

**DATA PROTECTION ACT  
PREVENTING DECISIONS  
BASED ON AUTOMATIC  
PROCESSING OF MY  
PERSONAL INFORMATION**

SIX



Information Commissioner



# **DATA PROTECTION ACT - PREVENTING DECISIONS BASED ON AUTOMATIC PROCESSING OF MY PERSONAL INFORMATION**

Introduction	1
Terms to help you	2
<b>Part one</b>	
How do I prevent a data controller taking any decisions about me on the basis of automated processing only?	3
To whom should the notice be addressed	4
<b>Part two</b>	
What happens if a decision is made solely by automatic means by a data controller which significantly affects me?	6
What can I do if I am not happy with the decision that has been taken?	6
What form should the data subject notice take?	7
What if the decision taken results in a refusal of credit?	10
What is an exempt decision?	10
What can I do if the matter is not resolved to my satisfaction?	11
What can the court do if the data controller fails to comply with a notice?	12

## INTRODUCTION

This leaflet 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 section 12 of the Data Protection Act 1998 (the “Act”).**

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 I on page 3);
- 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 II on page 6).

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

This leaflet is part of a series of eight leaflets which explain your rights under the Data Protection Act.

Details of our other leaflets can be found at the back. If you would like any of these please contact the Information Commissioner's Office. You will find our contact details on the back cover.

## 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 A 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 overleaf:

**Your full Address  
Date**

**Dear Sir or Madam**

**RE: Notice under section 12(1) of the Data Protection Act 1998 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 below:

**Your full address  
The Date**

**Dear Sir or Madam**

**RE: Notice under section 12(2)(b) of  
the Data Protection Act 1998 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?

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 Act. You also have rights under the Act 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 Act, 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 Act.

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".**

For further information about assessments, refer to the Commissioner's website

**[www.informationcommissioner.gov.uk](http://www.informationcommissioner.gov.uk)**

or contact the Commissioner's Office on 01625 545745.

## **WHAT CAN THE COURT DO IF THE 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 section 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 Act 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.



## **1. YOUR RIGHTS AND HOW TO ENFORCE THEM**



## **2. SUBJECT ACCESS - A GUIDE FOR DATA SUBJECTS**



## **3. INCORRECT INFORMATION - WHAT CAN I DO?**



## **4. HELP! HOW CAN I STOP THEM PROCESSING MY PERSONAL INFORMATION?**



## **5. STOPPING UNWANTED MARKETING MATERIALS**



## **7. CLAIMING COMPENSATION**



## **8. TAKING A CASE TO COURT**

*To order copies of the above leaflet contact the Information Commissioner's Office. You will find the details on the back cover.*

**Citizens Advice**

Myddleton House  
115-123 Pentonville Road  
London  
N1 9LZ

T: 020 7833 2181

W: [www.citizensadvice.org.uk](http://www.citizensadvice.org.uk)

W: [www.adviceguide.org.uk](http://www.adviceguide.org.uk)

**Court Service**

T: 020 7210 2266

W: [www.courtservice.gov.uk](http://www.courtservice.gov.uk)

**The Department for Constitutional Affairs**

W: [www.dca.gov.uk](http://www.dca.gov.uk)

**Legal Services Commission**

T: 020 7759 0000

W: [www.legalservices.gov.uk](http://www.legalservices.gov.uk)

## **Publication Request**

t: 01625 545 700  
f: 01625 524 510  
e: [mail@ico.gsi.gov.uk](mailto:mail@ico.gsi.gov.uk)

## **Enquiries**

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DP/LRP/6/050/20K



**Data Protection**

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