

# Good Practice Note

## Subject Access & Legal Proceedings

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The Data Protection Law gives individuals a right of access to information about themselves. The aim of this guidance is to provide an explanation to Legal practitioners and Data Protection specialists of the Commissioner's view on the exercise of these access rights where legal proceedings are contemplated or ongoing.

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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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A/S 7 of the Data Protection Law entitles an individual to request from a data controller a copy of the information constituting personal data about him.

#### Jersey

This right is subject to a number of exemptions in Part IV and Schedule 7.

#### Guernsey

This right is subject to a number of exemptions in Part IV and Schedule 6.

There is nothing in a/s 7, nor Directive 95/46/EC, limiting the purposes for which a subject access request may be made. There is also nothing to provide for a data controller to require the data subject to state the purposes for which he intends to use information obtained as a result of his subject access request. There are also no exemptions from the right of access where civil legal proceedings are contemplated or ongoing.

If a data controller refuses to comply with a subject access request, then the applicant may complain to the Commissioner and / or apply to the Court for an order.

#### Jersey

This is under Article 7(12).

#### Guernsey

This is under section 7(9).

Under a/s 40, the Commissioner has discretion to serve an enforcement notice requiring a data controller to comply with a/s 7.

In practice, subject access rights are often used by individuals who are in dispute with the data controller. In many cases, they may intend to begin or have already begun legal proceedings against the data controller and see a/s 7 as a way of obtaining additional information to assist in such proceedings.

It has been suggested that case law, and in particular *Durant v Financial Services Authority* [2003] EWCA Civ 1746, provides authority for data controllers to refuse to comply with a subject access request where the applicant is contemplating or has already begun legal proceedings.

The Commissioner does not accept this proposition. She takes the view that failing to comply with a subject access request in such circumstances will, unless an exemption under the Law applies, amount to a breach of the Sixth Data Protection Principle. The right of subject access is one of the cornerstones of Data Protection legislation. If a data controller were able to avoid complying with a subject access request in circumstances where the data subject was contemplating or had begun legal proceedings it would seriously undermine this fundamental right.

However, the courts do have discretion as to whether to grant an order under the Law and may be reluctant to exercise that discretion where it is clear that the purpose of the request is to fuel separate legal proceedings and, importantly, where the discovery rules under the Civil Procedure Rules would provide a more appropriate route to obtaining the information sought. The Commissioner is also likely to take such matters into account when considering whether to exercise her enforcement powers under a/s 40.

## Contact the Commissioner

### Enquiries and Publication Requests

#### Jersey

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