

Information Commissioner's Office

Consultation:

Direct Marketing Code

Start date: 8 January 2020

End date: 4 March 2020

Introduction

The Information Commissioner is producing a direct marketing code of practice, as required by the Data Protection Act 2018. A draft of the code is now out for public consultation.

The draft code of practice aims to provide practical guidance and promote good practice in regard to processing for direct marketing purposes in compliance with data protection and e-privacy rules. The draft code takes a life-cycle approach to direct marketing. It starts with a section looking at the definition of direct marketing to help you decide if the code applies to you, before moving on to cover areas such as planning your marketing, collecting data, delivering your marketing messages and individuals rights.

The public consultation on the draft code will remain open until **4 March 2020**. The Information Commissioner welcomes feedback on the specific questions set out below.

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

Or print and post to:

Direct Marketing Code Consultation Team
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire SK9 5AF

If you would like further information on the consultation, please email the [Direct Marketing Code team](#).

Privacy statement

For this consultation we will publish all responses received from organisations except for those where the response indicates that they are an individual acting in a private capacity (eg a member of the public). All responses from organisations and individuals acting in a professional capacity (eg sole traders, academics etc) will be published but any personal data will be removed before publication (including email addresses and telephone numbers).

For more information about what we do with personal data please see our [privacy notice](#)

Q1 Is the draft code clear and easy to understand?

Yes

No

If no please explain why and how we could improve this:

Q2 Does the draft code contain the right level of detail? (When answering please remember that the code does not seek to duplicate all our existing data protection and e-privacy guidance)

Yes

No

If no please explain what changes or improvements you would like to see?

Q3 Does the draft code cover the right issues about direct marketing?

Yes

No

If no please outline what additional areas you would like to see covered:

Q4 Does the draft code address the areas of data protection and e-privacy that are having an impact on your organisation's direct marketing practices?

Yes

No

If no please outline what additional areas you would like to see covered

Q5 Is it easy to find information in the draft code?

Yes

No

If no, please provide your suggestions on how the structure could be improved:

Q6 Do you have any examples of direct marketing in practice, good or bad, that you think it would be useful to include in the code

Yes

No

If yes, please provide your direct marketing examples :

Under the heading "Disproportionate effort", it would be helpful to provide more detail of when the exception will apply (rather than just when it won't apply) and if possible an example. We would find it useful for example to know the following – if an organisation wants to use personal data of a large number of individuals aggregated from LinkedIn and/or other publicly available sources, would it involve be considered disproportionate effort to provide a privacy notice to each individual?

Q7 Do you have any other suggestions for the direct marketing code?

1. In the section on the "soft opt-in" it would be helpful to highlight the explanation of what is meant by "in the course of the sale or negotiations for the sale of a product or service" earlier on. We would also suggest explicitly referring to the fact that an organization using the "soft opt-in" would need to use "legitimate interests" (or another applicable lawful basis) under the GDPR, as "soft opt-in" is not adequate as consent.
2. The section "How long should we keep personal data for direct marketing purposes?" doesn't give any indication of what should happen in relation to an ongoing marketing database, which is likely to be the context in which most businesses will be using personal data for marketing purposes. Please could we have some guidance and/or an example of this in practice? E.g. if a business is tracking whether emails have been opened or not, and an individual on your marketing list hasn't opened them for a year but hasn't unsubscribed, should the individual be removed from the list? Or is it reasonable to keep their data on the list until they unsubscribe?
3. In relation to business to business marketing, it would be helpful to include a clear definition of "corporate subscriber" at the beginning of this section, and preferably some examples, as this isn't very clear either in the current or new draft code.
4. We would appreciate being given more information about what the ICO envisages "new technology" to mean, as this is a very wide term and it is therefore unclear to which types of technology the ICO is referring. We realise this may be difficult to predict, as you won't want to update the code in the event of new inventions, but some examples or criteria for determining whether something is a "new technology" would be helpful.

About you

Q8 Are you answering as:

- An individual acting in a private capacity (eg someone providing their views as a member of the public)
- An individual acting in a professional capacity
- On behalf of an organisation
- Other

Please specify the name of your organisation:

Waterfront Solicitors LLP

If other please specify:

Q9 How did you find out about this survey?

- ICO Twitter account
- ICO Facebook account
- ICO LinkedIn account
- ICO website
- ICO newsletter
- ICO staff member
- Colleague
- Personal/work Twitter account
- Personal/work Facebook account
- Personal/work LinkedIn account
- Other

If other please specify:

techUK (Data Protection Group)

Thank you for taking the time to complete the survey