

Is it Personal Data?

How to identify what is 'Personal Data'

The Data Protection Act 2002 (the 'Act') implements the European Directive 95/46/EC and reflects similar legislation in the United Kingdom and across European Economic Area member states. The Act only applies to **'personal data'**.

The European Union¹ and the UK's Information Commissioner's Office² have issued guidance on the concept of personal data. It is apparent that clearer guidance would be beneficial to organisations in the Isle of Man jurisdiction and this document, together with the requirement to interpret the Isle of Man legislation as far as possible in the spirit of the intention of the Directive, aims to provide such general guidance.

'Data' and 'personal data'

The Act identifies three types of **'data'**:

- Information processed, or with the intention of being processed, by automatic means
- Information held in a relevant filing system
- Information held in accessible records

Information processed by automatic means (computerised) includes, but is not limited to, email, word-processed documents, information stored on portable devices, CCTV images, monitoring systems, telephone recordings and entry systems.

A relevant filing system is a structured set of manual (paper) files within which information can be readily found. The most common example of this is staff personnel files.

Accessible records include health, education and certain housing records.

'Personal data' is 'data', as described above, which identifies a **living individual** either on its own or in combination with other information in the possession of or likely to come into the possession of, the data controller (organisation).

On the following page you will find a flowchart which will help you identify whether information is or is not personal data and, therefore, whether the Act applies to that information. Further guidance is available from Reference Points as indicated on the flowchart. To enable the considerations to be more easily understood, this guidance uses the Minutes of a meeting as an example throughout, supplemented by other examples where necessary or to emphasise or differentiate a point.

**This guidance note has been prepared to assist you identify personal data.
The advice given is general, and is not intended to be legal guidance.
Further information can be obtained from the ODPS.
www.gov.im/odps email enquiries@odps.gov.im tel. 01624 693260**

¹ Article 29 working Party Opinion 4/2007 on the concept of personal data
http://ec.europa.eu/justice_home/fsj/privacy/docs/wpdocs/2007/wp136_en.pdf

² ICO Technical Guidance Note 'Determining what is personal data'
http://www.ico.gov.uk/upload/documents/library/data_protection/detailed_specialist_guides/personal_data_flowchart_v1_with_preface001.pdf

Is it Personal Data?

Does the data, or inferences drawn from the data, **impact** or have the **potential to impact** on an individual in any way in a personal, family, business or professional capacity?
See Reference Point 1

NO

UNLIKELY to be personal data

YES

Can a **LIVING** individual be identified from the information on its own or when combined with other information in, or likely to come into your possession?
See Reference Point 2

NO

NOT personal data

YES

Is the data **OBVIOUSLY** about a particular individual?
See Reference Point 3

YES

Personal Data

NO

Is the data **'linked'** to an individual? Does it provide particular information about that individual? Is the data used, or will it be used, to inform or influence actions relating to the individual?
See Reference Point 4

YES

Personal Data

NO

Does the data have any **biographical** significance in relation to the individual? Is the individual the **central** theme of the information rather than an on an object, event or transaction?
See Reference Point 5

YES

Personal Data

NO

NOT personal data

Working through the flow chart

Reference Point 1

*“Does the data, or inferences drawn from the data, **impact** or have the **potential to impact** on an individual in any way in a personal, family, business or professional capacity?”*

This is the prime consideration – does the data have, or could it have, any impact on the individual? If you are unsure, it is best to answer this question ‘Yes’ and go on to the next question.

Minutes

A set of Minutes includes discussions surrounding a new footpath being built between Number 29 and Number 30 Acacia Avenue. Although no names are mentioned and individuals are not readily identifiable, the data is still likely to have an impact on unnamed persons, particularly those living in the vicinity.

Fleet Vehicle Tagging

Technology now enables fleet managers to install unobtrusive monitors in vehicles to enable them to be tracked. This is a useful method to increase efficiency and monitor the time spent at premises or in transit.

However this information, or data, could equally be used in disciplinary proceedings or in identifying unsuitable driving habits as, in many products, the speed, instances of excessive braking and accelerating are also recorded. Whilst on its own this data only identifies the vehicle, it is likely to have an impact on the individual driving the vehicle.

Reference Point 2

*“Can a **LIVING** individual be identified from the information on its own or when combined with other information in, or likely to come into, your possession?”*

The Act only relates to living individuals, therefore information relating to a deceased person, or to any other entity does not fall within the Act.

For the data to be ‘personal data’ you must be able to identify a living individual from the information on its own or when combined with other information in your possession, or information you are likely to get.

A name on its own may not be personal data, for example there are many people with the surname Smith. But when this is combined with other information which enables an individual to be identified it becomes ‘personal data’.

A written description of an individual can be personal data, even though no name is mentioned. For example: the elderly grandmother living in a very large house in London who has lots of expensive jewellery and soldiers at her front gate - although you may not know her personally, you can recognise who she is! This can be ‘personal data’ – information which identifies a living individual.

Minutes

Do the Minutes name an individual? Has the resident of 29 Acacia Avenue been identified as Mrs. Smith? If so, this is Mrs. Smith’s ‘personal data’.

Fleet Vehicle Tagging

Is there a list of vehicle registrations or identifying fleet numbers?

Is there a roster of individuals responsible for each vehicle at a given time?

If so, when this information is combined it identifies Mr. Smith as driving vehicle number X2345 on February 28th at 14.30. This is Mr. Smith’s personal data.

Reference Point 3

*"Is the data **OBVIOUSLY** about a particular individual?"*

Examples of information 'obviously' about an individual are medical records, criminal records or performance records relating to work or sporting activities.

It is the content of this type of information that determines whether it "relates to" an individual.

It is important to remember that 'personal data' also includes expressions of intent towards the individual and opinions about them.

Minutes

Quote from the Minutes:

"We have received a letter from Mrs. Joan Smith of 29 Acacia Avenue concerning the proposed new footpath. This lady is a busybody and is always complaining about something. She thinks that just by paying her rates on time she can moan about everything. If I had my way we would charge her double rates."

This is obviously about Mrs Smith – she is named and identified as living at 29 Acacia Avenue. The opinions and expressions of intent contained within this statement are also her 'personal data', and if she made a subject access request this information should be provided to her!

Reference Point 4

"Is the data 'linked' to an individual?"

Does it provide particular information about that individual?

Is the data used, or will it be used, to inform or influence actions relating to the individual?"

Much information about individuals will be 'linked' to them in some way. For example, bank statements or phone bills detail the activities of individuals.

Ask yourself the following questions:

Is the data being, or could it be, processed to

- Learn
- Record or
- Decide

something about the identifiable individual?

Could it be used to inform or influence actions relating to that identifiable individual?

Is the information used to decide how much to charge an individual for a service or offer discounts – e.g. phone bills?

Could the information be used to market specific products?

If so, it is 'personal data'.

Minutes

What if the Minutes stated:

"The lady at No. 29 Acacia Avenue always pays her rates on time and is upset that she has not been consulted over the new footpath"

– could this influence a decision to offer a discount on her rates during the construction of the footpath?

Fleet Vehicle Tagging

In an accident report, Mr. Smith, the driver of vehicle X2345 states that he "was only doing 35 mph" at the time of the accident on February 28th. The tracking system indicates a speed in excess of 50 mph – will this influence an action relating to the individual such as a disciplinary proceeding?

Reference Point 5

*“Does the data have any **biographical** significance in relation to the individual?
Is the individual the **central** theme of the information rather than an on an object, event or
transaction?”*

If you have already decided that the information is ‘personal data’ as it is ‘obviously’ about them by its content, is ‘linked’ to them because it is about their activities or because the information is processed to determine an action relating to the individual there is no need to consider this point.

If you need to consider this point ask yourself:

Does this information record anything other than the individual’s casual connection with an event or matter which has no personal connotations for him or is unlikely to affect the individual in any way?

If the answer to this question is ‘No’ this is unlikely to be ‘personal data’.

Minutes

If an individual is recorded as attending a meeting in the Minutes, then this is biographical as it records the individual’s location at a given point in time. This is ‘personal data’. Only information in the Minutes which is about the individual is ‘personal data’– this does not mean that the entire Minutes are ‘personal data’.

In the case of Mrs Smith, information about her such as her address, the fact that she pays her rates promptly or a committee member statement that she is “a busybody” is biographical and, therefore, her ‘personal data’.

Fleet Vehicle Tagging

If a letter of complaint was received about the quality of work carried out by Mr. Smith and the length of time taken, the letter would contain the ‘personal data’ of the complainant. The information contained in the investigation report relating to the processes or actions involved leading up to the incident would not be the ‘personal data’ of the complainant – this information is not ‘about’ the complainant.

Some of the information contained in the investigation report may be the ‘personal data’ of Mr Smith, as the time spent completing the work will have been recorded in the system and can, therefore, be linked to him.