

1. With regard to the ICO's functions to enforce and oversee the following:

Freedom of Information Act 2000

Data Protection Act 1998

Environmental Information Regulations 2004

Privacy and Electronic Communications Regulations 2003

INSPIRE Regulations 2009

Do you consider, in relation to any or all of the above, that the provision of their services to individual users and to organisations remains necessary? Please explain your reasons for your answer.

It is worthwhile noting that we are responding to this consultation with reuse of data for research purposes in mind.

We would argue that the provision of services by the ICO (with particular reference to the Freedom of Information Act 2000 and the Data Protection Act 1998) is in fact even more important now than ever before. This is due to the increasing number of initiatives dedicated to facilitating research through the re-use of data. Additionally, such uses give rise to particularly complex legal and ethical considerations.

As such, the ICO plays an important role in promoting and disseminating best practice. Our research, under the Scottish Health Informatics Programme, Farr Institute (Scotland) and Administrative Data Research Centre (Scotland) has consistently revealed a cultural issue about sharing data: the law can only take us so far, issues extend beyond strict legal compliance with the relevant legislation.

The light-touch approach of the ICO in its role as both an authoritative advisory body and enforcer of sanctions is incredibly helpful and reassuring to stakeholders.

(b) Do you consider that services provided by the ICO in these areas could be improved? Please explain your reasons for your answer.

The ICO could develop more specific and bespoke guidance on the re-use of data for research (building upon pre-existing guidance). Too often, the re-use of data is referred to as "secondary" which implies an inferior use. In fact, a more appropriate term would be re-use, which importantly reflects that such data uses are a core aspect of research activities for various organisations. While we acknowledge that research might be permissible under the legitimate purposes of the data controller, this not yet permeated organisational culture.

(c) Do you consider that services provided by the ICO could be delivered differently? Please explain your reasons for your answer, including any examples from other regulators or comparable international bodies.

The ICO could consider expanding the office so that it includes members who are responsible for offering advice/developing best practice to specific sectors e.g. health, business etc. as well as liaising on cross-sectoral issues. Furthermore, in light of the proposed Data Protection Regulation, the respective roles, remits and relationships between the ICO and European Data Protection Supervisory Authorities should be made clear.

2. Is the independence of the ICO best supported by reporting to Parliament or to a government department such as the Ministry of Justice? Please explain your reasons for your views.

The ICO should remain accountable to the Ministry of Justice in order to maintain independence.

3. With continually changing technology, an increased use of social media and the internet, do you believe the ICO will continue to be fit for purpose?

We find both opportunities for adaptation and examples of best practice in regards to the ICO keeping fit for purpose with current technology.

For example, using safe havens are becoming the norm for data linkage initiatives across and outside of the UK. Explicit recognition of this point and guidance would be appreciated. Particularly, in light of data transfer outwith the EU (beyond loose definitions of safe harbour).

In contrast, the recent code of practice on anonymisation was both timely and helpful. It took a helpful approach to the idea of the "motivated intruder" and other key concepts involved in anonymisation. The guidance was provided in a language that was accessible to a wide range of stakeholders.

4. Do you have any additional comments you would like to submit as evidence to the review?

1. Local offices in Scotland, in particular, have been extremely helpful in the advice provided and in supporting our research in the Scottish Health Informatics Programme (the ICO endorsed the Scottish Government's Data Linkage Framework Guiding Principles and Best Practice). Additionally, work under SHIP revealed a serious lack of understanding of the nature and role of data controllers, which led to guidance on the respective roles of data controllers and data processors.

2. In consideration of the ICO's enforcement role, it might consider operationalizing a wider conception of harm. Recent research we undertook on behalf of the Nuffield Council of Bioethics and Wellcome Trust (forthcoming in February 2015) revealed that the notion of harm recognised in the Data Protection Act 1998 is far narrower than the broader range of impacts that can affect individuals and society as a result of inappropriate processing of personal data. This is compounded by the small amount of cases that actually make it to trial. The ICO is potentially best placed to be sensitive to and recognise, through its enforcement role, a broader range of circumstances that result in harmful impacts to individuals and society outwith the confines of legal conceptions and jurisprudential procedures governing the redress of harm.

3. Building upon best practice guidance on privacy notices, the (co)development of a certification scheme may warrant consideration. Certification of particular data processing operations by the ICO could provide assurance to individuals when privacy policies and notices are seldom read, whilst providing a further means for data controllers to self-assess and become confident in how they process personal data. This being said, we recognise the potential conflicts that could arise for the ICO in operating such a scheme, given the legal obligation already present to comply with the Data Protection Act 1998.