



# Privacy and Data Protection

Taylor Wessing LLP's Privacy and Data Protection Group advises and assists clients on all privacy and data protection related matters whatever their scale or scope.

## Background

The Data Protection Act 1998 is one of a number of highly significant laws which combine to create a complex regulatory environment governing the way in which businesses use individuals' personal information.

## The consequences of getting it wrong

Businesses have to make sure that data protection issues are adequately considered in respect of all their current data handling practices and future business developments. Failure to comply with the Data Protection Act 1998 can have serious consequences for a business including:

- Prosecution action taken against:
  - The business itself
  - Directors
  - The company secretary
  - Employees.

- Enforcement action affecting data:
  - Preventing a business from handling data in specified ways or deleting data altogether
  - Hampering any future due diligence process
  - Adverse publicity and loss of business reputation.
- Civil action by individuals
  - Suing a business for compensation for damage (and in certain circumstances, distress) suffered from a contravention of the Act.

## The privacy and data protection group

The members of the group all have extensive experience in advising clients on ensuring compliant data handling practices. Our team includes information technology, internet and e-commerce specialists, and a former staff member of the UK Information Commissioner's Office. The mix of the team makes it ideally placed to deliver broad-ranging practical advice and compliance solutions to businesses.

### **Our services include:**

- Group-wide and international data protection audits
- Contract reviews and drafting
- Drafting intra-group/ multi-national data protection and information exchange agreements
- Advising on data collection notices
- Web site privacy policies
- Drafting data and staff guides
- Subject access requests / employment disputes
- Employee monitoring advice
- Seminars, workshops and training

### **European service**

Taylor Wessing provides a European service to its client base through its UK, German, French and Belgian offices and its close links with European firms who can advise on the data protection and privacy laws of their respective jurisdictions.

## **Our areas of expertise**

### **The employer/employee relationship**

Every employer processes data about employees and it should have a data protection clause in its employment contracts to tell employees about what sort of data the company processes about them and what it does with this data. We recommend that this is complemented by a business wide data protection policy which acts to inform and reassure the employee that the employer respects their rights under the Data Protection Act 1998.

Employers need to be careful about how their employees use e-mail and the internet. We provide policies and guidance explaining exactly what employees may and may not do in this respect as well as the consequences to the employee of failing to comply.

In order to enforce these policies, employers may want to monitor the activities of their staff. This is a heavily regulated area on which we regularly advise.

Many employees, particularly those in the HR and sales departments, deal with personal data as part of their daily jobs. We provide training for staff and staff guides on, for example, how to handle data subject access requests.

### **Commercial agreements**

A wide variety of commercial arrangements involve the processing of personal data. In addition, customer and employee data are likely to be an integral component of business sale and purchase agreements. We advise on the suitable contractual frameworks and draft relevant data

protection and data usage clauses in a variety of contracts and also advise on the existing contracts of acquisition targets.

### **Outsourcing**

Many companies outsource data processing using the services of businesses which specialise in processing personal data on behalf of other companies.

Under the Data Protection Act 1998, this relationship must be documented in writing and we assist in drafting agreements or clauses for contracts.

### **Direct marketing**

Most businesses collect and process personal data relating to their customers, or prospective customers for the purposes of direct marketing. We advise clients on compliance with the Data Protection Act 1998, Privacy and Electronic Communication Regulations 2003 and applicable codes (such as the CAP Code) when collecting customer personal data and provide related documentation such as collection notices and internet privacy policies.

### **Access requests**

Individuals have increased rights of access to information held about them both on computer and now in some paper-based files. These rights are helping individuals to obtain information that may be useful in legal proceedings or claims for compensation. We advise clients on their rights to information and the proper approach to the handling of subject access requests.

### **Cross jurisdiction data transfers**

One of the most widely felt effects of the Data Protection Act 1998 is the restrictions that it places on exporting personal data outside the European Economic Area or a limited number of other countries (including Switzerland, Argentina and Canada). For companies with parents or subsidiaries outside Europe, this can be particularly problematic but there are ways around the problem. These include obtaining the consent of the data subject to the export or relying upon one of a number of other pre-conditions set out in the Data Protection Act 1998.

We advise on the suitability of these pre-conditions and draft appropriate documents, either to obtain the consent of data subjects or to form appropriate contractual arrangements with the entity to which personal data is being exported in order to ensure that the rights of the data subjects in question are respected.

Businesses in the US have the option of signing up to the US Safe Harbor scheme under which a signatory company will be considered to have equivalent safeguards to those in the EEA. We advise on whether or not this is an appropriate option for US clients or those exporting data to the US.

Multinational groups of companies with entities established in territories that do not have adequate data protection can now also put in place group-wide binding corporate rules and have such rules recognised by national data protection authorities, making their intra-group transfers of personal data lawful. We advise clients on whether or not this is an appropriate option and can help put together a binding corporate rules submission to the UK Information Commissioner's Office.

### **Data protection audits**

It is a criminal offence to process personal data without having filed an accurate notification (formerly known as a "registration") with the Information Commissioner but it is often difficult and time consuming for companies to co-ordinate between departments and complete a notification. To ensure that its notification is accurate, a business must first carry out an audit of its personal data processing activities.

We carry out data protection audits by supplying explanatory notes and advice and sending forms for completion. If the internal company structure is particularly complex, we can conduct audits in person.

One of the purposes of the audit is to highlight areas of data processing which are potentially non-compliant with the Data Protection Act 1998 including technical and other security measures. We will recommend a plan of action and provide documentary support and advice regarding its implementation.

### **Seminars and training sessions**

We regularly hold seminars and training sessions for mixed groups of clients on a variety of data protection related issues ranging from general introductions to data protection legislation, to specific topics such as internal data protection practices, employee monitoring, the use of employee data and direct marketing.

In addition, we can provide tailor made talks or training sessions at our clients' premises for large or small groups of employees. All our talks include Q&A sessions.

## The Team - Privacy and Data Protection



### Glyn Morgan

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Glyn is a partner specialising in digital media, communications and information technology. He focuses on the areas of privacy and data protection, electronic communications, e-commerce, rights exploitation and licensing, intellectual property rights, hacking and other computer crime, IT-related projects, managed services and outsourcing. He advises on regulatory and contract issues as well as on dispute resolution in these areas.



### Sally Annereau

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Sally is a data protection analyst in the Intellectual Property/Information Technology department.

Sally has over 15 years' experience of providing advice on data protection issues including six years working at the Office of the Data Protection Registrar (now the Information Commissioner) in addition to data protection compliance roles with marketing, broadcast and new media companies.

Sally is the co-author of the data protection chapter for Sweet & Maxwell's *Practical Commercial Precedents* publication and is a contributor to the Law Society's *Data Protection Handbook*.



### Daniel Pavin

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Daniel is a partner advising on a wide range of information technology and intellectual property issues, both contentious and non-contentious. He has a particular focus on data protection. Examples of data protection work include conducting and co-ordinating multi-national data protection audits and compliance programmes, advising on the collection and use of personal data for direct marketing, drafting employee e-mail and internet usage policies and advising on the redesign of software so that it complies with the Data Protection Act 1998.

Daniel is a contributor to the Law Society's *Data Protection Handbook* and to the British Bankers Association's *Data Protection: Practical guidance for banks*.



### Graham Hann

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Graham is a partner advising on all aspects of information technology and intellectual property laws, focusing on transactions including technology procurement, licensing and outsourcing as well as internet related issues. He has advised numerous UK and international clients on data protection issues including on the international transfer and sharing of personal data. Graham has worked in-house for a large internet based retailer and has spoken at seminars about data protection law.



### Christopher Jeffery

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Chris is a partner advising in relation to all aspects of IT contractual work: technology licensing, software development, systems procurement, online content and information and regulatory aspects of ecommerce and other web-based services, including data protection.

Chris has dealt with a broad range of companies: established US businesses rolling out in the UK and Europe, and UK-based start-ups and established IT suppliers and customers. Much of his focus has been on ensuring North American clients use standard form agreements which will "work" legally, and look right to customers and partners, in Europe and on steering clients through EU regulations, in particular the stringent and comprehensive privacy regime, and anti-trust laws as apply to distribution, reseller and other commercial relationships.



### Paul Callaghan

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Paul is a partner in the Employment and Pensions department. Paul advises on all aspects of employment law, both contentious and non-contentious. Paul has extensive experience in advising in relation to the employment law aspects of data protection. Paul has spoken at a number of international conferences on data protection issues in the workplace and is the author of the international chapter of 'Labor and Employment Workplace Data Law' to be published by the American Bar Association. Much of Paul's practice involves advising North American companies dealing with employment and data protection issues in relation to their UK operations.

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## A legal force for Europe

Based principally in the UK, France and Germany - with an office in Brussels and Dubai, as well as representative offices in Alicante and Shanghai - Taylor Wessing provides the full range of legal services to major corporations, financial and public institutions, growing enterprises and wealthy private clients.

Taylor Wessing has an enviable track record in serving knowledge-based and technology-orientated businesses. A market leader in intellectual property, the firm also has a strong market presence in corporate, finance and real estate.

## Our services

- **Corporate** - M&A, IPOs, private equity, tax, commercial law, inward investment, funds
- **Intellectual property** - Patents, copyright, trade marks, confidential information and all other aspects of intellectual property
- **Information technology** - Outsourcing, software licensing and development, e-commerce and IT disputes
- **Finance & projects** - Banking, structured finance, major projects
- **Dispute resolution** - Litigation, arbitration, mediation
- **Reconstruction and corporate recovery** - Restructuring, work-outs, formal insolvency
- **Real estate** - Investment, development, finance, planning and environment
- **Employment & pensions** - Employee benefits, human resources, pensions, pensions litigation
- **Competition** - EC law and anti-trust
- **Regulatory** - Public law, financial services
- **Private client** - International asset protection, tax and succession planning

## Data protection and privacy group contacts

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