

**DATA PROTECTION ACT
YOUR RIGHTS AND HOW
TO ENFORCE THEM**

ONE



Information Commissioner

DATA PROTECTION ACT - YOUR RIGHTS AND HOW TO ENFORCE THEM

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INTRODUCTION

This leaflet is part of a series of eight leaflets which explain your rights under the Data Protection Act and the procedure involved if you wish to enforce your rights through the courts.

It gives you general facts about the Act and the body responsible for enforcing it.

Details of our other leaflets can be found at the back. If you would like any of these please contact the Information Commissioner's Office. You will find all our contact details on the back cover.

YOUR RIGHTS AND HOW TO ENFORCE THEM

The Data Protection Act 1998 (the “Act”) came into force on 1 March 2000. It sets out rules for processing personal information (known as personal data) and applies to many paper records as well as those held on computer.

Many people and organisations (data controllers) have details about us (data subjects). The growth in the use of personal data has many benefits, like better medical care or helping fight crime. There are also some possible problems. It could cause you problems if information about you is recorded incorrectly, is out of date, or is confused with information about someone else.

The Act requires data controllers to comply with the rules of good information handling practice, known as the data protection principles. The principles require, amongst other things, that personal data are processed fairly and lawfully, are accurate and relevant and are subject to appropriate security.

WHAT IS THE ROLE OF THE INFORMATION COMMISSIONER?

The Information Commissioner (the “Commissioner”) is responsible for enforcing the Act and for providing advice and assistance to both data controllers and data subjects. The Commissioner’s focus is on seeking to promote compliance and the following of best practice. Failure to observe the data protection principles is not a criminal offence. The Commissioner does not have any powers to award compensation to a data subject affected by the processing of their personal data in breach of the Act. Compensation can only be awarded by a court in the event that the data controller refuses to compensate a data subject.

If an individual believes himself to be directly affected by the processing of his personal data, and has been unable to resolve the matter himself with the data controller, he may ask the Commissioner to **assess** whether the processing is likely or unlikely to have been carried out in compliance with the Act. The Commissioner is not required to come to a firm determination as to whether there has been a breach of the Act. He is simply required to decide whether, on the information available to him, compliance with the Act is, on balance, likely or unlikely.

If the Commissioner makes an assessment that the processing by the data controller is unlikely to have been carried out in compliance with the Act, the Commissioner will then decide whether remedial action is warranted. If so, he will try to achieve this with the co-operation of the data controller.

If this is not possible, the Commissioner has discretion as to whether to take any action and as to what action to take.

An assessment will inform you as to whether the matters that concern you are likely to involve a breach of the Act. It may help you to resolve a dispute and in making a decision as to whether to take legal action against a data controller under the Act. However, an assessment from the Commissioner is not necessary to make a claim to court.

It is important to note before starting any legal action against a data controller, that an assessment from the Commissioner stating that it is unlikely that there has been compliance with the Act is not binding on a court and the Judge may disagree with the Commissioner's findings. An important difference between an assessment of the Commissioner and the judgment of the court is the evidence upon which the respective decisions may be based.

Further information relating to assessments may be obtained from the Commissioner's website or by contacting the Commissioner's Information Line.

The purpose of this publication and the Information Packs referred to is to identify your rights under the Act and to assist you in solving any problems you may have with a data controller who you think may be processing your personal data in breach of the provisions of the Act. Information is also included to explain how to issue proceedings against a data controller in the County Court.

All the Information Packs and other publications produced by the Information Commissioner referred to in this publication may be obtained from our website

**www.informationcommissioner.gov.uk
or by telephoning 01625 545 700.**

WHAT RIGHTS DO I HAVE UNDER THE ACT?

The Act gives you various rights to control the way your personal information is used, including the following:

(i) The right to find out what information is held about you on computer and in some paper records. This is called the right of subject access.

If you would like more information on how to make a subject access request, please refer to the leaflet called

“Subject access – a guide for data subjects”.

(ii) If you wish to find out what credit reference agencies report about you and how you correct mistakes on such reports then you will need to refer to the leaflet called

“No credit?”

(iii) The right to take steps to prevent your personal data being processed if the processing is likely to cause you or someone else to suffer substantial damage or substantial distress which is unjustified.

If you would like more information on how to take such steps and what to do if the data controller does not lawfully do as you ask, you will find further information in

“Help! How can I stop them processing my personal information?”

(iv) The right to require the data controller not to use your personal data to market you with products, services or ideas.

If you would like more information on how to do this and what to do if the data controller does not do as you ask, you will find further information in:

“Stopping unwanted marketing materials”.

(v) Sometimes individuals or organisations will use a computer to process information about you, in order to take a decision that will affect you.

An example of this is an employer who uses computer scoring of job applications to decide who to interview. In some circumstances, you have the right to prevent decisions being taken about you which are based solely on automatic processing.

If you would like more information about this, you will find further information in

“Preventing decisions based on automatic processing of my personal information”.

If the decision taken has the effect of denying you credit, you should also refer to the leaflet called

“No credit?”

(vi) If a data controller is processing inaccurate information about you, you have the right to have that information amended or destroyed.

If you would like more information on how to exercise this right and what to do if the data controller does not do as you ask, please see:

“Incorrect information – what can I do?”

If the information which is inaccurate relates to information recorded on the files of a credit reference agency then you will find further information in the leaflet called:

“No credit?”

(vii) If you have suffered damage and distress as a result of a data controller failing to comply with the Act, you have the right to claim compensation from the data controller.

If you would like more information on how to do this please refer to the leaflet called:

“Claiming compensation”.

(viii) What do I do if I want to issue court proceedings against a data controller?

Where a solution cannot be reached by writing to a data controller, the Act allows you to take legal proceedings against the data controller. These proceedings may be commenced either in the High Court or in the County Court in England, Wales and Northern Ireland or in the Court of Session UK or the Sheriff’s Court in Scotland. It is expected that most cases under the Act will be commenced in the County Court or in the Sheriff’s Court.

For information as to how to make an application to Court please refer to the leaflet called

“Taking a case to court”.

The Commissioner and his staff will not usually take any part in court proceedings commenced by you.

The Commissioner is not able to advise on individual cases and their likelihood of success and you are advised to consult a solicitor, Citizen’s Advice or your local law centre if you are not sure whether you have a case under the Act before commencing proceedings.

WHAT IS IN THE INFORMATION PACKS?

Each Information Pack sets out what your rights are and, where possible, includes examples of letters and notices to send to the data controller. You will also find information to help you if you decide to take legal proceedings against a data controller.



**2. SUBJECT ACCESS
- A GUIDE FOR DATA SUBJECTS**



**3. INCORRECT INFORMATION
- WHAT CAN I DO?**



**4. HELP! HOW CAN I STOP THEM
PROCESSING MY PERSONAL
INFORMATION?**



**5. STOPPING UNWANTED
MARKETING MATERIALS**



**6. PREVENTING DECISIONS BASED
ON AUTOMATIC PROCESSING OF
MY PERSONAL INFORMATION**



7. CLAIMING COMPENSATION



8. TAKING A CASE TO COURT

To order copies of the above leaflet contact the Information Commissioner's Office. You will find the details on the back cover.

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Myddleton House
115-123 Pentonville Road
London
N1 9LZ

T: 020 7833 2181

W: www.citizensadvice.org.uk

W: www.adviceguide.org.uk

Court Service

T: 020 7210 2266

W: www.courtservice.gov.uk

**The Department for Constitutional
Affairs**

W: www.dca.gov.uk

Legal Services Commission

T: 020 7759 0000

W: www.legalservices.gov.uk

Publication Request

t: 01625 545 700

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DP/LRP/1/050/20K



Data Protection

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