

Data Protection Act 1998: Applying the s.29 exemption

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Exemptions – Key Points

Exemptions should be construed narrowly and almost all of them are structured as follows:

- apply only to processing 'necessary' for a particular purpose
- apply on a case by case basis
- where the application of certain provisions is 'likely to prejudice' a particular purpose

They have differing effects, for example,

- from the Act as a whole (very few)
- from subject access or other rights
- from subject access and FPNs
- from certain principles
- from notification
- or combinations of above

See Part IV DPA, Schedule 7, and for notification sec 17 and Notification regulations.

The subject information provisions

These are found in section 27(2) and refer to:

- The requirement to provide fair processing notices, and
- The right of subject access (section 7)

Section 27(5) is also important:

except for processing covered by one of the subject information exemptions, these provisions have effect no matter what Act of Parliament or other rule of law exists that prohibits or restricts disclosure, or authorises the withholding of information. A **very powerful** provision – a trump card over pre-existing legislation.

The non-disclosure provisions

These are found at sec 27 (3) and (4) and refer to:

- Principle 1 – but **there must be** a condition for processing in Sched 2 (& 3)
- Principles 2-5
- the individual's right to object to the processing (sec 10) or blocking, erasure of inaccurate data (sec14 (1-3))

Important!

These provisions are only discounted to the extent they are **inconsistent** with the disclosure. However, section 29 imposes a separate overriding prejudice test.

The exemptions:

Section 29 contains 3 separate but related exemptions:

Section 29(1) - Personal data processed for specified purposes of crime prevention/detection, apprehension/prosecution of offenders or imposition of tax or similar duties – Exempt from principle 1 and section 7 where application of either 'would be likely to prejudice' those purposes.

Section 29(2) – Personal data obtained from a body who had it in their possession for any of the above purposes in order to carry out a statutory function – exempt from the same provisions to the same extent.

Section 29(3) – Disclosures made for any the above purposes are exempt from the non disclosure provisions to the same extent.

Section 29 – Key points

Remember the two P's!

Purpose – Is the personal data being processed for any of the purposes listed in section 29(1) either by you or by the organisation you obtained the personal data from?

Prejudice – Would complying with any of the relevant provisions 'be likely to' prejudice those purposes?

Section 29(3) is not a legal gateway to personal data for the police or other bodies – You must make the decision whether to disclose!

Section 29 – crime and taxation

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Scope of exemption:

- Section 29(1) – broadly covers internal processing by law enforcement agencies
 - Section 29(2) – excludes subject information provisions
 - Section 29(3) – excludes the non-disclosure provisions

So Section 29(3) is the exemption most people come into contact with.

Section 29(3) - application:

- Disclosure is for purposes of:
 - Prevention/detection of crime
 - Apprehension/prosecution of offenders; or
 - Imposition/collection of tax or equivalent
- The purpose in question would be prejudiced by the application of the non-disclosure provisions (i.e. by the data controller withholding the data from the investigatory body).

Section 29(3) – whose shout?

- Only the investigator can really assess the importance of the information they are seeking
 - So initial determination of necessity is by them
- BUT – section 29(3) is permissive – you can disclose but aren't obliged to
 - You should also think in terms of proportionality
 - Section 29(3) does not disapply the subject information provisions – if you don't want the subject notified, say so!

Section 29(3) – practicalities

- Easiest way to tick all the boxes is to have a form with tick boxes
- Also a good place to remind people to carry out validation checks and secure data transmission
 - Our preference is PSN email address – covers secure transmission and is a reasonable indicator of authenticity
- Form should also confirm their views on proportionality and data subject notification

Section 29 in action

- Police – do you have a forwarding address for Joe Bloggs?
 - Proof of life inquiries
- Spanish local authority – do you have an address for this person who hasn't paid their Spanish property taxes?
 - We actually have a standard form response for this!
 - We in GCC use it in carrying out regulatory functions
 - Surveillance! An interesting clash of legal rules...

And, inaction under Section 29 (and its counterparts)

- Utility companies – do you have a forwarding address for Joe Bloggs?
- Lawyers wanting info for legal cases which isn't recoverable under FOI
- Fishing requests e.g. list of all occupants of a homeless hostel (and CCTV footage showing what they all look like)



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