

Data Protection and the Data Protection Act 1998



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The Data Protection Act 1998 (the Act) governs the collection, recording, storage, use and disclosure of personal data whether such data is held electronically or in manual form. Young people have the same rights as adults under the Act and the impact on scouting is addressed throughout this Factsheet (please see information in italics).

The term Scout Unit refers to any Group, District, County or other body constituted and recognised as a member of The Scout Association. The following summarises the main points and definitions; however, a Glossary of Important Terms can also be found at the end of this fact sheet.

1. THE MAIN PURPOSE OF THE ACT

The Act aims to protect the individual's right to privacy by promoting high standards in the way personal information about that individual should be handled. The rules apply to personal information held electronically incl. email, word documents, in a database etc or held manually in a readily accessible filing system. The Act provides two main ways by which this is achieved:

Firstly, any data controller who processes personal data about a living individual must observe the eight Data Protection Principles enshrined in the Act. The Act further classifies particular data as sensitive personal data and provides additional rules for processing this. As well as applying certain rules, data controllers must also register with the Information Commissioner's Office (ICO) through a formal process called notification unless they come under an exemption. The ICO has powers of enforcement

against all data controllers, whether they are under a duty to register or not;

Secondly, all data subjects i.e. individuals about whom personal data is held, are given wider rights of access and control in relation to it.

2. DATA CONTROLLERS AND THE RULES REGARDING PERSONAL DATA

A data controller is any individual, group or organisation, established in the UK processing personal data about an individual (who can then be identified from that data). The Act does not apply to individuals collecting information solely for their own domestic and household affairs e.g. an address book or solely for research, journalistic, artistic or literary purposes.

The Act also only applies to personal data which is essentially any significant piece of information about a living, identifiable individual e.g. a name together with an address, age, telephone number, information regarding his/her hobbies etc. It can also include an expression of an opinion about that individual. A data controller controls the purpose and method of processing such personal data (this is different than a data processor who merely processes data on a controller's behalf).

The ICO is an independent authority set up to promote access to official information and protect personal information (formerly known as the office of Data Protection Registrar). See www.ico.gov.uk for further information. The new 'Information Commissioner' is also sometimes referred to as the 'Data Protection Officer'.

Processing is given a wide meaning and includes obtaining, recording, holding, altering, retrieving, destroying or disclosing data.

The 8 'Data Protection Principles'

Under the Act, all data controllers must apply the following 8 Data Protection Principles which state that personal data must be:

- Processed fairly and lawfully;
- Obtained for a specified and lawful purpose;
- Adequate, relevant and not excessive to that purpose;
- Accurate and up-to-date;
- Kept only for as long as required for the purpose for which it was obtained;
- Processed in accordance with the rights of data subjects;
- Be kept secure proportionately to the level of harm that could result if unauthorised access occurs;
- Not transmitted outside the European Economic Area (EEA) without consent from the data subject.

Scout Units as data controllers and applying the rules

Scout units are likely to collect and store personal data about their members and in many cases other individuals involved with the unit. As a result they are likely to be classed as data controllers under the Act and will therefore have to ensure that the 8 data protection principles are applied when handling such data. The data controller is the Executive Committee of the relevant Scout Unit or body. Please note, a mere passing reference to an individual is not personal data under the Act e.g. the minutes of a meeting will not be considered personal data about those attending in general although if an individual was specifically discussed, then the minutes may be 'personal data' about that individual. Scout Units must also ensure that records of members are up-

to-date, in a secure place and not kept for longer than necessary.

Additional rules for 'Sensitive personal data'

The Act further categorises certain personal data as sensitive personal data and imposes additional rules about handling this. The data controller must first obtain the explicit consent of the data subject in order to obtain and hold such information. Personal data becomes sensitive if it includes information as to:

- a) Racial or ethnic origin; or
- b) Political opinions; or
- c) Religious beliefs; or
- d) Trade union membership; or
- e) Physical or mental health; or
- f) Sexual life; or

Commission of offences or alleged offences.

However, explicit consent is not required where the data subject has already publicised the data e.g. for:

- Medical purposes;
- Legal proceedings;
- Monitoring racial equality; or
- Employment purposes.

Scout Units and processing sensitive personal data

Moreover, it is likely that such personal data will be further classed as sensitive personal data and the explicit consent (i.e. in writing) of the data subject will be required before collection and processing. Most adults would have given their consent by completing their Form AA Adult Appointment Application, however, for other adults a suitable form should be completed. If the data subject is a minor (i.e. under the age of 18) then explicit consent of the parent/guardian is required.

Particular situations that may arise for Scout Units

a) Internet Web Site

The eighth Data Protection Principle prevents personal data from being transferred to countries outside the EEA without consent. In order to be completely safe in this regard, when publishing information on an Internet Web Site, the Scout Unit should not publish any personal data identifying a young person. If adult members are to be identified then their consent should be obtained. However, it is best to avoid naming any adult where reference to their job title will suffice. Scout Units are strongly advised to also refer to the Association's fact sheet entitled 'Developing a Scouting Web Site' (available from the Information Centre). In all cases, you must make provisions so that you can quickly remove personal information from the Internet if an individual asks you to.

b) Photographs and video footage

When taking a photograph of or videoing a specific person or group of people you must obtain their consent explaining what you intend to do with the photograph/footage including whether it is to be published and where. In relation to a young person, such consent must be obtained from a parent or guardian. Such consent may be written or verbal depending on the circumstances. Obtaining specific consent should not be

necessary when photographing/videoing a crowd where the individuals remain fairly anonymous.

c) CCTV footage

If the image recorded is aimed at a particular person's activities, then it must be processed in accordance with the eight principles of the Act and will also require the subject's consent.

3. NOTIFICATION TO THE ICO

Most data controllers must register with the ICO, which keeps a Public Register of Data Controllers. Notification requires completing a standard application form available from the ICO office (see contact details below) and paying a fee (at present £35.00). However, some data controllers will be exempt from notification.

Exemptions

A data controller may be exempt where personal data is collected:

- 1) purely to maintain a public register; or
- 2) for a not for profit organisation under special circumstances. This exemption is intended for small clubs, voluntary organisations, church administration and some charities; or
- 3) for core business purpose - where data is processed solely for marketing, staff administration and accounting or records.

Enforcement

It is important to note that the ICO can enforce the rules against all data controllers whether they are under a duty to register or exempt. Following a complaint or investigation, the ICO can serve a variety of notices (instructions) on data controllers who may not be complying with any of the Data Protection Principles, the additional rules for processing sensitive personal data or have failed to register (when such duty existed). These notices specify what action the data controller must take to remedy the situation and a failure to comply with such notice constitutes a criminal offence.

Scout Units exempt from notifying the ICO

As 'not-for-profit' organisations, most Scout Units are exempt from compulsory registration or notification to the ICO provided:

- a) The sole purpose for processing personal data is to establish or maintain membership or support for the Scout Unit or to provide/administer activities to members or those who have regular contact with the Scout Unit (this will encompass members of the Council amongst others); and*
- b) That the data subjects are restricted to the members (past, existing or prospective) or those who have regular contact with the Scout Unit; and*
- c) The type of data held is restricted to cater for the above reasons only e.g. names, addresses, identifiers or eligibility for membership etc.*
- d) Any disclosures (other than those made with the consent of the data subjects) are restricted to only those third parties necessary for this exempt purpose; and*
- e) The personal data is not kept after the relationship between the Scout Unit and the data subject ends, unless and for so long as it is necessary to do so for the exempt purpose*

A Scout Unit also does not have to notify the ICO about personal data processed solely for marketing its activities, staff administration (e.g.

removal, payment, discipline, superannuation, work management etc) and business accounting or records (e.g. purchases from suppliers etc).

Scout Units subject to enforcement

Although generally exempt from registering with the ICO, Scout Units are nevertheless still data controllers under the Act and apply the rules. As a result they will be subject to enforcement by the ICO if non-compliance is found.

4. DATA SUBJECTS AND THEIR RIGHTS

Following a request in writing to the data controller, a data subject is entitled (with some exceptions) to a description and a copy of personal data being held or being processed about them together, with an explanation as to why it is being processed/held and to whom it has been disclosed. The data controller may charge a standard fee to the data subject (a maximum of £10) and must comply with the request within 40 days.

Data subjects can have inaccurate data rectified, erased or destroyed and can stop data from being processed if it is unnecessary or causing damage or distress. They can also ask the ICO whether the Act has been contravened. If necessary, they may apply to court to exercise their rights and may receive compensation if damages are suffered due to any contravention of the Act.

A data subject may not be entitled to this right if they have already consented to the processing of their personal data (although such consent can be revoked) and also where such processing is necessary to:

Perform a contract to which the data subject is a party to e.g. employment contract;

Comply with a legal obligation;

Protect the vital interests of the data subject;

Make a request to the ICO to assess whether the Act has been contravened.

Dealing with a data subject's request

If a Scout Unit receives a request in writing from a data subject for a description and copy of personal data held about them, the request should be acknowledged and the Secretary of the Scout Unit (or other person appointed by the Executive Committee) must comply with the request within the 40-day time limit.

If there is a risk that another individual will be identified from disclosing the data, the request may be refused unless that other individual has consented or it is possible to blank out the other individual's particulars so they are no longer identifiable from the information. Such instances will need to be considered carefully on a case-to-case basis.

If the data requested includes a Reference given by another individual about the data subject, then again it must not be disclosed unless that Referee has consented or unless by removing that Referee's particulars they are no longer identifiable e.g. this may be relevant in relation to a Form RF Reference Form. Again such instances will need to be considered properly on a case-to-case basis. If the Reference about the data subject was provided by or on behalf of the data controller (i.e. the Executive of the Scout Unit) then the data controller does not have to disclose it.

The Scout Association - Headquarters

Headquarters is registered as a data controller. This registration permits it to keep personal data on a computerised database operated only by Headquarters. This registration does not cover Scout Units. Thus, if necessary (i.e. if for any reason a Scout Unit does not fall within the exemption outlined above) it will need to register and notify the ICO independently.

Personal data passed onto Headquarters by Scout Units

The Scout Association and its member Scout Units are considered separate legal entities and each is a data controller in its own right. In addition to this, Headquarters will also be a data controller in respect of personal data it is sent by Scout Units and which it then processes. It is therefore very important Scout Units ensure that personal data being passed on to Headquarters is accurate and has been processed properly in accordance with the Act by the Scout Unit.

Please note: *The Scout Association has sought to ensure that the information provided in this Factsheet is correct but emphasises that the content is intended to give an overview only and not provide a comprehensive or in-depth account of all the rules. Therefore, advice should be sought from the ICO for specific situations. **If in any doubt, further advice should be sought from The Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF/Telephone helpline: 08456 30 60 60/01625 54 57 45 - www.ico.gov.uk***

GLOSSARY OF IMPORTANT TERMS

or commission or alleged commission of any offence and/or sentence of any court.

“data controller”

The person or persons who determine the purposes and manner in which personal data is processed.

“data processing”

Includes the obtaining, recording, storing, using and the disclosing of personal data.

“data processor”

Any individual, group or organisation who processes data on behalf of the data controller (not being an employee of the data controller).

“data subject”

Each living individual whose information is held.

“notification”

The Information Commissioner maintains a public register of data controllers. Notification is the process by which a data controller's details are added to the register. Data controllers must notify unless they are exempt.

“personal data”

Data about any living individual who can be identified from that data or from any other information held by the data controller including expressions of opinion by or about the data subject.

“sensitive personal data”

Information as to an individual's racial or ethnic origin, political opinions, religious or other beliefs of a similar nature, trade union membership, physical or mental health or condition, sexual life