

The Data Protection Ordinance 2004



A guide for people

Government of Gibraltar

Ministry of Consumer & Civic Affairs
Ministry for Trade, Employment & Communication
Ministry for Financial Services

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Data Protection – Your Rights

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.

This guide aims to inform readers in advance about the new law and the rights that they will have under it. It sets out –

- what is covered by the Ordinance, and
- what are your key rights.

In today's world information is kept about all of us. Our employers keep information about us, as does our bank and our landlord. Every time we book a flight or even pay for our groceries in the supermarket with a credit card we are giving someone personal information about us, information which they may keep and use.

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

To exercise those rights you may need to write a letter to the person who holds data about you – remember that it's always wise to keep a copy of any letters you write.

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.

What sort of information is covered?

The Ordinance gives you rights about 'personal data' held about you.

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.

However personal data under the Ordinance does not include information held for purely personal, household purposes such as personal address books and diaries.

Your key rights

What are your key rights?

1. a right to have information about yourself collected, stored and used in accordance with the data protection principles;
2. a right to access information about yourself;
3. a right to have incorrect information about yourself corrected or destroyed;
4. a right to object to the use of information for the purposes of direct marketing;
5. a right not to have decisions made about you made solely on the basis of automatic processing of information; and
6. a right to complain to the Data Protection Commissioner and to take legal action against the improper use of information.

Key Right 1.

The data protection principles

Businesses, organisations and public bodies must comply with the data protection principles when collecting and using information about you. There are four key data protection principles. They are –

1. *Fair & lawful obtaining and processing of personal data.*
2. *Keeping & use only for Specific Purposes*
 - to obtain and keep personal data only for one or more specified purpose or purposes;
 - to use and disclose it only in ways compatible with those specified purpose(s);
 - to make sure the information is relevant and not excessive for those specified purpose(s);
 - to keep it for no longer than necessary for those specified purpose(s).
3. *Accuracy* - to keep the personal data accurate and up to date.
4. *Security* - to keep the personal data safely and securely.

In addition, personal data about you may not be sent to countries outside Gibraltar where it will not be protected.

For more information about the obligation to act in accordance with the data protection principles see the guides on “*Data Protection – A Guide for Business, Organisations and Public Bodies*” and “*Data Protection – What’s it all about?*”.

Key Right 2

A right to access information about yourself

There are two separate rights –

- a right to general information, free of charge, about the type of personal data that the business, organisation or public body keeps about individuals and the purposes for which it is kept (section 14(1)).
- a right to be given a copy of any information kept, or controlled, about you. To exercise this right you must ask, in writing, for the information and provide any information which the business, organisation or public body needs in order to ascertain your identity and locate the information. A fee may be charged for providing the information, but must be returned to you if you are not given the information within 21 days of your letter being received or if the information held turns out to need amending or destroying. (section 14).

In some limited circumstances you can be refused access to information; for example, where the information concerns a criminal investigation. If you require further information please refer to the Data Protection Ordinance, contact the Data Protection Commissioner or seek legal advice.

Key Right 3

A right to have incorrect information about yourself corrected

If the information held about you is incorrect or otherwise breaches the data protection principles you have the right to require that the information is corrected, destroyed or not used (section 15).

To exercise your right you must make the request in writing. The business, organisation or public body must respond within 35 days of receiving your request.

Key Right 4

A right to object to the use of information for the purposes of direct marketing

Direct marketing includes use of mailing lists and telephone lists to contact individuals to sell or promote a service or product. Sometimes it is undertaken by a business, organisation or public body which controls the information contained in the lists, sometimes by another body to whom they have sold the lists.

Some people find direct marketing a nuisance or offensive. For that reason the Ordinance gives you the right –

- to be informed by any business, organisation or public body if information which they control about you will be used for direct marketing purposes
- to object to information about yourself being used for the purposes of direct marketing (section 17)

To exercise your right you must write to the business, organisation or public body telling them that you do not want them to use information about you for direct marketing. They must comply with your request within 28 days of receiving your letter.

Key Right 5

A right not to have decisions made about you made solely on the basis of automatic processing of information

You have a right not to have important decisions taken about you solely on the basis of automatically processed information unless –

- you consent, or
- you are able to make representations about the information (section 18)

Key Right 6

A right to complain to the Data Protection Commissioner and to take legal action against the improper use of information

You have a right to complain to the Data Protection Commissioner if you feel that your rights are being infringed.

The Data Protection Commissioner has powers to investigate and resolve disputes and can order that compensation be paid to you in some cases.

If you are not satisfied with the result of your complaint to the Commissioner you may be able to bring a legal action in the courts.

The Data Protection Register

Most businesses, organisations and public bodies which 'process' information by computer will need to register with the Data Protection Commissioner.

The register will be open to inspection by all members of the public.

Where can I get more advice?

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

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

You may 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

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