



The Photographic Alliance of Great Britain Advice for Clubs, Federations and the PAGB

Data Protection

This document is an advisory document only and does not set out a policy for anyone to follow. It is intended only as guidelines for Clubs to construct their own policy. Whilst the document has been researched and we believe it to be accurate, the PAGB can accept no responsibility for any errors or incorrect statements and cannot be held liable for any consequent actions which may arise.

Scope

This document is primarily written as advice to affiliated Clubs, but also applies to member Federations and to the Photographic Alliance of Great Britain. Each of these is an independent data controller.

A list of sources consulted during the preparation of this advice is at Appendix One

Summary List of Actions

The actions recommended in the following sections are:

Compliance:

- Clubs will need to prepare and publish a data protection policy (also known as a privacy notice) containing an adequate description of what personal data will be collected and for what purposes.
- Clubs will need to review and document their compliance with their own policy.

Volunteers:

- Clubs will need to inform their volunteer officials about maintaining a separation between personal data from different data controllers, and between controlled and domestic use of personal data.

Consent via a Third Party:

- Organisers of inter-Club and similar events will need to review their entry conditions to ensure that any third party entrant confirms explicit consent for the organiser to hold personal data about the photographers entered to the event.

Electronic Marketing:

- Unless Clubs are prepared to manage their own comprehensive consent process:
 - Clubs must not make their membership contact information available for electronic marketing.
 - Clubs must refuse any request to cascade marketing material to members by electronic messages.

Principles

There has been data protection legislation based on European Union Directives, since 1984. The Data Protection Act 1984 (DPA84) was replaced by the Data Protection Act 1998 (DPA98), which in turn is replaced by the European Union General Data Protection Regulations (GDPR), as incorporated into UK law by the Data Protection Act 2018 (DPA18).

Throughout, data protection has been based on a set of principles, with which all data controllers must comply. A data controller collects and uses personal data. The principles apply to personal data collected by the controller on any data subject, meaning a natural living person.

GDPR Article 5(1) gives the principles in detail, but they can be summarised.

- The controller may only collect personal data relevant for lawful purposes, and where the data is sufficient and adequate, is not excessive, and is kept accurate and up to date. Personal data must be destroyed when it is no longer relevant or required.
- The controller must keep personal data secure, but also available for the relevant purposes.
- The controller must respect the rights of data subjects, including the right of access.

Compliance

Previously, compliance with the principles by data controllers was checked via notification to the Information Commissioner (ICO), with exemption for non-profit organisations, such as Clubs. Notification was abolished by the Digital Economy Act 2017 (DEA17), and the same exemptions, now for informing the Information Commissioner, have been continued.

GDPR Article 5(2) introduces a new and important requirement for all data controllers to demonstrate their compliance with the principles in Article 5(1). For non-profit organisations, this will be an additional duty. In practice this would appear to fall into two parts:

Action: Clubs will need to prepare and publish a data protection policy (also known as a privacy notice) containing an adequate description of what personal data will be collected and for what purposes.

Action: Clubs will need to review and document their compliance with their own policy.

The content of a data protection policy should be such that it meets the first of the rights of all data subjects ie, the right to be informed.

Regardless of these actions, effective compliance is an ongoing requirement, and it will always rely on a proper understanding by all relevant Club officials of their responsibility to act within any policy.

As a simple example, it is desirable for the contact details of all Club members to be restricted to the executive committee. If a committee member then circulates information to all members by email, the sender should place the circulation list in the 'Bcc' section of the email header, and not in the 'To' section. That will only happen if senders are advised appropriately.

Volunteers

Personal data kept solely for domestic use has always been exempt from data protection legislation, and that continues. However, Clubs have volunteers working from home, and a volunteer may work for several different organisations, each being a different data controller. Volunteers need to be advised that personal data acquired via one data controller may not be used for the purposes of another data controller, or for a domestic purpose.

Action: Clubs will need to inform their volunteer officials about maintaining a separation between personal data from different data controllers, and between controlled and domestic use of personal data.

Lawful Purpose

Data may only be held and processed by a data controller for a lawful purpose. GDPR Article 6(1) sets out the six available lawful purposes for processing personal data. There is nothing new about these: DPA98 Schedule 2 lists the same six purposes.

Possible options for Clubs include (a) 'consent', (b) 'contract', and/or (f) 'legitimate interests'. The others would not be applicable ie, (c) 'legal obligation', (d) 'vital interests', (e) 'public interest'.

It is commonly thought that explicit consent is always required to collect personal data. It is not, and 'consent' is only one of the options available to a data controller. But any consent, explicit or implied, will only be valid if members and potential members are adequately informed eg, via a published policy.

It may be simplest for Clubs to rely on Article 6(1)f, where personal data may be collected for the legitimate interests of the data controller. For a Club, it is obviously necessary to know who its members are, and to have sufficient contact details so that the members can be uniquely identified. It is also normal for Clubs to handle images from members and make records of entries to events and of any results.

A Club may also need to know about members in the recent past, about potential members and about contacts within other organisations. There will also be retained historical records eg, programmes, catalogues and award winners.

Consent via a Third Party

Normal activity for many Clubs includes facilitating submission of members' images to Inter-Club, Federation or PAGB events. In that case, the Club is passing personal data to another data controller. The receiving data controller has no direct relationship with the data subject, and has to rely on consent passed on by the Club.

Action: Organisers of inter-Club and similar events will need to review their entry conditions to ensure that any third party entrant confirms explicit consent for the organiser to hold personal data about the photographers entered to the event.

A similar issue arises with contact lists circulated in handbooks or placed on web sites, where policies and documentation also need to be reviewed.

Children

The PAGB has published separate guidance on the safeguarding of children and others, collectively referred to as 'vulnerable individuals'.

The guidance remains applicable, and no additional issues arise for Clubs from the change of data protection legislation.

The Right of Subject Access

Data subjects are entitled to access their personal data held by a data controller. The data subject does not have to give a reason for the request, and the few exemptions are unlikely to apply.

The Right of Rectification

There may be circumstances where the accuracy of data is genuinely disputed, and published or printed archives may have been correct at the time, but no longer. Otherwise, it is hard to imagine that Clubs would not want to hold accurate personal data and would welcome and act on any updates.

The Right of Erasure ('Right to be Forgotten')

GDPR includes the right to have personal data erased. The right is not automatic and there are several exclusions which in practice mean that the right would only apply, in the circumstances discussed in this document, in relation to electronic marketing (see below).

Other Data Subject Rights

Data subject rights also cover restriction of processing, portability of data and restriction of automated decision making or profiling. There are limitations to these rights, and Clubs are unlikely to be processing data where these rights apply. Where particular rights are not applicable, then guidance from the Information Commissioner's Office is that they need not be mentioned in a data protection policy.

Data subjects also have the right to make a complaint to the Information Commissioner. It would be sufficient to make that known as part of the response to a data subject access request.

Electronic Marketing

The Privacy and Electronic Communications (EC Directive) Regulations 2003 are separate from and additional to the data protection legislation. Essentially, the circulation of marketing material by electronic means is prohibited without express consent by the data subject, and a data subject is entitled to withdraw consent at any time.

The definition of marketing material includes any offer of goods or services addressed to an individual. The Information Commissioner's Office has more detailed guidance.

Marketing material would not include information to members about a Club's normal activities. There is no prohibition on general advertising, or material not directed to an individual eg, a poster or a pile of leaflets at a Club meeting.

Action: Unless Clubs are prepared to manage their own comprehensive consent process:

- Clubs must not make their membership contact information available for electronic marketing.
- Clubs must refuse any request to cascade marketing material to members by electronic messages.

Questions

More in depth information and explanations can be found on various pages of the Information Commissioner's Office website at: <https://ico.org.uk/for-organisations/>

Should you have any specific questions or require any further clarification, please contact the Secretary of the PAGB. Contact details can be found in the PAGB Handbook and on the PAGB Website.

Appendix One

Sources consulted during the preparation of this advice.

DPA84: “The Data Protection Act 1984” and subordinate legislation. Repealed by DPA98.

DPA98: “The Data Protection Act 1998” and subordinate legislation. Partly repealed by DEA17. Repealed by DPA18.

S.I.2003/2046: “The Privacy and Electronic Communications (EC Directive) Regulations 2003”. Rules controlling electronic marketing which are additional to data protection legislation. As amended in 2004, 2011, 2015, 2016.

PAGB: PAGB Advice for Clubs on Children, Young People and Vulnerable Adults attending Club Meetings. February 2015.

GDPR: “The General Data Protection Regulations”. More specifically - “Regulation (EU) 2016/679 of the European Parliament and of the Council”.

DEA17: “The Digital Economy Act 2017”, where it repeals that part of DPA98 concerned with notification by data controllers to the Information Commissioner.

S.I.2018/480: “The Data Protection (Charges & information) Regulations 2018”, replacing S.I.2000/188. Charges payable to the ICO unless exempt.

DPA18: “The Data Protection Act 2018”, repealing DPA98 and implementing GDPR into UK law.

ICO: “The Information Commissioner’s Office”.