



Prime Minister's Office
Data Protection Office

Volume 3

Data Protection - Your Rights



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INTRODUCTION

WHO CAN BE A DATA SUBJECT?

WE ARE ALL DATA SUBJECTS. WHENEVER YOU BOOK A FLIGHT, APPLY FOR A JOB, USE A CREDIT CARD, FILLS IN A SOCIAL SECURITY FORM OR BROWSE ON THE INTERNET, – YOU DO DISCLOSE SOME PERSONAL DATA.

Those who hold personal information relating to individuals must do so in a responsible manner. It is possible however, that:

- The information kept about you may be wrong or out of date;
- It may be given to someone not entitled to see it;
- You may find yourself receiving 'junk mail';
- Your privacy might be threatened in other more serious ways.

The Data Protection Act 2004 gives you rights to protect yourself against these and similar problems, and creates obligations for those keeping personal information.

You have the right to be informed of your personal data processing when you are the data subject. Data controllers are required to inform you whenever they collect personal data concerning you, unless you have previously been informed. You have the right to be informed of: the identity of the controller, the purposes for the processing and any further information such as the recipients of the data and the specific rights that you, as data subject, are entitled to. You have the right to receive this information whether the data was obtained directly or indirectly from third parties. Derogation may be allowed in the latter case if compliance is not reasonably practicable at the time of collection or the data is used in a form in which the data subject cannot reasonably expect to be identified.

DEFINITIONS

- **“consent”** means any freely given, specific and informed indication of the wishes of the data subject by which he signifies his agreement to personal data relating to him being processed;
- **“data”** means information in a form which is capable of being processed by means of equipment operating automatically in response to instructions given for that purpose; and is recorded with the intent of it being processed by such equipment; or is recorded as part of a relevant filing system or intended to be part of a relevant filing system;
- **“data controller”** means a person who, either alone or jointly with any other person, makes a decision with regard to the purposes for which and in the manner in which any personal data are, or are to be, processed;
- **“data processor”** means a person, other than an employee of the data controller, who processes the data on behalf of the data controller;
- **“data subject”** means a living individual who is the subject of personal data;
- **“direct marketing”** means the communication of any advertising or marketing material which is directed to any particular individual;
- **“personal data”** means data which relate to an individual who can be identified from those data; or data or other information, including an opinion forming part of a database, whether or not recorded in a material form, about an individual whose identity is apparent or can reasonably be ascertained from the data, information or opinion.

RIGHT OF ACCESS

The personal information to which you are entitled access is that which is either held on a computer or in a manual filing system about you. You can make an access request to any organisation or any individual who hold personal information concerning you. For example, you can make an access request to your doctor, your bank, a credit reference agency, a Government Department dealing with your affairs, or your employer.

Under section 41 of the Data Protection Act, any individual may make a written request to the data controller, who keeps personal information regarding that particular individual on computer or in a relevant filing system and is entitled to: (a) have a copy of the data upon payment of a fee of Rs 75, (b) know whether the data kept by the data controller include personal data relating to him, (c) have a description of the purposes for which it is held and (d) have a description of those to whom the data may be disclosed; unless compliance with such a request would be in breach of the confidentiality obligation of the data controller.

The data controller is also obliged to explain to the data subject the logic used in any automated or non-automated decision making process where the decision taken by him with regard to the personal data of the individual significantly affects the latter. This “right of access” is, however, subject to a limited number of exceptions, which are listed below.

An individual making an access request must:-

- apply to the data controller in writing by filling in the request for access to data form available on the website <http://dataprotection.gov.mu>;
- give any details which might be needed to help the data controller identify him or her and locate all the information the data controller may keep about him/her;
- The individual must also pay the data controller the access fee of Rs 75.

Every individual about whom a data controller keeps personal information on computer or in a relevant filing system, has a number of other rights under the Act, in addition to the Right of Access. These include the right to have any inaccurate information rectified or erased, to have personal data taken off a direct marketing or direct mailing list and the right to complain to the Data Protection Commissioner.

WHAT MUST THE DATA CONTROLLER DO IN RESPONSE TO AN ACCESS REQUEST?

- Supply the information to the individual within 28 days of receiving the request. Note that, having received the access request, the data controller cannot change or delete the personal data which you hold just because you do not wish the data subject to see it. Where the data controller is unable to comply with the request within 28 days, the data controller must inform the data subject or the relevant person acting on behalf of the data subject, before the expiry of the 28 days, that he is unable to do so and if required, to also state the reasons thereof and endeavour to comply with the request as soon as is reasonably practicable;
- Provide the information in a form which will be clear to the ordinary person (e.g., any codes must be explained).
- Ensure that you give personal information only to the individual concerned (or someone acting on his or her behalf and with their authority). For instance, you normally would not provide such information by phone.

If the data controller does not keep any information on computer or in a relevant filing system about the individual making the request you should tell them so within the 28 days.

The fee must be refunded if you do not comply with the request.

ARE THERE EXCEPTIONS OR LIMITATIONS ON THE RIGHT OF ACCESS TO PERSONAL DATA?

Yes, there are. Section 43 of the Data Protection Act provides that the right of access does not apply in a number of cases.

The restrictions upon the right of access fall into five groups:

The obligation to comply with an access request does not apply where:-

- the data controller is not supplied with the information he reasonably requires in order to satisfy himself as to the identity of the person making the request and to locate the information which the person seeks;
- compliance with the request would be in contravention of the confidentiality obligation imposed upon the data controller under Mauritian law;
- the data controller may refuse a request where disclosure would involve revealing personal data relating to another person to the data subject. However, where the other individual consents to the disclosure or the data subject obtains the approval of the Commissioner, the data controller would have to accede to the request. The Commissioner has the duty to see to it whether it is reasonable to approve a request without the consent of the other individual concerned and must take into account:-
 - any duty of confidentiality owed to that other individual;
 - any steps taken by the data controller with a view to seeking the consent of that individual;
 - whether that individual is capable of giving consent; and
 - any express refusal of consent by that individual.

Where a data controller has previously complied with a request by data subject under section 41, the data controller is not obliged to comply with a subsequent identical or similar request unless a reasonable interval of time has elapsed between the previous and the

subsequent requests. In determining what constitutes a reasonable interval, the Commissioner will have regard to:-

- The nature of the data;
- The purpose for which the data are processed; and
- The frequency with which the data are altered.

Thus, the right of access does not include a right to see personal data about another individual, without that other person's consent. This is necessary to protect the privacy rights of the other person. Where personal data consists of expressions of opinion about the data subject by another person, the data subject has a right to that expression of opinion except where that expression of opinion was given in confidence.

- The right of access does not include information given in confidence to the data controller for the purposes of the education, training or employment, or prospective education, training or employment of the data subject, the appointment or prospective appointment of the data subject to any office, the provision or prospective provision by the data subject of any service and where the personal data requested consist of information recorded by candidates during an academic, professional or other examination; such compliance would expose the data controller to legal proceedings since evidence concerning an offence other than an offence under the Act, may be revealed.

RIGHT OF RECTIFICATION OR ERASURE AND BLOCKING

Decisions, which significantly affect the data subject, such as the decision to grant a loan or issue insurance, might be taken by the data controller. Therefore, the data controller must adopt suitable safeguards, such as giving the data subject the opportunity to discuss the rationale behind the data collected or to contest decisions based on inaccurate data.

If you find out that information kept about you by someone else is inaccurate, you have a right to have that information corrected (or “rectified”). In some circumstances, you may also have the information erased altogether from the database - for example, if the body keeping the information has no good reason to hold it (i.e. it is irrelevant or excessive for the purpose), or if the information has not been obtained fairly. You can exercise your right of rectification or erasure simply by informing the body keeping your data.

In addition, you can request a data controller to block your data i.e. to prevent it from being used for certain purposes. For example, you might want your data blocked for research purposes where it is held for different purposes.

You are thus entitled to approach any data controller to know whether or not he is processing personal data that concern you, to receive a copy of the data in an intelligible form and to be given any available information about their sources. If the personal data are inaccurate, or if they were unlawfully processed, you are entitled to ask for the rectification, block, erasure or destruction of the data. Where a data controller is aware that a third party holds inaccurate personal data, he must, as soon as is reasonably practicable, require that third party to rectify, block, erase or destroy the data as appropriate.

Where the third party fails to comply with that requirement, he would be committing an offence and where the data controller fails to rectify, block, erase or destroy the inaccurate data as appropriate, the data subject may apply to the Commissioner to have such data rectified, blocked, erased or destroyed, as appropriate.

Where the Commissioner is satisfied that the data is incorrect, she will direct the data controller to do needful and when needful has been done, she will direct the data controller to notify third parties to whom the data have been disclosed for needful to be done as regards rectification, blocking, erasure or destruction.

RIGHT TO FREEDOM FROM AUTOMATED DECISION MAKING

Important decisions about you, such as rating your work performance, your creditworthiness or your reliability does not always have to be made solely by computer or automated means unless you consent to this. Generally speaking, there has to be a human input to such decisions.

RIGHT TO HAVE YOUR NAME REMOVED FROM A DIRECT MARKETING LIST

If an organisation holds your information for the purposes of direct marketing (such as direct mailing, or telephone marketing), you have the right to have your details removed from that database. This right is useful if you are receiving unwanted “junk mail” or annoying telephone calls from salespeople. You can exercise this right simply by writing to the organisation concerned. The organisation must write back to you confirming that they have dealt with your request.

For Individual Subscribers

Electronic mail (i.e. a text message, voice message, sound message, image message, multimedia message or email message) for the purpose of direct marketing cannot be sent to you without your prior consent unless it is from someone with whom you have a current customer relationship. The Data Protection Commissioner considers that, in order to comply with the provisions of the Data Protection Act concerning the retention of data for no longer than is necessary, and in line with best practice, a ‘current customer relationship’ exists where a business and a customer have engaged in a business transaction for a reasonable period of time. The rules for direct marketing using electronic mail are simple:

Advice on how to protect yourself

Some of the information used to market you is in the public domain, such as the telephone directory. In other situations, marketers generally do not obtain your details unless you have either directly given them your contact details or have supplied contact details in the context of entering a competition, a promotion or some form of lifestyle survey. If you are supplying contact details in these circumstances, read the conditions of entry carefully in order to understand how your contact details may be used. If the conditions state that your details may be used for marketing, or passed on to third parties to use for marketing, you must judge whether entering the competition is worth it.

Even where you do supply contact details, you can always change your mind at a later date and inform that organisation that you do not want to receive

marketing. However, this may be of little value when the organisation has already passed your details to third parties.

In general, when you are asked for your contact details, you should ask why they are needed. If you are not satisfied with the reasons offered, or do not trust the organisation, you must judge whether you want to risk volunteering information.

Be careful when supplying details on a public space such as a website forum. Details may be viewed by people without your knowledge and used without your consent. Similarly, be careful if you have a website and are placing contact details on it. Such details are commonly harvested by unscrupulous marketers.

By being careful about how you supply your contact details, you can do an awful lot to limit the use of such data by spammers.

If you own a mobile phone, be careful who else you let use it. It has been known for “friends” to subscribe each other to various services. The same applies to use of your e-mail account.

RIGHT TO COMPLAIN TO THE DATA PROTECTION COMMISSIONER

What happens if someone ignores your access request, or refuses to correct information about you which is inaccurate? If you are having difficulty in exercising your rights, or if you feel that any person or organisation is not complying with their responsibilities, then you may complain to the Data Protection Commissioner, who will investigate the matter for you. The Commissioner has legal powers to ensure that your rights are upheld and you may also appeal to the ICT Tribunal when the data controller does not comply with the notice sent by you to stop or not to begin the processing of your personal data for direct marketing purposes under section 30 of the Act.

For instance, a complaint can be made in writing or via e-mail to the Data Protection Office. The complaint form is available on the website <http://dataprotection.gov.mu>

When making a complaint, you should provide as much information as possible, including your own contact details; time and date of the message; a copy of the message if possible, or a summary of contents if not; information about any previous dealing with the sender of the message as well as a statement that you are making a formal complaint.

The complaint should enclose the following (if available):

- Your name and postal address (other contact details optional).
- A copy of the communication(s) which you received (photocopy of fax/transcript of call).
- The date and time of receipt.
- Details of the number on which the message was received.
- Details of the number from which the message was sent.
- A declaration that you have not consented to receiving such communications.
- A declaration that you have not been/are not a customer of the sender or, if a customer, that you have instructed the sender not to send messages.

- A copy of any instruction given to the sender not to send messages to you/make calls.
- Details of the instruction you gave your phone line provider to record an opt-out.

If the complaint includes any sensitive data, you are advised that e-mail is not a secure medium and you may wish to post the complaint instead.

If you wish to discuss any issue surrounding unsolicited commercial communications, you may phone the Commissioner's office.

RIGHT TO SEEK COMPENSATION THROUGH THE COURTS

If you suffer damage through the mishandling of information about you, then you may be entitled to claim civil compensation through the Courts. You should note that any such compensation claims are a matter for the Courts - the Data Protection Commissioner has no jurisdiction in this matter.

OBLIGATIONS

As mentioned above, people or organisations keeping personal information must give individuals access to their personal information, and must correct or delete any information found to be inaccurate or irrelevant. But their responsibilities don't stop there.

They must:

- Obtain personal information fairly and openly
- Use it only in ways compatible with the purpose for which it was given in the first place
- Secure it against unauthorised access or loss
- Ensure that it is kept accurate and up to date

They must not:

- Further process data in a manner incompatible with the purpose for which it was given
- Retain it for longer than is necessary for the purpose for which it was given

Any failure to observe these principles would be a breach of the Data Protection Act.

WHAT CAN YOU DO IF YOUR RIGHTS HAVE BEEN VIOLATED?

Your first step, if you fear that your rights have been violated, is to contact the person who appears to be the source of the violation in order to find out who the Data Controller is. If you don't get a satisfactory result from this, you could contact the Data Protection Office.

SOME QUESTIONS AND ANSWERS TO HELP YOU IN UNDERSTANDING YOUR RIGHTS

- Q.** A telecommunications provider gave information about your telephone or e-mail account to another company. As a result, you receive unsolicited calls or e-mails. What can you do?
- A.** If personal data was collected for billing purposes only, and you did not consent to further transfer of your data, then you are entitled to object to the transfer of your data to any third parties. The first step should be to write to your provider, clearly stating your complaint. If you receive no satisfactory answer, then you should contact the Data Protection Office.
- Q.** You are denied a loan because of inaccuracies in a bank's file. You made an access request to your bank in order to know what information was recorded on the bank's computer about your credit record. However, the bank failed to respond to your access request. You made several telephone calls to the bank regarding this request but to no avail. What should you do next?
- A.** The Act states that you have the right to obtain access to any personal data held about you. If the data are inaccurate, you have the right to rectify them. Therefore, if you do not receive an answer from the bank within 28 days, you can complain directly to the Data Protection Office which must investigate the claim and inform the complainant of the outcome. To contact the supervisory authority, you should in writing describe the problem and submit enough information so that the problem is well described by filling in the standardised form available online or at the Data Protection Office.
- Q.** Your employer has shared your medical file with your bank without seeking your consent. The medical file included information, the content of which may explain why your bank is refusing to allow you a mortgage credit. Are you entitled to compensation?
- A.** You are entitled to compensation if you suffer damage as a result of the unlawful disclosure of your personal data. This may be the case if your medical data have been shared without your consent. Any person or business may lodge a complaint with the Commission about an alleged violation of the Act.

