

Stopping Unwanted Marketing Materials

This leaflet is part of a series of nine leaflets which explain your rights under Data Protection Law and how to enforce those rights.

It deals your right to require a data controller not to use your personal data to market you with products or ideas. This right is contained in Article/Section 11 of the Law.

This guidance relates to both the Data Protection (Jersey) Law 2005 and the Data Protection (Bailiwick of Guernsey) Law, 2001.

Where the Laws differ and to show differences between the two jurisdictions the page will be split as shown below.

Jersey

Commissioner = Information
Commissioner

a = article within the Law

Guernsey

Commissioner = Data Protection
Commissioner

s = section of the Law

Where numbering of passages from the Laws are the same it will be shown as a/s.

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What is direct marketing?

Direct marketing is the communication to a particular individual of any advertising or marketing material. It is not confined to the advertising or marketing of commercial products or services. It would include, for example, the promotion of an organisation's aims or ideals or a charity or political party making an appeal for funds.

Direct marketing includes the material and message received though the post, by phone, by fax or by email or text message.

What can I do to prevent an organisation sending me direct marketing material?

If a specific organisation is targeting you with direct marketing information, you have the right to send that organisation a notice requiring them to stop or not to begin processing your personal data for the purposes of direct marketing at the end of such period of time as is reasonable in the circumstances.

The notice must be in writing and may be in the form of a letter. You should ensure that the notice is dated.

There is no particular form of words that you need to use provided that you make clear the following;

- your identity and the personal data to which you refer;
- the nature of the processing to which you object;
- when you require the processing of your personal data to cease (and this must be at the end of a period which is reasonable in all the circumstances).

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, and all other communications, recording the dates of all correspondence. This will be 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 notice to the company secretary.

What is a reasonable period to suggest for the Data Controller to cease or not to begin processing of my personal data?

This depends upon the size of the organisation. In the case of a small organisation with a small database it may be reasonable to expect them to deal with your request within 28 days.

In the case of a large, multinational organisation which may conduct processing of your personal data in many locations, some of them overseas, it may take longer for the relevant department to be notified.

The position will vary according to the circumstances of each case. A suggested form of letter is set out overleaf:

Example Letter

Your full Address

The date

Dear Sir or Madam

Jersey

RE: Notice under Article 11 of the Data Protection (Jersey) Law 2005 to cease or not to begin processing personal data for the purposes of direct marketing.

Guernsey

RE: Notice under Section 11 of the Data Protection (Bailiwick of Guernsey) Law, 2001 to cease or not to begin processing personal data for the purposes of direct marketing.

I[insert full name] of [insert full address]require you [to cease] [or] [not to begin] processing personal data relating to me for the purposes of direct marketing as soon as possible and in any event within 28 days of the date of this letter.

If you do not normally handle these requests for your organisation, please pass this letter to your Data Protection Officer or another appropriate officer.

Jersey

Please note that if you fail to comply with this notice, I can apply to the court for an order against you under Article 11 of the Data Protection (Jersey) Law 2005.

Guernsey

Please note that if you fail to comply with this notice, I can apply to the court for an order against you under Section 11 of the Data Protection (Bailiwick of Guernsey) Law, 2001.

Yours faithfully

Signature

What must a Data Controller do when he receives such a Notice?

A data controller must comply with your request as soon as possible. There are no exceptions to this.

What do I do if a Data Controller does not comply with my Notice?

You should contact the data controller again sending a copy of your original notice and asking for confirmation that you will not be sent any further direct marketing material.

If the data controller continues to send you direct marketing material, 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 accordance with the terms of the Law. You also have rights under the Law 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 Law, 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 Law. 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 or contact the Commissioner's Office.

What power does the Court have?

If the court is satisfied that the data controller has failed to comply with the notice, the court may order the data controller to take such steps for complying with the notice as the court thinks fit.

If the court is satisfied that the data subject has suffered damage by reason of a breach by the data controller of any of the requirements of the Law 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 the leaflet called "Claiming compensation" for further information as to your rights to claim compensation from the court.

If the court is satisfied that:

- the data subject has suffered damage because a data controller has breached any of the requirements of the Law in respect of any personal data in circumstances where the data subject is entitled to compensation and;
- there is a substantial risk of further contravention in respect to those data;

the court may order the rectification, blocking erasure or destruction of any of those data. Please refer to the leaflet called "Claiming compensation" for further information as to your rights to claim compensation from the courts.

What else can I do to stop receiving direct marketing material?

If you want to try and stop personally addressed unsolicited marketing material there are a number of services that can assist. Each deal with a different method of contact and you can register with any or all of them.

To tackle unwanted marketing by post contact :

Mailing Preference Service (MPS)

FREEPOST 29 LON 20771

London

W1E 02T

T: 0845 703 4599
W: www.mpsonline.org.uk

To deal with unwanted marketing by telephone contact :

Telephone Preference Service (TPS)

DMA House
70 Margaret Street
London
W1W 8SS

T: 0345 070 0707
W: www.tpsonline.org.uk

To stop unwanted marketing by fax contact :

Fax Preference Service (FPS)

3rd Floor
DMA House
70 Margaret Street
London
W1W 8SS

T: 0345 070 0702
F: 020 7323 4226
W: www.fpsonline.org.uk

Other publications in this series...

Each leaflet sets out what your rights are and, where possible, includes examples of letters and notices to send to the data controller. You will also find information to help you if you decide to take legal proceedings against a data controller.

Your Rights and How to Enforce Them

Subject Access - A guide for data subjects

Help! How can I stop them processing my personal information?

Incorrect information - What can I do?

No credit? Credit explained

Preventing decisions based on automatic processing of my personal information

Claiming compensation

Taking a case to court

All the leaflets and other publications produced by the Commissioner referred to in this publication may be obtained from our website www.dataci.org or by contacting the Office (details found on the last page of this document).

Useful contact information:

Jersey

Citizens Advice Bureau

The Annexe
St. Paul's Community Centre
New Street
St. Helier
Jersey
JE2 3WP

T: 0800 7350249 (Freephone)
W: www.cab.org.je
Email: advice@cab.org.je

Jersey Law Society

PO Box 493
St Helier
Jersey
JE4 5SZ

T: +44 (0)1534 613920
F: +44 (0)1534 613928
W: www.jerseylawsociety.je
Email: admin@jerseylawsociety.je

Jersey Advisory & Conciliation Service (JACS)

Trinity House
West Centre
Bath Street
St Helier
Jersey
JE2 4ST

T: +44 (0) 01534 730503
F: +44 (0) 01534 733942
W: www.jacs.org.je
Email: jacs@jacs.org.je

Guernsey

Citizens Advice Bureau

Bridge Avenue
The Bridge
St Sampson's
Guernsey
GY2 4QS

T: +44 (0)1481 242266
W: www.cabguernsey.org

The Guernsey Bar

c/o Mathew Newman
Bar Secretary
Ogier House
St Julian's Avenue
St Peter Port
Guernsey
GY1 1WA

W: www.guernseybar.com
Email: barsecretary@ogier.com

Contact the Commissioner

Enquiries and Publication Requests

Jersey

Office of the Information Commissioner

Brunel House
Old Street
St Helier
Jersey
JE2 3RG

T: +44 (0)1534 716530

W: www.dataci.org

Email: enquiries@dataci.org

Guernsey

Office of the Data Protection Commissioner

Guernsey Information Centre
North Esplanade
St Peter Port
Guernsey
GY1 2LQ

T: +44 (0)1481 742074

W: www.dataci.org

Email: enquiries@dataci.org