

This guidance note explains what you need to consider when you are requested to disclose personal information to assist in the prevention or detection of a crime, or the apprehension or prosecution of an offender.

Does the data protection legislation stop me releasing this personal information?

No. Although the general rule is not to disclose personal information unless it is necessary to do so, a 'Crime and taxation' exemption is set out in Schedule 9 to the GDPR and LED Implementing Regulations 2018 that permits a controller to disclose personal information that is necessary for the law enforcement purposes without infringing the data protection legislation.

The law enforcement purposes are:

- the prevention or detection of crime,
- the apprehension or prosecution of offenders, or
- the assessment or collection of any tax or duty or of any imposition of a similar nature.

Who might ask me to disclose personal information under this exemption?

The police are most likely to ask you to disclose personal information to assist in their enquiries. However, other organisations with a crime prevention or law enforcement function, for example, The Treasury (Social Security section in the case of benefit fraud), may refer to this exemption when requesting the disclosure of personal information. For ease, this note refers to releasing information to the 'requester'.

Does this exemption mean I must disclose the personal information if requested?

No. While most people may wish to assist the prevention or detection of crime, it is important to understand that a request for personal information referring to this exemption -

- does not require any disclosure of personal information to be made
- does not give the requester any power to require the provision of personal information.

Deciding whether, and what, personal information to disclose

If a request for information is received, it is up to the controller to decide whether to disclose the personal information to the requester, or not.

Such decisions are made by the 'controller', i.e. the organisation itself, and a suitably senior person authorised to act on behalf of the controller should make the decision. It is an important decision to take and may have implications for both the organisation and the decision-maker. Front-line and junior members of staff should not be expected to make this decision. All staff should, however, be aware of who deals with such requests and decisions within the organisation.

Careful consideration will need to be given as to whether the circumstances justify disclosing the personal information to the requester and, if so, what personal information is necessary to assist

the requester. This is because the exemption limits when, and what, personal information should be disclosed, i.e.

- The circumstances are of sufficient importance that not releasing the personal information would be likely to prejudice (harm) any attempt to prevent or detect a crime, and
- The personal information you disclose must be necessary and relevant to the investigation.

What should I consider?

For every request, you should take sufficient time to fully consider the following:

- What proof of identity is required to satisfy me that the person making the request is who they say they are? (Extra care is required if the request is made over the telephone.)
- What information do I need to satisfy me that the person asking for this personal information is doing so to prevent or detect a crime or catch or prosecute an offender?
- Are there other factors to be considered; for example, are there other legal impediments to disclosure or does a duty of confidentiality apply?
- How will this personal information assist attempts to prevent or detect crime or apprehend or prosecute an offender and, if I do not release the personal information how, and to what extent, will this impede the investigation?
- Why is it necessary to seek the personal information from me? Can it be sought elsewhere?
- If I do decide to disclose personal information, what is the minimum personal information I should disclose for the requester to be able to do their job?

These will be matters of fact that will need to be considered on a case-by-case basis.

What if I am unsure whether to provide the personal information?

You are not obliged to comply with a request for personal information made under these circumstances.

Whether the disclosure can be made by relying on the exemption, and therefore without infringing the data protection legislation, is only one consideration. You should also consider any other obligations that impact on making such a disclosure, taking legal advice if necessary, before disclosing any personal information to the requester.

If you are concerned about disclosing the personal information, or if there is pressure on time and you cannot make an informed decision in that time-frame, you can always ask the requester to seek a court order requiring the disclosure of the personal information.

If a court decides the personal information can be disclosed to the requester, you will not breach the data protection legislation by obeying that court order.

Releasing information about more than one person

There are times when you may release personal information relating to more than one person who the requester does not name, but who fit a particular description.

For example: the police may not have the name of the particular suspect, but they believe he is an employee of your organisation and have a particular description (for example, white male, between 20 and 30 years old with brown hair). In this situation, you may release the personal information of all the employees who match that particular description.

However, in this example you need to be satisfied that the police have narrowed the description of the suspect as much as they reasonably can.

Recommended good practice

- Establish who will deal with such requests and make the decision whether or not to disclose personal information.
- Ensure that all staff are aware of the procedure for dealing with such requests.
- Ask for the request to be made in writing and signed by someone of sufficient authority.
- Establish/verify the identity of the requester.
- Ensure that the request contains enough information to permit you to make a fully informed decision on whether to apply the exemption and disclose the personal information sought.
- Make a record of each decision you make, the reasons for that particular decision, whether that was to disclose personal information or not, and what, if any, personal information was disclosed.