



Northern Ireland Audit Office

Comptroller and Auditor General: Code of Data Matching Practice – Response to Consultation

November 2018

Introduction

1. Under statutory provisions inserted in the Audit and Accountability (Northern Ireland) Order 2003 (“the Order”) by the Serious Crime Act 2007, the Comptroller and Auditor General (C&AG) was given the power to undertake data matching exercises for the purpose of assisting in the prevention and detection of fraud.
2. Under article 4G of the Order the C&AG must prepare, and keep under review, a code of practice with respect to data matching exercises (“the Code”). Regard must be had to the Code in conducting and participating in any such exercise.
3. Article 4G of the Order provides that before preparing or altering the Code, the C&AG must consult the bodies mentioned in Article 4B(2) of the Order (which are those bodies whose accounts are required to be audited by the C&AG or by a local government auditor), the Information Commissioner and such other bodies or persons as he thinks fit.
4. We would like to thank all those who responded to the consultation for taking the time to provide valuable input to this important piece of work.
5. Enquiries about this document should be addressed to nfcoordinator@niauditoffice.gov.uk .

The Existing Code

6. The existing Code was published in July 2008, following consultation with a range of stakeholders (as defined in the Order) and the Information Commissioner. The Code had become out-of-date and required review and updating.
7. The draft Code issued for consultation included the following key changes from the 2008 Code:
 - The consultation draft Code reflected developments in how data matching exercises are conducted, and the introduction of new data matching products (for example, paragraphs 1.2.4 and 2.11.1).
 - The consultation draft Code excluded references to obsolete legislation, in particular the Data Protection Act 1998. References are now to “data protection legislation”, with appropriate links provided to the Data Protection Act 2018 and the General Data Protection Regulation (GDPR) (for example, paragraphs 1.6.2 and 2.1.4).
 - The consultation draft Code reflected changes to organisation’s names; in particular, all references to the Audit Commission are now to the Cabinet Office (for example, paragraph 2.3.4).
 - The consultation draft Code included multiple references and links to new guidance on data protection from the Information Commissioner’s Office (ICO) (for example, paragraphs 2.8.1 and 2.8.2).
 - The consultation draft Code included additional comprehensive guidance on the requirement for fair and lawful processing and the need for privacy notices (formerly fair processing notices) (see Section 2.8).
 - The consultation draft Code included additional guidance on data security and data breaches, with appropriate links to relevant ICO guidance (see Section 2.10).
 - The consultation draft Code included updated guidance on individuals’ rights under the new data protection legislation (see Section 2.16).

8. The consultation exercise is outlined at paragraphs 9 to 14. Paragraphs 15 to 16 give a summary of the types of issues raised by consultees and paragraph 17 outlines the changes to the consultation draft Code as a result of the consultation exercise.

The Consultation Exercise

9. The consultation draft Code of Data Matching Practice was issued on 14th August 2018 via email to the organisations listed at **Appendix 1**. The majority of these organisations participate in the C&AG's data matching exercises carried out under the National Fraud Initiative (NFI). The response date for the consultation was 1st October 2018.
10. The consultation draft Code was also made available on the Northern Ireland Audit Office website (at <https://www.niauditoffice.gov.uk/national-fraud-initiative>).
11. Eleven responses to the consultation were received, from:
 - The Information Commissioner's Office
 - The Department for the Economy
 - The Department for Education
 - The Department of Finance
 - Public Prosecution Service
 - The Northern Ireland Housing Executive
 - The Probation Board for Northern Ireland
 - The Youth Justice Agency
 - The South Eastern Health and Social Care Trust
 - Belfast City Council
 - arc21.
12. Five of the responses provided substantive comments on the draft Code; six expressed contentment with the draft as issued.
13. The majority of substantive comments were received from the Information Commissioner's Office. Many of these related to providing clarification of terminology and additional links to data protection legislation and guidance on the Information Commissioner's website.
14. In addition to producing this document, we have given detailed responses to those organisations which provided substantive comments.

Issues Raised

15. Key issues raised during the consultation related to:
 - changes to data protection legislation;
 - the application of the General Data Protection Regulation (GDPR);
 - the content of privacy notices;
 - the data collected;
 - data security and links to guidance on data breaches; and
 - the rights of data subjects.
16. All comments provided were given due consideration and the consultation draft Code was amended where appropriate. Changes are set out in more detail below.

Amendments as a result of the consultation

17. The following table summarises the changes made to the consultation draft Code as a result of the consultation exercise. Paragraph numbers refer to the updated version of the Code as published.

Paragraph number	Amendment
<i>The Statutory Framework</i>	
1.3.1	Wording added to clarify that the Northern Ireland Audit Office supports the Comptroller and Auditor General (C&AG) in data matching exercises.
1.3.2(f)	Insertion of the words “where necessary”, to reinforce the necessity requirement of lawful processing.
<i>Who will be participating?</i>	
2.3.4	The term “agent” now in bold and defined in Appendix 2.
<i>Powers to obtain and provide data</i>	
2.7.4	Link added to Data Protection Act 2018, schedule 2, which gives guidance on data protection principles and exemptions.
2.7.6	Insertion of words “and therefore” to further clarify that the C&AG’s statutory authority means that individuals’ consent is not required.
<i>Fairness and Transparency</i>	
2.8.1	Hyperlink amended to reflect current ICO guidance.
2.8.2	Link provided to detailed ICO guidance on privacy notices.
2.8.3	Wording added to reflect that privacy notices should indicate how individuals can exercise their rights in relation to the processing of their data.
2.8.6	Sub-heading added and paragraph amended to reflect current and up-to-date guidance on timing of privacy notices. The former paragraph on retrospective privacy notices has been deleted as this is a concept not recognised by current data protection law.
2.8.6	Final clause of final sentence amended to “unless it would involve a disproportionate effort or proves impossible”, to reflect the position under revised data protection legislation.
<i>Quality of the Data</i>	
2.9.3	Additional links provided to relevant legislation (Data Protection Act 2018 and GDPR).
<i>Security</i>	
2.10.2(e)	Additional sentence added regarding keeping a record of data protection training provided.
2.10.2(f)	“Where necessary” added to first sentence to indicate that not all security breaches will compromise passwords and necessitate a password change.
2.10.2(f)	Link to ICO guidance on data security breaches added. Additional wording included to reflect the need for organisations to follow internal procedures and notify their data protection officer regarding any data security breaches.
2.10.5	Wording added to distinguish data processor and data controller.
2.10.6	The words “where feasible” removed in relation to notifying data breaches. Links added to relevant ICO guidance and legislation.

Paragraph number	Amendment
<i>The matching of data by the Comptroller and Auditor General</i>	
2.12.1	Wording added to confirm that matching of data must be lawful, fair and transparent.
<i>Disclosure of data used in data matching</i>	
2.15.3	Additional wording inserted to fully reflect the Audit and Accountability (Northern Ireland) Order 2003, article 4D(4).
<i>Access by individuals to data included in data matching</i>	
Section 2.16	Sub-headings added to reflect different rights of individuals.
2.16.4	Inclusion of reference to right to rectification.
2.16.6	Additional wording to indicate that rights under the Freedom of Information Act 2000 extend only to accessing official information held by a public authority.
<i>Retention of data</i>	
2.18.1	Paragraph amended to reflect the new wording of the retention principle under the GDPR.
2.18.3	“Securely” added in relation to “destroyed”.
2.18.4	“Securely” added in relation to “destroyed”.
2.18.5	“Securely” added in relation to “destroyed”.
2.18.6	Wording amended to indicate that a retention schedule applies to the reference codes for previous matches.
<i>Reporting of data matching exercises</i>	
2.19.2	Wording inserted to clarify that use of information in a report which may identify an individual should be “fair and lawful”.
<i>Role of the Information Commissioner</i>	
3.2.1	Link provided to Information Commissioner’s website.
3.2.2	Wording amended to indicate that an organisation’s data protection officer should be an initial point of contact regarding queries.
3.2.2	Contact details now provided for the Northern Ireland Regional Office of the ICO.
<i>Appendices</i>	
Appendix 2	Additional definitions added for “agent”, “data controller” and “processing of data”.

Next Steps

18. Organisations participating in data matching exercises (and the C&AG and Northern Ireland Audit Office) should adhere to the revised Code of Data Matching Practice.
19. The Comptroller and Auditor General will review and consult upon the Code in the event of further legislative, organisational or procedural changes.

List of Consultees 2018

** = does not participate in the NFI*

* Information Commissioner's Office

Assembly Committees

* Public Accounts Committee

* Assembly Audit Committee

Departments

Department of Agriculture, Environment and Rural Affairs

Department for Communities

Department for the Economy

Department of Education

Department of Finance

Department of Health

Department for Infrastructure

Department of Justice

The Executive Office

Public Prosecution Service

Agencies and NDPBs

Agri-Food and Biosciences Institute

* Armagh Observatory and Planetarium

Arts Council NI

Civil Service Pensions

Community Relations Council

Construction Industry Training Board

Council for Catholic Maintained Schools

Driver and Vehicle Agency (DfI)

Education Authority

* Electoral Commission

Electoral Office NI

Forensic Science NI

Forest Service (DAERA)

General Consumer Council for NI

Health and Safety Executive NI

Invest NI

Labour Relations Agency

Land and Property Services (inc. Land Registers and OSNI)

Legal Services Agency NI

Libraries NI

Livestock and Meat Commission

* Local Government Staff Commission for NI (due to be wound up)

National Museums Northern Ireland

Northern Ireland Assembly

Northern Ireland Authority for Utility Regulation
 Northern Ireland Council for the Curriculum, Examinations and Assessment
 Northern Ireland Courts and Tribunals Service
 Northern Ireland Environment Agency (DAERA)
 Northern Ireland Fire and Rescue Service
 * Northern Ireland Fishery Harbour Authority (NDPB of DAERA)
 Northern Ireland Housing Executive
 Northern Ireland Human Rights Commission (funded by NIO but
 * independent)
 * Northern Ireland Judicial Appointments Commission
 Northern Ireland Local Government Officers' Superannuation Committee
 * Northern Ireland Museums Council (NDPB of DfC)
 * Northern Ireland Office
 * Northern Ireland Policing Board
 * Northern Ireland Prison Service
 Northern Ireland Statistics and Research Agency
 Northern Ireland Transport Holding Company (inc. Translink)
 Northern Ireland Water
 * Office of the Police Ombudsman for Northern Ireland
 * Parades Commission
 * Police Service NI
 Probation Board for Northern Ireland
 Sport NI
 Strategic Investment Board
 The Commissioner for Children and Young People for Northern Ireland
 The Equality Commission for Northern Ireland
 Tourism Northern Ireland
 Ulster Supported Employment Ltd
 * Youth Council for Northern Ireland (ALB of DE)
 Youth Justice Agency of Northern Ireland

Health Service Bodies

Health and Social Care Board
 Business Services Organisation
 Belfast Health and Social Care Trust
 Northern Health and Social Care Trust
 South Eastern Health and Social Care Trust
 Southern Health and Social Care Trust
 Western Health and Social Care Trust
 NI Ambulance Service Health and Social Care Trust
 NI Blood Transfusion Service
 NI Guardian ad Litem Agency
 NI Medical and Dental Training Agency
 * NI Practice and Education Council for Nursing and Midwifery
 * NI Regional Medical Physics Agency
 NI Social Care Council
 Public Health Agency

Regulation and Quality Improvement Authority

Local Government

Antrim and Newtownabbey Borough Council
Ards and North Down Borough Council
Armagh City, Banbridge and Craigavon Borough Council
Belfast City Council
Causeway Coast and Glens Borough Council
Derry City and Strabane District Council
Fermanagh and Omagh District Council
Lisburn and Castlereagh City Council
Mid and East Antrim Borough Council
Mid Ulster District Council

Newry, Mourne and Down District Council
ARC21

Universities and Colleges

- * Queen's University Belfast
- * St Mary's University College Belfast
Stranmillis University College Belfast
- * University of Ulster
Belfast Metropolitan College
Northern Regional College
North West Regional College
South Eastern Regional College
Southern Regional College
South West College

Housing

- * Northern Ireland Federation of Housing Associations
- * Apex Housing
Choice Housing
- * Radius Housing

Other

- * Criminal Justice Inspection Northern Ireland
- * Criminal Injuries Compensation Appeals Panel NI
- * Electoral Office
- * Northern Ireland Public Service Ombudsman

Audit Bodies

- Accounts Commission for Scotland
Audit Scotland
Auditor General for Scotland
Cabinet Office
Wales Audit Office
- * Grant Thornton
 - * KPMG

- * Moore Stephens
- * National Audit Office
- * PWC
- * RSM

Political Parties

- * Alliance Party of Northern Ireland
- * Democratic Unionist Party
- * Green Party in Northern Ireland
- * People before Profit Alliance
- * Progressive Unionist Party
- * Sinn Fein
- * Social Democratic and Labour Party
- * Traditional Unionist Voice
- * Ulster Unionist Party

Others

- * First Division Association
- * NI Council for Voluntary Action
- * NIPSA