

# Data Protection and Lions Clubs (2000)

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This updated summary of the Data Protection legislation as it affects Lions Clubs replaces the guidance issued in 1998. This summary now takes into account the provisions of the Data Protection Act 1998 which came into force this year (2000). The law stated in this note applies to England, Wales, Scotland and Northern Ireland.

*Please note that this is not a comprehensive summary of the legislation but is intended as a selective guide for the purposes of Lions Clubs only - it should not be used for the purposes of other organisations or commercial enterprises as there may be other parts of the legislation applicable to them which do not affect Lions Clubs.*

## Introduction

The Data Protection Act was designed to protect the rights of the individual about whom data is obtained. The Act applies to >personal data=, that is, information about an identifiable living person (>the Data Subject=). **This definition now applies both to computer based information and also to manual records if held in a >relevant filing system=.**

A relevant filing system is a set of information relating to individuals which although not processed by computer is structured in such a way that specific information relating to a particular individual is readily accessible.

What manual data is covered by the Act is extremely complex and outside the scope of a note such as this, but a structured filing system organised by names is certainly covered, for example, a Club Membership Filing system, or a card index system of recipients of donations, or participators in fundraising events. Any specific queries by clubs as to whether or not particular manual data is covered by the Act should be referred to the MD Legal Adviser.

## The Data Protection Principles

All clubs holding personal data - *irrespective of whether or not the club is obliged to notify under the Data Protection Act* (previously called registration) - must comply with the Data Protection Principles. There are no exemptions in the new Act for club membership information or mailing lists, which were exempt under the old legislation. Under transitional rules, however, such data, if held on computer and in place before October 1998 will be exempt, but **only until October 2001.**

Data held for domestic purposes by an individual are exempt from both notification and the Data Protection Principles. Domestic purposes means for purposes of the individual's personal, family or household affairs (including recreational purposes).

The Eight Data Protection principles in the 1998 Act differ from those in the 1984 Act, mainly enlarging the previous principles. An individual who suffers damage or damage and distress as the result of any contravention of these principles is entitled to compensation unless the Club can prove that they had taken reasonable care to comply with the relevant requirement.

### **The First Principle**

*Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless at least one of several specific conditions is met and (in the case of sensitive personal data) additional criteria is met.*

**For purposes of Data held by Lions Clubs, the only criteria likely to apply is that the Data Subject has given their consent to the data processing.** The other criteria include processing necessary for the performance of or entering into a contract, compliance with legal obligations, and other matters not likely to apply to Club records.

Sensitive personal data includes racial or ethnic origins, political opinions, religious beliefs, physical or mental condition, criminal records etc. I assume clubs will not keep such data. Any club who does keep any of this information should contact the MD Legal Adviser for further detailed advice.

Consent is not defined in the Act. It is clear however that this needs to be a positive act, it cannot be inferred from inaction. Thus **you now need the Data Subject to sign a form agreeing for the data to be kept**, you cannot assume consent because a Data Subject has not returned a form, not ticked a box, or not replied to a letter.

Consent must be informed consent and Data must be processed fairly.

Thus, you must make sure that no-one is misled as to who the information is for and as to the purpose for which it will be held, used or disclosed. For example, the information must not be obtained by unfair pressure or threats, or by improperly leading the person to believe the information must be supplied, or that failure to provide it might disadvantage him, or that the information would be kept confidential.

In obtaining information, you *must* ensure that the Data Subject has been informed of the identity of the person who is using the data and the purpose for which it is obtained.

By way of an example, if you collect data on participants in a fund raising venture with a view to mailshotting them for next years event, you must include a statement on the application forms asking them to confirm that they consent to their details being retained by the club for purposes of keeping them informed of future events and leaving a box for them to tick or sign.

I assume that no Club would wish to sell on its database of such participants, but if this is a possibility you will need to refer to this by including a statement to this effect with a tick box for them to agree to this.

In deciding on questions of fairness, a Data protection Tribunal will usually add more weight to the interests of the individual than the Club.

### **The Second Principle**

*Personal data shall be obtained only for one or more specified and lawful purposes, and shall not be further processed in any manner incompatible with that purpose or those purposes.*

Under the old Act, in order to comply with this principle, a Club merely had to ensure that it registered all its purposes with the data Protection Registrar. Now, a Data Subject must be notified of the reason that data is held.

### **The Third Principle**

*Personal data shall be adequate, relevant and not excessive in relation to the purpose or purposes for which they are processed.*

Basically, a club must hold enough information for its purposes but not additional information irrelevant to its purposes. Failure to maintain records up to date could mean it becomes inadequate, or if kept for longer than necessary, may become both irrelevant and excessive. There is little additional guidance that can be given to comply with this principle, to a large extent it will be a matter of common sense.

### **The Fourth Principle**

*Personal data shall be accurate and, where necessary, kept up to date.*

The Act states that >accurate=means correct and not misleading as to any matter of fact. A statement of opinion (which does not purport to be a statement of fact) cannot therefore be inaccurate. A Club must take reasonable steps to ensure that data is accurate. You must ensure the data is up to date (unless it is intended to be historical or for reference to a certain event or period of time).

### **The Fifth Principle**

*Personal data processed for any purpose or purposes shall not be kept for longer than is necessary for that purpose or those purposes.*

To comply with this principle you will need to review your data regularly and to delete information no longer required for your purposes.

For example, you should delete information about a member on your Club Members database if that Lion leaves the Club. A District database of cabinet members should delete references to Lions once they are no longer on cabinet.

Personal data which is held for historic, statistical or research purposes and which is not used in a way that is likely to cause damage or distress to the individual may be kept indefinitely.

### **The Sixth Principle**

*Personal Data shall be processed in accordance with the rights of Data Subjects under this Act*

This principle will be contravened if a Club fails to supply information following a proper request by the Data Subject for information or if it fails to comply with notices served under other provisions of the Act.

A request for information by a Data Subject must be in writing. A club can request a reasonable fee for giving information, but subject to this being paid, must give information promptly and in any event within 40 days. A reasonable interval must then elapse before a Data Subject is entitled to repeat a request for information.

Upon receipt of a valid request, a club must give all the information it holds on the Data Subject at the time the request was received. A club must not delete or alter information at the time of receipt of a request in order to get around disclosure or to make it more acceptable to the Data Subject.

Problems can arise where disclosure would also disclose information about a different Data Subject and if a club experience this they must seek further guidance from the MD Legal Adviser before disclosing any information.

A Data Subject can, by written notice, require a club to cease processing data relating to that individual for the purposes of direct marketing (defined as any advertising or marketing material which is directed to particular individuals). An example would be a mailshot to previous participants in an event.

The other notices referred to in the Act are unlikely to affect Lions Clubs eg where data is likely to cause substantial damage or substantial distress to the Data Subject or others.

### **The Seventh Principle**

*Appropriate technical and organisational measures shall be taken against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data.*

The level of security will depend on the type of data held and the harm that would result from a breach of security. For example, a list of local organisations which is reasonably public knowledge would need less security than a list of elderly or vulnerable persons kept for Club welfare purposes. Clubs must make an assessment of the risk of harm to individuals from a breach of security in order to determine what security measures are appropriate.

Regard will also be had to the state of technological developments at any time and the cost of

implementing any measures.

Club data held on a Club members computer at his place of employment (or anywhere else where others can access the computer, whether through a network, on-line, or physically using the computer) should be password protected to prevent unauthorised access.

Back up copies of data should always be kept.

Clubs should ensure that any members who keep data on their computer are conversant with the Data Protection Principles, particularly those relating to disclosure and the fact that Club data must not be used for business purposes or for purposes of any other organisation (unless permitted in accordance with the earlier parts of these notes).

### **The Eighth Principle**

*Personal Data shall not be transferred to a country or territory outside the European Economic Area, unless that country or territory ensures an adequate level of protection for the rights and freedoms of Data Subjects in relation to the processing of personal data.*

This Principle will not apply if the Data Subject has given his consent to the Transfer. Clubs invariably will have to Transfer basic information to America (Oak Brook) and therefore clubs should obtain a written consent from members to this.

It could be argued that the transfer of data is necessary for the performance of a contract between the Club member and Lions Clubs International in America ie a contract for membership, but it is safer and easier to simply obtain consent.

## **Notification**

Notification under the Data Protection Act 1998 now replaces the old Registration procedure.

### **Exemptions**

If a club has manual records only (but which are part of a relevant filing system), whilst they will have to comply with the Data Protection Principles, they will not be subject to the notification procedure.

As previously mentioned, data for domestic purposes is also excluded.

Under the old Data Protection Act 1984 there were exemptions from the Act (including registration) for Club Membership information and mailing lists. Under transitional rules, data in place before October 1998 will be exempt, but **only until October 2001**.

Under the Notification Procedure, there are exemptions from notification (*but not from the other parts*

of the Act) for not-for-profit organisations provided **all** the following conditions are met.

- ! The processing must **only** be for the purposes of a record of members or supporters of a body not conducted for profit (eg a Lions Club), or providing or administering activities for individuals who are either members or have regular contact with it.
- ! The Data Subjects must be past, existing or prospective members or those having regular contact with it. (This would not apply to a database of participants in fundraising events - but see below).
- ! The Data must be restricted to that necessary for the exempt purpose. (E.g. names, addresses, membership category).
- ! Disclosure is only with the consent of the Data Subject or to those necessary for this exempt purpose.
- ! Personal data is not kept after the relationship with the Data Subject ends, unless and for so long as it is necessary to do so for the exempt purpose.
  
- ! Additionally, if the only extra processing of your club relates to accounts and records or advertising marketing and PR, the Club may be exempt from notification.
- ! The accounts and records exemption covers the administration of customer and supplier records where the data is restricted to information necessary to the accounts; disclosure is limited to those made with the consent of the Data Subject or to third parties necessary for accounts and records eg external auditors; and personal data is not kept after the relationship with the Data Subject ends unless and for so long as is necessary for the accounts.
- ! The advertising marketing and PR exemption covers Clubs marketing their own goods, services or events - it will not apply if the Club is marketing an event in which the Club is participating if the event is actually run by another organisation. Other conditions apply: the Data Subjects are past existing or prospective customers/participants; the Data is restricted to that necessary for the advertising marketing and PR (eg names and addresses only); disclosure is limited to those made with the consent of the Data Subject or to third parties necessary for the advertising marketing and PR; and personal data is not kept after the relationship with the Data Subject ends unless and for so long as is necessary for the advertising marketing and PR

## Offences

It is an offence for any person to process personal data without notification unless exempt. It is also an offence not to notify the Commissioner of any amendments needed to the register entry within 28 days.

## Procedure

Notification is the process by which a club is entered on the Register of Data Controllers kept by the Data Protection Commissioner. Each entry includes the name and address of the data controller and a general description of the processing of personal data by the Club.

There are 2 ways to notify. Either by completing the notification form on-line and then printing and posting it or by telephone (01625 545 740) when a draft notification form will be sent based on the

information provided on the telephone.

The form will include a suggested template for notification purposes. The template for Club/Society should suit most Lions Clubs requirements. Additional purposes can be added if required - details of the templates for each purpose can be found on the Internet site.

Notification should be in the name of the Lions Club, not the individual who keeps the data, though in most cases the address to be given will have to be the Lion who completes the notification form unless the Club has a permanent address.

On completion of notification you will be given a security number which will need to be quoted if you contact the Commission. This is different than your registration number. Do not disclose the security number to anyone else.

The entry must be kept up to date and you must inform the Commission of any alterations. Change of information forms are available from the Commission and from their web site.

Clubs and Districts that are currently Registered under the 1984 Act will need to notify when the existing register entry expires - the Data Protection Commissioner should send the forms at the appropriate time. The new system records data use in very general terms - the old registration system of detailed coding no longer exists.

You no longer need to disclose sources of personal data, and registration of disclosures are replaced by notification of recipients. You will need to describe transfers of personal data outside the EEA (see data Protection Principle 8) e.g. to Oak Brook, USA and you will have to provide details about your security measures.

The old Registration was for 3 years, but now notification has to be renewed annually. The current fee is , 35 each year and there is provision to pay by direct debit.

## **Further Information**

As stated at the commencement of this note, this guide is a summary of the Data Protection Legislation as it affects Lions Clubs. *It is by no means a full description of the Law.*

Further information may be obtained from the office of the Data Protection Commissioner at Wycliffe House, Water Lane, Wilmslow, Cheshire. SK9 5AF (?01625 545 745).

The Data Protection Internet site which contains a great deal of useful information is at <http://www.dataprotection.gov.uk>

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