



**Data Protection
Commissioner**

An Coimisinéir Cosanta Sonraí

Data Protection Acts
1988 and 2003

**A Guide to
Your Rights**



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Definitions

As with any legislation, certain terms have particular meaning. The following are some useful definitions:

Data means information in a form which can be processed. It now includes both automated data and manual data. However, the application of certain parts of the Act to existing manual data is deferred until October 2007.

Automated data means, broadly speaking, any information on computer, or information recorded with the intention of putting it on computer.

Manual data means information that is kept as part of a relevant filing system, or with the intention that it should form part of a relevant filing system.

Relevant filing system means any set of information that, while not computerised, is structured by reference to individuals, or by reference to criteria relating to individuals, so that specific information relating to a particular individual is readily accessible.

Personal data means data relating to a living individual who is or can be identified either from the data or from the data in conjunction with other information that is in, or is likely to come into, the possession of the data controller.

Processing means performing any operation or set of operations on data, including:

- obtaining, recording or keeping data
- collecting, organising, storing, altering or adapting the data
- retrieving, consulting or using the data
- disclosing the information or data by transmitting, disseminating or otherwise making it available
- aligning, combining, blocking, erasing or destroying the data.

Data Subject is an individual who is the subject of personal data.

Data Controller is a person who, either alone or with others, controls the contents and use of personal data.

Data Processor is a person who processes personal data on behalf of a data controller, but does not include an employee of a data controller who processes such data in the course of his/her employment.

Sensitive personal data relates to specific categories of data which are defined as data relating to a person's racial origin; political opinions or religious or other beliefs; physical or mental health; sexual life; criminal convictions or the alleged commission of an offence; trade union membership.

This booklet is intended as a short guide for individuals on their data protection rights and on the data protection obligations of those who hold and process personal information. It is not an authoritative or definitive interpretation of the law. If, after reading this booklet, you require further information, please consult the Data Protection Commissioner's website www.dataprotection.ie, or contact the office by the various means detailed on the back of this booklet.

What is data protection?

It is the safeguarding of the privacy rights of individuals in relation to the processing of their personal data. You supply information about yourself to government bodies, banks, insurance companies, medical professionals and many others in order to avail of services or satisfy obligations. Organisations or individuals also obtain information about you from other sources. For the purpose of data protection such organisations or individuals who control the contents and use of personal data are known as data controllers. The Data Protection Acts 1988 and 2003 give you rights relating to this personal information and impose obligations on data controllers.

These rights apply where the information is held:

- on computer, or
- in a manual form, as part of a filing system that facilitates ready access to a specific individual's information.

These rights, which are outlined in detail in the remainder of this booklet, empower you to ensure that your information is accurate, is only made available to those that should have it and is only used for specified purposes.

You may have to take action to enforce these rights by contacting the data controller concerned and if you have any difficulty enforcing your rights you can avail of the assistance of the Data Protection Commissioner.

Your Rights

- 1. Right to have your data processed in accordance with the Data Protection Acts**
to have your personal information obtained and processed fairly, kept securely and not illegitimately disclosed to others
- 2. Right to be informed**
to know the identity of the data controller and the purpose for obtaining your personal information
- 3. Right of access**
to get a copy of your personal information
- 4. Right of rectification or erasure**
to have your personal information corrected or deleted if inaccurate
- 5. Right to block certain uses**
to prevent your personal information being used for certain purposes
- 6. Right to have your name removed from a direct marketing list**
to stop unwanted mail
- 7. Right to object**
to stop some specific uses of your personal information
- 8. Employment rights**
not to be forced into accessing personal information for a prospective employer
- 9. Freedom from automated decision making**
to have a human input in the making of important decisions relating to you
- 10. Rights under Data Protection and Privacy in Telecommunications Regulations**
to prevent your phone directory entry details from being used for direct marketing purposes

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1. Right to have your data processed in accordance with the Data Protection Acts

Those holding data relating to you are obliged to:

- obtain and process the information fairly
- keep it only for one or more specified, explicit and lawful purposes
- use and disclose it only in ways compatible with these purposes
- keep it safe and secure
- keep it accurate, complete and up-to-date
- ensure that it is adequate, relevant and not excessive
- retain it no longer than is necessary for the purpose or purposes
- give you a copy of your personal data, on request.

Note:

These rights apply to all computer held data and any new manual records created from 1 July 2003. However, for manual records created before 1 July 2003 the obligations to keep data accurate, complete and up-to-date, to ensure that it is adequate, relevant and not excessive and to retain it no longer than is necessary for the purpose or purposes, will only apply from 24 October 2007.

2. Right to be informed

Data controllers who obtain your personal information must ensure that you are informed of:

- the name of the data controller, i.e. the organisation or individual collecting the data
- the purpose for keeping your data, and
- any other information which they ought to provide to ensure their handling of your data is fair, for example, the identity of anyone to whom they will disclose your personal data, and whether or not you are obliged to answer any of their questions.

Data controllers who have obtained your personal data from someone else, i.e. not from you, must, in addition, inform you of the types of data they hold, and the name of the original data controller.

3. Right of access

You can obtain a copy of all personal data relating to you by making a written "access request" to any organisation or individual who holds personal information about you on computer or in manual form that is part of a relevant filing system. See page 11 on "How to make an access request".

This right includes access to expressions of opinion about you unless these opinions were given in confidence. The right of access does not apply in specific cases, which would prejudice a particular interest, e.g., the investigation of offences.

You are also entitled to an explanation of the logic used in any automated decision-making process where the decision significantly affects you and the decision is solely based on the automated process.

4. *Right of rectification or erasure*

If you discover that information kept about you by a data controller is inaccurate, you have a right to have that information rectified or, in some cases you may also have the information erased. For example, if the data controller keeping the information has no good reason to hold it, i.e. it is irrelevant or excessive for the purpose, or if the information has not been obtained fairly, you can exercise your right of rectification or erasure by simply writing to the data controller keeping your data.

5. *Right to block certain uses*

In addition to the right to correct or erase data you can request a data controller to block your data, i.e. prevent it from being used for certain purposes. For example, you might want your data blocked for research purposes where it is held for other purposes.

6. *Right to have your name removed from a direct marketing list*

If a data controller holds your information for the purpose of direct marketing, you can have your details removed. You can exercise this right by writing to the organisation or individual concerned. They must reply within 40 days confirming that they have dealt with your request.

7. Right to object

Where the data controller is processing data for the exercise of official authority, for the public interest, or for his/her own legitimate interests and you feel that the use of your data involves substantial and unwarranted damage or distress to you, you may request a data controller to stop using your personal data, or not to start using the data.

The right does not apply if:

- you have already given your consent to the use of your data
- the use is necessary for a contractual obligation to which you have agreed
- the use is for electoral purposes by election candidates or political parties, or
- the use is required by law.

The electoral register or other personal data required by law to be made public, such as a shareholder's register, cannot be used for direct marketing unless you have been given an opportunity to object to such use. These objection rights are free of charge.

8. Employment rights

No one can force you to make an access request, or reveal the results of an access request, as a condition of recruitment, employment or provision of a service. Where vetting for employment purposes is necessary, this can be facilitated where the individual gives consent to the data controller to release personal data to a third party.

Note:

This provision, although contained in the Data Protection (Amendment) Act 2003, which came into effect on 1 July 2003, will not be commenced until a later date.

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9. Freedom from automated decision making

Important decisions about you, for example, work performance, creditworthiness, reliability may not be made solely by automatic means e.g. by computer, unless you consent to this. In general there has to be a human input in such decisions.

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10. Rights under Data Protection and Privacy in Telecommunications Regulations

A subscriber to a telecommunications service can record the fact that he/she does not consent to the use of their phone directory details for direct marketing purposes. If you wish to record this preference you should contact your telecommunications provider, who will record it in the National Directory Database.

To be contacted by fax machine or by automated dialling for direct marketing purposes you must have given your prior consent to the data controller.

How to make an access request

To make an access request you must write to the organisation or individual holding your personal data asking for a copy of the data. Your request could read as follows:

Dear....

I wish to make an access request under the Data Protection Acts 1988 and 2003 for a copy of any information you keep about me, on computer or in manual form....

You should give any details that might be needed to help the person identify you and to locate all the information they may keep about you, for example, customer account no., any previous addresses, date of birth.

Where a data controller holds a substantial amount of your personal data, but you only want access to a small portion of that data, it may be helpful and result in a speedier response if you are specific in the request that you make.

You must be given the information, in an understandable form, within 40 days of receipt of your request but most data controllers manage to reply much sooner. You may be asked to pay a nominal fee but this cannot exceed the prescribed amount.

Assistance from the office of the Data Protection Commissioner

The Data Protection Commissioner will help you in ensuring that your rights are fully upheld and that data controllers meet their obligations under the Data Protection Acts. If you think that a data controller is not meeting their data protection obligations and if you are not satisfied with the response to your concerns, then you may complain to the Commissioner.

To make a complaint all you need to do is write to the Data Protection Commissioner giving details about the matter and

- identify the organisation or individual you are complaining about
- outline the steps you have taken to have your concerns dealt with
- indicate the response you received, if any, and
- provide copies of any correspondence between you and the organisation.

In cases where an informal settlement of the problem cannot be reached the Data Protection Commissioner will investigate the matter and write to you when he has reached his conclusions informing you of his decision. The Commissioner's main priority, if he upholds your complaint is that the data controller complies with the law and puts matters right. If the Commissioner rejects your complaint, he will inform you of this in writing. If you disagree with the Commissioner's finding, you have the right to appeal the decision to the circuit court.

The Data Protection Acts make it clear that organisations or individuals who hold your personal data owe you a duty of care. If you suffer damage through the mishandling of your personal information, then you may be entitled to claim compensation through the courts and this is a matter for you and your legal advisers. The Commissioner has no role whatsoever in dealing with compensation claims.

Further information is available from our website or you can contact the Office directly by email or phone. Brochures and leaflets relating to the Act are also available free of charge, on request from

The Data Protection Commissioner

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