



A basic guide to the  
Data Protection Act 1998  
October 2002

## INTRODUCTION

This guide is a condensed version of the definitive **The Data Protection Act 1998 and Market Research** which all members are urged to read.

These guidelines apply to anyone involved in the collection, processing and use of market research data and all methodologies – quantitative and qualitative - and sample sources which are potentially covered by the 1998 Act. They also apply to those projects where personal data are collected in a survey form but the information is then used for purposes other than confidential market research.

This material is provided for information only. It is not legal advice and should not be relied upon as such. Specific legal advice should be taken in relation to specific issues.

The guiding principles of the Act are:

- **Transparency** – ensuring individuals have a very clear and unambiguous understanding of the purpose(s) for collecting the data and how it will be used;
- **Consent** – at the time that the data is collected, individuals must give their consent to their data being collected, and also at this time, have the opportunity to opt out of any subsequent uses of the data.

## DEFINITIONS

### Notification

The process of informing the Office of the Information Commissioner about data held.

### Data Subject

A living identifiable person about whom data is held. An identifiable person is someone who can be identified, directly or indirectly, in particular by reference to an identification number or the person's physical, physiological, mental, economic, cultural or social characteristics.

### Personal Data

This legislation only covers data that identifies a living, individual, natural person. Data that is covered by the Act includes electronic, manual and recorded data - anything which can identify an individual. Once any identifiers linking data to a natural person have been removed then it no longer constitutes "personal data" and is therefore not covered by the provisions of the 1998 Act. It is therefore worth considering at what point in the survey process is the earliest that personal identifiers can be removed from the data.

### Data Controllers

Data controllers are those who control and determine the use of data they hold. All data controllers must notify with the Office of the Information Commissioner (OIC).

### Data Processing

"Processing" means obtaining, recording or holding data or carrying out any operation or set of operations on the data including: the organisation, adaption or alteration of the data; retrieval, consultation or use of the data; disclosure of the data by transmission, dissemination or otherwise making available; alignment, blocking, erasure or destruction of the data.

### Consent

Data subjects must have a clear understanding of what will happen as a result of providing information. In the case of market research it can be assumed that this condition has been satisfied by the respondent agreeing to be interviewed following an explanation of the nature and objectives of the research. If there is any likelihood of data subjects needing to be re-contacted then consent must be obtained at the first interview.

## **Sensitive data**

Explicit consent is required for processing *sensitive data*. This means that the consent must be absolutely clear and based on a detailed explanation of how the data will be used. This is defined as personal information covering:

- race or ethnic origin
- political opinions
- religious beliefs
- trade union membership
- physical or mental health
- sexual life
- the commission or alleged commission of an offence or any proceedings for an offence committed and the outcome.

## **KEY DATA PROTECTION PRINCIPLES**

There are eight data protection Principles within the Act and these form the fundamental basis of the legislation. These Principles are also included within the current *MRS Code of Conduct* and all members must become familiar with them and what they imply:

1. *Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless:*
  - *at least one of the conditions in Schedule 2<sup>1</sup> of the Act is met, and*
  - *in the case of sensitive personal data, at least one of the conditions in Schedule 3<sup>2</sup> is also met.*
2. *Personal data shall be obtained only for one or more specified and lawful purposes, and shall not be further processed in any manner incompatible with that purpose or other purposes.*
3. *Personal data shall be adequate, relevant and not excessive in relation to the purpose or purposes for which they are processed.*
4. *Personal data shall be accurate and, where necessary kept up to date (with every reasonable step being taken to ensure that data that are inaccurate or incomplete, having regard to the purpose(s) for which they were collected or for which they are being further processed, are erased or rectified).*
5. *Personal data processed for any purpose or purposes shall not be kept for longer than is necessary for that purpose or those purposes.*
6. *Personal data shall be processed in accordance with the rights of data subjects under this Act.*
7. *Appropriate technical and organisational measures shall be taken against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data.*

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<sup>1</sup> Additional conditions known as schedule 2 and schedule 3 have been added to the first principle. Schedule 2 sets out the basis on which the collection and use of data is permitted. They are,

- the individual agrees to the processing
- the processing is necessary
  - for the performance of a contract
  - for compliance with a legal obligation
  - to protect the vital interests of the individual
  - for the exercise of a public function in the public interest
  - for the data controller's or a third party's legitimate interest unless prejudicial to the interests of the individual.

<sup>2</sup> Schedule 3 of the first principle adds further conditions on processing if the data is "sensitive". See *the MRS Data Protection Act 1998 and Market Research* document for full details.

8. *Personal data shall not be transferred to a country or territory outside the European Economic Area unless that country or territory ensures an adequate level of protection for the rights and freedoms of data subjects in relation to the processing of personal data.*

## DATA PROTECTION CATEGORIES

A new categorisation of market research projects has been agreed with the Office of the Information Commissioner. These categories re-define the data collection processes used in the market research industry, and clarify the types and extent of feedback, which can or cannot be undertaken or described as confidential market research as covered by the MRS *Code of Conduct*:

### DATA PROCESSING CATEGORIES

<b>Category 1:</b> “Classic” market research	<b>Category 2:</b> “Classic” + not available/ deceased amendments	<b>Category 3:</b> “Classic” + interview marker on database	<b>Category 4:</b> “Classic” + feedback on service issues	<b>Category 5:</b> “Classic” + personal data for MR purposes	<b>Category 6:</b> Non-MR & mixed purposes
← defined as market research					non-MR →

The categories are differentiated by the extent and nature of any feedback from the data collection process, and form two main groups. Categories 1-5 cover projects which all meet the requirements of the Code within the definition of “Classic” market research. It is quite possible that a project may fit under more than one of these categories. Category 6 falls outside the remit of the Code in that some or all of the data will be used instead of or in addition to “Classic” research purposes. The following notes describe these categories in more detail:

**Category 1:** This category covers “Classic” confidential research with no feedback of any personal data unless to others involved in that specific project, provided they are already or have agreed to be bound by the MRS *Code of Conduct* and treat the data as for research purposes only (also, see Category 5, below). This would, for example, enable non-research specialists involved in a project to have access to individual respondent data.

**Category 2:** This applies to research projects using samples drawn from client customer databases or other third party owned lists. An obligation under the fourth Principle of the 1998 Act for the data controller is to keep the database relevant and up to date. **An agency therefore is able to and should be informing the client where an individual is found to be ‘no longer at this address (but not of any new address) or has died.**

**Category 3:** This also applies to the use of client owned customer databases for sampling. The agency provides back to the client the names, or list of identification numbers, of all those contacted solely for the purpose of setting up “do not select for research” (including those who declined to be interviewed on that occasion) markers on the customer database in order to prevent over researching individual customers.

**Category 4:** In this case a respondent, or the client, has requested that the interviewer(s) feedback to the client details of a specific complaint or dissatisfaction for investigation. The key points are firstly that the respondent must have given their consent – to both the principle of this feedback taking place and the content (to ensure that it accurately describes the details); secondly that the only details provided to the client are the respondents’ contact details plus a description of the complaint, and thirdly that the client can only use that information to deal with the issue raised and for no other purpose.

**Category 5:** In this case the client (probably the market research department) receives the results from the project at an individual respondent level but with the condition that the data at this personal level are only used for research purposes. This responsibility must be part of the project contract between agency and client. This is wider than Category 1 as it could apply to

anyone within the organisation, not just those in the project team. An example would be videotapes from group discussions.

**Category 6:** This covers all projects where some or all of the data will be used by the client at a personal level for purposes in addition to or instead of those defined in the 1998 Act and the MRS Code as confidential research. These projects must conform to the MRS guidelines for Category 6 Projects (this guideline will be available shortly).

Within all the above Categories, client organisations have the responsibility as data controllers under the 1998 Act to ensure that any data at a personal level passed back from an agency is used solely for the purpose(s) for which the respondent gave their informed consent. Agencies also need to ensure that their clients are conforming to the 1998 Act in respect of personal data passed to an agency to be used in a project (e.g. as a sampling frame). These responsibilities should be reflected in contractual relationships between clients and researchers.

## RESEARCH EXEMPTIONS

The new Act provides for various exemptions in respect of the processing of personal data for research purposes, including statistical or historical purposes:

- Personal data collected for research can be re-processed, provided that this is not incompatible with the purpose for which the data was collected (i.e. the purpose described to respondents).
- Personal data can be kept indefinitely, but this should not conflict with the fifth principle of the Act.
- The rights of data subjects to request access to the personal data held about them does not apply once any personal identifiers (e.g. name and address, telephone numbers, e mail addresses, reference numbers etc) have been removed from the data. This means that respondents can request a copy of the primary data record (e.g. questionnaire) as long as it contains an identifier, or, any data held by the data controller in other forms (e.g. a database of panel members etc).

For research exemptions to apply (i.e. in Categories 1 to 5), the processing of the data must be exclusively research purposes, and, the following conditions need to be met:

- The data is not processed to support measures or decisions with respect to the particular individuals; and
- The data is not processed in such a way that substantial damage or substantial distress is, or likely to be, caused to any data subject.

## FREQUENTLY ASKED DATA PROTECTION QUESTIONS

See *The Data Protection Act 1998 and Market Research* for further examples on application of the guidelines.

### **Q1: Does my organisation need to have someone who has the title “Data Protection Officer”?**

The important issue is that there should be one individual who is responsible for data protection (ensuring that the organisations’ responsibilities as a data controller are met), possibly as part of more general responsibilities covering data security, and that everyone within the organisation knows who this individual is and where queries on the legislation or subject access requests should be sent.

**Q2: Does the 1998 Act cover data collected by such methods as CCTV cameras, audio & video tapes, photograph files?**

All of these are covered by the 1998 Act if they identify living individuals.

**Q3: I conduct “business to business” research. Is data on organisations or their employees covered by the 1998 Act in the context of market research?**

In England and Wales, sole traders and partnerships are defined as individuals within the Act (in Scotland only sole traders are defined in this way). Therefore all the rights defined in the Act will be applicable for these types of businesses. Personal information on employees is also covered by the Act so this needs to be taken into consideration when conducting this type of research. For other types of business to business survey data the deciding factor as to whether it constitutes personal data under the Act will be dependent on whether this information is personal to the individual.

**Q4: What does the term “explicit consent” mean in the context of the 1998 Act?**

The Act says that this form of consent is one of the possible conditions required for processing sensitive data. Whilst the Act does not define explicit consent, the Commissioner advises that consent should be “absolutely clear” and require a positive action by the data subject. For “Classic” research projects this means ensuring at the commencement of the interview that the respondent clearly understands before they give their consent to be interviewed that firstly, the information they provide will only be used for research purposes and secondly that they have the right to withdraw from the interview at any time.

**Q5: What is a data controller?**

The Act defines a data controller as “the person (usually a legal person but could be a living individual in the case of a sole trader or partnership business) who (either alone or jointly or in common with other persons) determines the purposes for which and the manner in which any personal data are, or are to be processed”. Each separate legal entity is treated as a data controller within the Act, but not every legal entity becomes a data controller.

**Q6: What is a data processor?**

The Act defines a data processor as: “data processor”, in relation to personal data, means any person (other than an employee of the data controller) who processes the data on behalf of the data controller; Data Controllers must have a written contract with a processor ensuring the security of the data passed to it by the controller’.

## **FURTHER SOURCES OF INFORMATION**

- **The Data Protection Act 1998 and Market Research.** Now available on the MRS website and containing detailed sections on background to the Act, terminology, changes from 1994 Act, special exemptions covering research, implications for database users or managers, definitions of market research categories, role of data controllers, security, management and use of data, transferring data outside the UK and FAQs on the implications of the legislation. This also includes appended sections on notification procedures and MRQSA processes.
- **Market Research Processes and the Data Protection Act 1998.** Now available on the MRS website, these process guidelines provide information on how to ensure compliance with the Act whilst conducting market research.
- **MRS Guidelines:** (available on the MRS website [www.mrs.org.uk/code.htm](http://www.mrs.org.uk/code.htm))  
Best Practice in Mystery Customer Research  
Free Prize Draws Guidance Note  
Guidelines for Research Among Children and Young People  
Internet Research Interim Guidance Note

Qualitative Research Guidelines  
Data Collection Guidelines  
Questionnaire Design Guidelines  
Business to Business Guidelines  
Public Opinion Research Guidelines  
Guidelines for Category 6 projects are under consideration