

GREFFE
ROYAL COURT
12 JUL 2002
GUERNSEY

GUERNSEY STATUTORY INSTRUMENT

2002 NO. 17 .

**The Data Protection (Processing of Sensitive Personal Data)
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 section 66(2) and paragraph 10 of Schedule 3 to 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 -

Circumstances in which sensitive data may be processed.

1. For the purposes of paragraph 10 of Schedule 3 to the Law, the circumstances specified in any of the paragraphs in the Schedule to this Order are circumstances in which sensitive personal data may be processed.

Interpretation.

2. (1) In this Order, unless the context otherwise requires “**the Law**” means the Data Protection (Bailiwick of Guernsey) Law, 2001.

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

^a Order in Council No. V of 2002.

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

(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 are references thereto as amended, re-enacted (with or without modification), extended or applied.

(4) Unless the context otherwise requires -

(a) a reference in the Schedule to this Order to a numbered paragraph is a reference to the paragraph of the Schedule so numbered; and

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

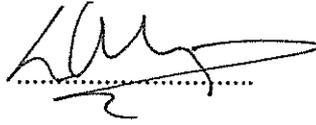
Citation.

3. This Order may be cited as the Data Protection (Processing of Sensitive Personal Data) Order, 2002.

Commencement.

4. 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 read 'L. C. Morgan', written over a horizontal dotted line. The signature is stylized and somewhat cursive.

L. C. MORGAN

President of the States Advisory and Finance Committee

For and on behalf of the Committee.

SCHEDULE

CIRCUMSTANCES IN WHICH SENSITIVE PERSONAL DATA MAY BE PROCESSED

1. (1) The processing -
 - (a) is in the substantial public interest;
 - (b) is necessary for the purposes of the prevention, detection or investigation of any unlawful act; and
 - (c) must necessarily be carried out without the explicit consent of the data subject being sought so as not to prejudice those purposes.
- (2) In this paragraph, “act” includes a failure to act.
2. The processing -
 - (a) is in the substantial public interest;
 - (b) is necessary for the discharge of any function which is designed for protecting members of the public against-
 - (i) dishonesty, malpractice, or other seriously improper conduct by, or the unfitness or incompetence of, any person; or

- (ii) mismanagement in the administration of, or failures in services provided by, any body or association; and
 - (c) must necessarily be carried out without the explicit consent of the data subject being sought so as not to prejudice the discharge of that function.
- 3. (1) The processing -
 - (a) is by way of disclosure;
 - (b) is in the substantial public interest;
 - (c) is in connection with -
 - (i) the commission by any person of any unlawful act (whether alleged or established);
 - (ii) dishonesty, malpractice, or other seriously improper conduct by, or the unfitness or incompetence of, any person (whether alleged or established); or
 - (iii) mismanagement in the administration of, or failures in services provided by, any body or association (whether alleged or established);
 - (d) is for the special purposes as defined in section 3 of the Law; and
 - (e) is made with a view to the publication of those data by

any person and the data controller reasonably believes that such publication would be in the public interest.

(2) In this paragraph, “act” includes a failure to act.

4. The processing -

- (a) is in the substantial public interest;
- (b) is necessary for the discharge of any function which is designed for the provision of confidential counselling, advice, support or any other service; and
- (c) is carried out without the explicit consent of the data subject because the processing -
 - (i) is necessary in a case where consent cannot be given by the data subject;
 - (ii) is necessary in a case where the data controller cannot reasonably be expected to obtain the explicit consent of the data subject; or
 - (iii) must necessarily be carried out without the explicit consent of the data subject being sought so as not to prejudice the provision of that counselling, advice, support or other service.

5. (1) The processing -

- (a) is necessary for the purpose of -
 - (i) carrying on insurance business; or
 - (ii) making determinations in connection with eligibility for, and benefits payable under, a pension scheme;
- (b) is of sensitive personal data consisting of information falling within section 2(e) of the Law relating to a data subject who is the parent, grandparent, great grandparent or sibling of -
 - (i) in the case of paragraph (a)(i), the insured person, or
 - (ii) in the case of paragraph (a)(ii), the member of the scheme;
- (c) is necessary in a case where the data controller cannot reasonably be expected to obtain the explicit consent of that data subject and the data controller is not aware of the data subject withholding his consent; and
- (d) does not support measures or decisions with respect to that data subject.

(2) In this paragraph and paragraph 6 -

- (a) “**insurance business**” has the meaning given by section

1(1) of the Insurance Business (Guernsey) Law, 1986^c;

(b) “insured” and “member” includes an individual who is seeking to become an insured person or member of the scheme respectively; and

(c) “pension scheme” has the meaning given by section 58 of the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc. (Bailiwick of Guernsey) Law, 2000^d.

6. The processing -

(a) is of sensitive personal data in relation to any particular data subject that are subject to processing which was already under way immediately before the coming into force of this Order;

(b) is necessary for the purpose of -

(i) carrying on insurance business; or

(ii) establishing or administering an occupational pension scheme; and

(c) either -

(i) is necessary in a case where the data controller cannot

^c Ordres en Conseil Vol. XXIX, p. 214; Vol. XXX, p. 243 (which inserted section 63A); No. III of 1997 and No. II of 1998.

^d Order in Council No. I of 2001.

reasonably be expected to obtain the explicit consent of the data subject and that data subject has not informed the data controller that he does not so consent, or

- (ii) must necessarily be carried out even without the explicit consent of the data subject so as not to prejudice those purposes.

- 7. (1) Subject to the provisions of sub-paragraph (2), the processing -
 - (a) is of sensitive personal data consisting of information falling within section 2(c) or (e) of the Law;
 - (b) is necessary for the purpose of identifying or keeping under review the existence or absence of equality of opportunity or treatment between persons -
 - (i) holding different beliefs as described in section 2(c) of the Law; or
 - (ii) of different states of physical or mental health or different physical or mental conditions as described in section 2(e) of the Law,
- with a view to enabling such equality to be promoted or maintained;
- (c) does not support measures or decisions with respect to any particular data subject otherwise than with the explicit consent of that data subject; and
 - (d) does not cause, nor is likely to cause, substantial

damage or substantial distress to the data subject or any other person.

(2) Where any individual has given notice in writing to any data controller who is processing personal data under the provisions of sub-paragraph (1) requiring that data controller to cease processing personal data in respect of which that individual is the data subject at the end of such period as is reasonable in the circumstances, that data controller must have ceased processing those personal data at the end of that period.

8. The processing -

- (a) is in the substantial public interest;
- (b) is necessary for research purposes (which expression shall have the same meaning as in section 33 of the Law);
- (c) does not support measures or decisions with respect to any particular data subject otherwise than with the explicit consent of that data subject; and
- (d) does not cause, nor is likely to cause, substantial damage or substantial distress to the data subject or any other person.

9. (1) The processing is necessary for the exercise of any functions conferred on an officer of police by any rule of law.

(2) In this paragraph, “**officer of police**” means a member of the salaried police force of the Island of Guernsey and -

- (a) in relation to Guernsey, Herm and Jethou, and within

the limits of his jurisdiction, a member of the special constabulary of the Island of Guernsey;

- (b) in relation to Alderney, a member of any police force which may be established by the States of Alderney and, within the limits of his jurisdiction, a special constable appointed by the Court of Alderney under section 15 of the Government of Alderney Law, 1987^e; and
- (c) in relation to Sark, the Constable and the Vingtenier.

^e Ordres en Conseil Vol. XXX, p. 37; section 15 has been repealed and replaced (from a date to be appointed) by No. I of 2000.

EXPLANATORY NOTE.

(This note is not part of the Order)

The first data protection principle set out in paragraph 1 of Schedule 1 to the Data Protection (Bailiwick of Guernsey) Law 2001 ("the Law") prohibits the processing of sensitive personal data unless one of the conditions in Schedule 3 to the Law is met. The condition set out in paragraph 10 of that Schedule is that the processing of sensitive personal data is carried out in circumstances specified by the States Advisory and Finance Committee. The Schedule to this Order specifies nine such circumstances.

Paragraph 1 of the Schedule to this Order covers certain processing for the purposes of the prevention or detection of any unlawful act, where seeking the consent of the data subject to the processing would prejudice those purposes. Paragraph 2 is a similar provision for cases where the processing is required to discharge functions which protect members of the public from certain conduct which may not constitute an unlawful act, such as incompetence or mismanagement.

Paragraph 3 of the Schedule covers certain disclosures for journalistic, artistic or literary purposes of personal data relating to a wide range of conduct (e.g. unlawful acts, dishonesty and incompetence etc.).

Paragraph 4 of the Schedule covers processing required to discharge functions involving the provision of services such as confidential counselling and advice, in circumstances where the consent of the data subject is not obtained for one of the specified reasons set out in the paragraph.

Paragraph 5 of the Schedule covers processing in certain insurance or pension scheme contexts, where details of particular relatives of the principal insured or member are required (e.g. health details of relatives used to calculate the life expectancy of the insured). The data controller must not process these data to make decisions or take actions with respect to the relatives, nor if he is aware of the relative withholding his consent to the processing.

Paragraph 6 of the Schedule covers the processing of sensitive data that were already being processed before the coming into force of this Order in certain insurance and pension contexts. Like the provision in paragraph 5, the data controller must not continue to process these data if he is aware of the data subject withholding his consent to the processing. Alternatively, the data controller may continue the processing in the case of group insurance or pension schemes even without the

explicit consent of the data subject to avoid prejudice to that insurance policy or pension scheme.

Paragraph 9 of Schedule 3 to the Law, provides as a condition relevant for the purposes of the first data protection principle that the processing is of personal data relating to racial or ethnic origin for the purposes of ethnic monitoring. Paragraph 7 of the Schedule to this Order makes similar provision in relation to the monitoring of equality between persons with different religious beliefs or between persons of differing physical or mental states or conditions.

Paragraph 8 of the Schedule covers, for example, processing in the course of maintaining archives where the sensitive personal data are not used to take decisions about any person without their consent and no substantial damage or distress is caused to any person by the keeping of those data.

Paragraph 9 of the Schedule covers processing by the police in the exercise of their common law powers.