

# Exemptions within Data Protection Law

---

The rights and duties set out in the Data Protection Law are designed to apply generally, but there are some exemptions to accommodate special circumstances. The most frequently used exemptions are outlined in this guidance.

---

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.

---

## Table of Contents

---

Introduction.....	3
What are the exemptions from notification? .....	3
What about exemptions from subject access?.....	4
Disclosure and non-disclosure – how do the exemptions work?4	
Disclosure and non-disclosure – when do the exemptions apply?.....	6
Crime and taxation (a/s 29) .....	6
Regulatory Activity (a/s 31) .....	9
Public information (a/s 34).....	10
Disclosures required by law (a/s 35(1)) .....	11
Legal advice and proceedings (a/s 35(2)) .....	12
Confidential references .....	13
Negotiations.....	14
Journalism, literature and art (a/s 32).....	14
Are there any further exemptions? .....	15
Contact the Commissioner.....	16

---

## Introduction

If an exemption applies, then (depending on the circumstances) you will be exempt from the requirement:

- to notify with the Commissioner; and/or
- to grant subject access to personal data; and/or
- to provide privacy/fair processing notices; and/or
- not to disclose personal data to third parties.

Entitlement to an exemption depends in part on your purpose for processing the personal data in question – for example, there is an exemption from some of the Law’s requirements about disclosure and non-disclosure that applies to processing personal data for purposes relating to criminal justice and taxation.

However, you must consider each exemption on a case-by-case basis because the exemptions only permit you to depart from the Law’s general requirements to the minimum extent necessary to protect the particular functions or activities the exemptions concern.

Furthermore, the exemptions themselves and when it is appropriate for their use can be complicated. This guidance note provides an outline of the most common exemptions and examples of their applicability. Legal advice should be sought if unsure in specific circumstances.

## What are the exemptions from notification?

Most organisations that process personal data must notify the Commissioner of certain details about that processing. However, the Law provides exemptions from notification for:

- organisations that process personal data only for:
  - staff administration (including payroll); and/or
  - accounts and records;
- some not-for-profit organisations;
- organisations that process personal data only for maintaining a public register;
- organisations that do not process personal information on computer.

## Jersey

Processing for any marketing, advertising and/or PR purposes must be notified to the Commissioner.

## Guernsey

Processing for advertising, marketing and public relations purposes (in connection with your own business activity) is also exempt from requirement to notify. Companies conducting such marketing on behalf of other organisations are still required to notify the Commissioner of this processing.

## What about exemptions from subject access?

Several of the exemptions mentioned in the rest of this guidance mean that you do not have to grant subject access in respect of personal data to which the exemption applies. Exemptions should be considered on a case-by-case basis and the decisions made should be documented.

Also, certain restrictions (similar to exemptions) are built into the Law's subject access provisions. For example, there are restrictions on the disclosure of personal data about more than one individual in response to a subject access request.

## Disclosure and non-disclosure – how do the exemptions work?

Different exemptions work in different ways. An exemption may:

- restrict certain rights of individuals in relation to the processing of their personal data; and/or
- limit the duties of organisations when processing that data.

The rights and duties that are affected by one exemption are not necessarily affected by others. So you should look at each exemption carefully to see what effect it has. However, the Law bundles several rights and duties into two groups, and the exemptions tend to work by "disapplying" (blocking) one or both of these groups. The two groups are

called the “**subject information provisions**” and the “**non-disclosure provisions**”.

The **subject information provisions** are:

- an organisation’s duty to provide individuals with a privacy/fair processing notice when their personal data is collected; and
- an individual’s right to make a subject access request.

The **non-disclosure provisions** are:

- an organisation’s duty to comply with the first data protection principle, but not including the duty to satisfy one or more of the conditions for processing – you must still identify the relevant condition for lawful processing (Schedules 2 & 3);
- an organisation’s duty to comply with the second, third, fourth and fifth data protection principles;
- an individual’s right to object to processing that is likely to cause or is causing damage or distress; and
- an individual’s right in certain circumstances to have inaccurate personal information rectified, blocked, erased or destroyed .

An exemption from “**the non-disclosure provisions**” – which would, for example, allow you to disclose personal data that would otherwise be protected from disclosure – is not an automatic exemption from all (or any) of those provisions. This is because an exemption only applies to the extent that the provisions are inconsistent with the disclosure in question. So if you think you may be exempted from any of the **non-disclosure provisions**, you should consider each of those provisions in turn and decide:

- which, if any, would be inconsistent with the disclosure in question; and
- the extent of the inconsistency.

## Disclosure and non-disclosure – when do the exemptions apply?

### Crime and taxation (a/s 29)

The Law recognises that it is sometimes appropriate to disclose personal data for certain purposes relating to criminal justice or the taxation system. In these cases, individuals' rights may occasionally need to be restricted.

In particular, the Law deals with several situations in which personal data are processed for the following "crime and taxation purposes":

- the prevention or detection of crime;
- the capture or prosecution of offenders; and
- the assessment or collection of tax or duty.

Personal data processed for any of these purposes are exempt from:

- an organisation's duty to comply with the first data protection principle, but not including the duty to satisfy one or more of the conditions for processing – you must still do this; and
- disclosure in response to a subject access request.

#### Example

The police process an individual's personal data because they suspect him of involvement in a serious crime. If telling the individual they are processing his personal data for this purpose would be likely to prejudice the investigation (perhaps because he might abscond or destroy evidence) then the police do not need to do so.

However, the exemption applies, in any particular case, only to the extent that applying those provisions would be likely to prejudice the crime and taxation purposes. You need to judge whether or not this effect is likely in each case – you should not use the exemption to justify withholding subject access to whole categories of personal data if for some individuals the crime and taxation purposes are unlikely to be prejudiced.

Example

A taxpayer makes a subject access request to Income Tax for personal data they hold about him in relation to an ongoing investigation into possible tax evasion. If disclosing the information which Income Tax have collected about the taxpayer would be likely to prejudice their investigation (because it would make it difficult for them to collect evidence, for example), Income Tax could refuse to grant subject access to the extent that doing so would be likely to prejudice their investigation.

If, however, the taxpayer does not make the subject access request until some years later when the investigation (and any subsequent prosecution) has been completed, it is unlikely that complying with the request would prejudice the crime and taxation purposes – in which case Income Tax would need to comply with it.

Nor would the exemption justify withholding all the personal data about an individual when only part of the personal data would be likely to prejudice those purposes.

Example

In the above example about an ongoing investigation into possible tax evasion, Income Tax would be entitled to refuse subject access to personal data which would be likely to prejudice their investigation. However, this would not justify a refusal to grant access to other personal data they hold about the taxpayer.

Personal data are also exempt from the **non-disclosure provisions** if:

- the disclosure is for any of the crime and taxation purposes; and
- applying those provisions in relation to the disclosure would be likely to prejudice any of the crime and taxation purposes.

The Law does not explain “likely to prejudice”. However, our view is that for these exemptions to apply, there would have to be a substantial chance (rather than a mere risk) that complying with the provision would noticeably damage one or more of the crime and taxation purposes.

#### Example

The police ask an employer for the home address of one of its employees as they wish to find him urgently in connection with a criminal investigation. The employee is absent from work at the time. The employer had collected the employee's personal data for its HR purposes, and disclosing it for another purpose would ordinarily breach the first and second data protection principles. However, applying those principles in this case would be likely to prejudice the criminal investigation. The employer may therefore disclose its employee's home address without breaching the Law.

If challenged, you must be prepared to defend your decision to apply an exemption, to the Commissioner or the court. We therefore advise you to ensure that any such decisions are taken at an appropriately senior level in your organisation and that you document the reasons for the decision.

When making such requests law enforcement agencies in both the Bailiwicks of Jersey and Guernsey should provide the organisation with a copy of completed exemption form referencing this exemption and providing details of the enquiry being undertaken and the information required. These should be retained securely and filed with any decision making documentation.

These exemptions do not require you to disclose personal data to the police or to other law enforcement agencies – they merely keep you within the Data Protection Law if you decide to disclose information in the circumstances in which the exemptions apply.

Another limb of the crime and taxation exemption is that personal data which:

- are processed for the purpose of discharging statutory functions; and
- consists of information obtained for this purpose from someone who held it for any of the crime and taxation purposes

are exempt from the **subject information provisions** to the extent that applying those provisions to the personal data would be likely to prejudice any of the crime and taxation purposes. This prevents the **subject information provisions** applying to personal data which are passed to

statutory review bodies by law enforcement agencies, and ensures that the exemption is not lost when the information is disclosed during a review.

Example

The body charged with independently overseeing the police complaints process (Police Complaints Authority in Jersey or Police Complaints Commission in Guernsey) receives an investigation report from the local police in which there is Mr X's personal data. The police force would not have been obliged to disclose this to Mr X in response to a subject access request – because doing so would be likely to prejudice its criminal investigation. This remains the case if the request is sent to the complaints body; where the criminal investigation would be likely to be prejudiced, no disclosure under subject access would be necessary, even though the complaints body is not conducting the investigation themselves.

## Regulatory Activity (a/s 31)

The Law provides an exemption from the **subject information provisions** for processing personal data in connection with regulatory activities. The exemption is not available to all organisations, and it applies only to the core functions of bodies that perform public regulatory functions concerned with:

- protecting members of the public from dishonesty, malpractice, incompetence or seriously improper conduct, or in connection with health and safety;
- protecting charities; or
- fair competition in business.

For the exemption to apply, those functions must also be:

### Jersey

- conferred on any person by or under any enactment;
- functions of the Crown, the States or a Minister, or administration, of the

### Guernsey

- conferred on any person by or under an enactment;
- functions of the Crown, a Law Officer of the Crown or committee of the States; or

States; or

- any other function of a public nature exercised in the public interest.

- any other function of a public nature exercised in the public interest.

So the exemption applies to public functions exercised by various watchdogs whose regulatory role is recognised by the public and the sector they oversee. Such regulators may be established by law or as a result of mutual agreement between the participants in their sector of business. However, the exemption does not apply to investigatory or complaint-handling functions that may benefit the public but which organisations undertake when investigating their own activities. Functions like complaint handling, which are subsidiary activities of most organisations, do not fall within the scope of the exemption.

There is no blanket exemption for regulatory activities – not even for the activities that fall within the scope of the exemption. This is because personal data that are processed to perform such activities are exempt from the **subject information provisions** only to the extent that applying those provisions would be likely to prejudice the proper performance of the activities.

## Public information (a/s 34)

Where an organisation is obliged by or under an enactment to make information available to the public, personal data that are included in that information are exempt from:

- the **subject information provisions**;
- the **non-disclosure provisions**;
- the organisation's duty to comply with the fourth data protection principle (accuracy); and
- an individual's right in certain circumstances to have inaccurate personal information rectified, blocked, erased or destroyed.

The provisions mentioned in the third and fourth bullet points above form part of the **non-disclosure provisions**. However, they are mentioned separately here because there is an automatic exemption in these

circumstances. There is no need for the organisation to show that the provisions are inconsistent with the disclosure.

Example

The Registrar of Companies is legally obliged to maintain a public register of certain information about companies, including the names and (subject to certain restrictions) addresses of company directors. A director complains that his name has been inaccurately recorded on the register. The Registrar is exempt from the director's right under the Data Protection Law to have the inaccuracy corrected (the Registrar's duties in relation to the register are governed by other legislation).

The exemption only applies to the information that the organisation is required to publish. If it holds additional personal data about the individuals, the additional data are not exempt even if the organisation publishes that data.

### Disclosures required by law (a/s 35(1))

Personal data are exempt from the **non-disclosure provisions** if you are required to disclose it:

- by or under any enactment;
- by any rule of common law; or
- by an order of a court or tribunal in any jurisdiction.

In these circumstances, the legal obligation overrides any objection the individuals may have.

Example

An employer is legally required to disclose details of its employees' pay to Income Tax. The employer may disclose this information irrespective of any objection which an employee may raise.

If you know that you are likely to be legally required to disclose certain kinds of personal data, it is good practice to tell individuals about this

when you collect the information from them. This is because telling individuals about the legal requirement is compatible with the disclosure of personal data to comply with the requirement and satisfies the requirements of the 1<sup>st</sup> principle.

## Legal advice and proceedings (a/s 35(2))

Personal data are exempt from the **non-disclosure provisions** where the disclosure of the data is necessary:

- for or in connection with any legal proceedings (including prospective legal proceedings);
- for obtaining legal advice; or
- for establishing, exercising or defending legal rights.

You do not have to disclose personal data in response to a request from a third party simply because this exemption applies. You can choose whether or not to apply the exemption to make a disclosure, and you should do so only if you are satisfied that the disclosure falls within the scope of the exemption. In other words:

- it is necessary for one of the above purposes; and
- applying the **non-disclosure provisions** would be inconsistent with the disclosure.

When faced with a request for disclosure, it can be difficult to decide whether the necessity test can be satisfied. You may also be reluctant to make a disclosure of personal data because of your relationship with the individual. In such circumstances you may decide not to comply with the request, unless obliged to do so under a court order.

Personal data is also exempt from the **subject information provisions** if it consists of information for which legal professional privilege could be claimed in legal proceedings (Schedule 7 para 10 in Jersey, Schedule 6 para 10 in Guernsey).

## Confidential references

(Schedule 7 para 1 in Jersey, Schedule 6 para 1 in Guernsey)

Personal data are exempt from an individual's right of subject access if it comprises a confidential reference that an organisation gives (or is to give) in connection with education, training or employment, appointing office holders, or providing services. The exemption only applies to references you give, and not to references you receive.

### Example

Company A provides an employment reference for one of its employees to company B. If the employee makes a subject access request to company A, the reference will be exempt from disclosure. If the employee makes the request to company B, the reference is not automatically exempt from disclosure and the usual subject access rules apply.

## Management information

(Schedule 7 para 5 in Jersey, Schedule 6 para 5 in Guernsey)

A further exemption applies to personal data that are processed for management forecasting or management planning. Such data are exempt from the **subject information provisions** to the extent that applying those provisions would be likely to prejudice the business or other activity of the organisation.

### Example

The senior management of a business is planning a re-organisation. This is likely to involve making certain employees redundant, and this possibility is included in management plans. Before the plans are revealed to the workforce, an employee makes a subject access request. In responding to that request, the business does not have to reveal its plans to make him redundant if doing so would be likely to prejudice the conduct of the business (perhaps by causing staff unrest in advance of an announcement of the management's plans).

## Negotiations

(Schedule 7 para 7 in Jersey, Schedule 6 para 7 in Guernsey)

Personal data that consist of a record of your intentions in negotiations with an individual are exempt from the **subject information provisions** to the extent that applying those provisions would be likely to prejudice the negotiations.

### Example

An individual makes a claim to his insurance company. The claim is for compensation for personal injuries which he sustained in an accident. The insurance company disputes the seriousness of the injuries and the amount of compensation it should pay. An internal paper sets out the company's position on these matters and indicates the maximum sum it would be willing to pay to avoid the claim going to court. If the individual makes a subject access request to the insurance company, it would not have to send him the internal paper – because doing so would be likely to prejudice the negotiations to settle the claim.

## Journalism, literature and art (a/s 32)

This exemption protects freedom of expression in journalism, art and literature (which are known as the "special purposes").

The scope of the exemption is very broad and it can exempt from most provisions of the Law, including subject access – but never principle 7 or the a/s 55 offence (unlawful obtaining etc of personal data).

However it does not give an automatic blanket exemption. In order for the exemption to apply:

- the data must be processed only for journalism, art or literature,
- it must be being processed with a view to publication,
- you must have a reasonable belief that the publication is in the public interest, and
- you must have a reasonable belief that compliance with the Law is incompatible with journalism, art or literature.

You will need to explain why the exemption is required in each case, and how and by whom this was considered at the time. The Commissioner does not have to agree with your view – but must be satisfied that you had a reasonable belief.

## Are there any further exemptions?

Yes. Exemptions are also available in relation to:

- national security and the armed forces;
- personal data that are processed only for research, statistical or historical purposes;
- personal data relating to an individual's physical or mental health. This applies only in certain circumstances and only if granting subject access would be likely to cause serious harm to the physical or mental health of the individual or someone else;
- personal data that consist of educational records or relate to social work;
- personal data relating to human fertilisation and embryology, adoption records and reports, statements of a child's special educational needs and parental order records and reports;
- personal data processed for, or in connection with, a corporate finance service involving price-sensitive information;
- examination marks and personal data contained in examination scripts;
- personal data processed for the purposes of making judicial or Crown appointments or for conferring honours; and
- personal data used for domestic purposes.

## 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](http://www.dataci.org)

Email: [enquiries@dataci.org](mailto: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](http://www.dataci.org)

Email: [enquiries@dataci.org](mailto:enquiries@dataci.org)