

**DATA PROTECTION ACT 2018
PART 6, SECTION 149**

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 "controller" as variously defined in sections 3(6), 5 and of the Data Protection Act 2018 ("the DPA") and Article 4(7) of the General Data Protection Regulation ("the GDPR"). 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. The Information Commissioner ("the Commissioner") has decided to issue the controller with an Enforcement Notice under section 149 DPA. The Notice is in relation to contraventions of Article 15 GDPR, and is thought to also extend to contraventions of Part 3, Chapter 3 of the DPA. This Notice is accordingly issued under section 149(2)(b) DPA.
3. This Notice explains the Commissioner's decision.

Legislative Framework

4. The DPA contains enforcement provisions in Part 6 which are exercisable by the Commissioner.

5. Section 149 DPA materially provides:

"(1) Where the Commissioner is satisfied that a person has failed, or is failing, as described in subsection (2), (3), (4) or (5), the Commissioner may give the person a written notice (an "enforcement notice") which requires the person—

(a) to take steps specified in the notice, or
(b) to refrain from taking steps specified in the notice,
or both (and see also sections 150 and 151).

(2) The first type of failure is where a controller or processor has failed, or is failing, to comply with any of the following—

- (a) ...*
(b) a provision of Articles 12 to 22 of the GDPR or Part 3 or 4 of this Act conferring rights on a data subject;
(c) ...;
(d) ...;
(e)

...

(6) An enforcement notice given in reliance on subsection (2), (3) or (5) may only impose requirements which the Commissioner considers appropriate for the purpose of remedying the failure."

6. Section 150 DPA materially provides:

"(1) An enforcement notice must—

- (a) state what the person has failed or is failing to do, and*
- (b) give the Commissioner's reasons for reaching that opinion.*

(2) In deciding whether to give an enforcement notice in reliance on section 149(2), the Commissioner must consider whether the failure has caused or is likely to cause any person damage or distress.

(3) In relation to an enforcement notice given in reliance on section 149(2), the Commissioner's power under section 149(1)(b) to require a person to refrain from taking specified steps includes power—

- (a) to impose a ban relating to all processing of personal data, or*
- (b) to impose a ban relating only to a specified description of processing of personal data, including by specifying one or more of the following—*
 - (i) a description of personal data;*
 - (ii) the purpose or manner of the processing;*
 - (iii) the time when the processing takes place.*

(4) An enforcement notice may specify the time or times at which, or period or periods within which, a requirement imposed by the notice must be complied with (but see the restrictions in subsections (6) to (8))."

7. Chapter 3 of the GDPR makes provision for the rights afforded to data subjects. These include the rights of subject access, rectification, erasure and restriction of processing.
8. Specifically Chapter 3, Article 15 materially provides:

"(1) the data subject shall have the right to obtain from the controller confirmation as to whether or not personal data concerning him or her

are being processed, and, where that is the case, access to the personal data and the following information:

- (a) the purposes of the processing;*
- (b) the categories of personal data concerned;*
- (c) the recipients or categories of recipient to whom the personal data have been or will be disclosed, in particular recipients in third countries or international organisations;*
- (d) where possible, the envisaged period for which the personal data will be stored, or, if not possible, the criteria used to determine that period;*
- (e) the existence of the right to request from the controller rectification or erasure of personal data or restriction of processing of personal data concerning the data subject or to object to such processing;*
- (f) the right to lodge a complaint with a supervisory authority;*
- (g) where the personal data are not collected from the data subject, any available information as to their source;*
- (h) the existence of automated decision-making, including profiling, referred to in Article 22(1) and (4) and, at least in those cases, meaningful information about the logic involved, as well as the significance and the envisaged consequences of such processing for the data subject.*

...

(3) the controller shall provide a copy of the personal data undergoing processing. For any further copies requested by the data subject, the controller may charge a reasonable fee based on administrative costs. Where the data subject makes the request by electronic means, and unless otherwise requested by the data subject, the information shall be provided in a commonly used electronic form.

...

9. Chapter 3, Article 23 sets out the restrictions which may apply to the scope of the obligations and rights provided for in Article 15.
10. Part 3 of the DPA concerns Law Enforcement Processing.
11. Section 29 DPA states that Part 3 applies to:
 - "(1)(a) the processing by a competent authority of personal data wholly or partly by automated means, and*
 - (b) the processing by a competent authority otherwise than by automated means of personal data which forms part of a filing system or is intended to form part of a filing system."*
12. The controller in this instance is a "competent authority" as defined under Schedule 7, Paragraph 6.
13. Section 45 of the DPA provides that:

"(1) A data subject is entitled to obtain from the controller—

- (a) confirmation as to whether or not personal data concerning him or her is being processed, and*
- (b) where that is the case, access to the personal data and the information set out in subsection (2).*

(2) That information is—

- (a) the purposes of and legal basis for the processing;*
- (b) the categories of personal data concerned;*
- (c) the recipients or categories of recipients to whom the personal data has been disclosed (including recipients or*

categories of recipients in third countries or international organisations);

(d) the period for which it is envisaged that the personal data will be stored or, where that is not possible, the criteria used to determine that period;

(e) the existence of the data subject's rights to request from the controller—

(i) rectification of personal data (see section 46), and

(ii) erasure of personal data or the restriction of its processing (see section 47);

(f) the existence of the data subject's right to lodge a complaint with the Commissioner and the contact details of the Commissioner;

(g) communication of the personal data undergoing processing and of any available information as to its origin.

(3) Where a data subject makes a request under subsection (1), the information to which the data subject is entitled must be provided in writing —

(a) without undue delay, and

(b) in any event, before the end of the applicable time period (as to which see section 54).

(4) The controller may restrict, wholly or partly, the rights conferred by subsection (1) to the extent that and for so long as the restriction is, having regard to the fundamental rights and legitimate interests of the data subject, a necessary and proportionate measure to—

(a) avoid obstructing an official or legal inquiry, investigation or procedure;

(b) avoid prejudicing the prevention, detection, investigation or prosecution of criminal offences or the execution of criminal penalties;

- (c) protect public security;*
- (d) protect national security;*
- (e) protect the rights and freedoms of others.*

(5) Where the rights of a data subject under subsection (1) are restricted, wholly or partly, the controller must inform the data subject in writing without undue delay—

- (a) that the rights of the data subject have been restricted,*
- (b) of the reasons for the restriction,*
- (c) of the data subject's right to make a request to the Commissioner under section 51,*
- (d) of the data subject's right to lodge a complaint with the Commissioner, and*
- (e) of the data subject's right to apply to a court under section 167.*

(6) Subsection (5)(a) and (b) do not apply to the extent that the provision of the information would undermine the purpose of the restriction.

(7) The controller must—

- (a) record the reasons for a decision to restrict (whether wholly or partly) the rights of a data subject under subsection (1), and*
- (b) if requested to do so by the Commissioner, make the record available to the Commissioner*

Background of the case

14. The controller has previously outlined in correspondence to the Commissioner that it has received an unprecedented rise in demand by the public for access to data since the introduction of the DPA in May 2018.

15. In a report dated 17 April 2019 the controller indicated that it was currently processing 1,535 'right of access requests' (referred to herewith as "subject access requests") which it had received since 25 May 2018, and that "over 94%" of those were outside of the statutory time frame for a response.
16. By 29 April 2019 the controller had indicated that it had 1,513 such requests open, and that 91.5% of those were over the statutory deadline for a response, i.e., 1,385 subject access requests overdue for a response.
17. This figure has been subsequently updated in the course of periodic reports from the MPS, and as of 13 June 2019 stands at 1,727 open subject access requests, with 1,169 of those being overdue for a response; and 689 of those being over 100 days old.
18. The controller has suggested that, in light of steps taken to increase staffing so as to deal with the backlog and the general increase in subject access requests, it expects to be able to demonstrate an "overall backlog reduction" by 30 September 2019.
19. The fluctuating backlog is a cause of significant concern for the Commissioner, and demonstrates that the controller is currently failing to adhere to its obligations in respect of the information rights of the individuals for whom it processes data. Previous meetings and protracted correspondence between the controller and Commissioner have proven ineffective and so it has been determined that an Enforcement Notice is required to encourage compliance.
20. The Commissioner considered, as she is required to do under section 150(2) 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 1,169 individuals being denied the opportunity of properly understanding what personal data may be being processed about them by the controller; furthermore they are unable to effectively exercise the various other rights statutorily afforded to a data subject in respect of that data.

21. Having regard to the significant level of the contravention, the Commissioner considers that this Enforcement Notice is the proportionate regulatory step to bring the controller into compliance.
22. In view of the above, and in exercise of her powers under section 149(2)(b) DPA, the Commissioner requires the controller to take the steps specified in Annex 1 of this Notice.
23. In addition, the 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.
24. Furthermore, the controller is advised to ensure that the current and prospective individuals who make subject access requests are aware of any delays in operational practice that may affect their statutory rights. Processes should be put in place to keep individuals informed and recovery plans should be published or publicised to allow the public to understand how the situation is being addressed.

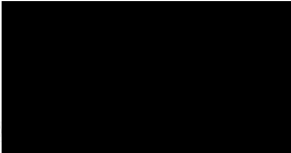
Consequences of failing to comply with this Enforcement Notice

25. If a person fails to comply with an Enforcement Notice the Commissioner may serve a penalty notice on that person under section 155(1)(b) DPA requiring payment of an amount up to 20 million Euros, or 4% of an undertaking's total annual worldwide turnover whichever is the higher.

Right of Appeal

26. By virtue of section 162(1)(c) DPA, there is a right of appeal against this Notice to the First-tier Tribunal (Information Rights). Information about your right of appeal 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:

- 1) By no later than 30 September 2019, to have informed the individuals referred to in paragraph 17 who have made subject access requests whether or not the controller is processing personal data concerning those individuals, and if so provide the individuals with a copy of their data, subject only to the proper application of any exemption from, or modification to, the right of subject access provided for in or by virtue of the GDPR or DPA respectively.
- 2) Furthermore, by 30 September 2019 at the latest, the controller is to carry out such changes to its internal systems, procedures and policies as are necessary to ensure that future subject access requests received by the controller, in respect of the controller, pursuant to Article 15 GDPR, and section 45 of the DPA, are identified and complied with in accordance with the requirements of Article 15 GDPR, and section 45 of the DPA, subject only to the proper application of any exemption from, or modification to, the right of subject access provided for in or by virtue of the GDPR or DPA respectively.
- 3) Continue to use its best endeavours to surpass the milestones referred to in paragraphs 1) and 2) above.

ANNEX 2

RIGHTS OF APPEAL AGAINST DECISIONS OF THE COMMISSIONER

1. Section 162(1)(c) of the Data Protection Act 2018 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. If an appeal is brought this Notice need not be complied with pending determination or withdrawal of that appeal. Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals
PO Box 9300
Leicester
LE1 8DJ

Tel: 0300 1234504
Fax: 0870 739 5836
Email: GRC@hmcts.gsi.gov.uk
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

4. Any Notice of Appeal should be served on the Tribunal within 28 calendar days of the date on which this Notice is sent.
5. The statutory provisions concerning appeals to the First-tier Tribunal (General Regulatory Chamber) are contained in sections 162 and 163 of the Data Protection Act 2018, and the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 (Statutory Instrument 2009 No. 1976 (L.20)).