

GUERNSEY STATUTORY INSTRUMENT

2002 NO. 14

**The Data Protection (Subject Access Modification)
(Education) Order, 2002**

<i>Made</i>	<i>9th July, 2002</i>
<i>Coming into operation</i>	<i>1st August, 2002</i>
<i>Laid before the States</i>	<i>2002</i>

THE STATES ADVISORY AND FINANCE COMMITTEE, in exercise of the powers conferred on it by sections 30(2) and (4) and 66(2) of the Data Protection (Bailiwick of Guernsey) Law, 2001^a and all other powers enabling it, and after consultation with the Data Protection Commissioner in accordance with section 66(3) of that Law, hereby makes the following Order -

Personal data to which Order applies.

1. (1) Subject to paragraph (2), this Order applies to personal data consisting of information constituting an educational record.

(2) This Order does not apply -

- (a) to any data consisting of information as to the physical or mental health or condition of the data subject to which the Data Protection (Subject Access Modification) (Health) Order, 2002 or Data Protection (Subject Access Modification) (Social Work) Order, 2002 apply; or

^a Order in Council No. V of 2002.

- (b) to any data which are exempted from section 7 by an order made under section 38(1) of the Law.

Exemption from the subject information provisions.

2. (1) Personal data falling within paragraph (2) and to which this Order applies are exempt from the subject information provisions.

(2) This paragraph applies to personal data processed by a court and consisting of information -

- (a) supplied in a report or other evidence given to the court by or on behalf of -

- (i) a probation officer;
- (ii) a medical practitioner;
- (iii) an educational establishment;
- (iv) a Committee of the States; or
- (v) any other person or body,

in the course of any proceedings relating to families or children; and

- (b) which the court directs should be withheld from the data subject on the ground that -

- (i) it appears to it impracticable to disclose the

report having regard to his age and understanding; or

- (ii) undesirable to do so having regard to potential serious harm which might thereby be suffered by him.

(3) For the purposes of this article, the expression “**proceedings relating to families or children**” includes any court proceedings to which the Orders of the Royal Court set out in the Schedule to this Order apply.

Exemptions from section 7.

3. (1) Personal data to which this Order applies are exempt from section 7 in any case to the extent to which the application of that section would be likely to cause serious harm to the physical or mental health or condition of the data subject or any other person.

(2) In circumstances where the exemption in paragraph (1) does not apply, where any person falling within paragraph (3) is enabled by or under any enactment or rule of law to make a request on behalf of a data subject and has made such a request, personal data consisting of information as to whether the data subject is or has been the subject of or may be at risk of child abuse are exempt from section 7 in any case to the extent to which the application of that section would not be in the best interests of that data subject.

(3) A person falls within this paragraph if -

- (a) the data subject is a child, and that person has parental responsibility for that data subject; or
- (b) the data subject is incapable of managing his own

affairs and that person has been appointed by a court to manage those affairs.

(4) For the purposes of paragraph (2), “**child abuse**” includes physical injury (other than accidental injury) to, and physical and emotional neglect, ill-treatment and sexual abuse of, a child.

Further modifications of section 7.

4. (1) In relation to data to which this Order applies -

(a) section 7(4) of the Law shall have effect as if the full stop at the end of paragraph (b) were deleted and there were inserted immediately after the word “individual” -

“; or

(c) the other individual is a relevant person.”;

(b) section 7(9) shall have effect as if -

(i) there were substituted -

“ (9) If a court is satisfied on the application of -

(a) any person who has made a request under the foregoing provisions of this section, or

(b) any other person to whom serious harm to his physical or mental health or condition would be likely to be caused

by compliance with any such request in
contravention of those provisions,

that the data controller in question is about to comply with or has failed to
comply with the request in contravention of those provisions, the court may
order him not to comply or, as the case may be, to comply with the request.”;
and

(ii) the reference therein to a contravention of the
foregoing provisions of that section included a
reference to a contravention of the provisions
contained in this Order.

(2) After section 7(12) of the Law insert -

“ (13) A person is a relevant person for the purposes of
subsection (4)(c) if he -

- (a) is a teacher or other employee at a
school;
- (b) is a person engaged by the proprietor of
a school or working at a school under a
contract for the provision of educational
services;
- (c) is employed by the States in pursuance
of functions of the States' Education
Council relating to education and the
information relates to him, or he
supplied the information in his capacity

as such an employee; or

(d) is the person making the request.

(14) In subsection (13)(b), “**proprietor**” has the same meaning given in section 30(5).”.

Interpretation.

5. (1) In this Order, unless the context otherwise requires -

“**educational record**” means any record of information which -

- (a) is processed by or on behalf of the proprietor of, or a teacher at, a school;
- (b) relates to any person who is or has been a pupil at the school; and
- (c) originated from or was supplied by or on behalf of -
 - (i) a teacher or other employee at the school;
 - (ii) a person engaged by the proprietor of the school or working at a school under a contract for the provision of educational services;
 - (iii) the pupil to whom the record relates; or
 - (iv) a parent of that pupil;

“**an instrument**” means any order (including any Order of the Royal

Court), regulations, rules or other subsidiary legislative instrument;

“**the Law**” means the Data Protection (Bailiwick of Guernsey) Law, 2001;

“**parent**” in relation to a pupil, includes a guardian and every person who has actual custody of the pupil;

“**request**” means a request made under section 7; and

“**section 7**” means section 7 of the Law.

(2) The provisions of the Interpretation (Guernsey) Law, 1948^b shall apply to the interpretation of this Order -

(a) throughout the Bailiwick; and

(b) as they apply to the interpretation of an enactment.

(3) Unless the context otherwise requires, references in this Order to an enactment or instrument are references thereto as amended, re-enacted (with or without modification), extended or applied.

(4) Unless the context otherwise requires -

(a) a reference in this Order to a numbered article is a reference to the article of this Order which is so numbered; and

^b Ordres en Conseil Vol. XIII, p. 355.

- (b) a reference in a provision of this Order to a numbered paragraph is a reference to the paragraph of that provision which is so numbered.

Citation.

6. This Order may be cited as the Data Protection (Subject Access Modification) (Education) Order, 2002.

Commencement.

7. This Order shall come into force on the 1st August, 2002.

Dated this 9th day of July, 2002.

A handwritten signature in black ink, appearing to be 'L. C. Morgan', written over a horizontal dotted line. The signature is stylized and extends to the right.

L. C. MORGAN

President of the States Advisory and Finance Committee

For and on behalf of the Committee.

SCHEDULE

Article 2

RULES OF COURT - PROCEEDINGS WHICH RELATE TO FAMILIES OR CHILDREN

1. Adoption Rules, 1961^c
2. Adoption (Alderney) Rules^d
3. Court of Appeal (Guardianship Proceedings) (Appeals) Rules, 1979^e
4. Domestic Proceedings and Magistrate's Court Rules, 1989^f
5. Juvenile Court (Criminal Cases) Rules, 1990^g
6. Matrimonial Causes Rules, 1952^h

^c O.R.C. Vol. I, pp. 180 and 222 and No. I of 1968.

^d O.R.C. No. I of 1974.

^e O.R.C. No. II of 1979.

^f O.R.C. No. IX of 1989 and No. I of 1993.

^g O.R.C. No. III of 1990 and No. I of 1994.

^h O.R.C. Vol. I, p. 64; No. I of 1973; No. I of 1980; No. IV of 1983; No. I of 1986 and No. I of 2001.

EXPLANATORY NOTE.

(This note is not part of the Order)

This Order provides for the partial exemption from the provisions of the Data Protection (Bailiwick of Guernsey) Law 2001, which confer rights on data subjects to gain access to data held about them, of certain data (education records) where the exercise of those rights would be likely to cause serious harm to the physical or mental health or condition of the data subject or another person, or, in some circumstances, would disclose information as to whether the data subject is or has been the subject of or may be at risk of child abuse which disclosure would not be in the best interests of that data subject. The Order does not apply to any data to which the Data Protection (Subject Access Modification) (Health) Order 2002 (G.S.I.xxx) or any order made under section 38(1) of the Law applies (article 1(2)).

In the case of court reports in certain proceedings, there is a complete exemption under article 2 of the Order from both section 7 of the Law and the first data protection principle to the extent to which it requires compliance with paragraph 2 of Part II of Schedule 1 to the Law (which confers obligations on data controllers to give certain information to data subjects relating to data held about them). For other personal data to which the Order applies, there is an exemption from section 7 of the Law only (article 3).

Article 5 of the Order also modifies section 7 of the Law so that a data controller cannot refuse access on the grounds that the identity of a third party would be disclosed in cases where the third party is a relevant person (as defined), unless serious harm to that relevant person's physical or mental health or condition is likely to be caused such that the exemption in article 3(1) applies.