

DATA PROTECTION ACT 1998

SUPERVISORY POWERS OF THE INFORMATION COMMISSIONER

ENFORCEMENT NOTICE

DATED: 9 August 2019

To: Hudson Bay Finance Limited
Of: Unit 10 Stadium Road
Stadium Court
Wirral
Merseyside
CH62 3RP

1. Hudson Bay Finance Limited is a "data controller" as defined in section 1(1) of the Data Protection Act 1998 ("DPA").
2. Section 4(4) of the DPA provides that, subject to section 27(1), it is the duty of a data controller to comply with the data protection principles in relation to all personal data with respect to which it is the data controller.
3. The Information Commissioner ("Commissioner") has considered a request for assessment made under section 42 of the DPA by [REDACTED] ("the complainant").
4. The request for assessment concerned the failure by the data controller to supply personal data requested by way of a subject access request made by the complainant in writing by recorded delivery on 18 May 2018 and signed for on 21 May 2018 (copy

attached) in compliance with the requirements of section 7 of the DPA.

5. Having received no response to her subject access request the complainant contacted the Commissioner on 21 September 2018 regarding the data controller's failure to respond.
6. The Commissioner wrote to the data controller on 11 December 2018 to ask it to review the complainant's subject access request and to provide a response. This letter was returned and was subsequently resent to the data controller on 17 January 2019 (copies enclosed).
7. The complainant still didn't receive a response to her subject access request and so the Commissioner telephoned the data controller on 14 March 2019, 20 March 2019 and 21 March 2019 to confirm the correct address details and to discuss the complaint. During the conversation on 21 March 2019 the data controller refused to engage and hung up the telephone.
8. The Commissioner wrote to the data controller again on 27 March 2019 and 28 March 2019 (copies enclosed). Subsequent calls were made to the data controller on 6 June 2019, 10 June 2019, 11 June 2019 and 13 June 2019 but the data controller didn't answer or return the calls as requested.
9. The Commissioner subsequently issued a preliminary enforcement notice on 26 June 2019 (copy enclosed) instructing the data controller to respond to the complainant's subject access request by 26 July 2019 but the data controller did not respond, either to the complainant or to the Commissioner.

10. The Commissioner has considered the data controller's compliance with the provisions of the DPA in light of this matter. The relevant provisions of the DPA are the Sixth Data Protection Principle and section 7.

11. The Sixth Data Protection Principle provides at Part I of Schedule 1 to the DPA that:

"Personal data shall be processed in accordance with the rights of data subjects under this Act."

12. Paragraph 8(a) of Part II of Schedule 1 to the DPA further provides that:

"A person is to be regarded as contravening the sixth principle if, but only if, he contravenes section 7 by failing to supply information in accordance with that section."

13. Section 7 of the DPA provides, amongst other things, as follows:

"(1) Subject to the following provisions of this section and to sections 8, 9 and 9A, an individual is entitled –

(a) to be informed by any data controller whether personal data of which that individual is the data subject are being processed by or on behalf of that data controller,

(b) if that is the case, to be given by the data controller a description of –

(i) the personal data of which that individual is the subject,

(ii) the purposes for which they are being or are to be processed, and

(iii) the recipients or classes of recipients to whom they are or may be disclosed,

(c) to have communicated to him in an intelligible form –

(i) the information constituting any personal data of which that individual is the data subject, and

(ii) any information available to the data controller as to the source of those data, ...”

...

“(8) ...a data controller shall comply with a request under this section promptly and in any event before the end of the prescribed period beginning with the relevant day.”

...

“(10) In this section-

‘prescribed’ means prescribed by the Secretary of State by regulations;

‘the prescribed maximum’ means such amount as may be prescribed;

'the prescribed period' means forty days or such other period as may be prescribed;

'the relevant day', in relation to a request under this section, means the day on which the data controller receives the request or, if later, the first day on which the data controller has both the required fee and the information referred to in subsection (3)."

...

14. The Commissioner is of the view that the data controller has contravened the sixth data principle in that, contrary to section 7, it has failed to inform the complainant, without undue delay, whether their personal data is being processed by or on behalf of the data controller and, where this is the case, failed, without undue delay, to have communicated to them in an intelligible form such information as may constitute personal data.
15. The Commissioner considered, as she is required to do under section 40(2) of the DPA when deciding whether to serve an enforcement notice, whether any contravention has caused or is likely to cause any person damage or distress. The Commissioner takes the view that damage or distress is likely as a result of the complainant being denied the opportunity of properly understanding what personal data is being processed about her by the data controller.
16. In view of the matters referred to above, the Commissioner hereby gives notice that, in exercise of her powers under section 40 of the DPA, she requires that the data controller shall within 30 days of this Notice take steps to:

Inform the complainant whether the personal data processed by the data controller includes personal data of which the complainant is the data subject, and shall supply them with copies of any such personal data so processed in accordance with the requirements of section 7 of the DPA and the Sixth Data Protection Principle in that respect, subject only to the proper consideration and application of any exemption from, or modification to, section 7 of the DPA provided for in or by virtue of Part IV of the DPA which may apply.

17. Failure to comply with this Notice is a criminal offence.
18. There is a right of appeal against this Notice to the First-tier Tribunal (Information Rights), part of the General Regulatory Chamber. Information about appeals is set out in the attached Annex 1.
19. Dated the 9 day of August 2019

Signed...



Suzanne Gordon

Director of Data Protection Complaints and Compliance

Wycliffe House

Water Lane

Wilmslow

Cheshire

SK9 5AF

ANNEX 1

RIGHTS OF APPEAL AGAINST DECISIONS OF THE COMMISSIONER

1. Section 48 of the Data Protection Act 1998 gives any person upon whom an enforcement notice has been served a right of appeal to the First-tier Tribunal (Information Rights) (the "Tribunal") against the notice.
2. If you decide to appeal and if the Tribunal considers:-
 - a) that the notice against which the appeal is brought is not in accordance with the law; or
 - b) to the extent that the notice involved an exercise of discretion by the Commissioner, that she ought to have exercised her discretion differently,

the Tribunal will allow the appeal or substitute such other decision as could have been made by the Commissioner. In any other case the Tribunal will dismiss the appeal.

3. You may bring an appeal by serving a notice of appeal on the Tribunal at the following address:

GRC & GRP Tribunals
PO Box 9300
Leicester
LE1 8DJ

Tel: 0300 1234504
Fax: 0870 739 5836
Email: GRC@hmcts.gsi.gov.uk
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

The notice of appeal should be served on the Tribunal within 28 days of the date on which the enforcement notice was sent.

4. The statutory provisions concerning appeals to the First-tier Tribunal (General Regulatory Chamber) are contained in sections 48 and 49 of, and Schedule 6 to, the Data Protection Act 1998, and Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 (Statutory Instrument 2009 No. 1976 (L.20)).

