



Data Protection Act 1998

The Data Protection Act 1998 seeks to strike a balance between the rights of individuals and the competing but legitimate interests of those using personal information. As such the Act bestows a duty on all bodies, when processing personal data to protect it from unauthorised use. It further poses restrictions on matters such as the length of time information can be retained for and limits how the information can be used. Under this Act Southampton City Council is obliged to provide information requested by the subject of the information with 40 working days of the request.

REQUESTING INFORMATION ABOUT OTHERS

- **Police**
- **HM Revenue and Customs**
- **Child Support Agency**
- **Health and Safety Executive**
- **Official Receiver**
- **Solicitors or another acting on your clients behalf**
- **Solicitor acting on your client behalf, but asking for another's data**

Police requesting information about another.

The Legislation:

Section 29 of the Data Protection Act 1998

Or

Section 35 of the Data Protection Act 1998 with another statutory power that permits the disclose of information such as Section 115 of Crime and Disorder Act 1995

General Information:

Disclosures to the Police are not compulsory except in cases where the council is served with a Court Order requiring information. However, Section 29 of the Data Protection Act 1998 does allow the council to release information to the Police without the consent of customers or members of staff in limited circumstances. Such disclosures will only be made to the Police if the following test is confirmed. Note: Southampton City Council will be looking for an authorisation of this request from an officer of rank Inspector or above.

Section 29 Test:

Two strand test that must be addressed in your application form

Strand One

- a) The prevention or detection of crime
- b) The apprehension or prosecution of crime
- c) The assessment or collection of any tax or duty of any imposition of a similar nature

Strand Two

Non-disclosure would be likely to prejudice you investigations

Section 35 Test:

Two strand test that must be addressed in your application form

Strand One

State that you are invoking section 35 as exemption to the Data Protection rules

Strand Two

Explain which other enactment (detailing the section) that you rely on to request the information.

How to make a request:

- 1) **Complete the application form and answer all the questions**

- 2) **Any requests should be sent through to:**

Information Compliance Officer
Corporate Legal Team
Southampton City Council
Civic Centre
Southampton
SO14 7LY

Telephone: (023) 8083 2676

Fax: (023) 8083 2308

Email: foi.requests@southampton.gov.uk

HM Revenue and Customs requesting information about another.

The Legislation:

Section 35 of the Data Protection Act 1998

AND

Section 18(A) Taxes Management Act 1970

However, there will be an additional statutory power that relates to each information request based on the facts of the investigation. This power will need to be included in the application request.

General Information:

The Inland Revenue have extensive statutory powers under the Taxes Management Act 1970 which require Southampton City Council to supply information relating to payments and other personal information made to the individual.

Section 35 Test:

Two strand test that must be addressed in your application form

Strand One

State that you are invoking section 35 as exemption to the Data Protection rules

Strand Two

Explain which other enactment (detailing the section) that you rely on to request the information.

How to make a request:

Complete the application form and answer all the questions

Any requests should be sent through to:

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Child Support Agency requesting information about another –

The Legislation:

Section 35 of Data Protection Act 1998

AND

There are various powers retained by the Child Support Agency. Examples are:

Section 14 Child Support Act 1991

Section 3 of Child Support (Information, Evidence and Disclosure)

Regulations 1992

General Information:

The Child Support Agency has extensive statutory powers to require information about relevant persons. Where disclosure is required to be made by Child support legislation it will not be in breach of the DPA 1998. This would be the case even though the data subject may object to the disclosure or may not have provided any specific permission to the CSA to disclose the information. The CSA obtains information from and about Non Resident Parents and Parents with Care under its statutory powers to do so.

Test:

Section 35 Test:

Two strand test that must be addressed in your application form.

Strand One

State that you are invoking section 35 as exemption to the Data Protection rules.

Strand Two

Explain which other enactment (detailing the section) that you rely on to request the information and fulfil any relevant test.

Strand Three

Explain that the information is needed to enable a decision to be made as to whether, in relation to an application for a maintenance assessment [calculation], there exists a qualifying child, *an absent parent* [a non-resident parent] and a person with care.

How to make a request:

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The Health and Safety Executive requesting information about another.

The Legislation:

Section 35 of Data Protection Act 1998

AND

Section 20(1) and (2)(a-m) of the Health and Safety at Work Act 1974

General Information:

Under this Act an inspector investigating a case can request from the authority disclosure of various documents or seizure of any articles or substances found in any premises which he has the power to enter.

Test:

Section 35 Test:

Two strand test that must be addressed in your application form.

Strand One

State that you are invoking section 35 as exemption to the Data Protection rules.

Strand Two

Explain which other enactment (detailing the section) that you rely on to request the information and fulfil any relevant test.

How to make a request:

Complete the application form and answer all the questions

Any requests should be sent through to:

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An Official Receiver requesting information about another.

The Legislation:

Section 35 of Data Protection Act 1998

AND

Section 236, 366 and 433 of the Insolvency Act 1986

General Information:

- Section 236 gives the court the power to summons, to a private examination, any person thought to be capable of giving information about the affairs of a company in liquidation.
- Section 366 provides for the private examination of the bankrupt (or his spouse or former spouse, or third parties believed to be in possession of the bankrupt's property or information about his affairs).
- Under section 433 any statement made under s236/s366 may be used in any proceedings (whether or not under the Insolvency Act 1986) brought against any person making or concurring in the making of the statement but it may not be used as evidence against anyone else (Re Norwich [1884] 27 ChD 515) (but see later paragraph 47.58)

Test:

Section 35 Test:

Two strand test that must be addressed in your application form.

Strand One

State that you are invoking section 35 as exemption to the Data Protection rules.

Strand Two

Explain which other enactment (detailing the section) that you rely on to request the information and fulfil any relevant test.

How to make a request:

Complete the application form and answer all the questions

Any requests should be sent through to:

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Solicitors or another requesting information on behalf of their client.

General Information:

Any person can authorise another to deal with their affairs. This is commonly used in a Solicitor/Client relationship. Data Protection rules recognise this and therefore the same authorisation can be used to authorise another to request and receive information on their behalf. In order to do so the Council must be provided with a written statement of authority from his client, stating that the solicitor is acting on the clients instructions, the clients personal data can be disclosed to the solicitor, in accordance with the DPA 1998.

Below is a standard form as a guide.

(Your Address)

.....
.....

**ICO
Legal Services
Southampton City Council
Civic Centre
Southampton
SO14 7LY**

Date:

To the Information Compliance Officer

I, (insert your name) authorise, (insert the name of the person who is to deal with your affairs) to request and receive any information about me held by (department name) department in Southampton City Council, in particular relating to (insert subject eg. Council Tax).

All correspondence relating to (insert name) resides at:

(insert address)

Yours faithfully

Signed

How to make a request:

Complete the application form and answer all the questions

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Solicitors requesting information on behalf of their client about another.

Legislation:

Section 35(2) Data Protection Act 1998

General Information:

The Act provides that non-disclosure provisions can be waived where the collation of the information is

“in connection with legal proceedings... or is otherwise necessary for... establishing, exercising or defending legal rights.”

However, even though this exemption has been provided under the Data Protection principles there is no compulsion to disclose. Therefore Southampton City Council may choose not to disclose the information sought pending authorisation from the Subject of the information.

Test:

Highlight that the request for information is made under Section 35(2) of the Data Protection Act 1998:

- 1) To be used in connection with legal proceedings;
- 2) Necessary for establishing, exercising, or defending legal rights

How to make a request:

Complete the application form and answer all the questions

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