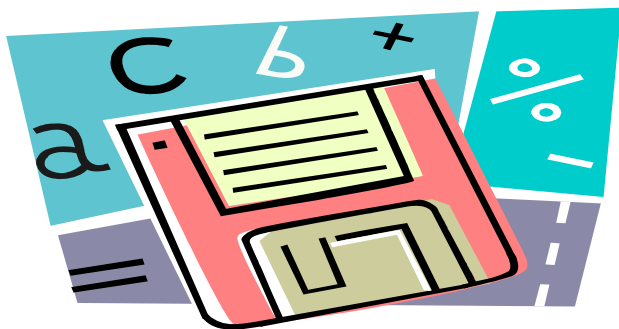


Data Protection Act and Paper Based Files and Records

Changes with effect from 23.10.07



In this Brief Update we look at the implications for records management following the expiry of the last of the transitional relief periods under the Data Protection Act 1998 ("the Act"):

Data Protection as a Business Risk

Readers will be aware of the recent negative publicity directed at some major High Street organisations - including several banks and the Post Office - arising out of their failure to securely dispose of personal customer information (rather than simply discard it in waste bins/receptacles outside their offices as was being done). Public undertakings were demanded by the Information Commissioner's Office and the whole episode should serve as a reminder that failure to comply with the Act constitutes an increasingly serious business risk.

Transitional Relief

Through a combination of the transitional provisions in the Act and the (English) Court of Appeal Decision in the 2003 *Durant v Financial Services Authority* case, we get to the position that personal data held in manual files and manual filing systems are excluded from the subject access request provisions of the Act.

This is about to change (with effect from 23.10.07) with regard to manual data created or held pre-24.10.98 (the date the Act came into effect) which forms part of a relevant filing system. Following *Durant*, "relevant filing system" in the case of manual filing systems means only those systems which are structured in a way broadly equivalent to computerised systems in providing ready accessibility to personal data (which many are not). Subject access requests made with respect to these structured paper based records will now require to be dealt with as in the usual way. Manual paper based files which are wholly "unorganised" (whether pre or post October 1998) remain outwith the subject access request provisions - this being the effect of the *Durant* decision.

Action Points

- Now would be a good time to review what (and how many) structured manual, paper based files or records are held by your business, whether these contain personal information/data and where and how they are stored. As from 24.10.07 the Act applies in full to all personal information held in these records and data controllers will need to ensure that the way they process this personal information is compliant with the Act.

Whilst shortcomings in the handling of these types of records are unlikely to have the high profile consequences referred to at the start of this Brief, nonetheless, business data controllers need to be aware of the additional legal requirements that will now apply following the expiry of the transitional period.

- Unless it is clear that these manual records/files can be destroyed, then consideration should be given to whether or not your existing computerised records management system should be used to accommodate them. Note however that the Act does **not** require that such records be digitised or computerised.

For further information on any of the issues raised in this Brief Update or on any other aspect of data protection or intellectual property please contact Lester Cameron (LFCameron@paull-williamsons.co.uk)