

EDINBURGH NAPIER UNIVERSITY

THE INTERACTION BETWEEN:

DATA PROTECTION ACT 1998 (DPA) & FREEDOM OF INFORMATION (SCOTLAND) ACT 2002 (FOI(S) A)

Introduction

The DPA and FOI(S) A are both concerned with information but they have different and at times conflicting purposes. The DPA protects individuals' rights to privacy and fair processing of their personal data, whilst FOI(S) A is intended to promote a culture of openness and accountability amongst public sector bodies by providing people with rights of access to the information held by them. The DPA and FOI(S) A therefore operate alongside each other but their interaction could potentially be complex when a request for disclosure of personal information is received. Both acts are retrospective.

Comparing the Acts

The table below sets out a comparison of the two acts*

	DATA PROTECTION ACT 1998	FOI (SCOTLAND) ACT 2002
Geographical coverage	UK	Scotland
Applies to	All organisations	Scottish public authorities only – estimated to be >10,000
Scope	Covers the processing by the University of personal data about living individuals. Individuals have the right to request access to their personal data held by the University.	Covers information we hold i.e. create or receive in our activities as a public sector body. Individuals or organisations have a general right of access to information from public bodies.
Format	<ul style="list-style-type: none"> • Has to be received in writing i.e. by completion of a form obtained from and returned to the University's Governance Officer (Data Protection & Legal) • A fee – currently £10 - is charged • Evidence of identity must be provided where required 	<ul style="list-style-type: none"> • Has to be in recorded form i.e. writing, email or voicemail • The act need not be specifically mentioned • Charges may be payable • Can be received by anyone anywhere in the University
Who can make a request?	Only the individual or his/her representative has the right to request personal data	Anyone over the age of 12, anywhere in the world can request information.
Deadlines	40 calendar days from receipt of form, fee and proof of identity where appropriate	20 working days from receipt of enquiry
*Edinburgh Napier acknowledges the assistance of material from the University of Glasgow in this table		

How do you deal with requests for personal information?

1. Where an individual requests copies of their own personal data this is dealt with under the DPA.
2. Where a third party asks for someone else's personal data this is handled as a FOI (S) A request.

Those dealt with under 2. above would be subject to an exemption if releasing the data would breach the DPA. However the University must then go on to consider the public interest test i.e. whether the interests and rights of the public under FOI(S) A outweigh those of the individual's right to privacy under the DPA. If that were deemed to be the case the University would be expected to release the information. All such decisions would be taken centrally after consultation between the Governance Officers (Data Protection & Legal) and (Records Manager) and in some cases legal advice may be sought.

Please also note that both the DPA and FOI(S) A cover **all** personal information held in both structured and unstructured manual records. This now includes e.g. the piece of paper lying on a desk or a post-it note.

Advice and guidance:

DPA: Helen Mizen, Governance Officer (Data Protection & Legal)

☎: 0131 455 6359

✉: h.mizen@napier.ac.uk

FOI(S) A: Jackie Timlin, Governance Officer (Records Manager)

☎: 0131 455 6257

✉: j.timlin@napier.ac.uk

Further Information

The UK Information Commissioner oversees the DPA: www.ico.gov.uk

The Scottish Information Commissioner is responsible for FOI(S) A:
www.itspublicknowledge.info