

Notification and the Data Protection Act

Subject Access and Employer's Obligation

Introduction

The Information Commissioner maintains a public register of data controllers. The register contains the name and address of the data controller and a general description of the processing of personal data by that controller. Notification is the process by which a data controller's details are added to the register.

The Data Protection Act 1998 ("the Act") requires every data controller who is processing (processing means obtaining, recording or holding the data or carrying out any operation or set of operations on the data) personal data to notify unless they are exempt. Failure to notify is a criminal offence.

Where an employer processes information concerning the health status of an employee (albeit for occupational health records or private health care provisions) they must notify the Information Commissioner.

Who is exempt from notification?

Exemptions apply to:

1. Data controllers who only process personal data for:
 - Staff Administration (including payroll)
 - Advertising, Marketing and Public Relations (for their own business)
 - Accounts and Records
2. Some Non For Profit Organisations (including small clubs, voluntary organisations, church administration and some charities)
3. Processing personal data for personal, family or household affairs (including recreational purposes)
4. Maintenance of a Public Register

An individual who is processing personal data for family or household affairs are exempt from notification and other provisions of the Data Protection Act. Other data controllers who are exempt from notification must comply with the other provisions of the Act which require that data shall be:

- Fairly and lawfully processed
- Processed for limited periods

- Adequate, relevant and not excessive
- Accurate
- Not kept any longer than necessary
- Processed in accordance with the data subjects' rights
- Secure
- Not transferred to countries outside of the EEA without adequate protection

Those exempt from notification may choose to notify voluntarily.

Exemptions are also available for core business activities which typically relate to small businesses. Core business activities are:

- Staff administration
- Advertising, marketing and public relations
- Accounts and records

Self assessment to notification

You have an obligation to notify if you:

- Process personal data (processing means to obtain, hold or record data or carry out any operation on that data and personal data relates to a living individual)
- Process all or part of the data on a computer
- Are a Data Controller
- Process personal data for financial, health or research purposes including CCTV (an illustrative list is available from www.dataprotection.gov.uk)

How to notify

There are 3 ways to notify:

- On the web at the address above – just fill in a form and send it to the Commissioner electronically
- On the telephone – the Notification Line number is 01625 545 740
- By post – either download the form from the net or request one on the number above.

The fee for notification is £35.00. The period of notification is one year and the entry will expire unless it is renewed and the fee is paid in full on a yearly basis. You may have your entry removed if, at any time during the notification period, notification

ceases to become necessary. Details of how to do this are available on the website address above.

Durant v FSA 2003

In this case, the Applicant was seeking disclosure of information that he claimed was personal data relating to him and held by the FSA.

The case, at appeal, provides guidance on the following:

- In order for data to be personal data, whether held on a computer or manual file, it must name or directly refer to the individual. A document that merely names someone is not personal data. An obligation to disclose will then arise if the information is in a biographical format and has the data subject as its focus.
- A “relevant filing system” for a manual (rather than computer) system, is one where information is structured by reference to that individual and is so structured that it is akin to a computerised system. If the documents are not structured in that way, the disclosure provisions of the Act are not triggered.
- Individuals who try to use the Act as a means of obtaining information generally on the grounds that it refers to them by name negates the primary purpose of the Act. The Courts will not look upon such individuals favourably.

Although this information sheet highlights some key issues relating to Notification and the Data Protection Act, it should not be considered comprehensive and is not a substitute for seeking professional advice on specific issues.

For further information and to ensure that you are sent information sheets on other employment issues, please contact Nick Hobden on 01892 510000 or by e-mail at nick.hobden@ts-p.co.uk.