

Guide to data protection law for churches

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1 The Basics

Data protection law covers information held by any person, business or organisation about a living individual. There are one or two exceptions. For example, information held for purely private and domestic purposes is not covered, so your own address book with your friends' names and addresses will not be subject to the law. Apart from these limited exceptions, the law applies to all personal data held by anyone. It therefore applies to all such information held by churches and church groups.

The law does not only apply to secret, confidential or sensitive information. For example, if your church compiles a list of parishioners who attend church regularly, that list will still be personal data covered by the Data Protection Act.

The details of church members who give charitable donations under the Gift Aid scheme, and the details of individual missionaries or other beneficiaries who benefit from those donations, will be covered by the Act, as will details of church staff (such as payroll details and comments contained in employment records) and membership and contact lists. All this means that it is simply impossible for a church or church group to operate at all without needing to comply with the Act.

2 Registration

As an organisation which handles personal data, the first issue which arises is whether the church or group should register with the Office of the Information Commissioner, the body which regulates data protection in the UK. Whilst some very small organisations are exempt from registration (details are available on the OIC website at http://www.ico.gov.uk/what_we_cover/data_protection/notification/do_i_need_to_notify.aspx), registration simply involves payment of a fee of £35.00 and the completion of a relatively simple form. The important point to bear in mind is that even if your church is exempt from registration, it still has to comply with all the requirements of data protection law referred to below, so in practice there may be little real reason not to register.

The Office of the Information Commissioner has indicated that churches and charities that only have the following basic personal data would not be expected to register:

- Church membership list (where individuals have provided their details themselves)
- Gift Aid records
- Accounting records
- Payroll records

A church or charity would be required to register if they hold more than basic data or other forms of personal data, including details of pastoral matters (such as minutes of meetings when individuals are discussed, letters or e-mails sent with any kind of commentary or opinions stated about individuals or pastoral notes).

Churches and charities need therefore to be very careful, if they do not wish to register with the Information Commissioner, to be disciplined in what personal data they obtain and store.

3 What You Can Do With Personal Data

The Act applies to any use of personal data, which is referred to as "processing". As you might expect, the definition of processing includes using the data for any purpose. So the Act applies, for example, to using a list of church members to send out information about the church or an invitation to an event. The definition of "processing" goes well beyond this however. "Processing" includes obtaining the data in the first place, disposing of data and even simply holding data, so all of these things are governed by the requirements of the Act.

4 The Right to Process Data

Your church cannot process data (and therefore cannot use, obtain, dispose of or simply hold personal data) unless you can satisfy one of six conditions laid down in the Act. In practice, the only conditions which are likely to be useful in the case of a church are that you either:

1. have the consent of the individual concerned to process their data, or
2. comply with a legal obligation (for example, allowing a policeman with a search warrant to look at the personal data contained in records), or
3. carrying out the "legitimate interests" of the church or group, so long as those do not interfere unduly with the rights of the individual concerned. This "balancing act" can be very difficult, by its very nature. It is wise to take advice on the specific facts of each situation; if in doubt, err on the side of caution and do not process personal data if you cannot show that one of these conditions applies.

Some information, including religious beliefs, physical or mental health, sexual orientation and trade union activity (but not financial information) is defined as "sensitive personal information" and is subject to additional protection. This may mean, for example, that you need an individual's explicit consent before processing their data. In practice it can be very difficult to lawfully process sensitive personal data so, again, take advice or err on the side of caution.

Standards to Comply With

There is a general requirement that the processing of personal data is done "fairly". This involves weighing up all the relevant circumstances. One important factor is the extent to which the individual is aware of the purposes for which the data will be used. For example, if a church gathers the personal details of its members and indicates that this is so that the church itself can keep a register of its members, obtaining and using that data is likely to be unfair and therefore unlawful if the data is then given to a missionary society so that that missionary society can write to the church members to request donations. It is therefore important for churches to inform church members (and other individuals whose information they hold) what information they hold or use and what it will be used for, unless that is unnecessary because it is obvious to the individuals concerned. For example, if church members fill in a Gift Aid form in relation to a donation which they are giving, it is obvious that that information will be used to reclaim tax on that donation, so that need not be spelled out to the individual.

Other Rules

There are eight principles laid out in the Act which must be complied with whenever personal data is processed.

1. The data must be processed fairly and lawfully. This is referred to above.
2. The data must be obtained only for specified lawful purposes and cannot be used for other purposes.
3. The data must be relevant and not excessive. For example, you do not need assessments of someone's income for a membership list.
4. The data must be accurate and kept up to date. This will involve having some policy or practice in place to review and update data; this will need to be appropriate given the nature of the data and the purposes for which it is held.
5. The data must not be kept for longer than is necessary. This means that your church should have a policy for reviewing the personal data which it holds and deleting personal data which is no longer necessary.
6. The data must be used in accordance with the rights of the individual concerned. For example, the individual has a right under the Act to access to copies of his personal data, so you must not store it and process it in a way which would frustrate that right.
7. The data must be kept secure. This means there should be both technical measures (e.g. ensuring that the church computer systems have passwords and firewalls to prevent the wrong people accessing it) and physical measures (e.g. files should not be treated casually but stored in locked environments) which are appropriate given the nature and importance of the personal data.
8. The data must not be transferred overseas, except to countries in the European Union and EEA and some other specified countries. At the moment, the only specified countries are Argentina, Canada, Guernsey, Jersey, the Isle of Man and Switzerland. You therefore cannot transfer personal data to any other country unless you have the consent of the individual concerned.

Disclosing Personal Data

Under the Act, individuals have the right to request copies of the personal data which a church or other organisation holds about them. There are some limited exceptions, such as personal data which includes information about third parties, but the situation on disclosure can be complicated and each request needs to be considered in the light of all the circumstances. Whilst a church may be entitled to withhold personal data for a number of reasons, it is not entitled to withhold it simply because it would be embarrassing or harmful to the church itself or to church workers. For example, a church's records may contain comments about a church member who is receiving pastoral care for difficult issues. The person providing that care may have made comments in that individual's file which are incorrect or even insulting, but that would not in itself be a reason to withhold disclosure of that personal data from the individual concerned. The same also applies of course to the files of church employees.

It is therefore sensible to have clear guidelines on what should be recorded in such matters. You need to decide whether you will record everything and take the risk of disclosure, or not record information in detail. You should of course not let the legal tail wag the dog; if you need detailed written records in practice, you should keep them.

It is important to bear in mind that this is the right of the data subject, not of anyone else. A man cannot make a valid data subject request for his wife, however good the reason may be for his desire to know the information. You should therefore ensure that the person making the request really is the data subject.

The request must be in writing to be enforceable, but need not spell out that it is a data subject request under the Act, so you should be alert to requests which may not be entirely clear. You are entitled to charge a fee of up to £10 and to request any information which you need in order to identify the information requested, but once you have those you must supply the information promptly and in any event within 40 days.

5 Summary

Although data protection law is complex and can involve difficult judgements it will usually be possible for a church to carry out its activities and deal with issues which arise in a way which complies with the law and which does not create serious difficulties for the church.

For subscribers to the Stewardship 'Consultancy helpline' help is available in the form of the telephone advice service supported by Coffin Mew LLP, solicitors. Please telephone Katrina Day at Coffin Mew on 023 8057 4313 or email her at katrinaday@coffinmew.co.uk.

We are grateful to Coffin Mew LLP, solicitors, for their contribution and advice in the preparation of this Briefing Paper.