuals processing personal data for the purposes of journalism to understand and comply with data protection obligations?

- Strongly agree
- Agree
- Neither agree nor disagree
- Disagree
- Strongly disagree

**Q4a** If the code could be more practical, please tick which section(s) could be more practical and tell us how it could be improved.

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- Disputes and enforcement
- Annex 1

Please explain your response to Q4a.

The people most likely to benefit from the Code will be production staff and those whose roles and responsibilities are not defined. They are not going to be Lawyers or data protection officers and will have limited knowledge of data protection.

The Code could be improved, and its audience broadened, by:

- the use of less legalese (removing references to case law, moving further reading and key legal provisions to an annex);
- use of graphics and visuals to display key concepts (for example, the legal bases for processing personal data, the additional conditions for processing special category data, what the special exemption purpose is, how and when it can be applied);
- signposting for those that need further advice (for example, contact details for media trade associations/bodies, where to obtain legal advice and business support, does the ICO have a hotline/telephone number that people can contact);
- provision of training to educate media organisations of data protection terms (for example, short videos posted on social media channels);
- engagement by the ICO with media trade associations/bodies to help inform media organisations of its key concepts.

**Q5** To what extent do you agree that the draft code covers the right issues about journalism in the context of data protection?

- Strongly agree
- Agree
- Neither agree nor disagree
- Disagree
- Strongly disagree

**Q5a** If we have not covered the right issues in the code, please tell us how it could be improved.

We acknowledge the ICO has kept how to define journalism loose, yet there are 2 pages in the Code devoted to what may or may not constitute journalism. In line with the Supreme Court's decision in *Sugar v BBC* that 'journalism, art or literature' covers the whole of the BBC's output to inform the public, on the basis that the special purpose exemptions as a whole cover everything broadcast on television (save paid for advertising) we are of the opinion that the Code should apply to all genres (not purely journalistic in nature).

The disputes and enforcement section in the Code should provide guidance on alternative mechanisms that could be used to resolve disputes prior to a matter becoming contentious.

**Q6** Please provide details of any cases, examples, scenarios or online resources that it would be useful for us to include in the code.

It would be useful to include the following in the Code:

- non-exhaustive list of examples when the special purpose exemption can apply;
- bullet point list of the public interest defences available for investigative journalism;
- detailed guidance for when manifestly made public condition can be relied on;
- summary of the 10 main categories from the ICO's Accountability Framework to help show how to demonstrate compliance;
- complementary resources (for example, privacy notices, data protection policy, retention policy, risk matrix/assessment, DPIA, LIA);
- use of visual aids for the key sections;
- contact details for legal advice and business support.

**Q7** To what extent do you agree that the draft code effectively protects the public interest in freedom of expression and information?

- Strongly agree
- Agree
- Neither agree nor disagree
- Disagree
- Strongly disagree

**Q7a** If the draft code could protect the public interest in freedom of expression and information more effectively, please tell us how it could be improved (bearing in mind the need to balance competing rights in the code).

**Q8** To what extent do you agree that the draft code effectively protects the public interest in data protection and privacy?

- Strongly agree
- Agree
- Neither agree nor disagree
- Disagree
- Strongly disagree

**Q8a** If the draft code could protect the public interest in data protection and privacy more effectively, please tell us how it could be improved (bearing in mind the need to balance competing rights in the code).

**Q9** Could the draft code have any unwarranted or unintended consequences?

- Yes
- No

**Q9a** If yes, please explain your answer to Q9.

Unless the audience for the Code is widened and its content made user friendly, it may discourage those that would benefit from its guidance the most.

Without guidance on the artistic special purpose exemption in the Code, media organisations could (unintentionally) apply the special purpose exemption for journalism on a broader scale.

**Q10** Do you think this code requires a transition period before it comes into force?

- Yes
- No

**Q10a** If yes, please tick the most appropriate option.

- 3 months
- 6 months
- 12 months

**Q11** Is there anything else you want to tell us about the draft code?

## Section 2 About you

Please see privacy information above.

**Q12** What is your name?

**Q13** If applicable, what is the name of your organisation and your role?

**Q14** Are you acting: Please select the capacity in which you are acting.

- in a private capacity (eg someone providing their views as a member of the public)?
- in a professional capacity?
- on behalf of an organisation?
- other

If other, please specify.

**Q14a** Are you: Please select most appropriate.

- A member of the public
- A citizen journalist

- A public figure (eg individuals who have a degree of media exposure due to their functions or commitments) or individual with a public role (e.g. politician, public official, business people and members of regulated professions)
- A representative of a newspaper or magazine
- A representative of a broadcaster
- A representative of an online service other than those above
- A representative of the views and interests of data subjects
- A representative of a trade association
- A representative of a regulator
- A representative of a 'third sector'/'civil society' body (e.g. charity, voluntary and community organisation, social enterprise or think tank)
- A freelance journalist
- A private investigator
- A photographer
- An academic
- A lawyer
- Other

If other, please specify.

**Further consultation**

**Q15** Would you be happy for us to contact you regarding our consultation on the journalism code?

- Yes
- No

If so, please provide the best contact details.

**Q16** Would you be happy for us to contact you regarding our work to develop a process to review processing for journalism in accordance with the statutory requirement under section 178 of the DPA 2018?

- Yes
- No

If so, please provide the best contact details.

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