

The Data Protection Act 2002 (the "DPA") aims to promote high standards in the handling of personal data by data controllers ("organisations"). Personal data may be in electronic format or, in some cases, may be manual records in a suitably sophisticated filing system. Organisations must follow the eight data protection principles, thereby protecting an individual's right to privacy.

The data protection principles state that personal data must be:

- Fairly and lawfully processed
- Processed for specified purposes
- Adequate, relevant and not excessive
- Accurate and, where necessary, kept up to date
- Not kept for longer than is necessary
- Processed in line with the rights of the individual
- Kept secure
- Not transferred to countries outside the EEA unless there is adequate protection for the information

Summary of your rights

The sixth data protection principle refers to the 'rights of the individual' and these rights are set out in part 2 of the DPA. In summary these rights are:

1. Right of access to personal data
2. Right to prevent processing for purposes of direct marketing
3. Rectification, blocking, erasure and destruction
4. Right to prevent processing likely to cause damage or distress
5. Compensation for failure to comply with certain requirements
6. Rights in relation to automated decision-taking

Your rights in more detail

1. Right of Access to Personal Data

This fundamental right is provided by section 5 of the Data Protection Act 2002.

This right is often exercised by individuals who want to see a copy of the personal data an organisation has about them. These requests are frequently connected to employment, and employment references, and the financial standing of individuals.

The right of access provides individuals with the ability to find out exactly what personal data is held, why, who it is given to, and to check the accuracy of the information that is held.

It is also the right to be informed, if you so request, of the logic involved in automated decisions (unless this is a trade secret), where the automated means is the sole basis for any decision, for

example evaluating your performance at work, creditworthiness, reliability or conduct, online credit card or job applications.

The right of access **does not** give you:

- a right to 'documents' or recordings, only to the information constituting your 'personal data' – you may receive a summary of your personal data or telephone conversation. It is not therefore a substitute for the discovery process in legal actions.
- a right to receive third party information, i.e. names or other information which would identify a third party **unless** that person has consented to the disclosure of their details, the organisation considers it reasonable in all the circumstances not to withhold the details or the record is a health, social care or education record when different rules apply to third party details of staff of those Departments.
- a right to receive information about a complaint you have made regarding a person – this will not be your personal data.

This right is subject to only a few exemptions. Further information about the right of access, the exemptions from this right and how to make a subject access request can be found in advice notes on the website.

2. Right to prevent processing for purposes of direct marketing

Individuals have the right to prevent their personal data being processed for the purpose of direct marketing. Section 9 of the Data Protection Act provides for this absolute right.

"Direct marketing" is marketing addressed to the individual, i.e. Mr John Smith. Marketing addressed to the "owner" or "occupier" is not "direct marketing" in a data protection context.

Individuals can write to an organisation at any time giving them notice to stop, or not start, sending direct marketing however that direct marketing is communicated. The means of communication could include by letter, phone, fax, email, sms etc.

Even if you have previously agreed to receive direct marketing, you can opt out at any time.

You must however give the organisation a reasonable time to comply with this request.

Whilst the DPA provides you with the right to prevent direct marketing "by whatever means", the Unsolicited Communications Regulations 2005 also includes specific obligations on those who use electronic communications such as emails, telephone and SMS messaging for direct marketing particularly with regard to the inclusion of an "opt out" option with every communication.

For further information, please see the advice notes on direct marketing on the website.

3. Rectification, blocking, erasure and destruction

The DPA requires personal data to be accurate, and where necessary kept up to date. The need to keep the personal data up to date depends on the nature of the personal data and the purpose it will be used for.

Individuals only usually become aware of inaccurate information when they have made a subject access request, received a communication from the organisation, or something unexpected happens.

An individual is entitled to have any inaccuracies in their personal data put right. Data is "inaccurate" in data protection terms if it is "incorrect or misleading as to any matter of fact". An opinion, which does not purport to be a statement of fact, cannot, therefore, be challenged on the grounds of inaccuracy.

Data cannot be inaccurate if it has been obtained from you in the first place, but the organisation should still take "reasonable steps" to ensure the accuracy of the information before further using or disclosing that information.

The organisation must also take "reasonable steps" to check the accuracy of any information obtained from a **third party**. In other words, the organisation should undertake appropriate checks to verify the information before it considers any use of it.

When an organisation **discloses** information to a third party, irrespective of its source, it must take "reasonable steps" to ensure the accuracy of the information, taking into account the purpose for which it will be used by that third party, and the potential damage that may be caused to the individual if the information to be used by the third party is inaccurate.

What can I do if my personal data is inaccurate?

Section 12 of the DPA provides a right to "rectification, blocking, erasure or destruction" of personal data. You can exercise this right by writing to the organisation and asking them to correct any inaccuracies in your personal data that you have identified. They may comply with this request for example, by including a note of your views alongside the information you have identified as being inaccurate.

This right is also enforceable by a court order. A court may also order that a court-approved statement of the true facts be supplemented for those data.

If an organisation has disclosed inaccurate information to third parties, a court may order the organisation to inform the third parties of the inaccuracy and of any need to rectify, block, erase or destroy that information.

A court may also make such an order if an individual is awarded compensation for any failure of the organisation to comply with any of the provisions of the DPA, and there is a substantial risk of further such failures.

4. Right to prevent processing likely to cause damage or distress

An individual is entitled to write to any organisation and inform that organisation that you require it to cease, or not begin processing your personal data for a particular purpose, or in a particular way, where the processing likely to cause substantial damage or substantial distress and such damage or distress would be unwarranted.

This right is provided by section 8 of the Data Protection Act 2002.

You **cannot** exercise this right if: -

- you have given your consent to the processing,

or the processing is **necessary** for

- the performance of a contract with you
- for compliance with a legal obligation imposed on the organisation
- to protect your vital interests.

There are also certain exemptions from this right, such as processing which is **necessary** for the prevention or detection of crime or the assessment or collection of tax.

To exercise this right you must write to the organisation explaining what personal data you wish them to stop processing and the reason. You must give the organisation a reasonable period to comply with your request.

However, a business is required to respond to your written "data subject notice" within 21 days stating that the business has complied, is intending to comply, or stating reasons why it does not intend to comply, with your request.

If an organisation states that it does not intend to comply with your request, you may make an application to the court. The court may order the organisation to take such steps as it considers necessary **if** it thinks that your application is justified.

5. Compensation for failure to comply with certain requirements

An individual is entitled to seek compensation from an organisation if they have suffered damage as a result of a contravention by the organisation of "any of the requirements of the Act" – this includes the failure to comply with a subject access request.

There is no definition of "damage" in the Act, and therefore this should not be viewed as being limited to financial damage alone, although an individual who has suffered financial loss of some sort because of a breach of the Act is likely to be entitled to compensation.

Individuals may also seek compensation for distress if damage has also occurred.

Individuals may seek compensation for distress alone if

- the court considers that the failure to comply with a subject access request was "unjustified and the data controller knew, or ought to have known that it was unjustified" – the court may also impose a fine on the organisation in such cases;
- the contravention relates to the processing of personal data for the "special purposes" of journalism, literature and art.

There is no requirement for an individual to go to court to seek compensation - an approach can be made directly to the organisation by the individual or by an Advocate acting on their behalf.

If a settlement cannot be reached an application may then be made to the Court.

In a court action, it is a defence for the organisation "to prove that he had taken such care as in all the circumstances was reasonably required to comply with the requirement concerned".

6. Rights in relation to automated decision-taking

In general terms this right allows you to have a decision that has significantly affected you and was made by automatic means to be reconsidered by a person. Section 10 of the Data Protection Act 2002 provides you with this right.

You are entitled to write to a business to ensure that no decision is made by that business, which significantly affects you, solely by automated processing. For example, you apply for credit and a computer works out a credit score based on answers you have provided which determines whether you will be provided with a facility or not. This right also applies to automated systems that monitor your performance at work, including psychometric testing.

If you exercise your right, a business is required to respond to your written notice within 21 days stating the steps that the business intends to take to comply.

If a decision about you is made by automated means only, and you have not exercised your right to prevent such decisions being made, the organisation must tell you as soon as reasonably practicable that the decision was taken on an automated basis. You have 21 days from the date on which you receive the notification to require the organisation to reconsider the decision or to take a new decision on a non-automated basis.

There are however certain "exempt decisions".

This right does not apply when the decision was taken by the organisation

- with a view to entering into a contract with you,
- for the performance of such a contract, or
- to comply with a legal obligation.

It also does not apply if the effect of the decision is to grant your request, or if steps have been taken to safeguard your legitimate interests, for example by allowing you to make representations.

As with the other rights, this right to have a decision re-taken by a person rather than by automated means is enforceable by a court order, although any order issued by the court must not affect the rights of any person other than the individual or the organisation.

Please note that the Information Commissioner cannot award compensation, exercise your rights, or take court action, on your behalf. If you are considering taking any legal action you should seek the advice of a Manx Advocate.