

Preventing Decisions Based on Automatic Processing of Personal Data

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

It deals with the right of an individual to prevent decisions being taken solely on the basis of automatic processing in certain circumstances. This right is contained in a/s 12 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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Rights under Article/Section 12

Article/Section 12 provides that a data subject has the right:

- to require a data controller to ensure that no decisions are made based solely on the automatic processing of that data subject's personal data which significantly affect that data subject (dealt with in Part One);
- to be notified as soon as reasonably possible that a data controller has made a decision based solely on the automatic processing means of a data subject's personal data which significantly affect that data subject (dealt with in Part Two).

However, these rights will not apply to an "exempt decision" and this expression is explained below.

Terms to help you

Data Controller – Anyone who determines the purposes for which and the manner in which personal data are, or are to be, processed.

Data Subject – The individual to whom the personal information refers. If people keep personal data about you, then you are a data subject.

PART ONE

How do I prevent the Data Controller taking any decisions about me on the basis of automated processing only?

You have the right to send a notice to a data controller, requiring that data controller to ensure that he does not make any decision which significantly affects you based solely on the automatic processing of your personal data, in order to evaluate matters relating to you.

The notice might, for example, relate to your performance at work, your reliability, your conduct or your creditworthiness. The notice may relate to a specific decision, or may relate to any decisions to be taken by the data controller that would significantly affect you.

There is no particular form of words that you need to use provided that you make clear your identity and explain the particular decision to which you refer. The notice must be in writing and may be in the form of a letter. You should ensure that the notice is dated.

The notice must be sent to the data controller. If you are sending the letter 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 the notice is capable of being used for subsequent reference.

You should keep a copy of the notice you send and the reply you receive from the data controller together with all other communications, recording the dates of all correspondence. This is important as evidence in any future consideration by the Commissioner or the court.

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 company secretary.

An example of a letter is set out below:

Your full Address

The date

Dear Sir or Madam

Jersey

RE: Notice under Article 12(1) of the Data Protection (Jersey) Law 2005 to prevent processing of personal data by automatic means.

Guernsey

RE: Notice under Section 12(1) of the Data Protection (Bailiwick of Guernsey) Law, 2001 to prevent processing of personal data by automatic means.

I [insert full name] of [insert full address] request that you (whether directly or via an agent) do not make a decision about me, based solely on the processing by automatic means of my personal data for the purpose of evaluating matters which significantly affect me [relating to] (insert matter to which the notice relates).

Please note that if you fail to comply with this notice, I may apply to the court for an order that you reconsider any decision made by reason of the processing of my personal data by automatic means or that you make a new decision which is not based solely on such processing.

Yours faithfully

Signature

PART TWO

What happens if a decision is made solely by automatic means by a Data Controller which significantly affects me?

If such a decision was taken, the data controller must give you notification as soon as possible that this was the basis of the decision.

What can I do if I am not happy with the decision that has been taken?

You have 21 days from receipt of that notification to serve a notice on the data controller requiring the data controller to reconsider the decision or to take a new decision on a different basis. This is called a "data subject notice".

The data controller must, within 21 days of receiving your data subject notice, provide you with a written notification specifying the steps that he intends to take to comply with the data subject notice.

What form should the data subject notice take?

There is no particular form of words that you need to use provided that you make clear the following:

- your identity and the particular decision to which you refer;
- that you require the data controller to reconsider the decision or to take a new decision other than on the basis of solely automated processing.

The notice must be in writing and may be in the form of a letter. You should ensure that the notice is dated. An example of the form the data subject notice might take is set out overleaf:

Your full Address

The date

Dear Sir or Madam

Jersey

RE: Notice under Article 12(2)(b) of the Data Protection (Jersey) Law 2005 in connection with the processing of personal data by automatic means.

Guernsey

RE: Notice under Section 12(2)(b) of the Data Protection (Bailiwick of Guernsey) Law, 2001 in connection with the processing of personal data by automatic means.

I [insert full name] of [insert full address] refer to the decision made by you as a result of the processing of my personal data by automatic means which was notified to me [in your letter dated [] / which was received by me on []/ in your telephone call on []].

I request that you [reconsider the decision] [take a new decision made otherwise than on the basis of the processing of my personal data by automatic means].

Please note that if you fail to comply with this notice, I may apply to the court for an order that you reconsider any decision made by reason of the processing of my personal data by automatic means, or that you make a new decision which is not based solely on such processing.

Yours faithfully

Signature

The notice must be sent to the data controller. If you are sending the letter 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 the notice is capable of being used for subsequent reference.

You should keep a copy of the notice you send and the reply you receive from the data controller, together with any other communications, recording the dates of all correspondence. This is important as evidence in any future consideration by the Commissioner or the court.

The notices are only appropriate where a decision significantly affects you. In the event of a dispute, only the court can decide whether the effect is significant and each case will be decided on its own merits. However, when you are considering issuing a data subject notice you must try to look objectively at what effect the decision has had on you. If it has merely caused you annoyance then it is unlikely to be considered significant.

What if the decision taken results in a refusal of credit?

If the automated processing is used to take a decision that results in you being refused credit, refer to the publication entitled "No credit?" produced by the Commissioner.

What is an exempt decision?

Article/Section 12 does not cover decisions taken by the data controller in the course of steps taken:

- for the purpose of considering whether to enter into a contract with you;
- with a view to entering into such a contract;
- in the course of performing such a contract; or
- where the decision is authorised or required by any enactment; and

- the effect of the decision is to grant your request or steps have been taken to safeguard your legitimate interests, for example, by allowing you to make representations.

What can I do if the matter is not resolved to my satisfaction?

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 publication entitled "Taking a case to court".

What can the Court do if a Data Controller fails to comply with a notice?

If the court is satisfied that a data controller has failed to comply with a notice under a/s 12 the court may order the data controller to reconsider the decision or to take a new decision which is not based solely on the automatic processing of personal data.

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

Help! How can I stop them processing my personal information?

Incorrect information - What can I do?

No credit? Credit explained

Stopping unwanted marketing materials

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