



Compliance advice

*Child Support Agency: use and disclosure of
maintenance assessment information*

Introduction

The Commissioner has received a number of enquiries and complaints about the use and disclosure of personal data by the Child Support Agency (CSA). Many enquirers believe that, under the Data Protection Act 1998, such disclosures may never be made unless those to whom the information relates have given their permission. This is not a correct understanding of the application of the Act and the purpose of this note is to provide readers with clarification of the data protection implications of the uses and disclosures of information by the CSA. It does not consider any other legal restrictions on the disclosure of information provided for by other legislation.

The Data Protection Rules

The Act does not prohibit the processing (including the disclosure) of personal data to third parties but regulates the circumstances in which processing can take place. There are a number of key considerations.

- Details of the processing, including disclosures, must be provided to the Information Commissioner who in turn places them on a public register. This is known as Notification. The data controller (organisation that controls the purpose and manner of the processing of personal data) in the case of the CSA is the Department of Work and Pensions and details of its notification are available via the Commissioner's web site (www.dpr.gov.uk) or directly from his office.
- Processing (including the collection of data) must be **fair**. This means, among other things that the CSA should ensure that individuals have a reasonable idea of how their information will be used. This is done by way of notices and leaflets accompanying application forms in which parties to an assessment for child maintenance are informed of the way in which disclosures of information may be made to the other party to the assessment.
- The processing must be **lawful**

Obtaining Information

The CSA has extensive statutory powers to require information about relevant persons. Where information is obtained under such powers it is unlikely that a breach of the Data Protection Act would result.

The CSA obtains information from and about Non Resident Parents (NRP) and Parents With Care (PWC) under its statutory powers to do so. For example the Child Support (Information, Evidence and Disclosure) Regulations 1992, as amended, give the CSA wide powers to require certain information from, amongst others, the relevant parties, employers of relevant parties and local authorities.

Disclosure of Information

S.35 of the Data Protection Act 1998 permits the disclosure of information in any case where the disclosure is required **by or under any enactment, by any rule of law or by the order of a court**. Therefore where a disclosure is required to be made by Child Support legislation it will not be in breach of the Data Protection Act 1998. This would be the case even though the data subject may object to the disclosure or may not have provided any specific permission to the CSA to disclose the information.

For example Regulation 24 of the Child Support and Income Support (Amendment) Regulations 1995, authorises the disclosure of information given by one party to a maintenance assessment to the other party in defined circumstances.

Paper Records

The Commissioner is aware that many of the records currently processed by the CSA are in a paper form not yet subject to the requirements of the Data Protection Act 1998. This is because, although the provisions of the Act do extend to certain paper records, they do not immediately apply to the processing of such records. Those parts of a manual record held by the CSA that were already in existence **before** October 1998 will benefit from a transitional period, the practical effect of which is that provisions of the Act relating to the non-disclosure, accuracy, adequacy, relevance, excessiveness and retention of personal data will not apply to such records until October 24th 2007.

Where the Appeal Tribunal is concerned, we understand that **all** information, including copies of any forms, documents, payslips, banks statements etc which have been provided to the CSA in respect of an assessment for child maintenance are copied to **all** relevant parties to the dispute. The Tribunal argues that this practice has its basis in natural justice on the grounds that each of the parties to the appeal should be aware of all the information provided to the Tribunal by any of the other parties.

Accuracy of Personal Data

The Fourth Data Protection Principle requires that personal data are accurate and kept up to date. Personal data are inaccurate if they are incorrect or misleading as to any matter of fact.

It should be noted here that the recording of an opinion of a CSA officer on an individual's file would not be open to practical challenge on the grounds of inaccuracy if it provides an accurate reflection of the officer's opinion or understanding of a particular incident or occurrence.

Request for Assessment

The Data Protection Act 1998 provides that an individual who believes themselves to be affected by the processing of personal data may request the Commissioner to make an assessment as to whether or not it is likely that the processing is being carried out in compliance with the provisions of the Act.

The Commissioner strongly encourages data subjects who have specific concerns to approach the data controller rather than report any apparent contraventions to him at the outset.

He believes that many matters can be resolved speedily without reference to his office allowing him to make more effective use of his resources.

If you have concerns about the processing of your personal data you should, in the first place, raise the matter in writing directly with the CSA and if appropriate request an explanation for any disclosure that may have occurred.

If when you receive a reply you still believe that there has been a breach of the Data Protection Act 1998 you can write back to the Commissioner requesting an assessment.

In order for the Commissioner to be in a position to make an assessment, you should provide full details of your concerns, copies of relevant correspondence, if appropriate a copy of the personal data concerned and any other evidence that you may have to support your case.

A 'Request for Assessment' form has been created to guide this procedure and can be printed off the Commissioner's website at the address www.informationcommissioner.gov.uk or obtained from the enquiry line on 01625 545745

Compensation

Failure to comply with the Data Protection Principles is not a criminal offence and the Commissioner can't punish a data controller for a contravention. Where a failure arises as a result of weaknesses in a data controller's practices and procedures, the Commissioner attempts to make effective use of his limited resources by concentrating on ensuring that the data controller follows best practice and is able to comply with the Principles in the future. Where a breach has resulted as a consequence of human error or a single failure to comply with procedures, there is little further action that he can take. Although where the Commissioner believes that a data controller is likely to continue to be in breach of a particular Principle, he can issue a formal enforcement notice.

An individual who suffers damage or damage and distress as the result of any contravention the requirements of the Act by a data controller is entitled to compensation where the data controller is unable to prove that they had taken such care as was reasonable in all the circumstances to comply with the relevant requirement. The Commissioner cannot award or aid in obtaining compensation, this is something that must be pursued by the individual concerned via the Courts.

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