



Commercial Briefing

Privacy Notices: New guidance from the Information Commissioner

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What is a privacy notice?

A privacy notice is the statement an organisation gives to an individual before collecting personal information about them. Privacy notices are provided in a number of ways. One common example is where organisations provide a link on their website to their privacy notice; other examples include provisions in an organisation's standard terms and conditions and scripts which are read out to callers to call centres.

The Information Commissioner recently revealed that 50% of consumers do not understand what they are consenting to when completing contractual forms containing privacy notices. In response, the Information Commissioner's Office has published a code of practice for organisations to follow when drafting privacy notices (Code).

Who needs to give a privacy notice and why?

Organisations are required by the Data Protection Act 1998 (Act) to process personal information fairly. The Code states that "individuals [need] to know how information about them will be used, and what the consequences of this are likely to be". This is sometimes referred to as "the fairness principle".

Although there is no single prescribed way of complying with the Act, the most common way for an organisation to comply with the fairness principle is by providing a privacy notice.

What is fair?

What is considered to be 'fair processing' will depend on the information collected and the use to which it is put. The Code states that where information is used in a reasonable way or in order to perform the service requested there is no duty to inform the individual of the intended use of that information.

However, the Code is clear that where the intended use of the information collected is unexpected or objectionable or where the information collected is sensitive (for example where it relates to an individual's racial origin or religious beliefs) the collecting organisation must actively communicate its privacy notice and therefore identify how any collected information will be used.

The Code goes on to state that privacy notices should not be legalistic, but should be genuinely informative and should help individuals to understand the consequences of the processing of their information. In other words, privacy notices should be clear and written in plain English.

Basic requirements

The basic legal requirement under the Act is that a privacy notice details:

- who the organisation collecting the information is;
- what it intends to do with the individual's information; and
- with whom or to whom that information will be shared or disclosed.

The Code states that an organisation should consider the effect which passing information on will have on the individual concerned. Simply telling customers how their information will be processed will not necessarily make the processing fair.

Keep privacy notices under review

Organisations should keep their privacy notices up to date as it is considered unfair under the Code for a privacy notice to be inaccurate or out of date. By reviewing customer complaints and making relevant adjustments to its privacy policy, an organisation can ensure that its privacy notice continues to operate fairly and in line with the current guidance.

Although there are no legal sanctions for not complying with the Code, it is strongly advised that the clear and helpful guidance contained in the Code is followed. Please let us know if you would find it helpful for us to conduct a brief "health check" of your privacy notices.

Further information

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