

Help!

How Can I Stop Them Processing my Personal Information?

This leaflet is part of a series of nine leaflets which explain your rights under Data Protection Law and how to enforce those rights.

This leaflet deals with the right to take steps to prevent your personal data from being processed if the processing is likely to cause you or someone else to suffer substantial damage or substantial distress which is unwarranted. This right is contained in a/s 10 of the Law.

This guidance relates to both the Data Protection (Jersey) Law 2005 and the Data Protection (Bailiwick of Guernsey) Law, 2001.

Where the Laws differ and to show differences between the two jurisdictions the page will be split as shown below.

Jersey

Commissioner = Information
Commissioner

a = article within the Law

Guernsey

Commissioner = Data Protection
Commissioner

s = section of the Law

Where numbering of passages from the Laws are the same it will be shown as a/s.

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When does a/s 10 apply?

Your rights under a/s 10 of the Law apply whether you object to the processing taking place at all, or whether the objection is specifically to processing for a particular purpose or in a particular way.

A/S 10 applies only in respect of the processing of personal data (data about an identifiable living individual) of which you are the data subject where the processing is necessary:

- for the administration of justice;
- for the exercise of any functions conferred on any person under any enactment;
- for the exercise of any functions of the Crown, the States or any public authority;
- for the exercise of any other functions of a public nature exercised in the public interest by any person; or
- for the purposes of the legitimate interests of the data controller or of a third party to whom the data may be disclosed.

A/S 10 will not apply when:

- you have given your consent to the processing (although consent may be withdrawn);
- the processing is necessary for taking steps at your request with a view to entering into a contract;
- the processing is necessary for the performance of a contract to which you are a party;
- the processing is necessary for compliance with any legal obligation to which the data controller is subject, other than an obligation imposed by contract;
- the processing is necessary to protect your vital interests (which the Commissioner interprets as being a life or death situation).

If I believe that such processing is taking place, what should I do?

You have the right to send a notice to that individual or organisation requiring them, within a reasonable time, to stop the processing. This is called a "data subject notice".

Any person or organisation processing personal data is known as the "data controller".

What form should a Data Subject Notice take?

The notice must be in writing and may be in the form of a letter. You should ensure that the notice is dated.

The data subject notice must make clear the following;

- your identity and the personal data to which you refer;
- the nature of the processing and whether it is the processing for a specified purpose or in a specified manner to which you object;
- when you require the processing of personal data about you to cease (and this must be at the end of a period which is reasonable in all the circumstances) or that you require the data controller not to begin processing personal data about you;
- that the processing of personal data about you, for that purpose, is causing, or is likely to cause you or another person, substantial damage or substantial distress, (see the section on substantial damage/distress) and that damage or distress would be unwarranted; and
- the reason why you believe that the processing is causing or is likely to cause you or another person substantial unwarranted damage and/or distress.

The notice must be sent to the data controller. If you are sending the notice by post, it is advisable to send it by recorded delivery.

The notice may be transmitted by electronic means provided that the data controller is able to identify you and the personal data to which you refer

from your notice and that the notice is capable of being used for subsequent reference.

You should keep a copy of the data subject notice and the reply you receive from the data controller together with all other correspondence. Record the dates of any communications, as this will be important evidence for the court or for the Commissioner.

To whom should the notice be addressed?

If you do not have the name of a particular individual within the data controller's organisation who you know can deal with your notice, you should address the data subject notice to the managing director or company secretary.

What is a reasonable period to suggest for a data controller to cease or not to begin processing personal data about me?

This depends upon the size of the organisation. In the case of a small organisation with a small database it may be reasonable to expect them to deal with your request within 28 days. In the case of a large, multinational organisation which may conduct processing of your personal data in many locations, some of them overseas, it may take longer for the relevant department to be notified. The position will vary according to the circumstances of each case.

What must a data controller do when he receives a Data Subject Notice?

The data controller must give you written notice either that he has complied with your notice or intends to comply with it, or, he must state the extent to which he intends to comply (if at all) and explain which parts of the notice he considers to be unjustified, if any, and why. This information must be given to you within 21 days of receiving the data subject notice.

What is “substantial, unwarranted damage/distress”?

As a guide, a data subject notice is only likely to be appropriate when the particular processing has taken place without justification and has caused, or is likely to cause you or another to suffer loss or harm or upset or anguish over and above annoyance levels.

If the data controller does not accept that substantial, unwarranted damage and/or distress has been caused by the processing of your personal data, it will be a matter for the court to resolve.

What if I get no response or disagree with a decision not to comply with my request?

If the data controller fails to respond within 21 days you should write to him again seeking an explanation, enclosing a copy of your data subject notice for ease of reference. If you still do not receive a response or the response is one with which you disagree, you may ask the Commissioner to carry out an assessment as to whether it is likely or unlikely that the data controller is processing your personal data in compliance with the Law. You also have rights under the Law to pursue the matter yourself through the court.

If the Commissioner makes an assessment that the matters that concern you are likely to involve a breach of the Law, this may help you to resolve a dispute or to make a decision as to whether to take legal action against a data controller under the Law.

However, it is not necessary for you to have obtained an assessment from the Commissioner before taking a matter to court.

For information as to how to make an application to the court please refer to the Commissioner’s leaflet “Taking a case to court”.

For further information about assessments, refer to our website www.dataci.org or contact the Office (details found on the last page of this document).

What powers does the Court have?

If the court is satisfied that the data controller has failed to comply with a data subject notice, the court may order the data controller to take such steps for complying with the data subject notice as the court thinks fit.

If the court is satisfied that the data subject has suffered damage by reason of a contravention by the data controller of any of the requirements of the Law in respect of any personal data, in circumstances where the data subject is entitled to a payment of compensation, and there is a substantial risk of further contravention in respect of those data, in such circumstances the court may order the rectification, blocking, erasure or destruction of any of those data.

Please refer to "Claiming compensation" for further information as to your rights to claim compensation from the court.

Other publications in this series...

Each leaflet sets out what your rights are and, where possible, includes examples of letters and notices to send to the data controller. You will also find information to help you if you decide to take legal proceedings against a data controller.

Your Rights and How to Enforce Them

Subject Access - A guide for data subjects

Incorrect information - What can I do?

No credit? Credit explained

Stopping unwanted marketing materials

Preventing decisions based on automatic processing of my personal information

Claiming compensation

Taking a case to court

All the leaflets and other publications produced by the Commissioner referred to in this publication may be obtained from our website www.dataci.org or by contacting the Office (details found on the last page of this document).

Useful contact information:

Jersey

Citizens Advice Bureau

The Annexe
St. Paul's Community Centre
New Street
St. Helier
Jersey
JE2 3WP

T: 0800 7350249 (Freephone)
W: www.cab.org.je
Email: advice@cab.org.je

Jersey Law Society

PO Box 493
St Helier
Jersey
JE4 5SZ

T: +44 (0)1534 613920
F: +44 (0)1534 613928
W: www.jerseylawsociety.je
Email: admin@jerseylawsociety.je

Jersey Advisory & Conciliation Service (JACS)

Trinity House
West Centre
Bath Street
St Helier
Jersey
JE2 4ST

T: +44 (0) 01534 730503
F: +44 (0) 01534 733942
W: www.jacs.org.je
Email: jacs@jacs.org.je

Guernsey

Citizens Advice Bureau

Bridge Avenue
The Bridge
St Sampson's
Guernsey
GY2 4QS

T: +44 (0)1481 242266
W: www.cabguernsey.org

The Guernsey Bar

c/o Mathew Newman
Bar Secretary
Ogier House
St Julian's Avenue
St Peter Port
Guernsey
GY1 1WA

W: www.guernseybar.com
Email: barsecretary@ogier.com

Contact the Commissioner

Enquiries and Publication Requests

Jersey

**Office of the Information
Commissioner**

Brunel House
Old Street
St Helier
Jersey
JE2 3RG

T: +44 (0)1534 716530

W: www.dataci.org

Email: enquiries@dataci.org

Guernsey

**Office of the Data Protection
Commissioner**

Guernsey Information Centre
North Esplanade
St Peter Port
Guernsey
GY1 2LQ

T: +44 (0)1481 742074

W: www.dataci.org

Email: enquiries@dataci.org