

# DATA PRIVACY FOR CHARITIES

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## DATA PRIVACY

Since the original data protection legislation was introduced in 1984 many organisations – both charities and businesses – have found it difficult to get overly excited by the issue. However in recent years the issue of data privacy has gradually crept up the agenda. Google's changes to its privacy policy last year made front page news as have recent reports that the US government routinely collects and analyses data from the internet. This article considers how the Data Protection Act 1998 (DPA) applies to charities and the impact of the changing legal regime.

### DOES THE DATA PROTECTION ACT APPLY TO CHARITIES?

Yes, the DPA applies to charities in much the same way as it does to commercial organisations. Most charities will, as a "data controller", be responsible for processing (i.e. holding or using) personal data relating to three main groups – supporters, beneficiaries and employees. The DPA requires organisations to comply with eight "data protection principles" set out in the box.

However the requirement to notify the Information Commissioner of data processing operations is relaxed for small non-profit-making bodies. Whilst the exemption should be sufficient for smaller charities carrying out basic processing operations the more sophisticated charities will need to study the exemption to see if it applies to all their processing activities.

### WHAT'S THE FUSS ABOUT?

The Information Commissioner's powers were increased in 2010 with the introduction of the power to issue monetary penalty notices of up to £500,000 for serious and reckless breaches of the law. The Information Commissioner issued 24 such notices during 2012 mainly to public sector organisations. Enforcement has focused upon the loss of sensitive personal data and examples include:

- ♦ the theft of an unencrypted memory stick (£150,000);
- ♦ sending an email containing sensitive personal data to the wrong email recipient (£120,000);
- ♦ leaving a plastic carrier bag, which contained papers including sensitive personal data, on a train (£70,000); and
- ♦ failure to remove sensitive personal data from computers before disposal (£325,000).

The European Union is currently debating the final text of a new EU-wide Data Protection Regulation which will see fines dramatically increase. The draft Regulation envisages that organisations can be fined up to 2 per cent of global turnover and introduces a number of other significant changes.

### DO CHARITIES FACE ANY PARTICULAR CHALLENGES?

The DPA provides enhanced protection to personal data which is "sensitive personal data". Sensitive personal data includes data relating to race, ethnic origin, political opinions, religious beliefs, trade union membership, health, sexual life or the commission or alleged commission of an offence. For some charities the processing of such information is an inherent part of their charitable purpose. These organisations may need to ensure that they have the explicit prior consent of the data subject<sup>1</sup> and should take particular care to safeguard such data from loss or unauthorised access.

Interesting issues also arise when a charity's supporter or beneficiary lists have a close correlation with a class of sensitive personal data. For example supporters of a religious charity are likely to (but will not necessarily) share the religious conviction of the charity concerned. In these cases charities would be well advised to assume that the list contains sensitive personal data and treat it accordingly.

### WHAT ABOUT EMAIL CAMPAIGNS?

Where organisations use their database in order to conduct marketing they must satisfy themselves that they have complied with the DPA. They must also consider the Privacy and Electronic Communications (EC Directive) Regulations 2003 which specifically prohibit the making of unsolicited calls and the sending of unsolicited emails. It is important to ensure that any emails, for instance those sent to supporters, are invited by the recipient.

The charity must still identify itself and provide a valid address or mechanism for opt-outs in each email.

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<sup>1</sup> Consent is not required if one of the other conditions set out in Schedule 3 of the DPA is satisfied

## WHAT DOES THIS MEAN FOR CHARITIES IN PRACTICE?

Some practical tips and suggestions include:

- ◆ Prepare a high level summary of what personal data your organisation holds, what it is used for and who it is disclosed to.
- ◆ Have a basic “privacy notice” which tells people how you use their personal data when you first collect it.
- ◆ Consider whether you are required to register with the Information Commissioner or whether you are exempt.
- ◆ Ensure you have appropriate IT security and employee training in place.
- ◆ Ensure all laptops and memory sticks are encrypted in case of loss.
- ◆ If your organisation processes “sensitive personal data” ensure that the trustees understand the risks involved and the organisation has adequate resources to ensure compliance.

## EIGHT DATA PROTECTION PRINCIPLES:

1. Data must be processed fairly and lawfully. The organisation must issue a “privacy notice” and satisfy one of the conditions for processing set out in Schedule 1 or 3 of the DPA.
2. Data is only processed for specified purposes and not for incompatible purposes.
3. Data is adequate, relevant and not excessive.
4. Data is accurate and up to date.
5. Data is not kept longer than necessary.
6. Data is processed in accordance with the DPA, meaning that the data controller has registered with the Information Commissioner (unless exempt) and the data controller provides access to the personal data upon request of the data subject.
7. Ensure appropriate technical and organisational measures to prevent unauthorised access or destruction.
8. Data not to be transferred outside the EEA.

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This note is intended to provide general information about some recent and anticipated developments which may be of interest. It is not intended to be comprehensive nor to provide any specific legal advice and should not be acted or relied upon as doing so. Professional advice appropriate to the specific situation should always be obtained.

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