

## New Data Protection Guidance for the Media

The Information Commissioner's Office (ICO) recently published the document "[Data Protection and Journalism: a guide for the media](#)". It is aimed at publishers and other media involved in journalism and, according to the ICO, is "intended to help the media understand and comply with data protection law and follow good practice, while recognising the vital importance of a free and independent media."

As well as providing a broad overview of the Data Protection Act 1998 (DPA) as it applies to the media, the guide includes the ICO's interpretation of the journalistic exemption contained in the DPA, which protects freedom of expression and is important for PPA members' journalistic activity (please see below).

The guide follows Lord Justice Leveson's recommendation that the ICO "should take immediate steps, in consultation with the industry, to prepare and issue comprehensive good practice guidelines and advice on appropriate principles and standards to be observed by the press in the processing of personal data."

### How the guide fits with the law and other guidance

Although the guide does not have legal force, it is a useful guide to the Data Protection Act 1998 (DPA) as it applies to publishers and complements other industry codes of practice such as the [UK Advertising Codes](#) and the [Code of Practice](#) enforced by the Independent Press Standards Organisation (formerly the PCC).

At 53 pages the guide is not exactly light reading. But the ICO has also published a two page [quick guide](#) aimed at journalists, which could easily be incorporated within PPA members' existing internal codes or guidance.

The longer guide is split into three sections:

1. **Practical guidance.** This introduces some data protection basics and provides broad guidelines on the effect of the DPA on key areas for publishers.
2. **Technical guidance.** As well as providing an overview of the DPA, this section provides detail on how the ICO interprets the journalistic exemption, which is key to the effective functioning of PPA members' journalistic activity. This section is aimed at those who want a more detailed understanding of the DPA.
3. **Disputes.** This section sets out the role of the ICO and what happens if someone complains under the DPA. As such it will be of more interest to senior editors or staff responsible for data protection compliance.

If PPA members would like guidance on data protection as it applies to marketing and other areas of their businesses, they should view the [ICO's other publications](#), including the [Direct Marketing Guide](#).

### Journalistic Exemption

The journalistic exemption (section 32 of the DPA) is broad in scope and can excuse compliance with almost all of the DPA's provisions. It can potentially cover almost all information collected or created as part of PPA members' day to day output – and gives publishers significant leeway to decide what is in the public interest.

It has four elements: (1) the data is processed **only** for journalism, art or literature; (2) with a view to publication of some material; (3) with a reasonable belief that publication is in the public interest; and (4) with a reasonable belief that compliance is incompatible with journalism (i.e. even if publication is in the public interest, it does not mean a publisher can ignore the DPA altogether: if a publisher can reasonably comply with the DPA, it must).

### **Broad interpretation**

Helpfully, the ICO states that “it must interpret it [the exemption] broadly to give proper protection to freedom of expression” but it goes on to state that “we will also expect organisations to be able to justify why the exemption is required on the merits of each case. The law does not provide journalists with an automatic exemption.”

As such, the ICO recommends that media organisations have robust policies and procedures, comply with applicable media industry codes of practice and maintain records of any particularly controversial decisions.

Although the journalistic exemption can disapply most the DPA, it is important to note that it does not provide protection from the section 55 offence of knowingly or recklessly obtaining personal data without consent (e.g. by blagging, hacking or other covert methods). There is a public interest defence to this offence, but it is narrower than the exemption for journalism in section 32.