

ICO Ref: RFA0552425

DATA PROTECTION ACT 1998

UNDERTAKING

Data controller: Disclosure & Barring Service

PO Box 110
Liverpool
L69 3JD

I, Adrienne Kelbie, Chief Executive, for and on behalf of the Disclosure & Barring Service hereby acknowledge the details set out below and undertake to comply with the terms of the following Undertaking:

1. The Disclosure & Barring Service is the data controller as defined in section 1(1) of the Data Protection Act 1998 (the 'Act'), in respect of the processing of personal data carried out by the Disclosure & Barring Service and is referred to in this Undertaking as the 'data controller'. Section 4(4) of the Act provides that, subject to section 27(1) of the Act, it is the duty of a data controller to comply with the data protection principles in respect of which he is the data controller.
2. Under case reference **ENF0530134** the Information Commissioner (the 'Commissioner') considered two requests for assessment made on behalf of individuals under section 42 of the Act. These concerned question e55 of an application form used by the data controller. The application form had not been amended since relevant legislation¹ came into force on 29 May 2013.

¹ Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (Amendment)(England and Wales) Order 2013 and the Police Act 1997 (Criminal Record Certificates: Relevant Matters)(Amendment)(England and Wales) Order 2013

3. An undertaking was completed on 10 March 2014, in which the data controller committed to amending e55 of the application form to take account of the revised legislative requirements. The undertaking also required that supporting information be provided to applicants, employers and other registered bodies who may have access to the application form or disclosure certificate. This was to be kept under review to ensure that they continued to receive up to date, accurate and relevant guidance in relation to filtered matters.
4. It has recently come to light that application forms which do not contain the necessary amendments remain in circulation. This is because a large number of third party organisations are continuing to rely on legacy forms issued prior to the amendment of question e55. In the Commissioner's view, the failure to address these legacy forms could be considered to create circumstances under which the unfair processing of personal data arises.
5. The Commissioner has considered the data controller's compliance with the provisions of the Act in the light of this matter. The relevant provision of the Act is the First Data Protection Principle.
6. The First Data Protection Principle provides, at Part I of Schedule 1 to the Act, that:

"Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless-

*(a) at least one of the conditions in Schedule 2 is met, and
(b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met."*

Sensitive personal data is defined in section 2 of the Act.

7. The Commissioner is satisfied that the data controller has contravened the First Data Protection Principle in that the existence of conviction/caution information (sensitive personal data) continues to be unfairly disclosed to prospective employers as a result of their response to question e55 as drafted on the legacy forms.

8. It has been agreed that, in consideration of the Commissioner not serving an Enforcement Notice under section 40 of the Act in respect of the contravention referred to above, the data controller undertakes as follows:

The data controller shall, as from the date of the Undertaking and for so long as similar standards are required by the Act or other successor legislation, ensure that personal data are processed in accordance with the First Data Protection Principle at Part I of Schedule 1 to the Act, and in particular:

(1) that as soon as practicable and in any event, by 31 December 2014, legacy application forms containing the un-amended question at e55 are either rejected or removed from circulation.

(2) that the data controller provide a fortnightly update to the Commissioner as to the progress in implementing this commitment.

Signed:
Adrienne Kelbie
Chief Executive

Dated:

Signed:
Stephen Eckersley
Head of Enforcement
For and on behalf of the Information Commissioner

Dated: