

# Data Protection & Freedom of Information

**What they mean to you**

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# Setting the Scene

- Two new Commissioners in place – Helen Dixon is our new Data Protection Commissioner and Peter Tyndall is our new Information Commissioner & Ombudsman
- Some similarities between both Acts
- Enacted for fundamentally different reasons
- Both have far-reaching implications for all organisations

# Data Protection

- Applies to any organisation (public or private) that holds and processes personal data
- Personal data of living individuals only
- Applies to manual and electronic data
- Registration requirements
- Data Controller obligations
- Breach reporting obligations

# Data Protection

## **The Eight Rules of Data Protection are**

1. Obtain and process information fairly
2. Keep it only for one or more specified, explicit and lawful purpose(s)
3. Use and disclose it only in ways compatible with those purposes
4. Keep it safe and secure

# Data Protection

5. Keep it accurate, complete and up to date
6. Ensure that it is adequate, relevant and not excessive
7. Retain it for no longer than is necessary for the purpose or purposes
8. Give a copy of his/her personal data to that individual on request

# Data Protection

Access to personal data by:-

- The data subject
- Parents/guardians to children's records or incapacitated persons' records
- Garda Siochana to certain records (relating to an investigation of criminal offences)
- Third parties – with appropriate consent

# Data Protection

## Confidentiality & Consent

- Staff handbook
- Information leaflets for clients
- IT policies, i.e. encryption, passwords, etc.
- Consent forms
- Know why you create records, who you share them with and how long you keep them

# Data Protection

## Breach Management:-

- Significant data breaches must be reported to the Data Protection Commissioner's office
- Have a policy in place detailing how they will be handled
- Ensure staff know what to do
- Nominate a Liaison person to work with DPC



# Data Protection

## Access Policy:-

- Administrative Access where appropriate
- Detail how certain requests will be processed  
e.g. requests from An Garda Siochana
- Delegate Decision Making function to staff
- Ensure all staff know what to do
- Comply with requirements of DPC office

# Data Protection

## CCTV Policy:-

- Set out its use and purpose
- Who is in charge of the footage
- How long it will be kept
- Who can access it
- Signage and notifications
- Appropriate and proportionate

# Data Protection

## Record Management:-

- What you record
- Who accesses it
- For what purpose
- Where is it stored
- How long do you keep it
- How you destroy it

# Data Protection

## Summary of Data Protection Acts

- Protection of personal privacy
- Use and disclosures
- Consent
- Retention
- Security & confidentiality
- Breach Management

# Freedom of Information

Long title of the FOI Act:-

*“An Act to enable members of the public to obtain access, to the greatest extent possible consistent with the public interest and the right to privacy, to information in the possession of public bodies, other bodies in receipt of funding from the State and certain other bodies...”*

# FOI

- New FOI Act 2014 passed into law on the 14<sup>th</sup> October 2014
- Significant expansion of provisions from the original 1997 Act and 2003 Amendment
- Extend FOI to all public bodies including An Garda Siochana (administrative records only), NAMA, NTMA, Central Bank (limited cover)
- Removal of fees for non-personal requests

# FOI

“...other bodies in receipt of funding from the State”

- 100% funding – already covered by FOI if funding Agency is FOI body
- For lesser funded agencies criteria currently being drawn up
- Will look at amount of funding, annual vs once-off, absolute level of funding, nature of services provided, etc.

# FOI

“...other bodies in receipt of funding from the State”

- This means that funded agencies will be covered by FOI in their own right
- Must establish FOI function to deal with requests
- Nominate Liaison Officer
- Comply with all requirements of the Act



# FOI

To those Agencies currently operating under a Service Level Agreement or Contract of Services:-

- FOI already covers any records created in the performance of that contract
- The public body is the FOI body and therefore processes the request e.g. GP/GMS records
- Must make records available on request

# FOI

## Provisions of the Act:-

- Right to access records “in the possession of...”
- Right to reasons for decisions
- Right to have records amended, corrected or deleted if incorrect, inaccurate or misleading

# FOI

## Obligations of FOI bodies:-

- Adhere to requirements e.g. acknowledgement, decision, internal review, timeframes, etc.
- Assist the requester
- Comply with decisions of Information Commissioner
- Publication of policies and procedures

# FOI

## Implications of FOI:-

- Significant emphasis on openness and transparency, particularly in relation to the spending of public monies
- Every record, in any form, potentially releasable under FOI
- Public interest requirement makes it hard to exempt records

# Record Keeping

Implications of both FOI & DP:-

- Assume personal records will be released
- Quality of record keeping will be tested
- “If it’s not written down it didn’t happen”
- Objective vs subjective
- Ensure good document management – drafts beware!
- Write reports (SUIs, Investigations, etc.) so that they can be released i.e. anonymise

# Policies & Procedures



Key policies for every organisation:-

- How to deal with access requests
- Breach Management policy
- CCTV policy
- Staff confidentiality
- IT Security Policies
- What your client can expect from you and what you expect from your client

# AllOne Services



- Develop policies and procedures to ensure compliance, e.g. Breach Management, CCTV, etc.
- Provide training to all staff on legislative requirements
- Train Decision Makers to deal with access requests
- Support and advice to Decision Makers dealing with difficult or complex requests

# Questions



Thank you for listening

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