

Reference No: E109/77/88; **Date:** 20/01/89

Circular 3/1989:- Data Protection Act 1988

A Chara

I am directed by the Minister for Finance to refer to the Data Protection Act, 1988 and to the need for all Departments to ensure full compliance with the Act in relation to the collection, use and disclosure of automatically processed personal data. As the responsibility for interpreting and observing the Act rests with each Department, Departments should familiarise themselves fully with the provisions of the Act.

Main Features of the Act

2. The Act is designed to protect the privacy of individuals with regard to automated personal data and to give effect in this country to the Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (1981).

3. The principal parties covered by the Act are as follows:-

Data subject: the individual in respect of whom the personal data are held

Data controller: the designated officer who controls the contents and use of the personal data (whether this data processed within the Department or by a computer bureau or service)

Data processor: the designated officer responsible for the processing of data on behalf of a data controller

Data Protection Commissioner: the officer appointed by the Government who, acting independently, has powers to investigate complaints, to maintain a register of data processors and specified data controllers, to supervise the operation of the legislation and, where necessary, to require compliance with its provisions.

4. The Act relates to personal data only, that is, data relating to an individual who can be identified either from the data or from the data in conjunction with other information in the possession of a Department. Sections 3 and 4 of the Act allow the data subject

* to establish whether an organisation keeps personal data (though not specifically on the applicant) and, if so, to have the data and the purpose(s) for which they are kept described

* to establish whether an organisation keeps personal data on the data subject and, if so, to be supplied with a copy of the data (with some exceptions)

* to have inaccurate data rectified, supplemented or erased.

5. Sections 5 and 8 of the Act provide for certain exemptions from its subject access and data disclosure provisions.

6. A copy of a booklet about the Act, prepared by the Information Management Advisory Service (IMAS) of this Department, is enclosed with this Circular. The material in the booklet should not be construed as a legal interpretation of the Act or of any of its provisions.

Registration of Data Controllers and Data Processors

7. Under Section 16 of the Act, certain categories of data controller (including Public Service Bodies) must register with the Data Protection Commissioner. The data controller(s) must register before the final closing date for registration announced by the Commissioner, supplying the necessary descriptions of all personal data under their control. The necessary official forms for completion when registering particulars are set out in the Data Protection (Registration) Regulations, 1988 (S.I. No. 351 of 1988). A copy of these regulations is contained in the IMAS booklet. The Commissioner will be accepting applications for registration between 9 January and 19 April 1989. Departments should, therefore, commence their preparations for registration immediately.

8. Each Department should designate one or more officers as data controllers. The data controller is designated by the Minister under Section 1(3)(a) of the Act as the officer legally accountable for the proper observance of the Act within his/her Department. Every other civil servant in the relevant Department is deemed for purposes of the Act to be the employee of the designated officer or officers.

9. The Act provides for the possible designation of more than one data controller in each organisation. Departments will, therefore, need to consider whether or not it is necessary to designate more than one data controller. The need for more than one designation would depend on the extent of the data holdings and the work required to handle each request for access to data by an individual (subject access request).

10. Each Department will also be required to register as a data processor where it carries out data processing for other Departments or organisations as its main activity. The provision of a contingency back-up service does not require a Department to register as a data processor.

11. When completing the registration form Departments should ensure that all persons/organisations/Departments to whom it is intended to disclose personal data are comprehensively described. It will also be necessary to describe in the registration form the purposes for which the data are held.

12. It is important to note that if for any reason data holdings are materially changed subsequent to registration, the Commissioner must be notified and the registered entry revised to reflect in full the changed position. Registration is for one year. The registration form only requires a description of the type and function of the personal data held, not an inventory of each field. It is advisable, therefore, when completing the registration form, to supply particulars which are broad enough to accommodate minor subsequent changes in the type/description/purpose of the data held.

13. In order to meet the deadline for registration, each Department should immediately begin to compile a complete index of all automated personal data held by it. This index should indicate which data fall within the compass of the Act i.e.

- (i) personal data stored on a computer medium or
- (ii) data stored on a computer medium which, when taken in conjunction with other information in the possession of the data controller, permit a living individual to be identified.

This index should be regularly updated. The IMAS booklet includes suggestions on how best to review the index.

14. Departments should also arrange to brief staff on the provisions of the Act and their obligations thereunder, the coordination of subject access requests (particularly where local offices are concerned) and the handling of other matters relating to the routine application of the Act.

Identification of subject access applicants

15. Persons making subject access requests should complete the appropriate application form, a copy of which is contained in the IMAS booklet. It should be noted that it is an offence under the Act to disclose personal data to unauthorised persons. It is essential, therefore, to ensure that persons making subject access requests are satisfactorily identified.

Word Processing provision

16. Section 1 of the Act exempts from the provisions of the Act "an operation performed solely for the purpose of preparing the text of documents". This provision exempts only the actual word processing operation - it does not exempt word processed text which is retained on the computer system after the completion of the document. Personal data held on a computer medium in free-text format counts as personal data for the purposes of the Act. Departments should be careful, therefore, to take due account of the implications of the Act for electronically/magnetically stored text.

Technical and security considerations

17. The Act contains a number of provisions which may have technical implications for the design and operation of computer systems in each Department. For example, the Act states that data cannot be retained on the system for longer than the purposes specified; data must be kept up-to-date; all data relating to the data subject must be accessible. All systems must be protected by appropriate security arrangements, with due account being taken of the sensitivity of the personal data held. The Act also requires, where data are materially amended on foot of a subject access enquiry, that all persons to whom the data had been disclosed over the preceding twelve months be informed of the changes, although it is understood that this provision may not come into force for the immediate future. Each Department will need to review the design and operation of its existing and future systems in the context of these and other requirements.

Official Secrets Act

18. A data controller should, following legal advice where necessary, ensure that disclosure of data would not constitute a possible infringement of the Official Secrets Act, 1963 which, it is understood, will not be covered in the regulations exempting data held under certain enactments from the subject access provisions of the Data Protection Act (Section 5 (3)(b)). Departments should note that it is not an offence to refuse to comply with a subject access request. Where this occurs the Commissioner may, however, issue an enforcement notice requiring the data controller to release the data. Failure to comply with an enforcement notice is an offence and in such a situation it would be up to the data controller to prove that the continued refusal to release the data was not "without reasonable excuse". The Commissioner has stated that it will be for the courts to decide what constitutes "reasonable excuse" in any particular case.

Bringing the new arrangements to notice

19. The attention of all serving staff and new entrants should be drawn to the contents of this Circular. Staff should also be informed of the names of the data controller(s), data processor (one has been designated), and the officer responsible for coordinating data protection activities in the Department.

20. The contents of this Circular should also be brought to the notice of bodies under the aegis of your Department.

21. Questions arising from this Circular should be addressed in the first instance to the Information Management Advisory Service of this Department (779601 Ext 500).

Mise le meas.

Seamus O Cíosáin
Runáí Cúnta