

DATA PROTECTION ACT, JOURNALISM AND THE PCC CODE

This short note has been put together to draw the attention of journalists and editors to those provisions of the Data Protection Act 1998 (DPA) that may impact on them as they carry out their professional duties. The DPA, which can be interpreted as a piece of privacy legislation, carries within it an implicit reference to the PCC Code of Practice. As such, the Commission is from time to time asked questions about how it is applied. Therefore, in order to promote awareness of the DPA – and as the Information Commissioner has in the past expressed concern about the lack of understanding of it among some journalists – the Commission has drawn together some of the questions it is most frequently asked. This note is by way of straightforward general guidance only and should not be relied on as legal advice. If you are concerned about how the Act will impact on a specific case you should seek advice from a specialist lawyer.

What is the DPA designed to do?

In general, the DPA imposes tight restrictions on the manner in which personal data may be kept, used and obtained. It also grants rights to individuals to demand access to personal data files about themselves, to have the sources of such information – and the persons to whom it has been passed – identified, and in some cases to require that there be no further processing of relevant data. There are various exemptions.

Isn't there a journalistic exemption?

The government recognised that the imposition of these rules without a journalistic exemption would be damaging to freedom of speech and to investigative journalism. It acknowledged that journalists and the media must be allowed to process data about individuals without having their activities, including newsgathering, investigations and publication, scotched by the Act's requirements. The Act therefore contains an exemption for personal data that is processed for the purposes of journalism. This exempts journalists from compliance in relation to some aspects of the *processing* of personal data and their source when it is undertaken with a view to publication of journalistic material and where the publisher reasonably believes both that publication is in the public interest and that, in all the circumstances, compliance with the DPA requirements would be 'incompatible' with the purposes of journalism. In these circumstances there is an exemption from all the obligations on data controllers except the requirement that data are kept secure.

There are also other safeguards for the media that allow the courts to stay legal action and protect against arbitrary use of investigation and enforcement powers.

What do 'data processing' and 'personal data' mean?

Very broadly, 'personal data' is information relating to an identifiable, living human being which is held electronically or in a paper-based filing system.

Processing personal data includes (the list is not exhaustive) obtaining, recording, holding, consulting, adapting, organizing, retrieving, disclosing, erasing and destroying it.

Full definitions are contained in the DPA which can be found at <http://www.hmso.gov.uk/acts/acts1998/19980029.htm>.

Part of the journalistic exemption relates to the public interest. What counts as the public interest?

The DPA does not define what the public interest means. However, in the case of the journalistic exemption, it does say that should any consideration be necessary (by a court) about whether a belief was reasonable that publication would be in the public interest, regard may be had to any relevant Code of Practice. In the case of newspaper and magazine journalism, this clearly means the PCC Code of Practice. The Code says that the public interest includes detecting or exposing crime or serious misdemeanour, protecting public health and safety and preventing the public from being misled by some statement or action of an individual or organisation. It also states that there is a public interest in freedom of expression itself, and that the Commission will have regard to the extent to which material has, or is about to, become available to the public.

The Commission has made clear on a number of occasions – not least through its case law that has been built up since 1991 – that the examples of the public interest contained within the Code do not constitute an exhaustive list. The Commission's adjudications, which can be found at www.pcc.org.uk, amplify the Code and should be read in conjunction with it.

Are there any other rules on obtaining personal information?

In addition to the Act's requirements, set out above, it contains some other controls and prohibitions and the way that information can be obtained and disclosed.

There is a specific offence of unlawful obtaining of personal data. You are not allowed to obtain, disclose and procure the disclosure of personal data if it is done knowingly or recklessly without the consent of the data controller. Both individuals and companies can be prosecuted at the instigation of the Information Commissioner or the Director of Public Prosecutions. It is also an offence to sell or offer to sell information that has been obtained without consent.

However, there are a number of exemptions – which are generally applicable and not just for journalists – from liability for the offences. Some will be more relevant to journalists than others. No offence is committed if the person concerned shows any of the following:

- That the obtaining, disclosing or procuring of the data was necessary to prevent or detect crime;
- That it was required or authorised by the law or by a court order;
- That the person concerned acted in the reasonable belief that he had a legal right to obtain or disclose the information or data, or to procure the disclosure to the other person;
- That he acted in the reasonable belief that the data controller would have given consent;
- That the obtaining, disclosing or procuring was justified as being in the public interest;
- That the personal data in question fall within the Act's national security exemption;
- That the data fall within the 'manual data held by public authorities' exemption which is due to come into force on 30 November 2005.

How can I find out more about the Data Protection Act?

A copy of the Act can be found at <http://www.hmso.gov.uk/acts/acts1998/19980029.htm>. For more information about how the Act has been implemented, you can visit the website of the Information Commissioner at www.informationcommissioner.gov.uk or telephone the office of the Commissioner on 01625 545 700.