

Data Protection briefing note

What does the Data Protection Act 1998 do?

- Applies to *personal* information about individuals.
- Assume all information about an individual is “personal”
- The Act applies to copy and photographs.
- It limits the use of this information
- It requires everyone who uses personal information to observe rules of good practice.
- It applies to your collection, use and publication of such information
- The Act states that all such information is to be used appropriately, accurately and relevantly
- It also grants rights to the individual ‘data subjects’ to ask for information from the ‘Data Controller’ about ‘personal data’ concerning them, i.e. where it came from, to whom it has been passed and, in some cases, to require that there be no further processing of relevant data.
- The Act therefore has the potential to cause real difficulties for your “Data Controller” – your editor – which means difficulties for individual journalists.
- GOOD NEWS – YOU CAN AVOID IT – JOURNALISTIC ENQUIRIES AND PUBLICATION CAN BE EXEMPT FROM THE ACT – BUT ONLY IF YOU FOLLOW RULES OF GOOD PRACTICE.
- In short, that means following the PCC code of Practice.

The Journalistic Exemption in Brief

- Section 32 exempts you from compliance with the Act if collection and use of the information is undertaken with a view to publication – and the material is journalistic, literary or artistic.
- To take advantage of the exemption there must be a reasonable belief that publication would be in the public interest.
- The Act does not define what is meant by in the “public interest”
- For this – look to the Press Complaints Commission (PCC) Code of Practice.

The Importance of the PCC Code of Practice

- If you don’t follow this code – you may fall foul of the Act – or at least your Editor may.
- Always abide by the terms of the PCC Code.
- Have special regard to clauses 9 and 16, relating to an individual’s privacy.

A Couple of Points of Interest

Can any individual use the act to demand that you to produce to them all the information that you hold on them, whether published or not?

- No – not if you have complied with the PCC in the first place

What about the Police?

- Again, no – if you have complied with the PCC in the first place – and so long as there are no allegations of terrorism – as the Terrorism Acts take precedence – but that is for another day.

Editorial Data Protection Briefing

I'm a journalist. I've heard that bits of the Data Protection Act don't apply to me. Is this true?

Yes. In order to ensure the balance between freedom of speech and the right to respect for privacy the Data Protection Act has a journalistic exemption and, for guidance, makes direct reference to media codes including the Press Complaints Commission (PCC) code of practice. The PCC guidelines on compliance with the Data Protection Act can be found at <http://www.pcc.org.uk/news/index.html?article=ODg=> .

Under the Data Protection Act journalism is called a 'special purpose'. In order to claim the exemption under the Act whatever you are doing as a journalist with personal information* must be:

1. Undertaken with a view to publication. The Act defines publish as 'to make available to the public or any section of the public'.
2. Its publication must be believed to be in the public interest**

The exemption is that you do not have to comply with any of the principles of the Data Protection Act other than the seventh which relates to keeping personal information physically and technically secure (for a breakdown of the principles see the Data Protection pages in the HR section on the JP Intranet). The exemption also removes the individual's right to access a copy of their personal information and their right to have their personal information deleted, blocked and/or corrected under the Act.

It is important to note though that just because as a journalist you are exempt from many of the controls of the Act it does not mean that you are automatically exempt from the offences. It is an offence under the Act for a person to, "knowingly or recklessly, without the consent of the data controller (i.e the "owner" of the data) to obtain or disclose personal data or the information contained in that personal data or to procure the disclosure to another person of the information contained in the personal data". It would therefore be an offence for a journalist to buy personal information, for example from private investigators or "bin scavengers". No offence is committed though if you can show that in obtaining, disclosing or procuring the personal information:

1. Your action was necessary to prevent or detect a crime
2. Your action was required or authorized by law
3. You had a reasonable belief that you had a right in law
4. You had a reasonable belief that you would have had the consent of the data controller (therefore you would not have acted knowingly or recklessly)
5. Your action was, in the particular circumstances, justified by law

However, caution is advised in assuming that that any of these defences would apply.

Remember just because you have privileges under the Act other agencies and/or companies do not. When making a request for your own personal information under the Data Protection Act to an agency/local authority/company remember that they have to comply with the all the requirements of the Act and may not be able to give

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you the information you request. They are not trying to annoy you on purpose, they complying with the law. With reference to local authorities/public bodies you may have more success making a request for information under the Freedom of Information Act (http://www.cfoi.org.uk/pdf/foi_guide.pdf), but remember that the local authority/public body must still comply with the Data Protection Act and you may therefore not be able to obtain personal information about other people.

There are other laws which will impact on journalists which should be considered when conducting enquiries. For example, the Regulation of Investigatory Powers Act 2000 makes it a criminal offence to intercept telephone calls without lawful authority. It is also a criminal offence under the Computer Misuse Act to gain unauthorised access to a computer.

*** What is “personal information”?** Personal information is information which identifies or could identify a living individual when combined with other information. This includes opinions. Examples are name, image, email address, telephone number, and unique reference numbers. Basically any piece of information which you can put into a system which can then reveal the identity of the individual. Personal information in structured paper based filing systems are also included under the Data Protection Act.

**** Define “public interest”.** “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. [The PCC Code of Practice] also states that there is a public interest in freedom of expression itself, and that the [Press Complaints] Commission will have regard to the extent to which material has, or is about to, become available to the public.”
(taken from Data Protection Act, Journalism and the PCC Code
<http://www.pcc.org.uk/news/index.html?article=ODg=>)

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