

Consultation

Data protection and
the press:

Framework

consultation on

proposed ICO code
of practice

Introduction

In considering the impact of the current framework of data protection law on the press Lord Justice Leveson has recommended that the Information Commissioner's Office (ICO) prepare and issue comprehensive good practice guidelines and advice on appropriate principles and standards to be observed by the press in the processing of personal data.

Lord Justice Leveson was, of course, critical of the adequacy of the current provisions of the Data Protection Act 1998 in relation to the press, and has also recommended that aspects of the Act be reformed. However, he considered that there was a pressing need for clear advice and guidance on the law now. The ICO therefore proposes to issue a code of practice under section 51 of the Data Protection Act in relation to the law as it currently stands.

The code will not contain any new legal duties – the purpose of such codes is to promote good practice and observance of the requirements of the Data Protection Act by data controllers. Depending upon decisions by the government about possible reform of the law, this guidance may require further review. However, we accept that it is important to produce guidance now, as recommended by Lord Justice Leveson.

The ICO is under a duty to consult widely whenever it issues a code of practice, but Lord Justice Leveson has also specifically recommended that we consult with the industry in the preparation of the new guidance. We are keen to do so and would welcome the active participation of the press and broadcast media in developing guidance which will give meaningful and constructive advice to those for whom it is written. We also want to explore how the new code would reflect existing or proposed regulatory frameworks for the press.

We recognise the crucial importance of getting the balance right between freedom of expression and individuals' legitimate expectations that their personal information will be protected. For these reasons, we are publishing this framework consultation

document at the outset of the project to give a broad overview of the likely scope and content of the proposed code of practice. In addition to the code of practice, the ICO will publish companion guidance for members of the public.

Scope of proposed code of practice

The proposed code will focus on the application of section 32 of the Data Protection Act – the so-called “special purposes” exemption. That exemption is not limited to the processing of personal data for journalistic purposes: it applies equally where personal data is processed for the purposes of art or literature. However, given the context in which the need for this guidance has arisen, we intend to confine our consideration of data protection law to the processing of personal data in connection with commercial and public service journalism. This will include the press and broadcast media. Although the code will therefore focus on journalism, it will be explicitly limited to data protection considerations. The purpose of the code will be to advise journalists how to comply with the Data Protection Act and about how to handle personal data in ways which are consistent with the principles of the Act.

It is not the ICO’s intention to purport to set ethical standards for journalists, or to interfere with the standards which already apply under relevant industry guidance, such as the Editors’ Code of Practice, the Ofcom Broadcasting Code, and the BBC Producers’ Guidelines. Nevertheless, the existing industry guidance does not consider the requirements of data protection law in any detail, and the ICO’s code will complement existing industry standards by providing additional coverage of this issue.

The ICO will assess the need for additional guidance on other aspects of the special purposes exemption when the code has been drafted and once it is known whether the relevant law is to be reformed.

Proposed structure of the ICO code

The precise structure of the code will obviously develop as work on the document progresses. However, our initial proposal is for a piece of guidance arranged over five main chapters, as follows:

Chapter 1 – Basic features of data protection

This will cover the following:

- key data protection concepts (such as the definitions of personal data and data controller, and what the Act means by “processing”);
- the requirement to notify the ICO;
- the data protection principles;
- the right of subject access;
- exemptions; and
- the law on obtaining personal information and the offence under section 55 of the Data Protection Act

Chapter 2 – Data protection and freedom of the press

With reference to the EU Data Protection Directive and the Human Rights Act, this chapter will seek to clarify the relationship between data protection and freedom of expression, demonstrating how the two concepts co-exist; and explaining why high standards of information-handling are not inconsistent with the freedom of the press.

The chapter will also cross-refer to existing industry codes of practice and guidelines, highlighting those provisions which relate to data protection.

Chapter 3 – Application of the special purposes exemption to journalistic activities

This chapter will focus specifically on the circumstances in which section 32 of the Data Protection Act modifies the application of the normal data protection regime. It will seek to address questions such as:

- When does the exemption apply?

- Where section 32 does apply, what rights and obligations flow from the Data Protection Act?
- Are there minimum standards of good practice which apply to the handling of personal data in all cases?
- When is personal data processed only for the special purpose of journalism?
- When is processing undertaken with a view to publication of any journalistic material?
- When is it reasonable to believe that publication would be in the public interest?
- When is it reasonable to believe that compliance with a relevant provision of the Data Protection Act would be incompatible with the special purpose of journalism?
- What role can other codes of practice play when considering the above?

Chapter 4 – How can good practice promote compliance with the law?

This chapter will be developed in consultation with the press and broadcast media industry. It could include a data protection good practice/practical tips checklist for Editors, managers and journalists.

Chapter 5 – Resolving disputes

This will cover the following:

- How may a dispute about the application of the special purposes exemption be resolved?
- The role of the ICO and of other regulators.
- The duty to stay court proceedings.
- The ICO's powers to assess compliance with the Act.
- The ICO's enforcement powers in cases concerning the processing of personal data for the special purposes.
- Rights of appeal from ICO decisions.
- General remedies for breaches of the Data Protection Act.
- Claims for compensation.

Proposed methodology

We are developing a stakeholder engagement plan which we intend to publish soon setting out our approach to engaging with the media and others with an interest in this area. Our key objective is to engage actively with stakeholders, using their expertise to understand how the sector operates, the information risks in this sector and using our influence to ensure the media understand their obligations when handling personal information.

This short public consultation on the likely scope and content of the proposed ICO code of practice is an important first step in ensuring our stakeholders have an opportunity to let us know their views and engage in constructive dialogue to develop a common understanding of how data protection legislation applies to the media. This will be followed by a full public consultation on the code itself.

The final document

We will consult publicly in due course on a draft of the code itself, but we would welcome comments at this stage about the overall scope of the proposal. In addition to any general observations, we are inviting views on the following specific questions:

1. Do you agree that the guidance should be issued as a code of practice under section 51 of the Data Protection Act?
2. Does the proposed range of content address the right issues? If not, what is missing?
3. Is the proposed structure for the guidance a helpful one?
4. Would it help to include worked examples in the code?

A summary of consultation responses will be published on the ICO website.

How to take part in this consultation

We welcome your responses to this consultation paper.

Responses to this consultation must be submitted by 15 March 2013. You can submit your responses in one of the following ways:

Download this document and email to

Consultations@ico.gsi.gov.uk

Print off this document and post to: Jonathan Holbrook
Information Commissioner's Office, Wycliffe House, Water
Lane, Wilmslow, Cheshire, SK9 5AF; **or fax a copy to** 01625
545808.

**Request a copy of this document to be posted to you
and post or fax it back to us.** To request a copy, you can
either telephone 0303 123 1113 and ask for Hannah Cutler, or
email Consultations@ico.gsi.gov.uk .

If you would like further information on the Data protection
and the Press ICO code of practice, or would like a copy of the
proposal and/or consultation document in an alternative
format, please telephone 0303 123 1113 and ask for Hannah
Cutler.

Accessibility

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The ICO website also has a Browsealoud feature that reads web pages for people who find it difficult to read online.

We do not translate all publications as a matter of course, but we will respond to individual requests in line with our Translations Policy, which can be found on our website.

Privacy statement

Following the end of the consultation we shall publish a paper summarising the responses. Information you provide in your response to this consultation, including personal information, may be published or disclosed in accordance with the Freedom of Information Act 2000 and the Data Protection Act 1998. If you want the information that you provide to be treated as confidential, please tell us but be aware that, under the FOIA, we cannot guarantee confidentiality.

Section 1: Your views

We will consult publicly in due course on a draft of the code itself, but we would welcome comments at this stage about the overall scope of the proposal. In addition to any general observations, we are inviting views on the following specific questions:

- 1.** Do you agree that the guidance should be issued as a code of practice under section 51 of the Data Protection Act?

Yes

No

Please explain why:

- 2.** Does the proposed range of content address the right issues? If not, what is missing?

Yes

No

Please explain why:

- 3.** Is the proposed structure for the guidance a helpful one?

Yes

No

Please explain why:

- 4.** Would it help to include worked examples in the code?

Yes

No

Please suggest other actions that we could take:

- 5. Please provide any further comments or suggestions on our proposed Data protection and the press ICO code of practice.**

Section 2: About you

1. Are you:

A member of the public who has used our service?	Y/N
A member of the public who has not used our service?	Y/N
A representative of a public sector organisation? Please specify:	Y/N
A representative of a private sector organisation? Please specify:	Y/N
A representative of a community, voluntary or charitable organisation, or of a trade body? Please specify:	Y/N
An ICO employee?	Y/N
Other? Please specify:	Y/N

**Thank you for completing this consultation.
We value your input**