

# Data Protection Policy

Quick reference – click below for:

- [How to make a request to see your personal data](#)
- [How to make a complaint](#)

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<b><u>Contents</u></b>	<b><u>Page</u></b>
<a href="#"><u>Introduction</u></a>	3-4
<a href="#"><u>Authorisation</u></a>	4
<a href="#"><u>Scope</u></a>	4
<a href="#"><u>Purpose</u></a>	4
<a href="#"><u>Common terms</u></a>	4-5
<a href="#"><u>Department notifications</u></a>	5
<a href="#"><u>Exemptions</u></a>	5-6
<a href="#"><u>Areas of responsibility</u></a>	6
<a href="#"><u>The Director</u></a>	6
<a href="#"><u>Data Guardian</u></a>	6-7
<a href="#"><u>Staff members</u></a>	7
<a href="#"><u>Offences</u></a>	7
<a href="#"><u>Disciplinary procedures</u></a>	7
<a href="#"><u>Management of Personal Data Processing including disclosure and sharing</u></a>	8-9
<a href="#"><u>Collection of Personal Data</u></a>	9
<a href="#"><u>Data storage – electronically and manually</u></a>	9-11
<a href="#"><u>Use of Data Processors</u></a>	11
<a href="#"><u>Security of Personal Data</u></a>	11
<a href="#"><u>Requests from Data Subjects for access to their Personal Data</u></a>	11-12
<a href="#"><u>When the exemptions may be used</u></a>	12
<a href="#"><u>How the Principles of the Law are adhered to</u></a>	12
<a href="#"><u>Complaints</u></a>	12-13

## **Introduction**

This policy is derived from the Data Protection (Bailiwick of Guernsey) Law, 2001 (“the Law”) and covers the application of this legislation within the Income Tax Office (“ITO”). The ITO is fully committed to this policy and it is employed throughout all areas of work undertaken.

The ITO is responsible for ensuring that its processing of Personal Data complies with the Law and this policy affirms that commitment. Personal Data is defined by the Law as data from which a living individual can be identified or data and other information which is in the possession of, or is likely to come into the possession of, the Data Controller, and includes any expression of opinion about the individual and any indication of the intentions of the Data Controller or any other person in respect of the individual.

Data protection is concerned with ensuring that an individual’s Personal Data is both kept secure and is not mishandled in any way.

Records subject to the data protection legislation comprise all computerised records and “relevant manual filing systems”. A “relevant manual filing system” is defined as one where Personal Data is held in an indexed or subdivided way which would allow direct access to specific information. If a manual file is held solely in chronological order then it would not be classed as a “relevant manual filing system” for data protection purposes. All handling and storing of Personal Data needs to be compliant including back up/archiving and destruction.

There are eight fundamental principles that relate to the processing of Personal Data and these are:

Personal Data should be:

1. Processed fairly and lawfully.
2. Obtained for specific and lawful purposes.
3. Adequate, relevant and not excessive.
4. Accurate and kept up to date.
5. Not kept for longer than is necessary.
6. Processed in accordance with the rights of Data Subjects.
7. Held securely with adequate precautions against unlawful or unauthorised processing, or accidental or deliberate loss or destruction.
8. Not transferred to another country unless there is an adequate level of security in force in the other territory for the processing of personal data.

The ITO holds a great deal of personal information on individual taxpayers and is recognised as a legal entity for the purposes of the Law. As such, all relevant members of the Policy & Resources Committee (“the Committee”) including staff and Board Members (political and non-political) have duties under the Law.

### **Authorisation**

This policy has been approved by the States Treasurer, the Committee and the Director of Income Tax.

This policy took effect on 1 December 2012 with the intention of being reviewed every 3 years or sooner if required. It was last updated in July 2014 and will next qualify for further review no later than July 2017.

### **Scope**

This policy applies to all Personal Data processed by or on behalf of the ITO and as such all relevant members of the Committee, including staff and Board Members, must abide by this policy.

In addition, any person, organisation or body acting as agent for the ITO, by processing data on its behalf, will also be required by the terms and conditions attached to their appointment, to comply with the provisions of this policy and the Data Protection Legislation.

### **Purpose**

The purpose of this policy is to enable the ITO to:

- Comply with the Law in respect of the relevant data it holds.
- Provide all staff, Board Members and agents with a clear understanding of their responsibilities in protecting people’s Personal Data against unauthorised processing or disclosure.
- Promote good practice.
- Protect staff, Board Members and agents from inadvertently breaking the Law, thus reducing the risks to the ITO and the States of Guernsey of failing to comply with the legislation.

### **Common terms**

The following terms are commonly used in data protection legislation. Definitions provided are taken from the Law.

- **“Data Controller”** – a person, who (either alone or jointly or in common with other persons) determines the purpose for which, and the manner in which, Personal Data are, or are to be, processed.

The ITO, led by the Director of Income Tax, is the Data Controller.

- **“Data Processor”** – any person (other than an employee of the Data Controller) who processes the personal data on behalf of the Data Controller.
- **“Data Subject”** – an individual who is the subject of Personal Data.
- **“Data Protection Commissioner”** – this post is held by an independent public official, not an agent or servant of the States of Guernsey. The post holder operates with impartiality and independence, and
  - provides and enforces the Law,
  - maintains the Register of Data Controllers,
  - ensures organisations (such as the ITO) comply with the Law and the eight data protection principles,
  - investigates complaints from individuals who feel they have been adversely affected by how their information has been processed.

### **Committee notifications**

The ITO is registered with the Data Protection Commissioner. The notification submitted is a general description of how personal information is processed by the ITO, both in relation to the general public and its staff. It includes the purposes for which information is processed, a description of all recipients of the information and a description of all countries where the information may be sent. The ITO’s notification can be reviewed at [www.dpr.gov.gg](http://www.dpr.gov.gg).

Any planned changes to the processing of information must be reflected in the notification and the responsibility for notifying the Data Protection Commissioner of any changes lies with the ITO’s Data Protection Guardian. Any unplanned, exceptional processing must be authorised by the Director or a Deputy Director, if none of these is available or it is a matter of urgency, a senior manager and must be duly documented.

It is an offence to process Personal Data other than as described in the notification.

## **Exemptions**

The first data protection principle requires the Director to inform individuals that he is processing their information and the purposes for which it will be used. The ITO's entitlement to process the data is governed by the Law and by the notification which the ITO has made in the Public Register of Data Controllers.

The sixth principle gives individuals the right to access their information, including the sources of information received. However, section 29 of the Law does provide an exemption from these requirements on the basis that the release of the information would prejudice:

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

The references to "crime" and "offenders" would include tax evasion.

## **Areas of responsibilities**

Every member of the ITO has a responsibility for data protection compliance and staff and Board Members will only process, disclose or share Personal Data in accordance with the 2001 Law and its associated orders and in accordance with this policy. The ITO recognises its overall responsibility for ensuring it complies with its legal obligations. The ITO Senior Management Team is responsible for audits of the information held, which will be carried out annually.

## **The Director**

The Director of ITO is responsible for the care and management of income tax (under the Income Tax (Guernsey) Law, 1975) and dwellings profit tax (under the Dwellings Profit (Guernsey) Law, 1975 – currently suspended) and information under the Foreign Tax (Retention Arrangements) (Guernsey and Alderney) Law, 2004 and for the assessment and collection of tax, and the enforcement of the taxation legislation. His jurisdiction covers Guernsey, Alderney and Herm but not Sark, Breghou and Jethou. Legal provisions are available to the Director so that he can obtain information to enable him to carry out his statutory duties.

In order to carry out his official functions, the Director needs to process personal information of taxpayers and potential taxpayers. He therefore has an obligation to comply with the Law, which will ensure the rights of individuals are protected, in regards to the handling of their information.

The Director of Income Tax has overall responsibility for all data protection issues arising in the ITO. However, he has designated a Senior Management Team member as the Data Protection Guardian, who manages the statutory obligations on the Director's behalf.

The Director of Income Tax also had responsibility as the Registrar of Charities and Non Profit Organisations, up until 30 June 2014, and this policy, with suitable adaptations, applied equally to that role. From 30 June 2014 the Office of Registrar of Charities and Non Profit Organisations was transferred to the Guernsey Registry.

### **Data Guardian**

The Data Guardian is responsible for the following:

- Production and issue of required policies and procedures.
- Dealing with the annual notification to the Data Protection Commissioner.
- Liaison with the Data Protection Office as appropriate.
- Liaison with the officer within the States responsible for corporate data protection policy and attending meetings at his or her request.
- Keeping a watching brief on data protection issues and developing knowledge of the subject.
- Ensuring the ITO's compliance with the Law.
- Monitoring all subject access requests.
- Advising staff on data protection matters.

### **Staff members**

Every member of the ITO is responsible for complying with the Law and with departmental policy and procedures.

Specifically, every member is responsible for:

- Collecting Personal Data in accordance with the Law and department policy.
- Disclosing or sharing Personal Data only in accordance with the Law.
- Advising the Data Protection Guardian of any apparent breach of the Law.

Furthermore, every staff member (along with Board Members and anyone who may have access to income tax records whilst carrying out some function at the ITO) takes an Oath of Secrecy that, subject to certain specific exceptions, they will not disclose information they receive in the performance of their duties.

### **Offences**

If a member of the ITO unlawfully collects, obtains or discloses Personal Data, they may be liable to action by the Data Protection Commissioner and/or the courts, which could result in a criminal conviction.

### **Disciplinary procedures**

Failure of staff to follow this policy may be deemed as a breach of the Civil Service Code of Conduct and may be dealt with as a disciplinary matter by the States of Guernsey. Failure of Board Members to follow this policy or any relevant procedures may be deemed as a breach of the Code of Conduct for Members of the States of Deliberation.

Each department of the States is treated as a separate legal entity for the purposes of the Law and is subject to the same obligations and liabilities as a private person. Whilst a department may not be prosecuted, the States as a whole may be prosecuted and anyone in the service of a department is treated as a servant of the department and may be prosecuted for offences under the Law.

### **Management of Personal Data Processing including disclosure and sharing**

As explained under “Responsibilities”, the Director is responsible for the assessment and collection of tax, and the enforcement of the taxation legislation. In order to carry out his statutory duties, the Director needs to process the Personal Data and information of taxpayers and potential taxpayers, and thus he has an obligation to comply with the Law.

Compliance with the Law will ensure the rights of individuals are protected in regard to the handling of their information.

Information comes to the Director from a number of sources. Principally, information will be supplied by taxpayers themselves when completing their income tax returns. Some information is received from third parties. In the case of employees, for example, details of wages will be received from employers. The Director will only use the information he holds in order to carry out his statutory duties and will ensure the processing of the information is fair and lawful in accordance with the first principle. In addition, some information may be used to compile government statistics but the Director ensures the information is provided in such a manner that individuals cannot be identified.



If properly authorised to do so (including authorisation from the taxpayer concerned) the Director may give information to others, for example, if he believes it necessary to do so to perform his statutory function. He may also provide information under a Double Tax Arrangement (DTA), a Tax Information Exchange Agreement (TIEA), agreements under the European Union Savings Directive (EUSD) or Intergovernmental Agreements (IGAs), which bring into effect the provisions equivalent to the US legislation (Foreign Account Tax Compliance Act) which Guernsey has entered into with another country. The Director may also provide information to the Law Officers/Law Enforcement for the purposes of taking legal advice, in connection with legal proceedings to collect outstanding tax and/or for the purposes of reporting an offence or suspected offence. He may also disclose information, if required to do so, under an act of court, an order under the Fraud Investigation Law or any similar statute/instrument allowing or requiring the disclosure of information in specific circumstances.

Guernsey has also had the Multilateral Convention on Mutual Administrative Assistance in Tax Matters extended to it (with effect from 1 August 2014) and this Convention permits Guernsey's Competent Authority (the Director of Income Tax) to enter into agreements, on how automatic exchange of information should be undertaken, with the Competent Authorities of other jurisdictions. Guernsey has also committed to adoption of the OECD Common Reporting Standard (CRS), which once finally approved will include a Model Competent Authority Agreement for the purposes of the automatic exchange of information. As a consequence, in the near future, such arrangements could be made with a significant number of other countries.

Section 206A of the Income Tax Law allows the Director to disclose, to the Social Security Department, certain information relating to a person without this constituting a breach of the Oath of Secrecy.

Section 206AA of the Income Tax Law [which was inserted by the Electronic Census (Guernsey) Ordinance 2013], allows the Director to provide information, including personal data, to the electronic census supervisor or to any census officer, again without this constituting a breach of the Oath of Secrecy.

The Director may cross check information that he receives with what is already held in his records. This may include information received from taxpayers as well as that received from other agencies, such as overseas tax authorities (for example, under the DTAs, TIEAs, EUSD, IGAs or CRS).

### **Collection of Personal Data**

The ITO is committed to obtaining Personal Data fairly and openly.

### **Data storage – electronically and manually**

Information is stored within the ITO both electronically and manually.

## Electronically

Information is stored electronically using the following systems:

- ITAX – this is a bespoke system which contains software to support the business of assessing and collecting tax. Information on this system is stored in a hierarchical database and is kept for 25 years. Regular “backups” are taken and stored securely off site. These are kept for a matter of days only and then the data is overwritten with later “backups”. See the separate [Document Retention, Destruction and Archive Policy](#) for details of the destruction of the data on ITAX.
- Perception Cash Receipting – this is a tailored cash receipting system. The information input is stored on a SQL database and is used for real time update of the ITAX system. Data is retained for a period of 25 years. See the separate [Document Retention, Destruction and Archive Policy](#) for details of the destruction of this data.
- Mitek – this system is used for capturing data from scanned images of employers’ quarterly paper returns, which are then processed by batch program and the data input into the ITAX database.
- Returns Creator – this system enables employers to record details of wages and salaries electronically which are then submitted on CD or by e-mail. The data is processed by batch program and transferred to the ITAX database. Data is retained for a period of 25 years. An electronic copy of the data is stored in a program known as “retrieve” so it can be accessed if there are any queries on the data that has been processed. See the separate [Document Retention, Destruction and Archive Policy](#) for details of the destruction of this data.

Distribution Reporter – this system enables companies to make electronic reports of all distributions/deemed distributions and qualifying loans. The XML file can be either submitted on CD or by e-mail and upon receipt is loaded automatically onto both the ITAX and EDRM systems.

- EDRMS – this is an Electronic Document and Records Management System. Information is stored in a Meridio Document Management database using:
  - Kofax software for scanning images of paper documents.
  - Microsoft Outlook for e-mails.

Metastorm BPM workflow software is used for end-user produced documents such as notes and letters.

The retention policy for information held in this system is 30 years. The system is backed up on a daily basis with the disks/tapes stored securely at an offsite location. See the separate [Document Retention, Destruction and Archive Policy](#) for details of the destruction of this data.

- Online Tax Return Filing System – this system allows individuals, companies and their accountants to complete and submit tax returns electronically via the internet, using online forms. The submitted form is loaded automatically onto the EDRM system overnight. Various checks are made to compare the information submitted online to the information stored on ITAX and in the circumstances where the data submitted meets certain set parameters; the information submitted online is used to automatically populate an assessment on ITAX. See the separate [Document Retention, Destruction and Archive Policy](#) for details of the destruction of the data on ITAX and EDRMS.
- Altia – this is specific software which the Director may use when reviewing bank statements. The bank statements are scanned as JPEG or PDF files and the software then populates the content into MS Excel files, allowing the Director to efficiently analyse the information provided. The scanned images and MS Excel files are retained for a period of 6 years following the end of the year in which the enquiry or investigation was concluded. See the separate [Document Retention, Destruction and Archive Policy](#) for details of the destruction of this data.

### Manually

Prior to 2007, generally all paper documents relating to tax cases were filed in paper files. This applied to all documents whether they were received from the individual taxpayer or generated internally.

Early in 2007, the EDRM system went “live”. From this date all documents are scanned into the EDRM system and, generally, the documents are no longer placed on paper files. Instead they are stored in “day boxes”, although there are some exceptions. The documents in the day boxes are retained for eighteen months and are kept securely. After this time the documents are destroyed so that only the electronic version of the document remains.

The paper files that were already in existence when EDRM went “live” and those exceptions referred to above have been kept and are stored in secure areas at the ITO. Archived files are also held in a secure location, until they are destroyed in accordance with our internal policy. See the separate [Document Retention, Destruction and Archive Policy](#) for details of the destruction of this data.

### Use of Data Processors

The ITO recognises its continual obligations with regard to Personal Data processed on its behalf by another organisation or individual, i.e. by a Data Processor.

All Data Processors will be required to produce a document stating how they comply with the Law, including their staff training, awareness processing and security controls. Data processors will be contractually obliged to act only upon instruction from the ITO and to exercise the security controls which have been documented and agreed.

## **Security of Personal Data**

All Personal Data will be held securely and protected from unauthorised access, use, loss or destruction.

## **Requests from Data Subjects for access to their Personal Data**

If an individual wishes to access the information held on them, the request should be sent, in writing to:

The Director  
States of Guernsey Income Tax  
PO Box 37  
St Peter Port  
Guernsey  
GY1 3AZ

In order to help the Director respond promptly and fully, the request should state the individual's full name, address, tax reference number and as much detail as possible surrounding the information required, and be boldly marked "Data Subject Access Request". Proof of identification may be required.

A £10 application fee must be included with the request. If the request relates to specific information that it transpires the Director does not hold, the fee will be returned.

The Director must reply within 60 days, although in most cases the Director should be able to respond in a much shorter period (particularly if the request is specific).

The individual will be allowed to see all information covered by the request, which is held in any of the electronic systems described above, except:

- Information that the Director holds in connection with investigations (see below regarding when the exemptions may be used),
- Information that could reveal the identity of someone else, unless they have agreed to their identity being revealed,
- Information connected with the prevention or detection of crime, or
- Where the information has already been provided to the individual in the past.

Paper files held prior to and since the introduction of the EDRM system are not considered to be covered by a subject access request as (based on the information provided by the Data Protection Commissioner) those records do not constitute a "relevant filing system", for the purposes of the Law.

### **When the exemptions may be used**

The Director will make use of section 29 of the Law if he considers that the assessment or collection, inside or outside of Guernsey, of any tax or duty or any imposition of a similar nature would be prejudiced.

This means that, in practice, the Director may withhold information received from confidential and/or sensitive sources and anything that may reveal internal procedures and processes relating to the investigation of tax evasion and avoidance.

As the tax affairs of many people are interlinked (for example partners in a business or those sharing a mortgage) the Director will not reveal information to an individual under the Law if, in doing so, this would reveal information concerning another person, unless he has specific authorisation from the other person to do so.

### **How the Principles of the Law are adhered to**

The Director will:

- Be open about how personal information is used (1st principle – fair processing).
- Only use the information he holds in order to carry out his statutory duties (1st principle – lawful processing).
- Only use the information for the purpose it was obtained (2nd principle).
- Ensure that the information held is accurate and as up to date as possible (4th principle).
- Ensure that the information held is appropriate, bearing in mind his statutory functions (3rd principle) and is not retained for longer than is necessary (5th principle).
- Ensure that the information is kept confidential (7th principle).

The individual has the right to have any inaccurate information held about them corrected.

### **Complaints**

If an individual feels that their information has not been processed in accordance with the Law, then the Director should be informed, in writing, at the address shown above. Full details of the complaint should be provided and be boldly marked “Complaint Regarding Data Protection”.

If the complainant is not satisfied with the Director's response, he may then write to the Data Protection Commissioner at:

PO Box 642  
Francis House  
Sir William Place  
St Peter Port  
GY1 3JE