

**YOUR RIGHTS
UNDER
THE DATA PROTECTION ACT 1998**

**Subject access requests to the security and
intelligence agencies**

DATA PROTECTION ACT 1998

Right of access (section 7)

In general, an individual is entitled:

- to be informed by any data controller whether personal data of which that individual is the data subject are being processed by or on behalf of that data controller;
- if that is the case, to be given by the data controller a description of -
 - the personal data of which that individual is the data subject,
 - the purpose for which they are being or are to be processed, and
 - the recipients or classes of recipients to whom they are or may be disclosed;
- to have communicated to him in an intelligible form -
 - the information constituting any personal data of which that individual is the data subject, and
 - any information available to the data controller as to the source of that data.

2. "Personal data" is information relating to an identifiable living individual. It includes information about the intentions of the data controller towards the data subject and also applies to information relating to an individual who can be identified from other information that is in the possession of, or is likely to come into the possession of, the data controller.

3. All personal data that is automatically processed (ie by computer) are covered, irrespective of the form in which the computer processes them. Manual records are also covered if they form a "relevant filing system" through meeting the following criteria:

- the information must be part of a structured set of information, relating to individuals;
- the structuring must be by reference to individuals or by reference

to criteria relating to individuals; and

- the structuring must allow specific information relating to a particular individual to be readily accessible.

4. "Processing" means obtaining, recording or holding the information or data or carrying out any operation or set of operations on the information or data.

5. A data controller is not obliged to supply any information unless he has received:

- a request in writing;
- the fee, where a fee is charged; and
- such information as he may reasonably require in order to satisfy himself as to the identity of the person making the request and to locate the information which that person seeks.

6. The "prescribed period" for a data controller to respond to a subject access request is within forty days of the request being received. The Security Service and SIS may require exemption from this requirement on national security grounds. If a request is not accompanied by the fee, where a fee is charged, and/or further information is required to initiate a search for the information being sought, the forty day period starts from the date the data controller receives the required fee and/or additional information.

7. Where a data controller cannot comply with the request without disclosing information relating to another individual who can be identified from that information, he is not obliged to comply with the request unless:

- the other individual has consented to the disclosure of the information to the person making the request: or
- it is reasonable in all the circumstances to comply with the request without the consent of the other individual.

Subject access exemptions

8. At the end of this leaflet there is a list which outlines the exemptions under Part IV of the Act and the other miscellaneous exemptions that relate to particular categories of personal data where one or more of the provisions under the Data Protection Act do not apply. The main exemptions that are provided cover national security; crime taxation; health, education and social work; regulatory activity; journalism, literature, art; research, history and statistics; information available to the public by or under enactment; disclosures required by law or made in connection with legal proceedings

etc; domestic purposes; and powers to make further exemptions by order.

9. It will be apparent, given the functions of the security and intelligence agencies as set out in the Security Service Acts 1989 and 1996 and the Intelligence Services Act 1994, that there may be personal data being processed that are exempt from the subject access provisions to the extent that such exemption, as provided for under section 28(1) of the Data Protection Act, is required for the purposes of safeguarding national security. If it were the case that the security and intelligence agencies are processing such exempt personal data there is no right for the individual to be informed whether or not such data is held, nor is there any right of access, although it should not be assumed by an individual that any such data is or is not held on them.

Right of complaint

10. Under the terms of the Data Protection Act there is, for most purposes, a right of complaint to the Information Commissioner or a court if an individual is dissatisfied with the response they receive. The address for the Information Commissioner is:

The Office of the Information Commissioner
Wycliffe House
Water Lane
Cheshire
SK9 5AF

11. However, where an exemption under section 28 of the Act, as described in paragraph 10 above, has been confirmed by a certificate signed by a Minister of the Crown who is a member of the Cabinet, or by the Attorney General, the right of appeal is to the Information Tribunal. A certificate relating to the work of the Security Service was signed by the Home Secretary on 10 December 2001, and certificates relating to the work of GCHQ and the Secret Intelligence Service were signed by the Foreign Secretary on 8 December 2001. (Copies of the certificates and statements from the two Secretaries of State outlining the reasoning behind their issue have been placed in the Library of the House of Commons and are available on request). Any person directly affected by the issuing of the certificate may appeal against the certificate to the Information Tribunal. It is also possible to appeal on the ground that the data that is sought does not fall within the scope of the certificate.

12. The detailed provisions of section 28 set out the exact scope of the appeal procedure. Schedule 6 of the Act sets out how the Tribunal is constituted in national security cases. You may also wish to refer to the

Data Protection Tribunal (National Security Appeals) Rules 2000 (SI 2000 No. 206). If you wished to consider such an appeal you may wish to contact:

Information Tribunal
Arnhem House Support Centre
PO Box 6987
Leicester
Leicestershire
LE1 6ZX

13. However, if you are aggrieved by anything which you believe the security and intelligence agencies have done in relation to you or your property, and irrespective of whether any exemptions under the Data Protection Act might apply to personal data these agencies may or may not be processing in relation to you, you may complain to the Investigatory Powers Tribunal, established under the Regulation of Investigatory Powers Act 2000.

SUBJECT ACCESS EXEMPTIONS

Part IV of the Act

- Section 28:** **National security** - provides an exemption to protect national security.
- Section 29:** **Crime and taxation** - covers personal data processed for the:
- (a) prevention or detection of crime;
 - (b) apprehension or prosecution of offenders, or
 - (c) assessment or collection of any tax or duty or of any imposition of a similar nature.
- Section 30:** **Health, education and social work** - provides powers for the Lord Chancellor to make orders providing exemptions in relation to health, education and social work records. Orders relating to all three categories of record have been made.
- Section 31:** **Regulatory activity** - covers personal data processed for the purposes of discharging a wide range of regulatory functions.
- Section 32:** **Journalism, literature and art** - covers personal data processed for journalistic, literary or artistic purposes.
- Section 33:** **Research, history and statistics** – covers personal data processed only for research, statistical or historical purposes, subject to certain conditions.
- Section 34:** **Information available to the public by or under enactment** - covers personal data which are statutorily made available to the public.
- Section 35:** **Disclosures required by law or made in connection with legal proceedings etc** - provides an exemption from non-disclosure where it is required by or under any enactment, by any rule of law or by an order of a court.
- Section 36:** **Domestic purposes** - provides an exemption for personal data processed only for the purposes of that individual's personal, family or household affairs.
- Section 37:** **Miscellaneous exemptions** – Schedule 7 confers further miscellaneous exemptions (see below).
- Section 38:** **Powers to make further exemptions by order** - provides a power for the Lord Chancellor to make orders providing exemptions where disclosure of information is statutorily prohibited or restricted, subject to certain conditions.

Schedule 7

- Paragraph 1: Confidential references given by the data controller** - covers confidential references given by data controllers in relation to education, employment or the provision of services.
- Paragraph 2: Armed forces** - provides an exemption to protect the combat effectiveness of the armed forces.
- Paragraph 3: Judicial appointments and honours** - covers personal data processed for the purposes of making appointments of judges and QCs, and the conferring of honours or dignities.
- Paragraph 4: Crown employment and Crown or Ministerial appointments** - provides a power for the Lord Chancellor to make orders providing exemptions in relation to Crown appointments. An order designating a limited number of appointments has been made.
- Paragraph 5: Management forecasts etc** - covers personal data processed for the purposes of management planning.
- Paragraph 6: Corporate finance** - provides an exemption for personal data processed for corporate finance purposes.
- Paragraph 7: Negotiations** - covers personal data consisting of records of the data controller's intention in relation to negotiations with the data subject.
- Paragraph 8: Examination marks** - modifies the 40 day maximum period for dealing with subject access requests in relation to examination marks.
- Paragraph 9: Examination scripts** - covers personal data consisting of information recorded by candidates during an academic, professional or other examination.
- Paragraph 10: Legal professional privilege** - covers personal data in respect of which legal professional privilege could be claimed.
- Paragraph 11: Self-incrimination** - provides an exemption for circumstances in which by granting access a person would incriminate himself in respect of an offence other than one under the 1998 Act.