

Privacy Notices



Guidance on the use of Privacy Notices

Version 2.5 August 2016

Overview

This document is designed to help you collect and use personal information fairly and lawfully in accordance with rules contained in the Data Protection Act 1998.

The term 'Privacy Notice' is used to describe the explanations that individuals are given when information is collected about them. These notices are important as they help ensure that individuals are perfectly clear about how their personal information will be used.

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Version	Date	Comment
1.0	24 th September 2004	Agreed by the Cabinet Member for Resources
2.0	25 th October 2004	Reformatted, pages and font. Renumbered paragraphs and published on the Intranet
2.0a	July 2007	Policy reviewed – front cover reformatted
2.1	November 2008	References to Privacy Policy replaced by Fair Processing Notice
2.2	January 2010	Reviewed for relevancy and accuracy
2.3	April 2012	Updated to incorporate the Information Commissioners latest guidance on Privacy Notices
2.4	May 2014	Reviewed as per review schedule. No changes made other than the policy date updated
2.5	August 2018	Reviewed in accordance with review schedule. No changes made.

INTRODUCTION

This document is designed to help you to collect and use personal information appropriately by drafting clear and genuinely information privacy notices. These make sure individuals know how information about them will be used, and what the implications of this are likely to be.

The term 'privacy notice' is used to describe the explanations that individuals are given when information is collected about them. This requirement to communicate a privacy notice actively is the strongest where the intended use of the information may be unexpected or objectionable, or where the information is sensitive or when providing the information, or failing to do so will have a significant effect on the individual.

Following this guidance will help you comply with one of the most important but most misunderstood parts of the Data Protection Act.

WHAT THE LAW SAYS

The law says that personal information shall be processed fairly and lawfully. It goes on to say that personal information is not to be treated as processed fairly unless the organisation in control of the processing ensures, so far as is practicable, that the individual has, is provided with, or has made readily available:

- The identity of the organisation in control of the processing.
- The purpose, or purposes, for which the information will be processed.
- Any further information necessary, in the specific circumstances, to enable the processing in respect of the individual to be fair.

Drafting a privacy notice is the obvious way to satisfy these requirements.

KEY POINTS ABOUT FAIRNESS

Fairness has two elements:

- Using personal information in a way that people would reasonably expect and in a way that is fair.
- Ensuring people know how their information will be used.

Fairness means being open and honest about who you are and what you are going to do with personal information you collect. Be clear and genuinely informative. Draft them in such a way that people they are aimed at will understand them. Do not use legalistic language – adopt a simple style that your intended audience will find easy to understand.

PUT YOURSELF IN 'THEIR SHOES'

It is good practice to try and put yourself in the position of the people you're collecting information about. Ask yourself the following questions.

- Would they understand who is collecting it?
- Would they understand what you're collecting and why?
- Would they understand the implications of this?
- Would they be likely to object or complain?

NO NEED TO STATE THE OBVIOUS

There is no need to state the obvious if the purpose and use of the information:

- Is something that a reasonable person is likely to anticipate and agree to if asked, and
- Is necessary to carry out the transaction or deliver the service the individual has requested, and
- Will have no unforeseen consequences for the individual concerned.

CONTENT OF PRIVACY NOTICES

The basic legal requirement is to make sure people know who you are, what you intend to with their information and who it will be shared with or disclosed to. Depending upon the circumstances, you may decide to go beyond the basic requirements of the law, for example by telling people:

- If you intend to pass the information on, the name of the organisations involved and details of how they will use information.
- How long you or other organisations intend to keep the information.
- Whether replies to questions are mandatory or voluntary.
- The consequences of not providing information – for example, non-receipt of a benefit.
- What you are doing to ensure the security of the information.
- How we will ensure it is kept up to date.
- Who to contact if they want to learn more about how their information will be used.

CONSENT

Consent can be important, however, you should not lead people to believe that they can exercise choice over collection and use of their personal information, when in reality they cannot. The collection and use of personal information is often essential to provide the service or carry out the transaction that the individual has requested. In such cases, choice is not an issue, because the individual cannot expect to receive what he or she has asked for unless any necessary processing of personal information takes place.

It is important to make sure that when people do have a choice, they are given genuine opportunity to exercise it. For example, an application form to join a particular group/service might collect information for monitoring purposes, such as age, gender, ethnicity etc.

It should be made clear on the form why this information is being collected and the fact that if the person chooses not to supply the information it will not affect their application.

Positive Consent -

A tactic sometimes used to gain consent is to include a privacy notice and then give the customer the option of 'opting out' by ticking a box. This is known as negative consent as the lack of action is taken as consent. The junk mail that we all receive is often a result of forgetting to tick a box.

Best practice is to use Positive Consent and giving the customer the option of 'opting in'. Therefore consent will not be assumed unless the customer has given a positive indication of their wishes.


HOW TO PROVIDE A PRIVACY NOTICE

Privacy notices can be provided through a variety of media.

- **Orally** - face-to-face or when you speak to someone on the telephone. It's a good idea to document this.
- **In writing** – printed media, printed adverts, forms, such as financial application forms or job application forms.
- **Through signage** – for example an information poster in a public area.
- **Electronically** – in text messages and on websites and in emails.

When possible it is advised to use the same medium you use to collect the information to also deliver the privacy notice.

EXAMPLES



Date of Birth

Occupation

Address

Post Code

How information about you will be used

We may share your information with credit reference agencies and other companies for use in credit decisions, for fraud prevention and to pursue debtors.

We would like to send you information about our own products and services, as well as those of selected third parties, by post, telephone, email and SMS. If you agree to being contacted in this way, please tick the relevant boxes.

Post ☐ Phone ☐ email ☐ SMS ☐

We would also like to share your information with other companies so that they may send you information about their products and services, by post, telephone, email and SMS. If you agree to your information being shared in this way, please tick the box. ☐

If you need any further information please write to us at 10 Street Name, Town Name, County Name AB12 3CD.

Customer Signature

Date

Simple language, clear font and style.


Clear opportunity to agree to marketing.

Prior consent sought.

Clear opportunity to opt out of marketing.

Alternative 'opt out' version

We would like to send you information about our own products and services, as well as those of selected third parties, by post. If you **do not** agree to being contacted in this way, please tick the box. ☐



Date of Birth

Occupation

Address

Post Code

LEGAL DECLARATION

X Limited is a company incorporated in England and is a member of the X Retail Group ("the Group"). The Group ("we/us") also includes Y Limited and Z Limited and their associated companies from time to time. The personally identifiable information you provide will be processed in accordance with the Data Protection Acts 1984 and 1998 and other applicable laws. We will use your information so that we can process your order. This includes administering any accounts, processing your bank/credit card details in order to obtain payment, arranging delivery of any goods purchased, and the prevention and detection of fraud. We can hand over your information to anyone to whom we transfer our rights and duties under our agreement with you or if we have a duty to do so and the law allows us to do it. We will use your information for market research and the marketing of our own and third parties' products and services. This may include contacting you by post, telephone, email or SMS unless you indicate you do not want to be contacted in any of these ways by calling us on 0870 23 45 67. We will use your information to search the files of credit reference agencies who will record that search. This information may be used by other lenders in making credit decisions about you, members of your household and those with whom you may be financially linked. Information held about you by the credit reference agencies may already be linked to records relating to people with whom you are financially linked. For the purposes of credit searching, you may be treated as financially linked and you will be assessed with reference to any associated records. We will share your information with other companies, for the purposes of market research and the marketing of their products and services, unless you indicate that you wish to be excluded from such uses by contacting us on 08701 23 45 67. By signing this form, you consent to the information you provide being processed for the above purposes.

Customer Signature

Date

Confusing and legalistic language. Closely spaced text, small italic font in light grey.


Unnecessary – means little to public.

Raises Privacy and Electronic Communications Regulations problems and 0870 number does not provide easy means to opt-out consistent with the medium (script).

Confusing language.

Unexpected use. Good practice would be to obtain consent.

EXAMPLES



(iv) ...
costs...
agreement...
become due and payable immediately and will not be...
to the terms of any default notice issued by you.

Using your personal information

6. Personal information which you supply to us may be used in a number of ways, for example:

- To make lending decisions
- For fraud prevention
- For audit and debt collection
- For statistical analysis

(i) We may share your information with, and obtain information about you from, credit reference agencies or fraud prevention agencies. If you apply to us for insurance we will pass your details to the insurer. Information provided by you may be put onto a register of claims and shared with other insurers to prevent fraudulent claims.


(ii) We will not disclose any information to any company outside the XXXX Bank Group except to help prevent fraud, or if required to do so by law.

(iii) For further information on how your information is used, how we maintain the security of your information, and your rights to access information we hold on you, please contact: (clear web link/freephone etc..)

Title that people will understand.

Clarity about who personal information is shared with and why.

Clear info about how to find out more. Easy, free access.



(iv) ...
costs...
agreement...
become due and payable immediately and will not be...
to the terms of any default notice issued by you.

DPA Statement

6. I/we agree that You and any lender resulting from this application (the "Lender") shall be entitled to use and process, by any medium, the information given by me/us which may be acquired during the lifetime of any loan for the following purposes:

- (i) to provide data and search the files of credit reference agencies or fraud prevention agencies whether before or during the lifetime of any loan granted me/us by the Lender
- (ii) to disclose the data to credit reference agencies when required by them for future applications for finance by me/us or my/our financial associates unless I/we successfully file a disassociation with the credit reference agencies
- (iii) to disclose the data to any other company within the XXXX Bank Group or to any third party at any time for the purpose of assessing my/our application and administering and enforcing any subsequent loan
- (iv) to disclose the data to any third party who replaces my/our Lender

By submitting your personal data you CONSENT to it being processed.

We will share information about you within the XXXX Bank Group and also with other selected companies to provide you with information about products/services which we believe may be of interest to you.

Under the terms of the Data Protection Act 1998 you have the right to make a subject access request. All requests must be made in writing to our head office. There is a charge for this service.

If you do not wish to receive marketing information from XXXX Bank Group or other companies please inform your branch.

Title doesn't mean much to the public.

Unnecessarily complicated language. Use of I or me, we or us etc adds to confusion.

Unclear, 'offputting' notice – seems like a difficult or expensive process. People may not know what a subject access request is.

Small print, not easy to do (i.e. contact branch). Opt out statement not next to statement about marketing information.