



Information Commissioner's Office
Promoting public access to official information
and protecting your personal information

Data Protection Good Practice Note

When can I disclose information to a private investigator?

This guidance is to help public and private sector organisations decide whether or not to disclose information about their employees or customers when it is requested by private investigators.

The situation

Private investigators undertake a wide variety of work that includes helping insurers to investigate fraud and lenders to trace debtors. In addition they act on behalf of individuals involved in matrimonial and family disputes. They also trace missing friends and relatives who are the beneficiaries of wills. To do this it may be necessary for investigators to contact private and public sector organisations to obtain personal information.

The Data Protection Act 1998 (the Act) regulates the processing of personal information and requires organisations to keep it secure. It generally restricts disclosure of personal information to third parties unless an exemption applies. Customers and employees will usually have an expectation that their information will not be disclosed to third parties without good cause.

The Act does not require an organisation to provide information to a private investigator or the parties they are acting on behalf of. Even where an exemption from the Act applies an organisation might decide to withhold the information requested unless or until a court orders them to disclose it.

Some individuals attempt to obtain information from organisations illegally by deception. This practice is known as “blagging” and is part of an illegal trade in personal information as highlighted in the Information Commissioner’s 2006 report “What Price Privacy?”. A private investigator with a legitimate request will be open about their activity and will not need to resort to blagging.

Is it possible to disclose some personal information to a private investigator if an exemption from the Act does not apply?

In some limited cases it may be possible to disclose personal information to a private investigator where an exemption does not apply. This will be where a disclosure to the investigator is in compliance with the good information handling principles contained in the Act and in particular it is fair and lawful and not incompatible with the purposes that the information were originally collected for.

Individuals should be informed of possible disclosures of their personal information at the point that it is collected by public or private sector organisations which will help to shape their expectations about how their information will be handled. Disclosures to private investigators in the types of

scenarios set out above are unlikely to be included in the information given to individuals and therefore these disclosures are unlikely to be in their reasonable expectations and may be unfair. However, the disclosure can still take place provided that there is no overriding duty of confidence in the particular circumstances, the purpose that the information will be used for is in the legitimate interests of the individual and will not prejudice them in any way and the organisation subsequently informs them of the unexpected disclosure.

For example:

A former employee is left money in the will of a relative and their previous employer is approached by an investigator for their last known address. It would not be unfair or incompatible with the reasons that the information is held by the employer for them to disclose the last known address so that the individual can be traced in order to benefit from the terms of the will.

An organisation considering a request for information will need to be satisfied of the legitimacy of the request and the identity of the requestor to guard against blagging.

Which exemptions may apply to disclosing personal information to a private investigator?

Prospective or existing legal proceedings and obtaining legal advice

In many cases investigators will be acting on behalf of litigants involved in, or who are contemplating, legal proceedings. If the particular information being requested is necessary for actual or prospective legal proceedings, or for obtaining legal advice, its disclosure may be exempt under section 35(2) of the Act and so it could be provided to the investigator if the organisation chooses to do so.

The organisation being asked for the information must consider each request, on a case by case basis, and be satisfied that it is genuine and within the scope of the exemption. In particular they will need to be satisfied that the prospect of proceedings is genuine, proceedings are already underway or legal advice is genuinely being sought. They will also need to be satisfied that the specific information being requested is actually necessary for the purpose stated by the investigator.

For example:

Obtaining the identity of someone responsible for damage to an individual's property may be necessary for the individual to take legal action to recover damages.

Local authorities, estate agents, landlords and solicitors may have forwarding addresses for absconded debtors that the lender needs for the purpose of recovering their debts through the courts. However, attempts to discover the financial value of assets of that individual, or their income, cannot be said to be necessary for instigating proceedings or taking legal advice although it may

be a relevant factor in those proceedings. This information should not be disclosed.

The organisation should subsequently inform the individual that their information has been disclosed to a private investigator for these purposes.

The prevention or detection of crime

In some exceptional cases, for example tracing a missing person, the information being requested by an investigator may be necessary for the prevention or detection of crime and so its disclosure may be exempt under section 29 of the Act. This will not apply to civil matters such as the enforcement of debts.

The investigator will need to satisfy the organisation that the specific information requested is necessary for the prevention or detection of crime and that not receiving it will significantly harm their investigation.

Please see the existing guidance on www.ico.gov.uk about releasing information to help prevent or detect crime that explains what can be disclosed and when.

What questions do I need to ask before I disclose the information?

Organisations will need to ask themselves the following questions every time they get a request for information from an investigator:

- Is the person requesting the information who they say they are?
- Has the request been made in writing?
- Has the investigator provided me with enough information to make a decision about whether or not an exemption applies in the particular circumstances or that disclosure is otherwise in compliance with the Act?
- Is the person asking for this information for the purpose of or in connection with, current or prospective legal proceedings or obtaining legal advice?
- Is the information being requested actually necessary for legal proceedings or obtaining legal advice or could they go ahead without the information?
- Is the person asking for this information doing so to prevent or detect a crime or catch and prosecute an offender?
- If I do not release the personal information will this significantly harm any attempt by the person to prevent or detect crime? (The risk must be that the investigation may very well be impeded.)
- If an exemption does not apply is it still possible to disclose some or all of the information in compliance with the Act.
- If I do decide to release personal information what is the minimum I can release for them to be able to do their job?

Recommended good practice:

- Select a person or group of people at a senior level within your organisation to decide whether or not to release personal information.
- Always ask for the request to be made in writing and verify the identity of the requestor.
- Do not request more information than you will need to make the decision.
- Inform the individual that their information has been disclosed to a private investigator unless it would be likely to prejudice the prevention or detection of crime or it is otherwise prohibited by law.
- Record each decision you make and the reasons why you came to that particular decision.
- Treat the personal information you receive as part of the request confidentially and securely and ensure that it is only shared to the extent necessary for considering the request.

A note for Private Investigators

Private investigators should use caution when requesting information about individuals from an organisation. In making your request you will also be disclosing personal information about the individual, for example that they are involved in legal proceedings or are a beneficiary. Do not disclose any more information than is necessary for your request to be properly considered by the organisation. Do not deceive or mislead organisations as obtaining the information in this way is likely to be a criminal offence under the Act.

More information

If you need any more information about this or any other aspect of data protection, please contact us.

Phone: 08456 30 60 60
01625 54 57 45

E-mail: please use the online enquiry form on our website

Website: www.ico.gov.uk