

**DATA PROTECTION ACT 1998
PART V, SECTION 40**

SUPERVISORY POWERS OF THE INFORMATION COMMISSIONER

ENFORCEMENT NOTICE

DATED: 21 June 2019

To: Chief Constable of the Metropolitan Police Service

Of: Metropolitan Police Service,
Victoria Embankment,
Westminster,
London
SW1A 2JL

1. The Metropolitan Police Service ("MPS") is a "data controller" as defined in section 1(1) of the Data Protection Act 1998 ("DPA"). The MPS is the territorial police force responsible for law enforcement in the Metropolitan Police District. It processes personal data in the course of carrying out its functions
2. Section 4(4) of the DPA provides that, subject to section 27(1), it is the duty of a data controller to comply with the data protection principles in relation to all personal data with respect to which it is the data controller.
3. On 25 May 2018 the DPA was repealed and replaced by the Data Protection Act 2018. Subject access requests made on or after 25 May 2018 must be dealt with in accordance with the Data Protection Act 2018 and the General

Data Protection Regulation. However, subject access requests made prior to that date remain subject to the DPA

4. The Information Commissioner ("Commissioner") holds evidence to suggest that there has been a sustained failure by the data controller to respond to subject access requests made prior to 25 May 2018 without undue delay, in compliance with the requirements of section 7 of the DPA. She has therefore decided to issue the data controller with an enforcement notice under section 40 of the DPA.
5. This Notice explains the Commissioner's decision.

Legislative Framework

6. In considering this case, the Commissioner finds that the relevant provisions of the DPA are the sixth data protection principle and section 7.
7. The Sixth Data Protection Principle provides at Part I of Schedule 1 to the DPA that:

"Personal data shall be processed in accordance with the rights of data subjects under this Act."

8. Paragraph 8(a) of Part II of Schedule 1 to the DPA further provides that:

"A person is to be regarded as contravening the sixth principle if, but only if, he contravenes section 7 by failing to supply information in accordance with that section."

9. Section 7 of the DPA provides, amongst other things, as follows:

"(1) Subject to the following provisions of this section and to sections 8, 9 and 9A, an individual is entitled –

- (a) to be informed by any data controller whether personal data of which that individual is the data subject are being processed by or on behalf of that data controller,*
- (b) if that is the case, to be given by the data controller a description of –*
 - (i) the personal data of which that individual is the subject,*
 - (ii) the purposes for which they are being or are to be processed, and*
 - (iii) the recipients or classes of recipients to whom they are or may be disclosed,*
- (c) to have communicated to him in an intelligible form –*
 - (i) the information constituting any personal data of which that individual is the data subject, and*
 - (ii) any information available to the data controller as to the source of those data, ..."*

...

"(8) ...a data controller shall comply with a request under this section promptly and in any event before the end of the prescribed period

beginning with the relevant day."

...

"(10) In this section-

'prescribed' means prescribed by the Secretary of State by regulations;

'the prescribed maximum' means such amount as may be prescribed;

'the prescribed period' means forty days or such other period as may be prescribed;

'the relevant day', in relation to a request under this section, means the day on which the data controller receives the request or, if later, the first day on which the data controller has both the required fee and the information referred to in subsection (3)."

...

Background to the case

10. Following a series of initial correspondence, the Commissioner, on 11 January 2019, wrote to the data controller to request information as to its current backlog of subject access requests made under section 7 of the DPA. The data controller's response of 24 January 2019 indicated that there remained 175 such active subject access requests for which the responses were overdue.

11. This figure had reduced to 48 outstanding subject access requests in the subsequent correspondence of 4 April 2019, when the data controller posited that the remaining subject access requests would be responded to by 3 May 2019.
12. This deadline passed, and in a report sent to the Commissioner on 13 June 2019 it was confirmed that 8 subject access requests made under section 7 of the DPA were still awaiting a response. It has been projected by the data controller that this backlog will be cleared by no later than 30 September 2019.
13. In drafting this Notice the Commissioner notes that in addition to protracted correspondence with the data controller, there have been a number of meetings which have taken place in which recovery plans have been proposed which were intended to address the backlog in subject access requests. Despite various assurances been given, it appears that the data controller has to date failed to clear its backlog of overdue subject access requests made under section 7 of the DPA.
14. Whilst the Commissioner acknowledges the steps taken by the data controller to respond to these subject access requests, including the recruitment of additional staff, she remains concerned by the data controller's failure to clear the outstanding cases, noting that the oldest such subject access request dates back to April 2018. From the information provided it has been identified that there are 8 outstanding subject access requests that were received before 25 May 2018.
15. The Commissioner is of the view that the data controller has contravened the sixth data protection principle in that, contrary to section 7, it has failed to inform the 8 individuals, without undue delay, whether their personal data is being processed by or on behalf of the data controller and, where this is the

case, failed, without undue delay, to have communicated to them in an intelligible form such information as may constitute personal data.

16. Notwithstanding the explanations given by the data controller for having accrued such a backlog, and the steps it is understood to have taken to remedy the situation and to comply with its section 7 requirements, the data controller has to date been unable to demonstrate satisfactory adherence to its obligations in respect of the outstanding subject access requests.
17. The Commissioner considered, as she is required to do under section 40(2) of the DPA when deciding whether to serve an enforcement notice, whether any contravention has caused or is likely to cause any person damage or distress. The Commissioner takes the view that damage or distress is likely as a result of the 8 individuals being denied the opportunity of properly understanding what personal data may be being processed about them by the data controller; furthermore they are unable to effectively exercise the various other rights statutorily afforded to a data subject in respect of that data.
18. In view of the matters referred to above the Commissioner hereby gives notice that, in exercise of her powers under section 40 of the DPA, she requires the controller to take the steps specified in Annex 1 of this Notice.
19. The data controller is requested to continue to provide formal progress updates to the Commissioner on a fortnightly basis to allow progress in respect of the outstanding subject access requests to be monitored


Consequences of failing to comply with this Enforcement Notice

20. Failure to comply with this Notice is a criminal offence.

Right of Appeal

There is a right of appeal against this Notice to the First-tier Tribunal (Information Rights), part of the General Regulatory Chamber. Information about appeals is set out in the attached Annex 2.

Dated the 21st day of June 2019.

Signed: ... 

Suzanne Gordon
Director of Data Protection Complaints and Compliance
Wycliffe House
Water Lane
Wilmslow, Cheshire
SK9 5AF

ANNEX 1

TERMS OF THE ENFORCEMENT NOTICE

THIS NOTICE REQUIRES THE CONTROLLER TO TAKE THE FOLLOWING STEPS:

By 30 September 2019 at the latest, inform the 8 (eight) individuals who submitted subject access requests before 25 May 2018, whether the personal data processed by it includes personal data of which those individuals (or any of them) are the data subjects. Furthermore, it shall supply each of them with a copy of any such personal data so processed in accordance with the requirements of section 7 of the DPA and the sixth data protection principle in that respect, subject only to the proper consideration and application of any exemption from, or modification to, section 7 of the DPA provided for in or by virtue of part IV of the DPA which may apply.

ANNEX 2

RIGHTS OF APPEAL AGAINST DECISIONS OF THE COMMISSIONER

1. Section 48 of the Data Protection Act 1998 gives any person upon whom an enforcement notice has been served a right of appeal to the First-tier Tribunal (Information Rights) (the "Tribunal") against the notice.
2. If you decide to appeal and if the Tribunal considers:-
 - a) that the notice against which the appeal is brought is not in accordance with the law; or
 - b) to the extent that the notice involved an exercise of discretion by the Commissioner, that she ought to have exercised her discretion differently,

the Tribunal will allow the appeal or substitute such other decision as could have been made by the Commissioner. In any other case the Tribunal will dismiss the appeal.

3. You may bring an appeal by serving a notice of appeal on the Tribunal at the following address:

GRC & GRP Tribunals
PO Box 9300
Leicester
LE1 8DJ

Tel: 0300 123 4504
Fax: 0870 739 5836
Email: GRC@hmcts.gsi.gov.uk
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

The notice of appeal should be served on the Tribunal within 28 days of the date on which the enforcement notice was sent.

4. The statutory provisions concerning appeals to the First-tier Tribunal (General Regulatory Chamber) are contained in sections 48 and 49 of,

and Schedule 6 to, the Data Protection Act 1998, and Tribunal
Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules
2009 (Statutory Instrument 2009 No. 1976 (L.20)).