



Information Commissioner's Office
Promoting public access to official information
and protecting your personal information

Data Protection Technical Guidance

Determining what information is 'data' for the purposes of the DPA

Introduction

The Data Protection Act 1998 (the 'DPA') applies only to information which falls within the definition of 'personal data'. The concept of personal data is therefore key to the DPA and Directive 95/46/EC on the protection of individuals with regard to the processing of personal data and on the free movement of such data (the 'European Data Protection Directive' or the 'Directive'). On 20th June 2007 the Article 29 Data Protection Working Party adopted Opinion 4/2007 on the concept of personal data (01248/07/EN-WP136). This guidance, and its sister guidance entitled 'Determining what is personal data', draws on WP136 and applies the concepts discussed in that paper in a UK context.

Personal data as defined by the Directive and the DPA

The Directive

The object of the European Data Protection Directive, implemented in the UK by the DPA, is to provide that "Member States shall protect the fundamental rights and freedoms of natural persons, and in particular their right to privacy with respect to the processing of personal data".

'Personal data' is defined in Article 2 of the Directive by reference to whether information relates to an identified or identifiable individual.

The Directive then goes on to state, in Article 3, that it applies to the processing of personal data only where such processing is wholly or partly by automatic means, or where the processing is otherwise than by automatic means of personal data which form part of a 'filing system'¹ or are intended to form part of a 'filing system'.

The Directive therefore considers first whether the information relates to an identifiable individual and then describes the two different types of processing (processing by automatic means and manual processing within a 'filing system') which will bring information within the scope of the Directive.

¹ European Directive Article 2 (c)

The Data Protection Act 1998

The DPA repeats the substance of the Directive definition of 'personal data' but tackles the definition in reverse order to the Directive. The DPA first considers the nature of the processing in order to determine whether the information in question is 'data' (either processed by automatic means or manual processing for a filing system) and, secondly, considers whether such 'data' is 'personal data' in that it relates to an identifiable individual.

The Directive and the DPA cover two common categories of information:

- information processed, or intended to be processed, wholly or partly by automatic means (e.g. on computer)²; and
- information processed otherwise than by automatic means which form part of, or are intended to form part of, a 'relevant filing system' (i.e. manual information in a filing system)³.

In most circumstances it will be a relatively straight forward task to determine:

- (a) whether the information is 'data' for the purposes of the DPA; and
- (b) whether the information in question 'relates to' an 'identifiable individual'

and consequently, to determine whether 'personal data' is being processed.

In most cases it will be obvious when you are processing data. In those cases where this is unclear this guidance, and in particular the questions set out in the flowchart, aim to take you through the factors to consider when determining whether you are processing 'data'. The guidance offers suggestions, for use in appropriate cases, of considerations which may help you to reach a decision about the nature of the information in question.

The additional scope of the Data Protection Act

The DPA introduces two more types of manual processing of information which, if the information relates to an identifiable individual, will involve processing of 'personal data'. These additional categories of processing are introduced in the DPA definition of 'data' and concern:

- processing information as part of an 'accessible record'⁴; and

² Automatically processed data is defined in section 1(1)(a) of the DPA.

³ 'Relevant filing system' is defined in section 1(1) (a) DPA.

⁴ 'Accessible record' as defined in section 1(1) (d) and section 68 DPA.

- processing recorded information held by a public authority (commonly referred to as 'category 'e' data' as it falls within paragraph (e) of the DPA section 1(1) definition of 'data').

The DPA is therefore concerned with four types of data which can be broadly described as:

- (i) automatically processed data;
- (ii) data forming part of a relevant filing system;
- (iii) data forming part of an accessible record (whether or not falling within (i) or (ii) above); and
- (iv) data recorded by a public authority (whether or not falling within (i) to (iii) above⁵).

⁵ Where information is 'data' only by virtue of paragraph (e) of section 1(1) DPA (and does not also fall under any of paragraphs (a), (b), (c) or (d) of the definition of data) the application of the DPA may differ to that in relation to other types of data.

The aim of this guidance and flowchart

This guidance aims to help you determine whether information falls within any of the four categories of ‘data’ outlined above. Whether such ‘data’ is ‘personal data’ for the purposes of the DPA and the Directive is considered in the ICO guidance entitled [Determining what is personal data](#)

Is the information ‘data’ for the purposes of the Data Protection Act?

There are several steps to determining whether information is data for the purposes of the DPA.

Questions to help you are set out in boxes 1 to 8 below.

- 1 [Automatically processed information](#)
- 2 [Filing systems](#)
- 3 [‘Relevant filing systems’](#)
- 4 [File Names – using individuals’ names as file names to structure the information set](#)
- 5 [File Names – using criteria relating to individuals to structure the information set](#)
- 6 [Indexing and sub-division within files](#)
- 7 [‘Accessible records’](#)
- 8 [Category ‘\(e\)’ data](#)

[Annex 1 - Microfiche records](#)

[Annex 2 - Sound and image information](#)

1 Automatically processed information

Is the information, or is the information intended to be, ‘processed automatically’?

- | | |
|------------|---|
| Yes | The information is ‘data’ for the purposes of the DPA and may be personal data – See ICO guidance - Determining what is personal data |
| No | Go to next question. |

The DPA provides that information that is “processed by means of equipment operating automatically in response to instructions given for that purpose” or information that is “recorded with the intention that it should be processed by means of such equipment” is ‘data’⁶.

⁶ DPA subsections 1(1) (a) and (b)

The Directive simply provides that it shall apply to the processing of personal data wholly or partly by automatic means. Neither the DPA nor the Directive provides further explanation of what is meant by 'automatic processing'. There are, however, certain processes that are clearly covered by the concept of 'automatic processing'.

Example: A tennis coach types up a report on his computer of an individual tennis player's performance in a tennis tournament. The information in question has been recorded in a form in which it can be readily manipulated, retrieved and disseminated electronically.

The information in the report is clearly processed automatically and is 'data' for the purposes of the DPA.

Information may be recorded with the intention that it should be processed automatically where, for example, information is recorded in a manual form and the information is then either input manually onto a computer system or is scanned onto such a system.

Example: A would-be customer meets with a bank employee to discuss opening a new account. The bank employee asks the prospective customer for certain information (such as name, address, and employer's details) and records these details manually on a 'new account application form'. These details will subsequently be added to the bank's account information computer system.

The information is data in that it is recorded with the intention that it will be processed automatically.

[Return to contents list](#)

2 Filing systems

Is the information recorded as part of a filing system?

- YES** If information, that is not processed automatically, is held in a systematic or structured way you need to consider whether the system is a 'relevant filing system' for the purposes of the DPA – [Go to next question.](#)
- NO** If information that, is not processed automatically, is not held in a systematic or structured way you will need to consider two other questions in order to determine whether the information will fall within the scope of the DPA. These questions are, firstly, whether the nature of the information means it is an 'accessible record' and, secondly, whether the fact that the entity processing the information is a public authority means the information is category 'e' data. – [Go to question 7.](#)

It is important to appreciate that information stored in a systematic way, but not held in traditional manila files in a conventional filing cabinet or wall-mounted file hangers, may still be held in a 'filing system' if the system is structured to allow easy access to specific information about individuals⁷.

Example: A set of documents stored on a series of shelves in a systematic manner would be likely to constitute a 'filing system'.

Though traditionally people tend to think of filing systems solely in relation to paper records, the term 'relevant filing system' can apply to sets of records in other forms. (Specific [guidance on information held on microfiche](#) is set out in Annex 1 of this guidance).

Where there is only one file it might appear that there is no 'system'. However, where information is held about individuals in one large file with appropriate subdivisions, this single file could constitute a filing system. What is key to the

⁷ Recital 15 of the Directive provides: "Whereas the processing of such data is covered by this Directive only if ...the data processed are contained or are intended to be contained in a filing system structured according to specific criteria relating to individuals, so as to permit easy access to the personal data in question".

Recital 27 of the Directive provides: "...as regards manual processing, this Directive covers only filing systems, not unstructured files, whereas, in particular, the content of a filing system must be structured according to specific criteria relating to individuals allowing easy access to the personal data ...the different criteria for determining the constituents of a structured set of personal data, and the different criteria governing access to such a set, may be laid down by each Member State, whereas files or sets of files as well as their cover pages which are not structured according to specific criteria, shall under no circumstances fall within the scope of this Directive".

concept of 'filing system' is the existence of a structure to the record keeping which facilitates ready access to information and an understanding that the structure will be used whenever a new record is added to the information set.

[Return to contents list](#)

3 'Relevant filing systems'

Is the information recorded as part of a 'relevant filing system'⁸ or with the intention that it should form part of a 'relevant filing system'?

There are several steps to determining whether information is recorded as part of a 'relevant filing system'. Questions to assist in this process are set out in boxes 4 to 6 below.

Information that is processed automatically is usually held on computer systems which employ sophisticated search engines to assist in identifying particular pieces of information. Collections of non-automatically processed information (here referred to as 'manual records') are not intended to be covered by the DPA unless the collection is held in an organised filing system structured either by reference to individuals or by criteria relating to individuals which allows ready access to specific information about a particular individual⁹.

It is inevitable that manual records systems cannot be searched for specific information as quickly and easily as electronic systems. However if, when necessary, specific information about a particular individual may be retrieved from the system then the information can generally be described as readily accessible.

Some manual records systems will be organised in such a way that the process of locating, retrieving and printing the specific information about a particular individual will be resource intensive. However, the key consideration is not the time and effort involved but whether there is a system in place that allows the organisation to find information, applying a standard search procedure, without searching through every item in a set of information¹⁰. As

⁸ Section 1(1) 'relevant filing system' means any set of information relating to individuals to the extent that, although the information is not processed by means of equipment operating automatically in response to instructions given for that purpose, the set is structured either by reference to individuals or by reference to criteria relating to the individuals, in such a way that specific information relating to a particular individual is readily accessible.

⁹ Section 1(1) DPA

¹⁰ "A relevant filing system for the purposes of the Act is limited to a system:

1) in which the files forming part of it are structured or referenced in such a way as clearly to indicate at the outset of the search whether specific information capable of amounting to personal data of an individual requesting it under section 7 is held within the system and, if so, in which file or files it is held; and

2) which has, as part of its own structure or referencing mechanism, a sufficiently sophisticated and detailed means of readily indicating whether and where in an individual file or files specific criteria or

long as specific information within the set is readily accessible the set of information will be data in a relevant filing system even if the information needs to be obtained from several different locations within the system¹¹.

Example: An organisation holds information about staff expense claims in paper files. The information is held in separate files for the different types of expenses claimed (e.g. travel, entertaining clients, hotel claims etc). Each file holds information about individuals' claims in relation to the particular type of expense covered by the file in alphabetical order.

Where information is needed about a particular employee's overall expense claims, information will need to be gathered from each of the differently titled expense files. Gathering information about the individual's overall expense claims may involve locating information in a number of different files which may prove time-consuming. However, the particular information about the individual in question is readily accessible and the expense claims files are likely to constitute a relevant filing system.

When considering relevant filing systems it is important to remember that, even where one is dealing with a highly structured manual filing system comprising paper files, locating specific information about a particular individual will often involve some searching through a few pages to find particular information. Information sets may be structured in a variety of different ways all of which allow ready access to specific information about a particular identifiable individual. The following questions identify some of the ways filing systems may be structured.

[Return to contents list](#)

4 File Names – using individuals' names as file names to structure the information set

Does the filing system use the names of individuals (or another unique identifier) as the file name?

YES [Go to Question 6](#)

NO Go to next question.

[Return to contents list](#)

information about the applicant can be readily located" Lord Justice Auld at paragraph 50 Durant v FSA [2003] EWCA Civ 1746

¹¹ See definition of relevant filing system in Section 1(1) DPA and Recital (15) of the Directive

5 File Names – Using criteria relating to individuals to structure the information set

Does the system use criteria relating to individuals (e.g. sickness, absence, pensions or qualifications) to structure the system?

YES Go to next question

NO [Go to question 7](#) - Where a system does not use the names of individuals, nor criteria relating to individuals to structure the system, it is unlikely to be a relevant filing system. Consider whether the information comprises an accessible record or is category (e) data.

Example: A filing system is created to hold information about employees. Each file is given the name of the type of employee information it holds (criteria relating to individuals – such as, annual leave, sickness record or contact details). Information about the employees is held within each file in alphabetical order of the employees' names, or other logical order.

This is a relevant filing system.

Such a system will allow ready access to a category of information (specific information about a particular individual) and, as the information is structured by reference to individuals (information held in alphabetical named order within each file), the set of information will constitute a relevant filing system.

Example: A system may be created to hold only a single category of information about individuals, say information concerning employees' annual leave. In a large organisation such information may be divided between 26 files labelled from A to Z and each containing details of the annual leave entitlement of the employees whose surname begins with the relevant letter of the alphabet. Within each 'letter' file the employee's details are held in alphabetical order.

While the file names may be only 'A' or 'B' etc, the system is structured to allow ready access to specific information about identifiable employees. It is therefore likely to be a relevant filing system.

[Return to contents list](#)

6 Indexing and sub-division within files

Is the information in the files indexed or subdivided to allow ready access to specific information about a particular individual?

- YES** This is likely to be a 'relevant filing system' and the information is 'data' for the purposes of the DPA. The 'data' may be personal data – See ICO guidance - [Determining what is personal data](#)
- NO** **Either** (i) The system or file holds only a single category of information - the set of information may constitute a relevant filing system if the system allows easy access to specific information about individuals - Consider whether any of the data contained in the relevant filing system is 'personal data' – see ICO guidance - [Determining what is personal data](#)
- Or** (ii) The system files each hold more than one category of information and the files are not indexed or sub-divided - [Go to question 7.](#)

6.1 Different types of sub-division and indexing

Specific information about a particular individual may be held in a file which uses the individual's name as the file title and uses a tab or index entry to identify the relevant categories of information.

Example: The file title is 'Joe Bloggs' and the file, in common with all other files within the system, is sub-divided by tabs into the following categories of information: Attendance record; Annual leave; Sickness Record; Special leave; Training.

A system such as this is likely to provide ready access to specific information relating to a particular individual, and as such is likely to constitute a relevant filing system.

Alternatively, the information may be equally easy to access where the file name uses criteria relating to individuals and the individual files are subdivided or indexed by reference to individual's names.

Example: The file title is 'Annual leave' and the file is sub-divided or indexed alphabetically by employees' names or by filing in an alternative logical order.

Again, a system such as this is likely to provide ready access to specific information relating to a particular individual, and as such is likely to constitute a relevant filing system.

6.2 Sub-division and indexing - Chronological filing

Purely chronological filing of information covering a variety of categories is unlikely to constitute a 'relevant filing system' (and the information will not be 'data' covered by the DPA). However, where records relate to a single category of information these may be held in a 'relevant filing system' even though the records are filed in purely chronological order – provided, as always, that the single category refers to individuals or criteria relating to individuals, and the system facilitates ready access to specific information about those individuals.

6.2.1 Numerous categories of information held in purely chronological order

Information falling into various different categories which is filed purely in chronological order is unlikely to be held in a relevant filing system. The collection of information is structured by reference to date rather than “by reference to individuals or by reference to criteria relating to individuals”.

Example: An organisation keeps a record of all correspondence received by the office. Each piece of correspondence is copied by the post room before distribution and placed on a 'day file' which forms part of a set of files. The copy correspondence is filed purely in date order and the name on the file will be simply the date of the correspondence. A particular copy letter may only be found by searching through all the documents in the relevant 'day file'.

This is not a relevant filing system.

6.2.2. Single category information held in purely chronological order

Where a set of information contains only a single category of information held in chronological order the set will not usually comprise a relevant filing system unless the set is structured by reference to individuals or criteria relating to individuals.

Example: An organisation creates a filing system to record the award of 'employee certificates of merit' each month.

- (1) The system comprises a series of files with a year as the title of each file. In each file there is placed a copy of all the certificates of merit awarded in that year in chronological order.

The system is structured to record information as to certificates awarded on a month by month basis rather than to record whether

any particular individual has been awarded a certificate and, if so, in which month. Where the system contains numerous copy certificates it will not be possible to discover whether any particular employee has received a certificate without extensive manual searching through all the documents in the files. The information is structured purely chronologically and not by reference to individuals or criteria relating to individuals.

The information is not held in a relevant filing system. The information is not readily accessible as it is held primarily by reference to date rather than by reference to individuals or criteria relating to individuals.

- (2) Where the same copy certificates are held in a series of files with employees' names as the file titles and the copy certificates awarded to each employee are filed in chronological order in each named file the information will be held in a relevant filing system.

The information is held in a relevant filing system as it is held primarily by reference to the individual and is readily accessible.

6.3 The effect of information within the set of which is not indexed or categorised

- 6.3.1 If the set contains non-categorised information (for example each file in the set contains a 'Miscellaneous/' 'other relevant information' divider or section) can the set comprise a relevant filing system?

When considering the effect of non-categorised information in a filing system consider (a) the purpose behind the creation of the system and (b) the categories of information the system has been designed to assist you to locate.

Example: A high street clothing shop holds a considerable amount of information about each of its numerous customers. The shop creates a filing system to hold customer details and chooses to use the customers' names as the file names. Each customer file contains several standard categories of information (such as contact details, purchases, colour/style preferences, favourite designers, etc).

This is a relevant filing system.

If all information relating to a particular customer were simply put in the file in any order the set would not be a relevant filing system because considerable manual searching through each file would be required to locate particular information about a customer. If, however, each file is divided into standardised categories of customer information (contact details, purchases,

colour/style preferences, favourite designers) the system is likely to be a relevant filing system as specific information relating to particular individuals is readily accessible.

Where a system is designed to facilitate access to specific information about particular individuals, the existence of non-categorised information in the system will not usually compromise this objective. In the above example, if the shop received information about a customer that did not fit within any of the existing categories of information, it could simply add the information to the relevant customer's file as 'Miscellaneous' information. The presence of the miscellaneous information in the file would not adversely affect ease of access to the categorised information and equally the small amount of miscellaneous information would itself be easy to locate. Obviously, if the amount of additional non-categorised information is so extensive as to hinder access to the categorised information this may influence whether the system comprises a relevant filing system or not.

6.3.2 Is information within a relevant filing system that is not categorised or indexed information 'data' for the purposes of the DPA?

Information will be 'data' for the purposes of the DPA where it is 'recorded as part of a relevant filing system or with the intention that it should form part of a relevant filing system'¹².

Information systems are designed to service perceived current business needs and information categories are selected accordingly. Information falling outside these specified categories but which is nevertheless relevant information will often be stored within the system in 'Miscellaneous' or 'Other relevant information' sections within individual files or in a separate "General", "Miscellaneous" or 'Other relevant information' file.

Where the filing arrangements within a business are very poor it is likely that the business will struggle with the administration arrangements required to run an effective business. In addition, in such circumstances it is unlikely that any relevant filing system could be said to exist.

Example: Where a business stores information in manual files but the bulk of the information within each file is not categorised or indexed the system is unlikely to form a relevant filing system as specific information about a particular individual is not readily accessible within the system.

As outlined above, miscellaneous information can be held either in a single file of information within the system or it can be held in a separate miscellaneous section in each file.

Example: An organisation holds personnel information in separate files for each member of staff. The files use the employees' names as the

¹² Section 1(1)(c) of the Data Protection Act 1998.

file names. Each file is divided into a number of categories of information (such as annual leave, sickness absences; pension arrangements etc). Where the organisation has a piece of personnel information about a particular individual which does not fall within any of the existing categories within that individual's file the information is simply stored at the back of his file in a 'Miscellaneous' or 'Other information' section.

Provided the 'Miscellaneous' section does not become so large as to require extensive searching for particular information, the information in the miscellaneous section of each individual file will form part of the relevant filing system.

Example: An organisation holds personnel information in separate files for each member of staff. Each file is divided into a number of categories of personnel information. Where the organisation has a piece of information that does not fall within any of the existing categories within the individual staff files the information is placed in a separate file within the filing system entitled 'General Personnel Information' or 'Miscellaneous Personnel Information' in which information about any or all of the employees within the organisation may be held.

The information in the miscellaneous information file is unlikely to form part of the relevant filing system.

Where the information is held in a single general miscellaneous information file it is unlikely that specific information about a particular individual within the file will be readily accessible without extensive manual searching of all the documents in the file. The information in the file will not therefore form part of the relevant filing system to which it relates.

Where the amount of 'Miscellaneous' information held in the individual files in the system begins to grow one it is likely that, at some point, the system operator may decide to expand the indexed or subdivided categories of information within the files to introduce new categories to include these additional types of information. The creation of new categories would make the system more useful for the organisation's business needs in that it would facilitate ready access to the information the organisation holds.

Information held in the 'miscellaneous' sections of the separate files within a well organised system is likely to be sufficiently well structured to allow ready access to specific (albeit yet to be categorised) information about a particular individual and such currently miscellaneous information will therefore form part of the relevant filing system.

Example: Taking the high street clothing shop example above we can consider the impact of 'miscellaneous'/'other relevant information' retained by the shop.

The shop has created a simple filing system to hold customer details. The system uses customer names as the file names. Each customer file contains several standard categories of information (such as contact details, purchases, colour/style preferences, favourite designers).

A satisfied customer writes to the shop to thank the staff for their excellent service and wonderful clothes. The current filing system does not contain a category/index entry in the customer files which covers this correspondence. The shop staff simply add the letter to the relevant customer's file as miscellaneous information. The letter is readily accessible within the relevant customer's file even though it has not been labelled or indexed.

The shop continues to do well and several more letters of thanks are received from other customers. The shop owner considers whether the letters from customers might be used as testimonials in the shop's forthcoming advertising campaign. With this in mind a new category is added in each of the customer files entitled "Testimonials" to help staff separate the letters of praise from other miscellaneous information that has been added to customer files.

6.3.3 Mis-filed information

Where information of a type that the system is designed to hold (in our example, information such as customer details) has been mis-filed (for example, the contact details have been placed in the miscellaneous section of a customer's file) a clear and pragmatic approach is to treat such information as forming part of the relevant filing system. The information is of a type that the system is intended to hold and will clearly form part of a relevant filing system as soon as the mis-filing is corrected.

6.4 Not all files have all the same sub-dividers or some files contain categories of information not common to all files

Where not all files contain all the same sub-dividers, or some files contain categories of information not found in all files, it may be unclear whether the system is a relevant filing system.

It does not matter that not all categories of information appear in each file provided the categories/sub-divisions contain information about individuals that the creator/operator of the system wishes to capture and that, in order to facilitate ready access, the same categories/subdivisions are used for the same information wherever it may appear in the system. What is important is that information is filed in a consistent and organised manner.

6.5 Arrangements for holding information using only very limited structure

When considering whether a set of records comprises a relevant filing system it is important to bear in mind the effects of scale – the amount of information within the set may affect whether the information is readily accessible and therefore whether it is held in a relevant filing system. Consequently, a large set of loosely structured information may not constitute a relevant filing system even though it is structured in exactly the same way as a small set of information which does constitute a relevant filing system¹³.

The structure of the system is important in identifying a relevant filing system in that the structure needs to facilitate ready access to specific information about a particular individual.

Example: A small emerging business employs four individuals. Information relating to the employment of these staff is, in the early days of the business, kept in a single box file.

This is a relevant filing system as explained below.

The information would, at first glance not appear to be structured in anyway. However, on further consideration, the information can be seen to be relatively well structured. The information in the file all relates to ‘employment issues’. Although this broad category has not been further subdivided into particular employment categories, while there is relatively little information in the set, this further categorisation may not be necessary to facilitate ready access to specific information about a particular member of staff. In addition, the set is structured by reference to criteria relating to individuals – the broad category of “employment issues”. The set is not structured by reference to each of the four individual employees but, while there are only a few employees, it is a simple task to identify the information relevant to each of the individuals.

If the organisation were to grow and take on new employees and the organisation continued to hold employment information in a single box (even though in practice this would be likely to be unworkable) the employment information would cease to be held in a relevant filing system as specific information about a particular employee would not be readily accessible.

When considering sets of information it is necessary to consider whether the set is sufficiently well structured to facilitate ready access to particular information of the type the set is intended to hold. In the example given above, the box file of employment records used while the business is relatively small is probably sufficiently well structured to allow ready access to, for example, a copy of one of the employee’s employment contract, with only very limited manual searching of the records required.

¹³ This approach reflects one of the fundamental goals underpinning both the EC Data Protection Directive and the UK DPA – that of balancing the rights of individual data subjects against the burdens placed on businesses.

As an organisation grows and more information is retained it is likely that, for its own internal business purposes, an organisation will develop more highly structured information systems to facilitate access to specific information. A key concept in considering relevant filing systems is, therefore, whether the system sufficiently structured to allow ready access to specific information about a particular individual without extensive manual searching within those records?

Where a set of information is formally structured by reference to individuals, or criteria relating to individuals, it is highly likely that the system will allow ready access to specific information about a particular individual. Where the system is less clearly structured by reference to individuals (or criteria relating to individuals) consideration must be given to whether the system is **sufficiently structured** to allow ready access to such information without extensive manual searching within the records.

6.6 Personnel files

One would anticipate that information held in personnel files is likely to be held in a relevant filing system as such files will, for practical purposes, need to be sufficiently well structured to allow access to specific information about particular individuals. Where there is some degree of structure to the filing arrangements, if the structure is sufficient to allow ready access to specific information about a particular individual, the personnel records will comprise a relevant filing system for the purposes of the DPA (see 6.5 above for discussion of arrangements for holding information using only very limited structure).

[Return to contents list](#)

7 'Accessible Records'

Is the information part of an accessible record as defined by section 68¹⁴ DPA?

| | |
|------------|---|
| YES | The information is 'data' for the purposes of the DPA. The 'data' may be personal data – See ICO Guidance – Determining what is personal data |
| NO | Consider whether the information is category 'e' data – Go to next question. |

¹⁴ Section 68 DPA (1) In this Act "accessible record" means –

- (a) a health record as defined by subsection (2),
- (b) an educational record as defined by Schedule 11, or
- (c) an accessible public record as defined by Schedule 12.

(2) In subsection (1)(a) "health record" means any record which –

- (a) consists of information relating to the physical or mental health or condition of an individual, and
- (b) has been made by or on behalf of a health professional in connection with the care of that individual.

The DPA includes within the scope of the definition of data specific reference to certain public records which might not otherwise be caught as information which is processed automatically or held within a relevant filing system.

Section 68 DPA provides that accessible records are:

- health records - consisting of any record relating to the physical or mental health or condition of an individual made by or on behalf of a health professional in connection with the care of that individual,
- educational records - local education authority and special schools only - see Schedule 11 DPA, or
- accessible public records – local authority housing record or local authority social services record - see Schedule 12 DPA.

The inclusion of such records as ‘data’ preserves access rights previously granted under the Access to Health Records Act 1990 and other legislative provisions now repealed.

[Return to contents list](#)

8 Category ‘(e)’ Data

Is the information held by a public authority (as defined in section 3 of the Freedom of Information Act 2000 (FOIA)¹⁵)?

YES The information is ‘data’ for the purposes of the DPA and may be personal data – See ICO guidance - [Determining what is personal data](#)

NO If the manual record is not processed automatically, is not an accessible record, not held as part of a relevant filing system and not held by a public authority, it will not be data for the purposes of the DPA.

The Freedom of Information Act 2000 introduces a right of access for individuals to information held by public authorities. Section 68 of the 2000 Act creates a new category (e) in the DPA definition of ‘data’ in order to provide protection for information about individuals, held by public authorities in non-electronic or un-filed records, in the face of the FOIA access regime. The Commissioner has published guidance on FOIA access arrangements http://www.ico.gov.uk/upload/documents/library/freedom_of_information/detail_ed_specialist_guides/personal_information.pdf

¹⁵ “FOIA 3(1) In this Act “public authority” means –
(a) subject to section 4(4), any body which, any other person who, or the holder of any office which – (i) is listed in Schedule 1 [of this Act], or
(ii) is designated by order [of the Secretary of State] under section 5, or
(b) a publicly-owned company as defined by section 6.”

Information about individuals held by public authorities which is not otherwise 'data' is personal data even though it is substantially exempt from most of the Data Protection Principles.

[Return to contents list](#)

More information

If you need any more information about this or any other aspect of data protection please contact us.

Phone: 08456 306060

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Annex 1

Microfiche records

[Back](#)

1 Microfiche records in general

Many organisations hold information about their individual clients or customers in the form of microfiche records. Microfiche records comprise minimised photographic images of paper records and are held either on microfiche sheets or on tapes containing numerous records on a single sheet or tape.

Sets of microfiche records are usually stored in appropriately labelled boxes and access to the records is achieved by manual searches of the boxes to identify the particular sheet or tape containing the required record. Once the correct sheet or tape has been located the record may be viewed using a microfiche reader which magnifies the image to legible size.

2 Microfiche records and relevant filing systems

In order that microfiche records may be of use to the organisation they are usually structured and stored by reference to criteria appropriate to the business needs of the organisation.

Example: A financial institution such as a bank or a building society offers personal account services to the general public. Each customer will be given a separate account which, for the bank/building society's convenience, will have an individual account number. In all dealings with the bank/building society the customer will be required to provide his account number. The bank/building society will record all information about the individual's dealings by reference to their individual account number.

Where the bank/building society records information about individuals' accounts on microfiche (using account numbers as reference points), the microfiche records will comprise a set of information relating to individuals (the customers). Whether such a set forms a relevant filing system will depend on the structure of the set and the extent to which specific information about a particular customer is readily accessible in the system.

Where the set is structured:

- by reference to *criteria relating to individuals* (the account numbers);
- in such a way that *specific information* (details of an account transaction)
- *relating to a particular individual* (a customer);
- is *readily accessible* (in that the bank/building society has in place procedures to allow ready access to such information);

the set of information on microfiche will comprise a relevant filing system.

Any information held in such a relevant filing system which relates to an identifiable living individual is likely to be personal data to which the eight data protection principles apply¹⁶.

It is inevitable that non-automatically processed information (manual records) systems cannot be searched for specific information as quickly and easily as automatic (including electronic) data processing systems but, where they are sufficiently structured to facilitate the location of specific information about identifiable individuals, the information they contain will be data for the purposes of the DPA.

Some manual information systems will be organised in such a way that the process of locating, retrieving and printing the specific information about a particular individual will be resource intensive, however, this in itself will not mean that the set of information does not form a relevant filing system.

If, when necessary, particular information may be retrieved from the system then the information can generally be described as readily accessible. Even though accessing the required information may on occasion be time consuming and demand a high level of resource, the key consideration is not the time and effort involved but whether there is a system in place that allows the organisation to find information, applying a standard search procedure, without searching through every item in the every record in a set of information¹⁷.

Often where a high level of effort and resource is required to retrieve information it is because of the sheer volume of information stored within the information set and not because the set lacks sufficient structure to allow retrieval. If it is only the volume of information, rather than the manner in which the information is stored, that makes retrieval of a particular piece of information time-consuming the system will be a relevant filing system.

Where specific information about a particular individual can be located by the organisation using a standardised location procedure or by following the organisation's search process, the set of information will have the appropriate structure and the information will be 'readily accessible' for the purposes of the definition of relevant filing system.

¹⁶ See ICO Guidance – [Determining what is personal data](#)

¹⁷ "A relevant filing system for the purposes of the Act is limited to a system:

- 1) in which the files forming part of it are structured or referenced in such a way as clearly to indicate at the outset of the search whether specific information capable of amounting to personal data of an individual requesting it under section 7 is held within the system and, if so, in which file or files it is held; and
- 2) which has, as part of its own structure or referencing mechanism, a sufficiently sophisticated and detailed means of readily indicating whether and where in an individual file or files specific criteria or information about the applicant can be readily located". Lord Justice Auld at paragraph 50 *Durant v FSA [2003] EWCA Civ 1746*

3 Sets of information about organisations as well as individuals

Organisations may hold manual records in microfiche form in relation to corporate as well as individual customers. However, where a significant proportion of the records relate to individuals these records will form a sub-set of records within the broader system. This sub-set will constitute a set of information relating to individuals and will be a relevant filing system where the set is structured by reference to individuals, or criteria relating to individuals, so as to allow ready access to specific information about a particular individual.

[Return to contents list](#)

Annex 2

Sound and image information

1 Introduction and scope

When considering the processing of 'data' we usually think of either text information held on computer or information held on paper in traditional manual files. The definition of 'data' is, however, not limited to these two forms of information. Information in any form (photographs, sound recordings or microfiche records) may come within the scope of the Act if it falls within any of the definitions of 'data' in paragraphs (a) to (e) of subsection 1(1) of the Act.

This annex is concerned with the concept of 'data' in relation to information in non-paper form (captured on audio or video tape or photographic film) and electronically processed non-text information (in particular, sound and image information recorded in a digital format).

2 How data protection legislation addresses the processing of sound and image information

The European Directive on the Processing of Personal Data (Directive 95/46/EC) clearly states that the provisions of the Directive should be applicable to the processing of sound and image information¹⁸. However, the Directive recognises that such application should not be without certain limitations. It therefore also provides that such information should only fall within the scope of the Directive where it is either processed in an automated manner or the information is contained in a relevant filing system¹⁹.

3 Automatic Processing

The DPA provides that 'data' includes information which is being processed, or is recorded with the intention that it should be so processed, by means of equipment operating automatically in response to instructions given for that purpose²⁰.

¹⁸ Recital 14 provides:

“(14) Whereas, given the importance of the developments under way, in the framework of the information society, of the techniques used to capture, transmit, manipulate, record, store or communicate sound and image data relating to natural persons, this Directive should be applicable to processing involving such data;”

¹⁹ Recital 15 provides:

“(15) Whereas the processing of such data is covered by this Directive only if it is automated or if the data processed are contained or are intended to be contained in a filing system structured according to specific criteria relating to individuals, so as to permit easy access to the personal data in question;”

²⁰ This reflects the provisions of the Directive which refer to 'the processing of personal data wholly or partly by automatic means'.

3.1 Information in text-form

It has long been accepted that information held on computer in the form of text is information processed by means of equipment operating automatically in response to instructions given for that purpose and is therefore 'data' for the purposes of the DPA. Non-computerised (manual) text information will only be data if it falls within any of paragraphs (c) to (e)²¹.

3.2 Non-text information (sound and image information)

Sound and image information may be captured by a variety of means, the most common of which are recordings on photographic film or magnetic tape or the digital capture of sounds or images.

(a) Still images produced from photographic film

In order to be viewed a still image captured on photographic film must be developed and then usually printed and retained as a photograph. The processes involved in capturing and creating the hardcopy photograph may involve the use of highly sophisticated technical equipment. However the resulting photograph, without further action (such as scanning or other image capture), is not automatically processed.

Hardcopy photographic images may nonetheless still be 'data' for the purposes of the DPA where they are retained with other information in a 'relevant filing system' (discussed in sections 3 to 6 of the main body of this guidance) and thereby may also be personal data for the purposes of the DPA.

Whether the individual whose image has been captured may exercise his right of subject access in relation to a photograph will depend on whether the photograph is held in a relevant filing system.

(b) Sounds and images held in an automatically processed form

Still and moving images and sounds are recorded for a variety of purposes. Where recordings are made to record social or domestic activities it is likely that the DPA 'domestic purposes' exemption will apply to the processing. In contrast, where recordings are used in a professional or business context the provisions of the DPA are likely apply in full.

In the business environment the most common purposes for which sound and image information is processed are for security, crime detection and fraud prevention, staff training, quality control checking, and legislative and

²¹ (c) is recorded as part of a relevant filing system or with the intention that it should form part of a relevant filing system,
(d) does not fall within (a),(b) or (c) but forms part of an accessible record...,
(e) is recorded information held by a public authority and does not fall within any of paragraphs (a) to (d).

regulatory compliance. In addition, evidence from financial and other business organisations indicates that it is now increasingly common for businesses to record telephone conversations to record business transactions or client instructions that may be time critical.

The recording of sounds and images involves the use of highly sophisticated equipment. Information may be recorded on magnetic tape or, increasingly, businesses are making use of digital recording techniques to capture both sound and image information. The process of capturing and viewing sound and moving image information clearly involves a considerable degree of automation. Sound and moving image information, when processed by appropriate equipment, is processed automatically for the purposes of the DPA. Such information may also be 'personal data' for the purposes of the DPA.

The manner in which the sound and image data is held may impact on the data controller's ability to respond to subject access requests for such information. Usually, the data controller can only access specific information about a particular individual whose sounds or image have been recorded if the individual in question is able to provide detailed information as to the date and time he believes his information was captured together with information as to what he was wearing or a description of his appearance. The requirement to provide such additional 'location' information is set out in section 7(3) of the DPA which provides:

"a data controller is not obliged to comply with [a subject access] request ... unless he is supplied with such information as he may reasonably require in order to ... locate the information which that person seeks"

Where an individual provides information enabling the system operator to locate recordings relating to him the operator will be required to comply with a request for subject access made by that individual where the recordings comprise personal data about the individual.

Where an individual is seeking subject access to purely audio recordings of his dealings with a business, whether the business will be able to supply him with any information will depend on whether he is able to provide information (such as the name of the employee he was speaking to and the date and time of the call) to enable the system operator to locate the information required.

It is important to remember that, regardless of whether the data controller is able to respond to subject access requests, he will nevertheless be obliged to comply with the data protection principles (especially with regard to security) in relation to any sound and image information he holds which is personal data.

[Return to contents list](#)

