UK GDPR and DPA 2018
The research provisions

The Information Commissioner’s Office (ICO) is seeking feedback on draft guidance on the research provisions in the UK GDPR and the DPA 2018.

Data protection law contains a number of provisions for processing personal data for research purposes.

The aim of the guidance is to highlight where in the legislation the various provisions that relate to research can be found, how they fit together and their practical effect. It also provides guidance on the definition of key terms, which will help organisations understand when they can rely on the research provisions.

The guidance is intended to provide more detail and clarity about this complicated area of data protection. It will help those engaged in research to carry out their processing while being compliant with the law. It should give researchers confidence to make use of the provisions where appropriate.

The research provisions are currently under consideration as part of the Government’s stated intent to reform data protection. However, it is important for us to develop guidance on the current legislation to support organisations using personal data for research purposes now. It is crucial that we continue to support stakeholders in this complex area, making compliance with data protection easier. We also believe that the draft guidance addresses some of the issues identified in the data protection reform consultation as being problematic to organisations engaging in research. We will keep any guidance we produce in this area under review to ensure it reflects any future changes.

Please submit responses by **5pm on Friday 22 April**. Responses submitted after the deadline may not be considered.

Q1: On a scale of 1-5, to what extent do you agree or disagree that the guidance is clear and easy to understand? Please explain your reasoning for your choice.

[ ]  1 – Strongly disagree

[ ]  2 – Disagree

[ ]  3 – Neither agree nor disagree

[x]  4 – Agree

[ ]  5 – Strongly agree

Comments:

Overall, the guidance structure is clean and clear. If it is possible to also add some checklists (ex. “Data may be considered to be used for archiving in the public interest if…”), this may be helpful.

Q2: Do you think the draft guidance will help you to carry out your research while complying with your obligations under data protection law? If no or unsure, please explain why.

[x]  Yes

[ ]  No

[ ]  Unsure

Comments:

Particularly when used as a reference document in conjunction with the applicable regulations, this will be helpful.

Q3: To what extent do you agree or disagree that the guidance gives a useful definition of archiving purposes in the public interest?

[ ]  1 – Strongly disagree

[ ]  2 – Disagree

[x]  3 – Neither agree nor disagree

[ ]  4 – Agree

[ ]  5 – Strongly agree

Q4: To what extent do you agree or disagree that the guidance gives a useful definition of scientific or historical research purposes?

[ ]  1 – Strongly disagree

[ ]  2 – Disagree

[ ]  3 – Neither agree nor disagree

[x]  4 – Agree

[ ]  5 – Strongly agree

Q5: To what extent do you agree or disagree that the guidance gives a useful definition of statistical purposes?

[ ]  1 – Strongly disagree

[ ]  2 – Disagree

[ ]  3 – Neither agree nor disagree

[x]  4 – Agree

[ ]  5 – Strongly agree

Q6: Do the definitions of these terms fit with your understanding of these concepts? If unsure or no, please explain why.

[ ]  Yes

[ ]  No

[ ]  Unsure

Comments:

The archiving in the public interest definition describes purposes and aims, but does not appear to have a clear definition (unless the definition is “processing that has these purposes/aims.”).

Q7: Do the definitions capture the key features of each of the types of research-related purpose? If unsure or no, please explain why.

[ ]  Yes

[ ]  No

[ ]  Unsure

Comments:

Who determines whether data has potential/value for the public (p. 9)? This could allow for very broad justifications.

Q8: Do these definitions help you determine whether your processing can make practical use of the research provisions in your day-to-day work? If unsure or no, please explain why.

[ ]  Yes

[ ]  No

[x]  Unsure

Comments:

Much of this is helpful, but it may be useful to include template question lists, etc. for people to use in determining whether a processing operation fits the research provisions.

Q9: Are there any factors that you use to determine whether processing is for research-related purposes which you expected to see in the guidance? If yes, please give details.

[ ]  Yes

[x]  No

[ ]  Unsure

Comments:

I believe all typically considered factors were mentioned.

Q10: Is the section of the guidance on appropriate lawful bases when processing for research-related purposes helpful? If unsure or no, please explain why.

[x]  Yes

[ ]  No

[ ]  Unsure

Comments:

Q11. Is the section of the guidance on the compatibility of research with your original purpose helpful? If unsure or no, please explain why.

[x]  Yes

[ ]  No

[ ]  Unsure

Comments:

It may be helpful to emphasize strongly that, while data collected for one purpose can generally be compatibly used for research, security measures are critical when making data public.

Q12. The guidance provides a definition of when processing for research-related purposes is in the public interest. Does this definition help you determine whether or not your processing is in the public interest? If unsure or no, please explain why.

[ ]  Yes

[x]  No

[ ]  Unsure

Comments:

Who determines if there is a “clear and positive benefit” (p27)? How strong should the likelihood of benefit be (p27)? “Provision of more efficient/effective products” (p27) could be misused.

Q13. Does the section on exemptions help you determine when you may apply the exemptions for research-related purposes? If unsure or no, please explain why.

[x]  Yes

[ ]  No

[ ]  Unsure

Comments:

Requiring documentation where an exemption is relied upon is excellent. Consider adding details on how to weigh factors considered for “disproportionate effort” (p32) and ethics of using data an individual has claimed is inaccurate (p34-35).

Q14. Does the section on appropriate safeguards contain sufficient detail for your processing? If unsure or no, please explain what else you think this section should cover.

[x]  Yes

[ ]  No

[ ]  Unsure

Comments:

Yes, but I question why moral protest against a processing practice is not considered “substantial distress” (p44). Conscientious objection seems like it should be considered here.

Q15: Does the guidance contain enough examples? If unsure or no, please give details of further scenarios you would like us to consider.

[ ]  Yes

[x]  No

[ ]  Unsure

Comments:

It would be helpful to include some examples that demonstrate practices that would NOT fall under research purposes, despite some indicators that they may.

Q16: Did you find the examples in the guidance useful or not useful? Please give details as to why/why not.

[x]  Useful

[ ]  Not useful

[ ]  Unsure

Comments:

Yes, but most examples are clear and altruistic uses. It may be helpful to have more examples in gray areas where a determination would be more challenging.

Q17: Is there anything that you think hasn’t been covered that should be? If yes, please give details.

[x]  Yes

[ ]  No

[ ]  Unsure

Comments:

Do any of these exemptions apply to journalism?

Q18: Please provide any further comments or suggestions you may have about the drafts.

About you

Q19: Are you answering as:

[ ]  An individual or professional acting in a private capacity

[x]  A data protection professional acting in your professional capacity or on behalf of an organisation

[ ]  Other

If you state ‘Other’ please ensure that you specify here:

Q20: Please specify the name of your organisation:

The Electronic Privacy Information Center (EPIC)

Q21: Please provide a contact email address:

schroeder@epic.org

Q22: What sector are you from?

Civil Society

Q23: How did you find out about this consultation?

[x]  ICO website

[ ]  ICO Twitter account

[ ]  ICO Facebook account

[ ]  ICO LinkedIn account

[ ]  ICO staff member

[ ]  Colleague from your organisation

[ ]  Person outside your organisation

[ ]  Other

Comments:

**Privacy statement**
For this consultation we may publish the responses received from organisations or a summary of the responses. We will not publish responses from individuals. If we do publish any responses, we will remove email addresses and telephone numbers from these responses but apart from this we will publish them in full. Please be mindful not to share any information in your response which you would not be happy for us to make publicly available. For further information, see [responding to our consultation requests and surveys.](https://ico.org.uk/global/privacy-notice/responding-to-our-consultation-requests-and-surveys/)

Should we receive an FOI request for your response we will always seek to consult with you for your views on the disclosure of this information before any decision is made.

For more information about what we do with personal data please see our [privacy notice.](https://ico.org.uk/global/privacy-notice/)