

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](mailto: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 :

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

## **Relative privacy impact of business-to-business and business-to-consumer direct marketing**

The draft direct marketing code acknowledges that, when assessing compliance of direct marketing with the GDPR, it is important to consider whether your target audience includes consumers, or business contacts. (p.25)

The direct marketing code also refers to the Information Commissioner's separate guidance on legitimate interests, including the section "Can we use legitimate interests for our business to business contacts?"

That separate guidance notes that, when undertaking the balancing test in connection with direct marketing to business contacts "You may find it is straightforward as business contacts are more likely to reasonably expect the processing of their personal data in a business context, and the processing is less likely to have a significant impact on them personally."

Accordingly, as indicated by the existing guidance above, it is commonly understood that the privacy impact of processing for direct marketing to business contacts is low, relative to processing to consumers in a non-business context.

We appreciate the draft code does not seek to duplicate existing guidance. However, the relevance of the reasonable expectations of data subjects, the distinction between a consumer and business context and the lower risk posed by the processing of business information, are each of great importance to businesses intending to undertake processing for direct marketing purposes on the basis of legitimate interests.

In our view, it would be of significant benefit to businesses when identifying an appropriate lawful basis, if the code were to reflect the guidance mentioned above in a more explicit manner.

In particular, we suggest the addition of a brief paragraph to explain that, when carrying out the balancing test, the fact that the personal data involved comprises "business card" information (such as business contact details, employer, role) would make it more likely to pass that test in favour of legitimate interests, as business contacts are more likely to reasonably expect the processing of their personal data in a business context, and the processing is less likely to have a significant impact on them personally (subject, where relevant, to a data protection impact assessment).

In a business context, data subjects even invest significant effort to ensure their business card information (as used above) is kept up to date, distributed and made publicly available, for example through corporate websites and LinkedIn.

Increasingly, business connections are made using corporate websites, online directories, and social networks. Restricting the ability of businesses to make connections, discover leads and market themselves through modern channels would hinder normal business practices.

Individuals are accustomed to, expect, and benefit from discovering new connections and opportunities by direct email marketing in a business context. Were consent required in all cases, in addition to publishing their business contact information on social networks, corporate websites and similar, it would eliminate many of those connections and opportunities.

Updating corporate websites, social networks and similar with business card data is not unlike a situation described in a domestic (rather than business) context in the draft code (at p.61-2), which uses the example of an individual moving house and taking positive action to share their new address with third parties to illustrate conditions where consent would not be necessary to market to an individual at a new address.

However, certain statements in the draft code may be interpreted as inconsistent with the possibility that, in a business context, sharing of public contact information for direct marketing purposes may be undertaken without obtaining consent.

In particular, we suggest revising the following sentence on p.101 of the draft code, to add the underlined text:

"You cannot always use legitimate interests to sell data for direct marketing purposes. For example, to sell unconsented data for email marketing, if consent is required for that email marketing."



## 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:

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:

Thank you for taking the time to complete the survey