

UK GENERAL DATA PROTECTION
REGULATION

The new UK Data Sharing Code of Practice is now in force

In the 20 year period since the first data sharing code was introduced by the Information Commissioners Office (“ICO”) in 2001, the data landscape has undergone monumental change.

This prompted the ICO to introduce an updated code under section 121 of the Data Protection Act 2018 (“DPA 2018”).

4 MIN READ



The code came into force on 5 October 2021 and contains practical guidance on how to share data fairly and lawfully. As the ICO can take the code into account when considering whether an organisation has complied with its data protection obligations and it can also be used in evidence in court proceedings it is important that any organisation involved in data sharing considers the code before embarking on data sharing.

Key topics covered in the code

Data Sharing covered by the code

The code only covers the sharing of personal data between controllers, whether that be separate or joint controllers, however it does not cover data sharing between a controller and processor.

Deciding to Share

The code recommends that a Data Protection Impact Assessment (DPIA) is carried out before any decision to share data is made, even when there may be no legal requirement to do so, as that will enable an organisation to assess risks and determine whether there is a need to introduce safeguards.

Data Sharing Agreements

A data sharing agreement is only mandatory for joint controllers however the code highlights that it is good practice to have an agreement in place and states that the

ICO will take the existence of any relevant data sharing agreement into account when assessing any complaint they receive about data sharing.

Data Protection Principles

When sharing data, the data protection principles must be followed and a data sharing agreement will provide a framework to do this.

Accountability

The code stresses that the importance of accountability “cannot be overstated” and that to be effective, the message of accountability in the culture and business of an organisation must be embedded from board level through to all your employees and contractors. Where proportionate, an organisation must put in place a data protection policy which adopts a “data protection by design and default” approach. If you have a data protection officer, they should be closely involved from the outset in any plans to enter into a data sharing arrangement.



Fairness and transparency in data sharing

Fairness and transparency are fundamental to an organisation's approach to sharing data and as part of that consideration organisations should also bear in mind ethical factors when deciding whether to share personal data by asking whether it is right to share it.

Lawful basis for sharing

Organisations must be able to show that they considered and identified a lawful basis before sharing any data to enable it to satisfy the accountability principle in the UK GDPR and the DPA 2018.

Security

Having appropriate organisational and technical measures in place will be key, not only in relation to an organisation's own processes but also in relation to the recipient organisation. Although a recipient organisation will be responsible for the security of data received, the code states that the sharing organisation should take

steps to ensure that security measures have been put in place by the recipient organisation. Suggested steps include ensuring that an agreed set of security standards are incorporated into the data sharing agreement; and resolving any difficulties before personal data is shared where each organisation has different security standards. The code suggests that using a DPIA for any data sharing operation can be an effective means of considering the issues.

The Rights of Data Subjects

In a data sharing arrangement, organisations must have policies and procedures that allow data subjects to exercise their individual rights easily. Where several organisations are sharing data, it can be difficult for individuals to decide which organisation they should contact. The code provides that the privacy information provided to them at the time you collect their data should make that clear.



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It is also good practice to provide a single point of contact for individuals, which allows them to exercise their rights over the data that has been shared without making multiple requests to several organisations, bearing in mind that they are permitted to choose to exercise their rights against any controller they wish.

Due Diligence

If a merger or acquisition or other change in organisational structure means transferring data to a different or additional controller, then data sharing should be considered as part of the due diligence carried out which includes establishing the purposes for which the data was originally obtained, the lawful basis for sharing it, and whether these have changed following the merger or acquisition.

Sharing personal data in databases and lists

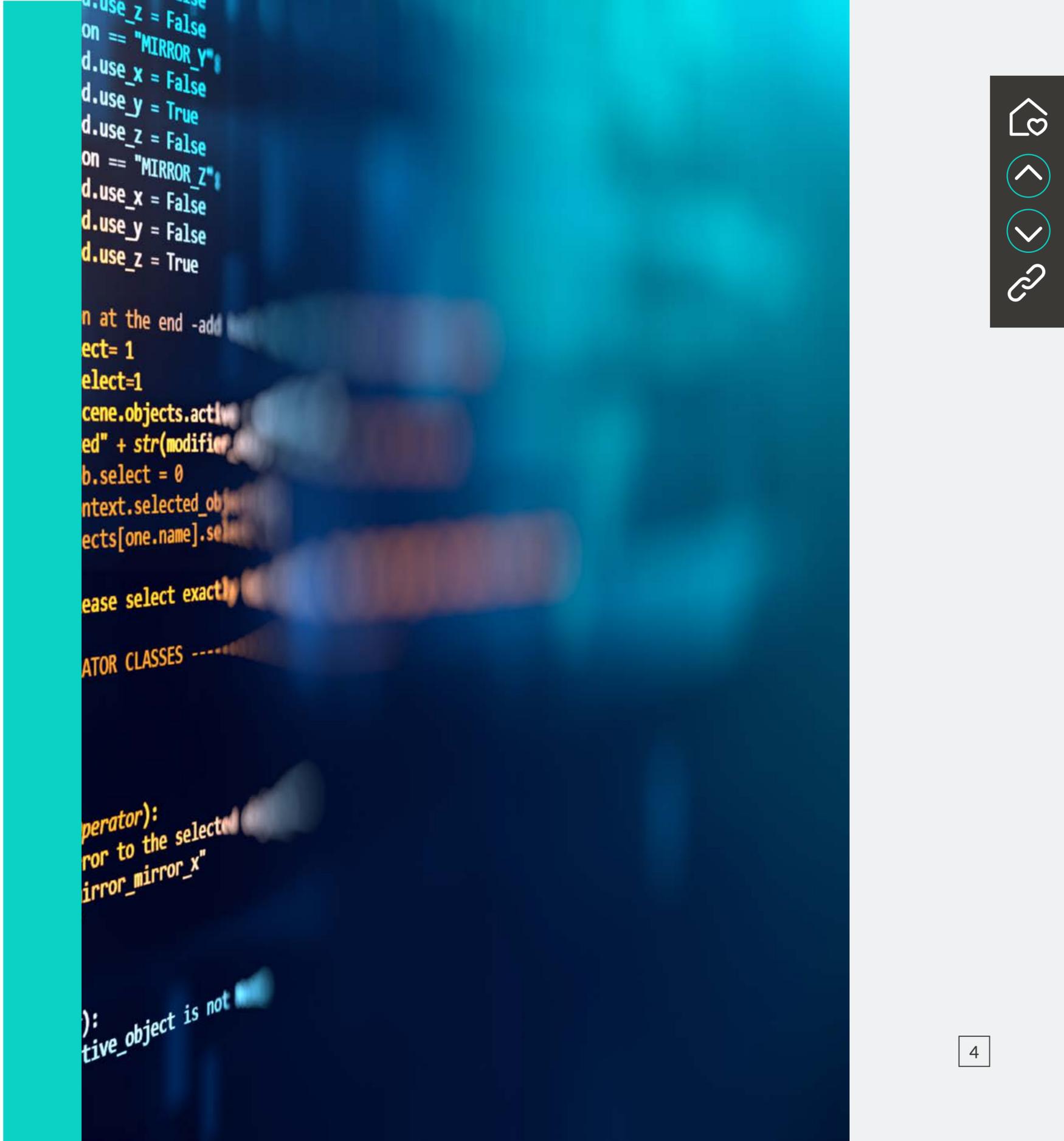
The code outlines that it is the responsibility of the recipient to satisfy itself about the integrity of the data supplied, make appropriate enquiries and checks and respond to any complaints about it.

Children's data

As you would expect, the code provides that extra care should be taken when sharing children's data and it should only be shared where there is a compelling reason to do. The best interests of the child should be a primary consideration with the result that a DPIA should be used to assess and mitigate risks to the rights and freedoms of children, and due diligence checks should be carried out on the recipient organisation.

Data Sharing in an urgent situation or in an emergency

Helpfully, the code confirms that in an emergency organisations should go ahead and share data as is necessary and proportionate. The code confirms that in these situations it might be more harmful not to share data than to share it.



Summary

Although the Information Commissioner stated in her foreword to the code that it is not a panacea to solve all data sharing challenges, the code does provide clarity and is a useful guide for organisations seeking to share data responsibly and in line with the data protection legislation. Overall, the spirit of the code is to facilitate responsible data sharing rather than to impose obstacles which is very much aligned with one of the UK Government's 10 Tech Priorities, to unlock the power of data whilst maintaining high standards of data protection.

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