

## Data Protection (Jersey) Law 2005

# ***GOOD PRACTICE NOTE***

### ***The Buying and Selling of Customer Databases***

This good practice note has been published as guidance only and should be read in conjunction with the Data Protection (Jersey) Law 2005. This document gives practical advice for assisting with compliance with the Law when buying and selling databases which contain customers' personal information. This advice is for use when a business is insolvent or closing down, or when an asset is being sold, either by the owner or an insolvency practitioner.

#### **The most common queries the Data Protection Commissioner receives are:**

- Can databases be sold?
- What can personal information on the database be used for?
- Do I have to inform those on the database about the change of ownership?
- Can I use personal information for marketing?
- How long can I keep the information on the database?

#### **Can databases be sold?**

Yes. If an organisation first obtains information from individuals with the intention of selling the database as a commercial asset, individuals should be informed how their information is going to be used, including that it will be sold.

Normally personal information in a database should not be sold if the individuals have not been told originally that their information could be passed on to other organisations. However, where a business is insolvent, bankrupt, being closed down or sold, the Law will not prevent the sale of a database containing the details of individual customers, providing certain requirements are met. These requirements are outlined below.

#### **What can a buyer use the personal information for?**

When personal information covered by the Law is collected from individuals it should be clear to them what it will be used for. When a database is sold, the seller must make sure that the buyer understands that they can only use the information for the purposes for which it was collected. Any use of this personal information should be within the reasonable expectations of the individuals concerned. So, when a database is sold, its use should stay the same or similar. For example, if the database contains information obtained for insurance, the database should only be sold to another insurance-based business providing similar insurance products. Selling it to a business for a different use is likely to be incompatible with the original purpose and likely to go beyond the expectations of the individuals.

The buyer of any database should be aware that they can only use the personal information on it in line with the purposes for which it was originally collected. They need to know what these purposes were when they buy the database. If the buyer wants to use the personal information for a new purpose, they will have to get consent for this from the individuals concerned. As the original collector of the information, the seller has a responsibility to ensure that the personal information is used properly. This can be achieved by making it clear to the buyer what the information can or cannot be used for.

### **Do I have to tell the individuals about the change of ownership?**

The buyer should make sure that all the affected individuals are told who now has their information. This should be done as soon as practicable, and prior to any active processing of the data giving contact details for the new owners and confirming that the personal information obtained will only be used for the same purposes as before. If the buyer wants to use the information in a new way then this will also provide an opportunity to ask individuals for their consent.

### **Marketing**

The buyer of a database often wants to use it to send marketing material. Whether they will be able to do so will depend on the basis on which the personal information concerned was collected. The general rule is that unsolicited marketing can be sent to individuals where they have agreed to this or where this is nevertheless likely to be within their reasonable expectations. For example, if an individual goes on holiday with a particular travel company then it is reasonable for that company to send a brochure advertising similar holidays the next year, unless the individual has made clear that they do not wish to receive such marketing. Therefore, the buyer should check the basis on which the information was collected and whether any of the individuals have objected. The buyer should also establish whether the individuals would only expect to receive marketing via a particular medium, for example by mail. Unsolicited marketing emails should only be sent to individuals who have consented and buyers should not assume consent if an individual does not respond.

### **How long can I keep the information for?**

The Law requires that any personal information held should be adequate, relevant and not excessive, and that it should not be kept for longer than is necessary. The new owner of a database should decide how much of the information they need to keep. Any unnecessary personal information should be deleted. Personal information should not be held simply on the basis that it might become useful one day.

### **Contacting the Commissioner:**

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