



DATA PROTECTION ACT 1998

GUIDANCE NOTE 3 – THE EXEMPTIONS

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Date of Publication: 29th January 2009
Version: 1.4

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1. Version Control

Version	Date	Notes
1.0		Sent out to DP Contacts for comments
1.1	26 th July 2006	Updated following comments received
1.2	16 th October 2006	Updated with additional comments
1.3	20 th October 2006	Updated
1.4	29 th January 2009	Updated

2. Points of contact for this Guidance

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3. The Exemptions

3.1 Introduction

The Data Protection Act 1998 gives rise to a number of exemptions from, and modifications to, various provisions of the Act, such as subject access, if particular circumstances apply. These exemptions mean that not everything you do with personal data will be subject to the full force of the Act. Exemptions regarding Section 7 (Subject Access) are referred to in the Act as "the miscellaneous exemptions".

It is very difficult to provide precise guidance on the exemptions within the Act because of the nature of each exemption and the ability to apply and interpret these depending on the circumstances surrounding each case.

Exemptions cannot be easily categorised. However, a number of categories of exemptions consist of, or include, an exemption from one or other of the following categories of provisions:

THE SUBJECT INFORMATION PROVISIONS

- The provision of fair processing
- Section 7 - Subject Access

THE NON-DISCLOSURE PROVISIONS

- Principle 1, except the requirement for compliance with schedules 2 & 3 of the Act (conditions for processing personal data and sensitive personal data)
- The second, third, fourth and fifth principles of the Act
- Section 10 (prevention of any processing likely to cause damage or distress)
- Sections 14(1) to (3) (rectification, blocking, erasure and destruction)

4. The Application of the Exemptions

If you believe that you may be able to apply one of the exemptions yourself, always seek advice from your Directorate Data Protection Contact Officer in the first instance. Alternatively, you may seek guidance from the Corporate Information Governance Team or the Council's Legal Services department. (See *section 7 - Advice and Assistance*)

If you do receive a request and it clearly states one of the exemptions listed, you should still apply due care and attention and seek the relevant professional advice (as mentioned above) before responding to it.

5. An Exemption from the non-disclosure provisions

5.1 Public Interest Disclosure

This will be available in circumstances where the Act recognises that the public interest requires disclosure of personal data, which may otherwise be in breach of the Act. Where an exemption applies and it is deemed to be appropriate then such a disclosure would not be in breach of the legislation.

5.2 The Two Stage Test

Before reliance on any of the exemptions from the non-disclosure provisions a data controller must satisfy a two-stage test:

1. The disclosure falls within one of the following sections, namely, section 29(3) (the third crime and taxation exemption), section 34 (information made available to the public) or section 35 (disclosures required by law or in connection with legal proceedings).
2. If the disclosure falls within one of the above categories, the data controller (Birmingham City Council) would need to consider the non-disclosure provisions in order to determine which, if any, would be inconsistent with the disclosure.

5.2.1 Section 29 - Crime and Taxation

This is used where information is needed urgently for the prevention or detection of a crime or the apprehension or prosecution of offenders or the assessment or collection of any tax or duty.

The most common request you may come across within your work environment would be from the Police. They will request information under Section 29(3) of this exemption and will be required to provide a completed WA170 form. The Police must use this procedure when requiring information urgently. It should only be relied on for an individual and not a group of individuals e.g. tenants in a block of flats.

Further guidance on the WA170 Form and its completion can be located within Guidance Note 4 - Disclosures.

5.2.2 Section 34 - Information Available to the Public by or under an Enactment

Where the Council is required to provide information under an enactment, a rule of law or order of a court to make it available to the public, personal data is exempt from some of the principles of the Data Protection Act 1998.

An example of this exemption is the Electoral Roll; this is where information is made available to the public under an enactment.

5.2.3 Section 35 - Disclosures required by law or in connection with legal proceedings

Personal data is exempt from the non-disclosure rules if the information is required for the purpose of:

- Any legal proceedings
- Obtaining legal advice or;
- Under statute, by any rule of law or by order of a court or;
- Establishing, exercising or defending legal rights

6. The Exemptions within the Act

6.1 The Exemptions within the Act are as follows:

- National Security (section 28)
- Crime and taxation (section 29)
- Health, Education and Social work (section 30)
- Regulatory activity (section 31)
- Processing for the special purposes (section 32)
- Research, history and statistics (section 33)
- Information made available to the public by or under an enactment (section 34)
- Disclosures required by law (section 35(1))
- Disclosures made in connection with legal proceedings (section 35 (2))
- Domestic purposes(section 36)
- Exemptions contained within The Data Protection (Miscellaneous Subject Access Exemptions) order 2000 (S.I. No. 419)
- The Miscellaneous Exemptions (Schedule 7) - confidential references given by the data controller
- Armed forces
- Judicial appointments and honours
- Crown employment and Crown or Ministerial appointments
- Management forecasts/management planning
- Negotiations
- Corporate finance
- Examination scripts
- Examination marks
- Legal professional privilege
- Self-incrimination
- Transitional exemptions

6.2 Reliance on an Exemption

Before relying on an exemption please consult with your directorate Data Protection Contact in the first instance. The final decision on whether an exemption can be relied on will rest with the officer who is responsible for the disclosure.

If in any doubt on whether or not information should be disclosed or whether the application of one of the exemptions can be relied on, please contact a member of the Corporate Information Governance Team.

Please see Section 7- Advice and Assistance for contact details

7. Advice and Assistance

7.1 The Corporate Information Governance Team

The Corporate Information Governance Team provides advice and assistance on the Data Protection Act 1998 and the Freedom of Information Act 2000 as well as other associated legislation. The Corporate Team can be contacted on 0121 303 4876 or in writing at the following address:

Corporate Information Governance Team
Intelligent Client Function
1st Floor, Lancaster Circus
1 Lancaster Circus
Birmingham
B4 7AB

7.2 Directorate Data Protection Contact Officers

Birmingham City Council has a Data Protection Officer within each individual Directorate in order to provide assistance on data protection issues. If you have any concerns relating specifically to your Directorate please contact your contact officer in the first instance and they will be able to advise you accordingly.

A full list of DP Contact officers is available on In-line.

7.3 The Information Commissioner

The Information Commissioner is the governing body for Data Protection and Freedom of Information and is an independent officer who is appointed by the Queen and reports directly to parliament.

The Information Commissioners duties include:

- Maintaining a register of data controllers
- Distribution of information on legislation
- Promoting compliance with the data protection principles
- Considers complaints about breaches of the principles within the Act
- Prosecutes offenders who contravene the Act

The Commissioner is there to help everyone comply with the Act. If you would like further advice on the Act you can contact the Information Commissioner's office at the address below or you can search their web-site to locate useful information on legislation matters.

Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Tel: 01625 545 745