

Communicating enforcement activities

1 Introduction

The Data Protection Commissioner's Office ("DPCO") aims to be robust in resolving data protection complaints. Publicising our enforcement and regulatory activities is an important part of our role as strategic regulator, and a deterrent for potential offenders.

The DPCO aims to get media coverage for enforcement activities, and this policy provides a clear set of guidelines for communicating our enforcement and regulatory activities generally. The aim of this document is to provide the DPCO with a framework to allow us to communicate with confidence and to gain the maximum effect. It is in line with the DPCO's data protection Regulatory Action Strategy and is in accordance with the DPCO's Publication Scheme.

This is consistent with our Corporate Plan aims to take purposeful risk-based enforcement action and to be an influential organisation. It also contributes to our communications objectives to encourage good practice and raise awareness of obligations.

This document covers publicising information proactively – for example, by issuing a news release or informing a journalist. However, it must be noted that many organisations will not make the distinction between "publicising" and "publishing" (eg putting a document on our website); it is therefore wise not to make too much of this distinction or it may lead to false promises.

2 The principles of communicating enforcement and regulatory activities

2.1 Enforcement and regulatory activities can mean a number of things. For the purposes of this strategy, we intend the term to cover everything in the DPCO's enforcement strategies, some investigation work (ie significant issues) and significant freedom of information decisions.

Principle one The default position is that all enforcement and regulatory activities, plus significant decisions and investigations, are suitable for communications.

2.2 This policy must be driven by the reputation the DPCO wants to have: independent, influential and practical. Stakeholders have told us that they want to see us taking enforcement action (it is one of the criteria by which they judge the DPCO's reputation). They also want us to have good relationships with them. We need to ensure these relationships are based on a mutual understanding that we will wield both the carrot and the stick. We need to ensure we don't damage the reputation of the DPCO by agreeing with an organisation that we won't publicise our action.

Principle two The default assumption is that we will communicate our enforcement and regulatory activities (regardless of the stakeholder and our relationship with them). We won't promise non-publicity to an organisation during our investigations or regulatory/enforcement activity.

While there will be general agreements about how to communicate our activities, we do recognise that different cases may need different treatment. Each case will need careful consideration of the communication it requires in order to protect and promote the reputation of the DPCO.

Principle three There will be general criteria about how to communicate the DPCO's enforcement and regulatory activities, but flexibility will be allowed to take into account the needs of each individual case.

- 2.4** The relevant departments work will closely together, to allow time to identify issues likely to be of significant external interest and for timely and appropriate communications to be developed.

Principle four DPCO officers will keep each other informed of enforcement and regulatory activities in advance of the event and will work together to plan the communications treatment.

- 2.5** We need to ensure that we have a clear line of authority to clear communications treatment of enforcement activities. If the treatment cannot be agreed (or the fact that we are communicating the activities at all), then it should be referred to the Deputy Commissioner. If no agreement can be reached at that level, the Commissioner will decide.

Principle five The DPCO's Regulatory Action Policy applies to enforcement activities, as illustrated above.

- 2.6** In some cases, the DPCO may be working alongside other regulators on an investigation. These organisations may have different policies on communicating enforcement and regulatory activities. In these circumstances, the relevant DPCO departments will liaise with their counterparts in the other regulatory bodies to discuss and agree the approach to communications.

Principle six When investigating with other regulatory bodies, the DPCO will discuss the communications approach with those bodies.

3 General criteria for communicating enforcement and regulatory activities

As noted above (principle two) the default assumption is that we will communicate our enforcement and regulatory activities (regardless of the stakeholder and our relationship with them) and that (principle three) decisions on communication will be made on a case by case basis. However, it is possible to make some further general rules to help us in our decisions about whether to communicate.

3.1 When we are likely to publicise enforcement and regulatory activities

- If it's already a news story. We would probably also publicise the fact we're investigating in these circumstances.
- Where there's an opportunity for education/prevention.
- If it's new, extreme, a first etc (standard news criteria).
- If it meets a communications, corporate or information rights objective.
- If it would help an investigation to publicise it.
- If there are aggregate stories showing trends etc.
- Where publicity is likely to deter others.
- Where publicity would be in the public interest.

3.2 When we are not likely to publicise enforcement and regulatory activities

- When releasing information could prejudice a trial.
- When an investigation is underway (and it could be hindered by publicity, or the investigation may come to nothing).
- When we have several similar cases and time or news constraints mean we have to choose.
- If it is too dull or technical to make the news.
- Where we would breach Article 59 of the Data Protection (Jersey) Law 2005.

4 General criteria for communicating different types of enforcement and regulatory activities

4.1 Data protection

Preliminary notices

- More suited to aggregate story, unless there is an overriding public interest to publicise it, all parties agree, if it was already in public domain, or if there is a regulatory need.

Undertakings

- We will publicise undertakings depending on news value and/or if there is a need to address public concerns.
- Where they relate to Article 55 and are given by individuals in lieu of possible prosecution they will normally be put on our website in an anonymised form.
- Undertakings will normally be kept on our website for two years.

Prosecutions

- We may inform journalists in advance.
- We will adhere to contemporaneous reporting rules.
- We may issue a news release.
- In some cases we'll provide the case summary to a journalist.

- We will report on prosecutions in our Annual Report to the States of Jersey. This also goes on our website and will normally be kept on our website for five years.

Cautions

- We may publicise cautions depending on news value.
- More suited to aggregate story.

Enforcement Notices

- We will publicise these depending on news value.
- Enforcement notices will be put on our website and reviewed after two years.

Injunction application

- More suited to an aggregate story.

Application for Enforcement order

- We may publicise these depending on news value.

Inspection

- If publicity is desired, we will work with the relevant authority on communicating international inspections.

Negotiation

- More suited to aggregate story, unless all parties agree or it was already in public domain.

Information Notice

- We are likely to publicise if it's in the public domain
- We may publicise if it helps the investigation
- We are likely to publicise if there's an expectation of an update or we need to show we have taken action.

Search warrant

- We will publicise these in aggregate (eg in the annual report)
- We may publicise if it helps the investigation
- We are likely to publicise if it's in the public domain
- We are likely to publicise if there's an expectation of an update or we need to show we have taken action.

5 Likely tools for communicating enforcement and regulatory activities

This is not an exclusive or exhaustive list, but gives a good indication of the ways we might choose to publicise DPCO enforcement activities. The Commissioner will decide which to choose, in consultation with colleagues in relevant departments.

- journalists' briefings
- news releases
- website/internet
- Annual Report to the States of Jersey
- e-newsletter
- personal letters
- briefings to stakeholder groups.
- Special reports to the States of Jersey (on the decision of the Commissioner)

6 Review date

- We will review this policy in one year's time.