

Significant measures that will affect all aspects of life in the Island are being put in place to contain the spread and mitigate the effects of coronavirus.

The Public Health Directorate is taking steps to ensure that the Public Health England guidance is implemented in the Island. For the latest updates on the situation, see <https://www.gov.im/coronavirus>

## DATA PROTECTION

It is inevitable that some of those measures and steps will involve the processing of personal data (such as name, address, workplace, travel details) of individuals, including in many cases sensitive, 'special category' personal data (such as data relating to health).

### For health bodies

*Data protection law does not stand in the way of the provision of healthcare and the management of public health issues.*

For health bodies, including public health, there are specific conditions in the data protection law that makes such processing, which includes disclosures, lawful. (See paragraphs 2 and 3 of Schedule 2 to the Implementing Regulations)

The processing of that personal data is still subject to appropriate safeguards, and must comply with the data protection principles, unless there is good reason not to. Accuracy of personal data, however, remains imperative.

For example, the data protection law will not be infringed if:

- the Public Health Directorate seeks relevant information from employers about staff;
- details of positive tests are communicated to a patient's GP, particularly if this will assist in identifying any key front line staff who may have come into contact with that patient and, therefore, present a further contamination risk.

### For non-health bodies

Employers and other organisations do have a general obligation to protect the health of their staff/volunteers etc. So, in some cases, it can be reasonable for you to ask staff if they

have returned to the Island recently and are required to self-isolate, or whether they, or others close to them, have experienced coronavirus symptoms.

You do not necessarily need to know where they have been, or record what symptoms they have - in most cases a Yes/No answer may be sufficient.

**But**, if you do ask for specific health information you must:

- a. Not ask staff for more health information than is necessary and proportional to the specific working circumstances;
- b. Make sure that the personal data you hold is **accurate**.
- c. Have **appropriate measures** in place to protect any health information you collected from unauthorised access or loss, etc, whether this is held in paper format or electronically.;
- d. Not keep that health information for any longer than is necessary;
- e. Explain to staff what health information you need from them and why, and how long it will be kept.

If a member of staff, for example, becomes ill with coronavirus symptoms, you might need to tell their colleagues. However, that doesn't mean that you need to give out their name or post their name on a notice board.

You should also review the guidance issued by the Public Health Directorate as some might apply directly to employers.

If the Public Health Directorate seeks information from you about the health of your staff in connection with the coronavirus outbreak, there is nothing in the data protection law that prevents or prohibits you from providing relevant, accurate, information to that body.

## **Working from Home**

Staff are being encouraged to work from home where possible.

However, the controller (in most cases the employer) remains responsible for ensuring that appropriate measures continue to be in place to ensure the security of any personal data being processed.

Those measures should include, for example:

- ensuring that all removable storage devices containing personal data are appropriately encrypted;
- maintaining records of the removal, location, and return of any devices used for home working, including laptops, removable storage devices;

- use of virtual private networks;
- enabling remote access to devices, in case of loss, cyber-attack;
- helping staff to look after devices by providing guidance;
- reminding staff to report any security breaches or loss of personal data.

Appropriate security measures should also be put in place where physical documents are removed from the office and taken home. Consider:

- Providing closeable, or sealable folders for transporting documents and files.
- Implementing a log to record the removal and return of files or documents from the office so that they can be tracked, located and recovered if necessary.

**If there are personal data breaches, or losses of personal data, the controller is, and remains, liable. Those liabilities cannot be waived, even by requiring staff to sign a form.**

Helpful guidance on secure home working is available from the UK's National Cyber Security Centre, and can be found at: <https://www.ncsc.gov.uk/guidance/home-working>

### **Data subject rights**

The law applying to data subjects' rights is unaffected by the coronavirus situation.

Controllers continue to be required to comply with the exercise of any right without undue delay but within one month. The Commissioner cannot advise controllers or individuals otherwise.

Whilst statutory obligations cannot be waived, the facts of each case, including evidence of specific extenuating circumstances will be taken into account should a complaint about compliance with a request be made during the coronavirus situation.

Although it is generally recommended that controllers maintain suitable records of the actions that have taken in complying with requests, this is particularly important during this current public health situation where controllers may face difficulties with complying within the statutory timeframe.

Controllers experiencing difficulty in complying with requests within the statutory time should communicate clearly with the individuals concerned about the handling of their request. For example, they may wish to explore the possibility of providing a staged response to a request.

We are deeply conscious of the impact that the coronavirus is having on health bodies in particular and that the prioritisation of patient care may mean the diversion of resources.

We are also conscious that some businesses will be closed all together for, what may be, a significant period.

We will, as far as possible, take a proportionate and pragmatic regulatory approach.

But it is important that controllers play their part in being able to evidence to the Commissioner, if necessary, the steps taken, the challenges they faced and any other extenuating circumstances in relation to compliance with their statutory obligations.

## **FREEDOM OF INFORMATION**

The right to access public information under the Freedom of Information Act is unaffected by the coronavirus situation.

Public authorities continue to be required to comply with requests promptly, but within twenty working days.

The Commissioner cannot advise public authorities or requestors otherwise.

Whilst statutory obligations cannot be waived, the facts of each case, including evidence of specific extenuating circumstances will be taken into account should a complaint about compliance with a FOI request be made during the coronavirus situation.

Public authorities should maintain suitable records of the actions that have taken in complying with FOI requests, and this is particularly important during this current public health situation where they may face difficulties with complying within the statutory timeframe.

Public authorities experiencing difficulty in complying with requests within the statutory time should communicate clearly with the requestor about the handling of their request.

We are deeply conscious of the impact that the coronavirus is having on public authorities and that the prioritisation of certain public services etc. may mean the diversion of resources.

We will, as far as possible, take a proportionate and pragmatic regulatory approach.

But it is important that public authorities play their part in being able to evidence to the Commissioner, if necessary, the steps taken, the challenges they faced and any other extenuating circumstances in relation to compliance with their statutory obligations.

We also recognise that public authorities may experience an influx of FOI requests related to the coronavirus situation and would, therefore, strongly encourage the proactive publication of as much information as possible to minimise the impact.