

Geodemographics and privacy

Obligations, rights and customer choices under the Data Protection Act 1998

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Main topics

- Introduce DPA
- What is “personal data”?
- Other definitions
- The DP principles
- Individual rights
- Exemptions
- The Information Commissioner’s Office

Data Protection Act 1998

An Act to make new provision for the regulation of the processing of information relating to individuals including the obtaining, holding, use or disclosure of such information

What is “personal data”?

Personal data :

- Relates to living individuals
- Identifiable from the information alone or in combination with other information
- Anonymised/pseudonymised
- Statistical units
- Small area statistics
- Marketing information

What is “data”?

- Electronic information
- Structured filing systems
- “Accessible records”
 - local authority housing
 - education
 - social services
 - Health
- Public authorities – everything else!

Other Key Terms

- *Processing* – means anything you do to personal data e.g. hold, disclose, amend, obtain etc...
- *Data Controller* – means a person who (either alone or jointly or in common with other persons) determines the purposes for and the manner in which any personal data are, or are to be, processed
- *Data Processor* - means any person (other than an employee of the data controller) who processes the data on behalf of the data controller
- *Data Subject* - means an individual who is the subject of personal data

What are the obligations?

- To ensure that any processing of personal data is in accordance with the data protection principles;
- to ensure that the rights and choices of the individual are respected; and
- to notify as a “data controller” if necessary.

The DP principles

Personal data should be:

- processed fairly and lawfully;
- limited to specified purposes;
- adequate, relevant and not excessive;
- accurate and up to date;
- retained only for as long as necessary

The DP principles continued

- processed in accordance with individuals DP rights;
- subject to appropriate measures to prevent loss or unauthorised disclosure;
- not transferred to countries outside the EEA without adequate data protection.

Rights of individuals

- Right of access to their own personal data
- Right to prevent processing likely to cause damage and distress
- Right to prevent processing for direct marketing
- Rights in relation to automated decision-taking
- Compensation
- Rectification, blocking erasure and destruction

Right to access personal information (Section 7 DPA)

Individuals have the right:

- to be informed if their own personal information is being processed;
- to get a description of the information, the purposes it is used for and who will receive it;
- to get a copy of their own information and information about where you got it from;
- to get information on the logic behind automated decisions which evaluate matters relating to them.
- Response within 40 days
- £10 maximum fee

Right to prevent processing likely to cause damage and distress

Right to stop processing:

- When it causes substantial damage or substantial distress.
- The damage or distress must be unwarranted.
- 21 days to respond
- Does not apply where
 - it is required by contract,
 - It is a legal obligation for the organisation,
 - to protect “vital interests”, or
 - the individual has consented
- Can be asserted in Court

Right to prevent processing for direct marketing

- Right to require you to stop any processing of personal data for the purpose of direct marketing
- An absolute right – no exceptions!
- Can be asserted in Court
- Implications for use of geodemographics in direct marketing

Rights in relation to automated decision-taking

- Right to require that no decision is taken purely by automated means
- Must “significantly” affect the individual
- Creditworthiness, reliability, conduct
- 21 days to respond
- Can be asserted in Court
- Implications for decisions on public and private service provision to individuals

Compensation

- Where the individual has suffered damage, or damage and distress, by reason of contravention of DPA.
- Defence to prove all reasonable care had been taken.
- Compensation awarded by the Courts, not by the ICO.

Rectification, blocking, erasure and destruction

- Courts can order rectification, blocking erasure or destruction of inaccurate data
- Can also order destruction of opinions based on inaccurate data
- Courts can order that third parties are notified of destruction
- Also applies where compensation would be payable

Exemptions

- Section 29: Crime and Taxation
 - the prevention or detection of crime
 - the apprehension or prosecution of offenders
 - Assessment or Collection of Tax or Duty
- Section 35: Disclosures required by law or in connection with legal proceedings
- Section 36: Domestic purposes
 - Individual's personal, family or household affairs (including recreational purposes)

The research exemption

- Section 33 of DPA for
- Exemption applies to “research purposes” where:
 - The data does not support measures or decisions in respect of particular individuals
 - The use of data will not, and is not likely to, cause substantial damage or distress
- Further processing for research purposes is allowed
- Raw statistical data can be kept indefinitely
- Exempt from right of access if results do not identify individuals

The research exemption continued

- This is not a blanket exemption!
- Individuals should be told that personal information may be used for research purposes – “fair processing”
- Personal identifying information should only be used where necessary

The Information Commissioner's Office

The Information Commissioner is an independent officer appointed by the Queen who reports directly to Parliament. His duty (and that of his office) is to oversee:

- Data Protection Act 1998 (DPA)
- Freedom of Information Act 2000 (FoIA)
- Environmental Information Regulations 2004 (EIR)
- Privacy and Electronic Communications Regulations 2003 (PECR)

What we do

- Provide information
- Promote good practice
- Issue codes of practice (e.g. CCTV, Framework Code on Sharing Personal info)
- Maintain an official public register of notified organisations
- Investigate complaints under the DPA, FoIA, EIR and PECR
- Take enforcement action

Contact us

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