What is personal data? – A quick reference guide

Data Protection Act 1998

The Data Protection Act 1998 (DPA) is based around eight principles of 'good information handling'. These give people specific rights in relation to their personal information and place certain obligations on those organisations that are responsible for processing it.

An overview of the main provisions of the DPA can be found in The Guide to Data Protection. This is part of a series of guidance, which goes into more detail than the Guide, to help organisations to fully understand their obligations, as well as to promote good practice.

This guidance explains how to determine whether information is 'personal data' for the purposes of the DPA.

Overview

This quick reference guide is designed to complement and to be used in conjunction with the detailed ICO guidance entitled 'Determining what is personal data'.

Both pieces of guidance aim to assist data protection practitioners in determining whether data falls within the definition of personal data in circumstances where this is not obvious.

This short guide takes the form of questions which, when taken in order, aim to provide an indication of whether the data being processed is personal data. A short form question and answer flowchart is included at the end of this guide. For detailed consideration of the concept of personal data, you should refer to the 'Determining what is personal data' guidance.

Introduction

If you hold information about individuals either on computer or in certain types of filing system you may be holding 'personal data'. Broadly speaking the DPA covers four types of information (referred to as 'data' in the Act):

    (i)   information processed, or intended to be processed, wholly or partly by automatic means (that is, information in electronic form usually on computer)[1];

    (ii)   information processed in a non-automated manner which forms part of, or is intended to form part of, a 'filing system' (that is usually paper records in a filing system)[2]

    (iii)   information that forms part of an 'accessible record' (that is, certain health records, educational records and certain local authority housing or social services records, regardless of whether the information is processed automatically or is held in a relevant filing system)[3]; and

    (iv)   information held by a public authority (referred to as 'category 'e' data' as it falls within paragraph (e) of section 1(1) of the DPA).

Not all information held in filing systems is covered by the DPA and the Information Commissioner has also produced guidance to help you decide whether filed information falls within the scope of the Act: What is 'data' for the purposes of the DPA

In most circumstances it will be fairly easy to decide whether the information you hold falls within one of the four types of information covered by the DPA and whether the information 'relates to' an 'identifiable individual' and is therefore 'personal data' regulated by the Act.

Where you are unsure, this quick reference guide comprises a series of questions which, when worked through in order, are intended to help you determine whether you hold personal data.

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[1] Data in electronic form is defined in section 1(1)(a) of the DPA.
[2] 'Relevant filing system' is defined in section 1(1)(a) DPA.
[3] 'Accessible record' is defined in section 1(1)(d) and section 68 DPA.

Is the information you hold 'personal data' for the purposes of the Data Protection Act?

There are several steps to determining whether the data you hold (electronic or manual) is 'personal data'[4] for the purposes of the DPA. Questions taking you through these steps are set out below[5].

1.   **Can a living individual be identified from the data, or, from the data and other information in your possession, or likely to come into your possession?**

> **Yes**   Go to question 2.
>
> **No**   The data is not personal data for the purposes of the DPA.

Idenitfiability - An individual is 'identified' if you have distinguished that individual from other members of a group. In most cases an individual's name together with some other information will be sufficient to identify them. Simply because you do not know the name of an individual does not mean you cannot identify that individual. The starting point might be to look at what means are available to identify an individual and the extent to which such means are readily available to you.

2.   **Does the data 'relate to' the identifiable living individual, whether in personal or family life, business or profession?**

> **Yes**   The data is 'personal data' for the purposes of the DPA.
>
> **No**   The data is not 'personal data' for the purposes of the DPA.
>
> **Unsure**   See questions 3 to 8 below.

Meaning of 'relates to' - Data which identifies an individual, even without a name associated with it, may be personal data where it is processed to learn or record something about that individual, or where the processing of that information has an impact upon that individual. Therefore, data may 'relate to' an individual in several different ways, the most common of which are considered below.

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[4] See definition of 'personal data' section 1(1) DPA.

[5] See also p. 5-7 Legal Guidance

3.   Is the data 'obviously about' a particular individual?

>   **Yes**   The data is 'personal data' for the purposes of the DPA.

>   **No**   Go to question 4.

Data 'obviously about' an individual will include his medical history, criminal record, record of his work or his achievements in a sporting activity.

Data that is not 'obviously about' a particular individual may include information about his activities. Data such as personal bank statements or itemised telephone bills will be personal data about the individual operating the account or contracting for telephone services.

Where data is not 'obviously about' an identifiable individual it may be helpful to consider whether the data is being processed, or could easily be processed, to learn, record or decide something about an identifiable individual. Information may be personal data where the aim, or an incidental consequence, of the processing, is that you learn or record something about an identifiable individual, or the processing could have an impact on, or affect, an identifiable individual.

4.   Is the data 'linked to' an individual so that it provides particular information about that individual?

>   **Yes**   The data is 'personal data' for the purposes of the DPA.

>   **No**   Go to question 5.

Example
There is a single named individual employed in a particular post, the salary information about the post will be personal data 'relating to' the single employee occupying that position.

5.   Is the data used, or is it to be used, to inform or influence actions or decisions affecting an identifiable individual?

>   **Yes**   The data is 'personal data' for the purposes of the DPA.

No　　Go to question 6.

Informing or influencing decisions - Example: Data about an individual's phone or electricity account clearly determines what the individual will be charged.

Different organisations may process the same data for different purposes.
A single piece of data, which is not personal data when processed by one person may become personal data when it is processed by another person depending on the purpose of the processing and the potential impact of the processing on individuals.

6. **Does the data have any biographical significance in relation to the individual?**

　　Yes　　The data is likely to be personal data for the purposes of the DPA.

　　No　　Go to question 7.

　　Unsure　Go to question 7.

Biographical significance - When considering 'biographical significance', what is important is whether the data goes beyond recording the individual's casual connection with a matter or event which has no personal connotations for him.
The fact that an individual attended the meeting will be personal data about that person. However, this does not mean that everything in the minutes of that meeting is personal data about each of the attendees.

7. **Does the data focus or concentrate on the individual as its central theme rather than on some other person, or some object, transaction or event?**

　　Yes　　The data are likely to be personal data for the purposes of the DPA.

　　No　　Go to question 8.

　　Unsure　Go to question 8.

When considering the 'focus' of information it may be helpful to consider whether the information is being processed to record

something about an individual or to record information about an object.

Whether information is linked to an individual, for example, to learn something about that individual, is the key factor in determining whether information about an object is personal data.

Example: information as to the number of products produced by a machine in a week could be used, either to access the efficiency of the machine, or it could be used to access the productivity of the individual operating the machine.

8.   Does the data impact or have the potential to impact on an individual, whether in a personal, family, business or professional capacity?

> **Yes**   The data is 'personal data' for the purposes of the DPA.

> **No**   The data is unlikely to be 'personal data'.

Even though the data is not usually processed by the data controller to provide information about an individual, if there is a reasonable chance that the data will be processed for that purpose, the data will be personal data.

If you are still unsure whether the information you hold is personal data for the purposes of the DPA see the detailed ICO guidance "Determining what is personal data" and "Determining what is data".

A flowchart of the above questions is set out below.

Flowchart

1.	**Can a living individual be identified from the data, or, from the data and other information your possession, or likely to come into your possession?**
	Yes Go to question 2.
	No The data is not personal data for the purposes of the

2.	**Does the data 'relate to' the identifiable living individual, whether in personal or family life, business or profession?**
	Yes The data is 'personal data' for the purposes of the DPA.
	No The data is not 'personal data' for the purposes of the DPA.

3.	**Is the data 'obviously about' a particular individual?**
	Yes The data is 'personal data' for the purposes of the DPA.
	No Go to question 4.

4.	**Is the data 'linked to' an individual so that it provides particular information about that individual?**
	Yes The data is 'personal data' for the purposes of the DPA.
	No Go to question 5.

5.	**Is the data used, or is it to be used, to inform or influence actions or decisions affecting an identifiable individual?**
Yes	The data is 'personal data' for the purposes of the DPA.
No	Go to question 6.

6.	**Does the data have any biographical significance in relation to the individual?**
Yes	The data is likely to be personal data for the purposes of the DPA.
No	Go to question 7.
Unsure	Go to question 7.

7.	**Does the data focus or concentrate on the individual as its central theme rather than on some other person, or some object, transaction or event?**
Yes	The data is likely to be personal data for the purposes of the DPA.
No	Go to question 8.
Unsure	Go to question 8.

8.	**Does the data impact or have the potential to impact on an individual, whether in a personal, family, business or professional capacity?**
Yes	The data is 'personal data' for the purposes of the DPA.
No	The data is unlikely to be 'personal data'.