

DATA PROTECTION ACT 1998

The Data Protection Act 1998 applies to “data controllers” (which in the context of this Fact Sheet would mean churches) who process information about “data subjects” (i.e. the person to whom the information refers) whether the information is kept manually - in structured records, or on a computer. “Data” means any information relating to a living person.

Data controllers who process information that is not exempt are required to “notify” the Information Commissioner’s Office (ICO) that they are processing data. Churches are only allowed to process personal data if they satisfy the relevant conditions set out in the Act. This means that in most cases the church will only be able to process data if one of the following conditions is satisfied:

1. The processing is necessary to further the “legitimate interests” of the church, provided that such processing does not prejudice the “right and freedoms or legitimate interests” of the person concerned. If the church processes data under this condition, there is no requirement to obtain consent from the person concerned, but you need to make sure that you respect that person’s rights.
2. The person concerned has given consent. The consent may be explicit or implicit. For example, a person who emails the church asking a question gives implicit consent for his or her contact details to be stored in such a way that enables the church to respond to the email.
3. Compliance with a legal obligation – for example a court order requiring disclosure of information.

Where a church is processing sensitive personal data (which in many cases it will be) the first two conditions above become more stringent as follows:

1. You can only rely on the “legitimate interests” condition if (a) the processing relates only to members of the church or people who have regular contact with the church, (b) personal data is not disclosed outside of the church without consent of the person the information relates to and (c) appropriate safeguards are in place for the rights and freedoms of the persons concerned.
2. Where you are relying on consent the consent needs to be explicit.

Churches are not required to notify under the Act if they only use the information for maintaining membership records and for recording donations given to the church, so long as they adhere to the following rules:

1. Members must be aware that their contact details will be used for the purposes of a directory to be made available to other members;
2. The directory should include a confidentiality statement instructing members not to share the details with non-members;
3. The data collected should be handled in accordance with the general principles set out below.

However, churches must notify the ICO if they maintain pastoral records such as keeping a record of pastoral visits, issues discussed, advice given, the individual's personal beliefs, etc. It can be a grey area whether the maintaining of certain records will require notification or not. The ICO has produced a **'self-assessment test'** that will help a church to find out if they need to register. This can be done online at: <https://ico.org.uk/for-organisations/register/self-assessment/>

Irrespective of whether a church is required to notify or not, all data controllers are governed by certain data protection principles set out in the Act, which require data controllers to:

1. Process personal data fairly and lawfully.
2. Obtain personal data for specific and lawful purposes, and process it only for those purposes.
3. Ensure that the personal data is adequate, relevant and not excessive in relation for the purpose for which it is held and processed
4. Ensure that personal data is accurate and kept up to date.
5. Ensure that personal data is not kept longer than is necessary for the purpose for which it was obtained.
6. Process personal data in accordance with the rights of the data subjects.
7. Ensure that personal data is kept secure.
8. Ensure that personal data is not transferred to a country outside the European Economic Area unless the country to which it is transferred has a suitable level of data protection in place.

Additionally, sensitive personal data, such as a record of a person's religious beliefs, political opinions, medical information, mental health, criminal record (to give just a few examples) may only be held with the explicit consent of the data subject who also has a right of access to the information held.

Such requests for information must be handled in an appropriate manner. The ICO has also produced a **'Subject access request: checklist'** to help in handling such a request. This can be done online at: <https://ico.org.uk/for-organisations/subject-access-request-checklist/>

Whilst this checklist is geared towards businesses, the underlying principles are relevant to churches. In the event of a church receiving a subject access request, church officers may approach the Corporation for guidance as to how they should proceed.

Further information and advice may be obtained from the ICO at one of the contact points listed below:

Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF

Telephone: 0303 123 1113 or 01625 545745

Fax: 01625 524510

Email: registration@ico.org.uk

Website: <https://ico.org.uk>

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