

DATA PROTECTION ACT 1998

SUPERVISORY POWERS OF THE INFORMATION COMMISSIONER

ENFORCEMENT NOTICE

To: SCL Elections Limited

Of: 55 New Oxford Street
London
WC1A 1BS

1. SCL Elections Limited is a data controller as defined in section 1(1) of the Data Protection Act 1998 ("DPA").
2. Section 4(4) of the DPA provides that, subject to section 27(1), it is the duty of a data controller to comply with the data protection principles in relation to all personal data with respect to which he is the data controller.
3. The Information Commissioner ("Commissioner") has considered a request for assessment made under section 42 of the DPA by Professor David Carroll ("the complainant").
4. The request for assessment concerned the failure by SCL Elections Limited ("the data controller") to supply personal data requested by way of a subject access request in compliance with the requirements of section 7 of the DPA.

5. The complainant made a subject access request to the data controller on 10 January 2017, by completing an online form at <https://datarequests.cambridgeanalytica.org>
6. The complainant received a response from the email address data.compliance@sclgroup.cc informing him to submit a £10 fee and proof of ID to SCL Elections Ltd, which was said to be Cambridge Analytica's agent for the purposes of subject access requests under the DPA.
7. Having provided the required information and fee, the complainant received a substantive response to his request on 27 March 2017 under cover of a letter from the SCL Group, marked for and behalf of Cambridge Analytica.
8. Under cover of this letter the complainant was provided with a spreadsheet which was said to contain all of the personal data to which he was entitled to under the DPA. The spreadsheet contained information under three separate categories:
 - (i) "Core data", which included the complainant's name, address, date of birth, and voter ID.
 - (ii) "Election returns", which included the complainant's election returns for both primary and general elections from 2000 to 2014, and in some cases it is understood an indication of the political party to which the complainant was registered at the time.
 - (iii) "Models", which included a profile purporting to show the complainant's views on ten issues including gun rights, education, healthcare, immigration and the environment, ranking the apparent

importance of these issues to the complainant between 1 and 10. It also included his likely partisanship categorised by both his registered and unregistered political preference and likely propensity to vote in the 2016 general election.

9. In addition the data controller informed the complainant that it processed this data for the purposes of “audience opinion / behaviour research and polling; statistical analysis and predictive algorithm development; and communications / outreach support services”. It explained that the data was sourced “.. through reputable data vendors” and “.. large scale research through research partners”. It also provided a very generic list of the classes of recipients of the data, including “political campaigns, non-profit organisations and commercial entities”.
10. The complainant was not satisfied with the response to his subject access request and complained to the Commissioner. Amongst other things, the complainant did not consider that he had been provided with all of the personal data held about him by the data controller, nor an adequate explanation of where the data had been obtained from or how it would be used.
11. The Commissioner wrote to the data controller about this matter on 12 September 2017. The data controller was asked a number of questions in relation to the data it held about the complainant, for example whether it had provided the complainant with all of the personal data it held; what purposes it processed that data for; whether it had relied on any exemption to the right of subject access; and further details as to where the data had been obtained from and to whom it had been disclosed.

12. The data controller responded to the Commissioner on 26 September 2017 asserting that as the complainant was not a UK citizen, nor based in the UK, he was not entitled to make a subject access request or make a request for assessment to the Commissioner under the DPA. The data controller stated that the complainant was no more entitled to make a subject access request under the DPA “.. than a member of the Taliban sitting in a cave in the remotest corner of Afghanistan”. The data controller did not respond to the specific questions raised by the Commissioner in her correspondence about the data it held about the complainant.
13. The Commissioner responded to the data controller on 26 October 2017 providing a detailed explanation as to why the complainant was entitled to make a subject access request under the DPA and why her office had jurisdiction to consider his complaint. The Commissioner therefore asked for a response to the questions she had previously asked the data controller about the data it processed about the complainant.
14. The data controller replied to the Commissioner on 2 November 2017. It again refused to accept that the complainant was entitled to make a subject access request or a request for assessment under the DPA, asserting that the Commissioner had no vires to consider the complaint. The data controller informed the Commissioner that it did “.. not expect to be further harassed with this sort of correspondence”.
15. The Commissioner has considered the data controller’s compliance with the provisions of the DPA in light of these matters. The relevant provisions of the DPA are the Sixth Data Protection Principle and section 7.

16. The Sixth Data Protection Principle provides at Part I of Schedule 1 to the DPA that:

“Personal data shall be processed in accordance with the rights of data subjects under this Act.”

17. Paragraph 8(a) of Part II of Schedule 1 to the DPA further provides that:

“A person is to be regarded as contravening the sixth principle if, but only if, he contravenes section 7 by failing to supply information in accordance with that section.”

18. In relevant part, section 7 of the DPA provides as follows:

(1) Subject to the following provisions of this section and to sections 8, 9 and 9A, an individual is entitled –

(a) to be informed by any data controller whether personal data of which that individual is the data subject are being processed by or on behalf of that data controller,

(b) if that is the case, to be given by the data controller a description of –

(i) the personal data of which that individual is the subject,

(ii) the purposes for which they are being or are to be processed, and

(iii) the recipients or classes of recipients to whom they are or may be disclosed,

(c) to have communicated to him in an intelligible form –

(i) the information constituting any personal data of which that individual is the data subject, and

(ii) any information available to the data controller as to the source of those data, and

(d) where the processing by automatic means of personal data of which that individual is the data subject for the purpose of evaluating matters relating to him such as, for example, his performance at work, his creditworthiness, his reliability or his conduct, has constituted or is likely to constitute the sole basis for any decision significantly affecting him, to be informed by the data controller of the logic involved in that decision-taking.

(2) A data controller is not obliged to supply any information under subsection (1) unless he has received—

(a) a request in writing, and

(b) except in prescribed cases, such fee (not exceeding the prescribed maximum) as he may require.

(3) Where a data controller—

(a) reasonably requires further information in order to satisfy himself as to the identity of the person making a request under this section and to locate the information which that person seeks, and

(b) has informed him of that requirement,

the data controller is not obliged to comply with the request unless he is supplied with that further information.

(4) Where a data controller cannot comply with the request without disclosing information relating to another individual who can be identified from that information, he is not obliged to comply with the request unless—

- (a) the other individual has consented to the disclosure of the information to the person making the request, or*
- (b) it is reasonable in all the circumstances to comply with the request without the consent of the other individual.*

(5) In subsection (4) the reference to information relating to another individual includes a reference to information identifying that individual as the source of the information sought by the request; and that subsection is not to be construed as excusing a data controller from communicating so much of the information sought by the request as can be communicated without disclosing the identity of the other individual concerned, whether by the omission of names or other identifying particulars or otherwise.

(6) In determining for the purposes of subsection (4)(b) whether it is reasonable in all the circumstances to comply with the request without the consent of the other individual concerned, regard shall be had, in particular, to—

- (a) any duty of confidentiality owed to the other individual,*
- (b) any steps taken by the data controller with a view to seeking the consent of the other individual,*
- (c) whether the other individual is capable of giving consent, and*

(d) any express refusal of consent by the other individual.

(7) An individual making a request under this section may, in such cases as may be prescribed, specify that his request is limited to personal data of any prescribed description.

(8) Subject to subsection (4), a data controller shall comply with a request under this section promptly and in any event before the end of the prescribed period beginning with the relevant day.

19. The data controller has not cooperated with the Commissioner's investigation of this matter, nor responded to the specific enquiries made by her in relation to data processed about the complainant. In the circumstances, and on the basis of the evidence before her and in the public domain, the Commissioner considers that on the balance of probabilities the data controller has not fully complied with the complainant's subject access request.
20. In particular, the Commissioner considers that further personal data about the complainant must be held in order for the data controller to have generated the profile of the complainant that is set out in the "Models" category of the spreadsheet as referred to in paragraph 8(iii) above. Furthermore, the Commissioner considers that the description of the sources of personal data provided by the data controller were wholly inadequate.
21. The Commissioner is therefore of the view that the data controller has contravened the Sixth Data Protection Principle.

22. The Commissioner has considered, as she is required to do under section 40(2) of the DPA when deciding whether to serve an Enforcement Notice, whether any contravention has caused or is likely to cause any person damage or distress. The Commissioner takes the view that damage or distress to the complainant is likely as a result of him being denied the opportunity of correcting inaccurate personal data, which may be processed by the data controller, because they are unable to establish what personal data are being processed within the statutory timescale.
23. **In view of the matters referred to above the Commissioner hereby gives notice that, in exercise of her powers under section 40 of the DPA, she requires that the data controller shall within 30 days of the data of this notice take the following steps:**

Provide the complainant with:

- (i) a description of the personal data processed by the data controller about the complainant;**
- (ii) a description of the purposes for which that data are being processed;**
- (iii) a description of the recipients or classes of recipients to whom the data are or may be disclosed;**
- (iv) copies of the information constituting personal data about the complainant in an intelligible form in accordance with the requirements of section 7 of the DPA and the Sixth Data Protection Principle, subject only to the proper consideration and application of any exemption from, or**

modification to, section 7 of the DPA provided for in or by virtue of Part IV of the DPA which may apply; and
(v) a description as to the source of that personal data.

24. Failure to comply with this notice is a criminal offence.

25. There is a right of appeal against this Notice to the First-tier Tribunal (Information Rights). Information about appeals is set out in the attached Annex 1.

Dated the 4th day of May 2018

Signed:

Elizabeth Denham
Information Commissioner
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

ANNEX 1

RIGHTS OF APPEAL AGAINST DECISIONS OF THE COMMISSIONER

1. Section 48 of the Data Protection Act 1998 gives any person upon whom an Enforcement Notice has been served a right of appeal to the First-tier Tribunal (Information Rights) (the "Tribunal") against the notice.
2. If you decide to appeal and if the Tribunal considers:-
 - a) that the notice against which the appeal is brought is not in accordance with the law; or
 - b) to the extent that the notice involved an exercise of discretion by the Commissioner, that she ought to have exercised her discretion differently,

the Tribunal will allow the appeal or substitute such other decision as could have been made by the Commissioner. In any other case the Tribunal will dismiss the appeal.

3. You may bring an appeal by serving a notice of appeal on the Tribunal at the following address:

GRC & GRP Tribunals
PO Box 9300
Leicester
LE1 8DJ

Tel: 0300 1234504
Fax: 0870 739 5836
Email: GRC@hmcts.gsi.gov.uk
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

The notice of appeal should be served on the Tribunal within 28 days of the date on which the Enforcement Notice was sent.

4. The statutory provisions concerning appeals to the First-tier Tribunal (Information Rights) are contained in sections 48 and 49 of, and Schedule 6 to, the Data Protection Act 1998, and Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 (Statutory Instrument 2009 No. 1976 (L.20)).