



Information Commissioner's Office

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The Act regulates the use of “personal data”. To understand what personal data means, we need to first look at how the Act defines the word “data”.

Data means information which –

- (a) is being processed by means of equipment operating automatically in response to instructions given for that purpose,
- (b) is recorded with the intention that it should be processed by means of such equipment,
- (c) is recorded as part of a relevant filing system or with the intention that it should form part of a relevant filing system,
- (d) does not fall within paragraph (a), (b) or (c) but forms part of an accessible record as defined by section 68, or
- (e) is recorded information held by a public authority and does not fall within any of paragraphs (a) to (d)

Paragraphs (a) and (b) make it clear that information that is held on computer, or is intended to be held on computer, is data. So data is also information recorded on paper if you intend to put it on computer.

Relevant filing system (referred to in paragraph (c) of the definition) is defined in the Act as:

any set of information relating to individuals to the extent that, although the information is not processed by means of equipment operating automatically in response to instructions given for that purpose, the set is structured, either by reference to individuals or by reference to criteria relating to individuals, in such a way that specific information relating to a particular individual is readily accessible.



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This is not an easy definition. Our view is that it is intended to cover non-automated records that are structured in a way which allows ready access to information about individuals. As a broad rule, we consider that a relevant filing system exists where records relating to individuals (such as personnel records) are held in a sufficiently systematic, structured way as to allow ready access to specific information about those individuals.

Accessible record" (referred to in paragraph (d) of the definition) means:
a health record that consists of information about the physical or mental health or condition of an individual, made by or on behalf of a health professional (another term defined in the Act) in connection with the care of that individual;
an educational record that consists of information about a pupil, which is held by a local education authority or special school (see Schedule 11 of the Act for full details); or
an accessible public record that consists of information held by a local authority for housing or social services purposes (see Schedule 12 for full details).

Accessible records were included in the definition of "data" because pre-existing access rights to information were not restricted to automatically processed records, or records held in non-automated systems falling within the definition of "relevant filing systems". So, to preserve all these pre-existing access rights, the definition of "data" covers accessible records even if they do not fall in categories (a), (b), or (c).



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The Freedom of Information Act 2000 created a new category of data which extended the definition of “data” in the Data Protection Act to include any information held by a public authority which would not otherwise be caught by the definition. Where information requested under the FOI Act includes information about identifiable individuals, public authorities must consider whether its release would breach the Data Protection Act. The new category of data (which is often referred to as “category (e) data”) is designed to ensure that before releasing any personal information under the FOI Act, public authorities consider whether this would be fair. Processing category (e) data is exempt from most of the rights and duties created by the Data Protection Act.

Personal data means data which relate to a living individual who can be identified –
(a) from those data, or
(b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller,
and includes any expression of opinion about the individual and any indication of the intentions of the data controller or any other person in respect of the individual.

It is important to note that, where the ability to identify an individual depends partly on the data held and partly on other information (not necessarily data), the data held will still be “personal data”.



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The presumption is that, because information about these matters could be used in a discriminatory way, and is likely to be of a private nature, it needs to be treated with greater care than other personal data. In particular, if you are processing sensitive personal data you must satisfy one or more of the conditions for processing which apply specifically to such data, as well as one of the general conditions which apply in every case. The nature of the data is also a factor in deciding what security is appropriate. Please see Schedules 2 and 3 of the Act and the section of this guide on the [conditions for processing](#).

The categories of sensitive personal data are broadly drawn so that, for example, information that someone has a broken leg is classed as sensitive personal data, even though such information is relatively matter of fact and obvious to anyone seeing the individual concerned with their leg in plaster and using crutches. Clearly, details about an individual's mental health, for example, are generally much more "sensitive" than whether they have a broken leg.

Many individuals choose to make their political allegiance public, for example by wearing badges or rosettes or by putting a sticker in their window. There is a condition for processing sensitive personal data that covers information made public by the individual concerned.



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Religion or ethnicity, or both, can often be inferred with varying degrees of certainty from dress or name. For example, many surnames are associated with a particular ethnicity or religion, or both, and may indicate the ethnicity and religion of the individuals concerned. However, it would be absurd to treat all such names as “sensitive personal data”, which would mean that to hold such names on customer databases you had to satisfy a condition for processing sensitive personal data. Nevertheless, if you processed such names specifically because they indicated ethnicity or religion, for example to send marketing materials for products and services targeted at individuals of that ethnicity or religion, then you would be processing sensitive personal data. In any event, you must take care when making assumptions about individuals as you could be collecting inaccurate personal data.

Full information on the ICO can be found at <https://ico.org.uk/for-organisations/guide-to-data-protection/key-definitions/>