

Telecommunications Directory Information

A Fair Processing Code

OFTEL wish to encourage competition in directory information products and services whilst ensuring that customer privacy is protected. This Code sets out the Registrar's view of how the fair processing requirement of the First Data Protection Principle applies to directory information. Those companies wishing to receive downloads of directory information from BT will be subject to licence conditions which will reflect the rules set out in the Code.

Code of Practice on Telecommunications Directory Information Covering the Fair Processing of Personal Data

21 December 1998

Introduction

1. This Code of Practice (**'the Code'**) has been prepared by the Data Protection Registrar (**'the Registrar'**). It has been drawn up following consultation with representatives of data controllers and data subjects. This Code reflects the Registrar's views regarding the fair processing of telecommunications directory information relating to individuals. The Registrar considers that processing personal data in breach of its requirements will breach the fair processing requirement of the First Principle of the Data Protection Act 1984.
2. The Data Protection Act 1984 will be repealed when the Data Protection Act 1998 is brought into force. However, the First Principle of the 1998 Act, also provides that the personal data shall be processed fairly. The Registrar considers that processing personal data in breach of this Code will breach the fair processing requirement of the First Principle of the Data Protection Act 1998. The Registrar is satisfied, therefore, that the Code will remain valid when the Data Protection Act 1998 is brought into force. When this occurs any reference to the Registrar should be construed as a reference to the Data Protection Commissioner. Similarly any reference to data users should be construed as a reference to data controllers. In due course the Registrar may decide to formally issue a Code on the fair processing of directory information by virtue of the Commissioner's powers under Section 51(3)(b) of the Data Protection Act 1998.

Review

3. The Registrar reserves the right to review the Code in the light of practical experience of its operation, changes in technology, industry practice or the expectations of data subjects. A review might be initiated in response to representations from

representatives of data users and data subjects. If the Registrar believes there is a need to significantly revise or amend the Code she will do so following consultation with representatives of data users and data subjects.

Scope

4. The Code applies to personal data, that is data relating to living individuals, processed for the purpose of providing telecommunications directory information services or products. Although the Code relates particularly to residential subscribers, telecommunications directory information which relates to sole traders and partnerships in England and Wales is likely to be personal data. Sole traders are individuals trading under their own name or under a business name, whose businesses do not have a legal personality distinct from that of the individuals concerned. Partnerships in England and Wales are groups of individuals that do not have a legal personality distinct from that of the individual partners. The Registrar recognises that sole traders and partners may well have different expectations from residential subscribers regarding the basis on which telecommunications directory information relating to their businesses may be made available.
5. The Registrar also includes a recommendation on:
 - measures data users processing telecommunications directory information about data subjects might take to prevent telecommunications directory information being processed unfairly by others (see 14).
6. The Code applies to any personal data processed in order to provide a public telecommunications directory information service or product, no matter where the information is sourced from. As such it also covers the processing of personal data derived from publicly available telecommunications directory services or products. Therefore a company which processed personal data derived from such services and products for use in its dealings with customers would be subject to the Code. For example, a company could not use such personal data to derive the address from the telephone number from which a call is made without consent. For the avoidance of doubt this Code does not apply to private directories such as the internal telephone directory of a large company.

Relationship with telecommunications legislation

7. The Registrar is advised by Ofel that under the Telecommunications (Open Network Provision) (Voice Telephony) Regulations 1998 (1998 No 1580) companies which are under an obligation to supply telecommunications directory information on request, on a wholesale as opposed to a retail basis, must refuse to do so if the person requesting telecommunications directory information does not undertake to process the information in accordance with any relevant Code of Practice issued or approved by the Data Protection Registrar, such as this Code, or if they have reasonable grounds to believe that the person requesting the information will not comply with data protection legislation

8. The Registrar understands that these Regulations also require all Telecommunications Act licensees to comply with any relevant Code of Practice, such as this Code, prepared and disseminated by the Registrar or by a trade association where, in the case of the latter, the Registrar has notified that in her opinion the code promotes the following of good practice.

Definitions

9. Unless otherwise stated the definitions of the Data Protection Act 1984 apply until it is repealed. When the Data Protection Act 1998 is brought into force the definitions of that Act will apply.

The First Data Protection Principle - Data Protection Act 1984

10. “The information to be contained in personal data shall be obtained, and personal data shall be processed, fairly and lawfully.”
[Schedule 1, Part II, paragraph 1 of the Act is attached as Annex 1 to the Code]

The First Data Protection Principle - Data Protection Act 1998

11. “Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless-
 - (a) at least one of the conditions in Schedule 2 is met, and
 - (b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met.”
[Schedule 1, Part II, paragraphs 1 to 4; Schedules 2 and 3 of the Act are attached as Annexes 2, 3 and 4 to the Code]
12. This Code provides guidance only on the fair processing of personal data held, or derived from, telecommunications directory services or products. This guidance is limited to fair processing in relation to the basis on which directory information is released or made available. It does not deal with the lawful processing requirements of the First Principle of the Data Protection Act 1984 and the Data Protection Act 1998. It does not address the obligation to satisfy at least one of the conditions in Schedule 2 of the Data Protection Act 1998. It does not deal with the other obligations imposed by either Act.
13. The Registrar considers that personal data consisting of directory information should only be made available in line with the wishes and expectations of data subjects.

Therefore, unless the data subject has given prior informed consent otherwise,

- (a) A search for a telecoms number using an electronic directory or a directory enquiry service should require the inquirer to provide both the approximate name and address of the data subject being sought.

- (b) Where the data subject's name, address and telecoms number is published or displayed in printed or electronic form it should be ordered alphabetically by the data subject's name.
- (c) Where the data subject's name, address and telecoms number is published or displayed in printed or electronic form it should not be ordered to allow searches by address only.
- (d) A data subject's telecoms number only or telecoms number and address may not be used to generate a name and/or address (ie reverse searching).
- (e) A data subject's information that is publicly available must not be changed unless it is to correct a piece of directory information that is incorrect and misleading. By way of example, an incorrect postcode or a change to the telephone number of a data subject that is beyond the data subject's control, could be amended. However, where a data subject wishes his name to appear in a certain form (ie initial or initials and surname, first name and surname, even nickname) this should not be amended. If a data subject requests that only part of his address is included in a publicly available directory, his full address may not be published.

Recommendation

14. Data users are strongly recommended to adopt measures to seek to make it more difficult for their telecommunications directory services and products to be used in ways that could involve unfairness to individuals and to adopt minimum quality of service standards designed to minimise unfair processing of personal data arising as a result of inaccuracy or error. They are also encouraged to draw attention to the prohibition on making unsolicited marketing calls and faxes to those who have indicated they do not wish to receive them imposed by the proposed Telecommunications (Data Protection and Privacy) (Direct Marketing) Regulations 1998 due to be superseded by the Telecommunications (Data Protection and Privacy) Regulations 1999.

The measures adopted by data controllers should reduce the likelihood of telecommunications directory information being misused and should aim to prevent activities such as:

- (a) Bulk copying of telecommunications directory information, through measures such as:
 - restrictions on the number of records generated from a single search using electronic directories;
 - encryption of telecommunications directory information in electronic directories;
 - the absence of an on-line interface to electronic directories;
 - restrictions on the number of directory entries which can be copied and pasted from electronic directories.

- (b) Reverse searching of telecommunications directory information, through measures such as:
- encryption of telecommunications directory information in electronic directories.
- (c) Other misuse of telecommunications directory information, through measures such as:
- ensuring printed directories contain a minimum number of data subjects or cover a minimum geographical area, to prevent the publishing of a small printed directory which would enable searching by location without using a data subject's name;
 - ensuring all directories contain a clearly visible health warning that the directory information is not to be used for unsolicited direct marketing telephone calls without first checking the list of data subjects who have opted out of receiving such calls.

Annex 1

Schedule 1, Part II, paragraph 1 of the Data Protection Act 1984

SCHEDULE 1

PART II

INTERPRETATION

The First Principle

1. (1) Subject to sub-paragraph (2) below, in determining whether information was obtained fairly regard shall be had to the method by which it was obtained, including in particular whether any person from whom it was obtained was deceived or misled as to the purpose or purposes for which it is to be held, used or disclosed.

(2) Information shall in any event be treated as obtained fairly if it is obtained from a person who -

(a) is authorised by or under any enactment to supply it; or

(b) is required to supply it by or under any enactment or by any convention or other instrument imposing an international obligation on the United Kingdom;

and in determining whether information was obtained fairly there shall be disregarded any disclosure of the information which is authorised or required by or under any enactment or required by any such convention or other instrument as aforesaid.

Annex 2

Schedule 1, Part II, paragraphs 1 to 4 of the Data Protection Act 1998

<http://www.hms0.gov.uk/acts/acts1998/80029--1.htm#sch1ptll>

SCHEDULE 1

PART II INTERPRETATION OF THE PRINCIPLES IN PART I

The first principle

1. - (1) In determining for the purposes of the first principle whether personal data are processed fairly, regard is to be had to the method by which they are obtained, including in particular whether any person from whom they are obtained is deceived or misled as to the purpose or purposes for which they are to be processed.

(2) Subject to paragraph 2, for the purposes of the first principle data are to be treated as obtained fairly if they consist of information obtained from a person who-

(a) is authorised by or under any enactment to supply it, or

(b) is required to supply it by or under any enactment or by any convention or other instrument imposing an international obligation on the United Kingdom.

2. - (1) Subject to paragraph 3, for the purposes of the first principle personal data are not to be treated as processed fairly unless-

(a) in the case of data obtained from the data subject, the data controller ensures so far as practicable that the data subject has, is provided with, or has made readily available to him, the information specified in sub-paragraph (3), and

(b) in any other case, the data controller ensures so far as practicable that, before the relevant time or as soon as practicable after that time, the data subject has, is provided with, or has made readily available to him, the information specified in sub-paragraph (3).

(2) In sub-paragraph (1)(b) "the relevant time" means-

(a) the time when the data controller first processes the data, or

(b) in a case where at that time disclosure to a third party within a reasonable period is envisaged-

(i) if the data are in fact disclosed to such a person within that period, the time when the data are first disclosed,

(ii) if within that period the data controller becomes, or ought to become, aware that the data are unlikely to be disclosed to such a person within that period, the time when the data controller does become, or ought to become, so aware, or

(iii) in any other case, the end of that period.

(3) The information referred to in sub-paragraph (1) is as follows, namely-

- (a) the identity of the data controller,
- (b) if he has nominated a representative for the purposes of this Act, the identity of that representative,
- (c) the purpose or purposes for which the data are intended to be processed, and
- (d) any further information which is necessary, having regard to the specific circumstances in which the data are or are to be processed, to enable processing in respect of the data subject to be fair.

3. - (1) Paragraph 2(1)(b) does not apply where either of the primary conditions in sub-paragraph (2), together with such further conditions as may be prescribed by the Secretary of State by order, are met.

(2) The primary conditions referred to in sub-paragraph (1) are-

- (a) that the provision of that information would involve a disproportionate effort, or
- (b) that the recording of the information to be contained in the data by, or the disclosure of the data by, the data controller is necessary for compliance with any legal obligation to which the data controller is subject, other than an obligation imposed by contract.

4. - (1) Personal data which contain a general identifier falling within a description prescribed by the Secretary of State by order are not to be treated as processed fairly and lawfully unless they are processed in compliance with any conditions so prescribed in relation to general identifiers of that description.

(2) In sub-paragraph (1) "a general identifier" means any identifier (such as, for example, a number or code used for identification purposes) which-

- (a) relates to an individual, and
- (b) forms part of a set of similar identifiers which is of general application.

Annex 3

Schedule 2 of the Data Protection Act 1998

<http://www.hmsso.gov.uk/acts/acts1998/80029--n.htm#sch2>

SCHEDULE 2

CONDITIONS RELEVANT FOR PURPOSES OF THE FIRST PRINCIPLE: PROCESSING OF ANY PERSONAL DATA

1. The data subject has given his consent to the processing.
2. The processing is necessary-
 - (a) for the performance of a contract to which the data subject is a party, or
 - (b) for the taking of steps at the request of the data subject with a view to entering into a contract.
3. The processing is necessary for compliance with any legal obligation to which the data controller is subject, other than an obligation imposed by contract.
4. The processing is necessary in order to protect the vital interests of the data subject.
5. The processing is necessary-
 - (a) for the administration of justice,
 - (b) for the exercise of any functions conferred on any person by or under any enactment,
 - (c) for the exercise of any functions of the Crown, a Minister of the Crown or a government department, or
 - (d) for the exercise of any other functions of a public nature exercised in the public interest by any person.
6. - (1) The processing is necessary for the purposes of legitimate interests pursued by the data controller or by the third party or parties to whom the data are disclosed, except where the processing is unwarranted in any particular case by reason of prejudice to the rights and freedoms or legitimate interests of the data subject.

(2) The Secretary of State may by order specify particular circumstances in which this condition is, or is not, to be taken to be satisfied.

Annex 4

Schedule 3 of the Data Protection Act 1998

<http://www.hmsso.gov.uk/acts/acts1998/80029--o.htm#sch3>

SCHEDULE 3

CONDITIONS RELEVANT FOR PURPOSES OF THE FIRST PRINCIPLE: PROCESSING OF SENSITIVE PERSONAL DATA

1. The data subject has given his explicit consent to the processing of the personal data.
2. - (1) The processing is necessary for the purposes of exercising or performing any right or obligation which is conferred or imposed by law on the data controller in connection with employment.
 - (2) The Secretary of State may by order-
 - (a) exclude the application of sub-paragraph (1) in such cases as may be specified, or
 - (b) provide that, in such cases as may be specified, the condition in sub-paragraph (1) is not to be regarded as satisfied unless such further conditions as may be specified in the order are also satisfied.
3. The processing is necessary-
 - (a) in order to protect the vital interests of the data subject or another person, in a case where-
 - (i) consent cannot be given by or on behalf of the data subject, or
 - (ii) the data controller cannot reasonably be expected to obtain the consent of the data subject, or
 - (b) in order to protect the vital interests of another person, in a case where consent by or on behalf of the data subject has been unreasonably withheld.
4. The processing-
 - (a) is carried out in the course of its legitimate activities by any body or association which-
 - (i) is not established or conducted for profit, and
 - (ii) exists for political, philosophical, religious or trade-union purposes,
 - (b) is carried out with appropriate safeguards for the rights and freedoms of data subjects,
 - (c) relates only to individuals who either are members of the body or association or have regular contact with it in connection with its purposes, and

(d) does not involve disclosure of the personal data to a third party without the consent of the data subject.

5. The information contained in the personal data has been made public as a result of steps deliberately taken by the data subject.

6. The processing-

(a) is necessary for the purpose of, or in connection with, any legal proceedings (including prospective legal proceedings),

(b) is necessary for the purpose of obtaining legal advice, or

(c) is otherwise necessary for the purposes of establishing, exercising or defending legal rights.

7. - (1) The processing is necessary-

(a) for the administration of justice,

(b) for the exercise of any functions conferred on any person by or under an enactment, or

(c) for the exercise of any functions of the Crown, a Minister of the Crown or a government department.

(2) The Secretary of State may by order-

(a) exclude the application of sub-paragraph (1) in such cases as may be specified, or

(b) provide that, in such cases as may be specified, the condition in sub-paragraph (1) is not to be regarded as satisfied unless such further conditions as may be specified in the order are also satisfied.

8. - (1) The processing is necessary for medical purposes and is undertaken by-

(a) a health professional, or

(b) a person who in the circumstances owes a duty of confidentiality which is equivalent to that which would arise if that person were a health professional.

(2) In this paragraph "medical purposes" includes the purposes of preventative medicine, medical diagnosis, medical research, the provision of care and treatment and the management of healthcare services.

9. - (1) The processing-

(a) is of sensitive personal data consisting of information as to racial or ethnic origin,

(b) is necessary for the purpose of identifying or keeping under review the existence or absence of equality of opportunity or treatment between persons of different racial or ethnic origins, with a view to enabling such equality to be promoted or maintained, and

(c) is carried out with appropriate safeguards for the rights and freedoms of data subjects.

(2) The Secretary of State may by order specify circumstances in which processing falling within sub-paragraph (1)(a) and (b) is, or is not, to be taken for the purposes of sub-paragraph (1)(c) to be carried out with appropriate safeguards for the rights and freedoms of data subjects.

10. The personal data are processed in circumstances specified in an order made by the Secretary of State for the purposes of this paragraph.

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