

# The Data Protection Ordinance 2004



## A guide for business & organisations

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# **Data Protection Ordinance 2004**

## **A Guide for Business, Organisations and Public Bodies**

As from January 2004 Gibraltar has had its own data protection law – the Data Protection Ordinance 2004.

The Ordinance is not currently in force, but will be commenced following a period of consultation.

The Data Protection Ordinance will affect a wide range of businesses, organisations and public bodies. Its central aim is to ensure that information held about people is accurate and that people know how information about them is being used. To achieve this it places responsibilities on persons who control information and gives rights to people about whom information is kept.

This guide aims to assist businesses, organisations and public bodies to prepare for their new responsibilities. It sets out –

- who has responsibilities under the Ordinance,
- what are the key responsibilities,
- who needs to register with the Data Protection Commissioner,
- information about transferring data outside Gibraltar,
- where you can get more advice.

This guide is for general information only. It is not legal advice or a definitive statement of the law and does not include detailed information about the legal provisions of the Ordinance.

## **Do you have data responsibilities?**

If you answer YES to the following question then you will have data protection responsibilities under the Ordinance –

- do you keep or control the use of personal data about living people whether on computer or in manual records?

Personal data is information about living people who can be identified. It can be any information – even something as simple as a name and address. More complex information such as pay records, financial records, educational records or criminal records will also be personal data.

The Ordinance does not cover personal data or information held for purely personal, household purposes such as personal address books and diaries.

## **Your key responsibilities**

What are your key responsibilities?

1. *Fair & lawful obtaining and processing;*
2. *Keeping & use of personal data only for specific purposes;*
3. *Accuracy* - keeping personal data accurate and up to date;
4. *Security* - keeping personal data safely and securely;
5. *Access* – allowing access to his or her personal data to anyone who asks for it.

*If you do not comply with your responsibilities under the Ordinance you may have to pay financial compensation and may be guilty of a criminal offence.*

### **Responsibility 1**

#### ***Fair & lawful obtaining and processing of personal data***

- **Key responsibility** – to ensure that the people about whom you keep information know that you keep it and purposes for which you keep and use it and to ensure that the information is only stored and used as permitted by the Data Protection Ordinance.

To comply with this rule you will need to –

- make sure that people about whom you have or control information know that you keep it and the purposes for which it will be kept or used and that they are provided with the information set out in section 10 of the Ordinance;
- make sure that you are only storing or using personal data for a purpose authorised by section 7, or if the information is ‘sensitive data’ that you are only storing or using it for a purpose authorised by section 8 of the Ordinance.

### **Responsibility 2**

#### ***Obtaining and use of information only for specific purposes***

- **Key responsibility** –to obtain, use and disclose information about people only in a manner compatible with the purpose(s) for which you have informed them the information will be kept or used (section 6(1)(c)).

To comply with this rule you will need –

- to collect and keep information about people only for purposes which they have been told about;

- not to keep information about people which is unnecessary or excessive for the purpose(s) about which you have informed them;
- not to use or disclose information about individuals for purpose(s) different to those about which you have informed them;
- not to keep information for longer than necessary for the purpose(s) about which you have informed them.

### **Responsibility 3**

#### ***Making sure information is accurate and up to date***

- **Key responsibility** – to ensure that information is accurate and, where necessary, is kept up to date (section 6(1)(b)).

To comply with this rule you will need to have procedures to ensure that information held about people is up to date and accurate.

### **Responsibility 4**

#### ***Keeping information safely and securely***

- **Key responsibility** – to ensure that information about individuals is kept safely and confidentially (sections 6(1)(d), 11, and 12).

To comply with this rule you will need to have effective organisational and technical security procedures in place and your staff must know that they must keep personal information securely and in accordance with any security procedures you have established.

### **Responsibility 5**

#### ***Giving information to individuals who request it***

- **Key responsibility** – to enable individuals to know what information you keep generally about

people, and what information you keep specifically about them.

Under the Ordinance individuals about whom information is kept have a range of rights (for more information see leaflets "*Data Protection – What's it all about?*" and "*Data Protection – Your rights*"). To exercise their rights people may need to know what, if any, information you hold about them.

To comply with this rule you will need –

- to provide general information, free of charge, to the public about the type of information that you keep about individuals and the purposes for which you keep it (section 14(1)).
- to provide an individual with a copy of any information which you keep, or control, about them if they, in writing, request it. You must provide the information within 21 days of receiving the written request and may charge a fee for providing it (section 14).

## **Registration with the Commissioner**

Most businesses, organisations and public bodies which 'process' information by computer will need to register with the Data Protection Commissioner (see sections 23 and 24 of the Ordinance).

## **Transferring information outside Gibraltar**

Some businesses, organisations and public bodies may need or wish to transfer information relating to individuals to a place outside Gibraltar. For example the medical practices may wish to transfer medical records

to Spain or the UK, businesses may wish to transfer records to branches in Switzerland or the Isle of Man.

Sections 30 and 31 of the Ordinance deal with the transfer of information from Gibraltar.

### **Where can I get more advice?**

The Data Commissioner can provide information on all aspects of the Data Protection Ordinance.

Data Protection Commissioner,  
Gibraltar Regulatory Authority,  
Suite 811 Europort, Gibraltar.  
Tel: 74636 Fax: 72166  
Email: info@gra.gi

You may also find the following websites helpful–

- Irish Data Protection Commissioner –  
<http://www.dataprivacy.ie/docs/Home/4.htm>
- UK Data Protection Commissioner –  
<http://www.informationcommissioner.gov.uk/>
- European Commission –  
[http://europa.eu.int/comm/justice\\_home/fsj/privacy](http://europa.eu.int/comm/justice_home/fsj/privacy)

You can obtain a copy of the Data Protection Ordinance at –

<http://www.gibraltarlaws.gov.gi/articles/2004-01o.pdf>

**Additional copies of this guide may be obtained at –**  
[www.gibraltar.gov.gi](http://www.gibraltar.gov.gi)