

DATA PROTECTION ACT

What is the Data Protection Act?

The Data Protection Act 1998 (DPA) is a piece of legislation that gives prisoners the right to access data that is held *about them*. You may use the DPA when you wish to see the contents of the files kept about you by any ‘Data Controller’, including the Prison Service, Probation and prison healthcare departments.

The DPA should not be confused with the Freedom of Information Act 2000, which gives prisoners, their representatives and other organisations the right to access *non-personal* information, such as policy documents, that is held by public authorities in England, Wales and in Northern Ireland.

The DPA obliges Data Controllers to keep all personal data accurate and up to date, no matter how seemingly insignificant.

Can information be withheld from me?

Data Controllers may refuse to disclose information on your file where:

- to do so may reveal the identity of, or information relating to a third party; or
- the data has been gathered for the prevention and detection of crime.

You have no right to be told if information has been withheld from you. If you suspect you have been improperly refused access to information you can ask the Information Commissioner to investigate.

Do I have the right to see security intelligence information?

You can ask for a copy of your security file, although due to the DPA exemptions set out above, they are usually so heavily edited before disclosure that they may contain little useful information.

If you have a query about a specific prison Security Intelligence Report (SIR), you can

ask for a gist of the information, and how it has been rated. The National Service Framework (contained in PSO 1000) says SIRs should be rated according to the quality of the source (ranging from always or highly reliable to unreliable/untested), and of the information itself (true with no reservations/not known to be true/untrue). The gist, if disclosed, may allow you to question the validity and reliability of the information.

How do I make a DPA request?

If you only wish to see a small, easily accessible piece of information that the Prison Service hold about you, for example a copy of your property card, then the request should be made informally by way of a wing application (old version of PSO 9020 para 4.9).

More substantial requests should be marked DPA Subject Access Request (SAR). A SAR may be submitted on a general application form, but the prison may also have a special SAR form. If the request is for information from your healthcare files, you should ask the prison to forward the request to the relevant Data Controller.

Alternatively, for prison or probation files you may send the request directly to:

Ministry of Justice
Data Access and Compliance Unit
Branston Registry, Building 16
Supply and Transport Store
Burton Road
Branston
BURTON UPON TRENT
Staffordshire DE14 3EG

Can I be charged for making a DPA request?

If you only wish to see a small, simple piece of information within the prison then you shouldn't be charged. However, you can be charged for the photocopying costs.

If you wish to see your entire prison/probation file then you will be charged £10. If you are legally represented your solicitor may be able to pay for this. Otherwise, £10 will be deducted from your prison account.

Special rules apply to fees for paper based health records and education records (a sliding scale from £1 to a maximum of £50, depending on the number of pages provided).

How long should I have to wait to receive the information requested?

The information requested should be provided within 40 days of receipt of both the DPA request and any fee charged.

What if I disagree with the contents of my file?

There will be a mixture of fact and opinion in your files.

If there is a fact within your file that you can prove to be incorrect, then the Data Controller is obliged to amend or delete the contents of the record. Data Controllers also have a duty to taken 'reasonable steps' to check the accuracy of disputed information. The more important the consequences for the individual concerned, the greater the effort the Data Controller should make to check the accuracy of the information.

If there is a fact, or opinion in your file you disagree with, but cannot clearly prove or disprove, the Data Controller is obliged to note on the record that the information in question is in dispute.

Can OASys reports be amended?

OASys reports are locked after completion and generally can only be amended by requesting a fresh review. Reviews can be conducted at any time and prisoners should not have to wait until their next annual OASys review to have a significant error corrected, or points of dispute noted.

What do I do if the Data Controller refuses to change inaccurate information, or note objections on the record?

Firstly, you should complain about the contents of a particular file in writing on a COMPI form or by letter to the relevant Data Controller. If you do not receive an adequate response to your complaint, you can refer the matter to the Information Commissioner's Office (ICO), or the Prisons and Probation Ombudsman (for prison or probation complaints), for investigation.

Complaints to the ICO must be made within a year of becoming aware of the data problem. The ICO will not offer you compensation. However, they can order the Data Controller to change their practices or correct the problem in some way.

Alternatively, you can bring a claim in the County Court. The court can order a Data Controller to (i) rectify, block, erase, or destroy inaccurate information, or (ii) amend the record to include a note of the true facts, or the fact that a statement of opinion is based on inaccurate or disputed information.

Can I claim compensation for DPA breaches?

Generally, you can only claim for compensation, including distress, if you have suffered loss or damage as a result of a DPA breach. Distress alone cannot be claimed.

More detailed information on your DPA rights and how to make a complaint or bring court action are available from the ICO:

*Information Commissioner's Office
Casework and Advice Section
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF
Ph: 0303 123 1113 (Helpline)*

PRISONERS' ADVICE SERVICE
PO BOX 46199
LONDON EC1M 4XA
TEL: 020 7253 3323 / 0845 430 8923