

Alumni Databases and the new Data Protection Act

Summary of a meeting held between UK University representatives of CASE (the Council for Advancement and Support of Education) and the Data Protection Registrar's Office.

Wilmslow 25 January 2000

Introduction

The purpose of the first part of the above meeting was to discuss likely interpretations of certain key elements of the 1998 Data Protection Act, as they affect alumni databases.

The starting point was a broad understanding of the stipulations of the new Act. The purpose of this document is *not*, therefore, to provide a comprehensive guide to the New Act, or to provide definitions of key terms (e.g. 'data processing' or 'sensitive data'). Other documents prepared by experts within the field have already provided this (e.g. 'Data Protection in the Education Sector - A Guide for Good Practice' by Catherine Rayner, published by the Association of Colleges). The Data Protection Office Web site provides helpful further guidance (for example, 'Preparing for the new Act' at <http://www.dataprotection.gov.uk/prepare.htm>).

We did, however, focus on a number of important issues relating specifically to alumni databases, most notably the level of consent required for the range of activities typically undertaken by Alumni Offices, and the linked question of the sharing of data with various internal and external groups and individuals.

It is important to stress that where interpretations of elements of the Act are involved there remain many grey areas, and that the Data Protection Office (henceforth DPO) is itself awaiting further clarification from the Government on a number of issues (including, for example, the sections of the Act which deal with the transfer of data outside of the European Union).

Any comments or recommendations made below are based on the informed opinions and advice passed on to us by staff at the DPO. This does not mean that their view is necessarily legally water-tight. As the Act comes into force confirmation of interpretations regarding some of the more nebulous areas might only come through individual test cases. However, the views of the Data Protection Registrar and the DPO team would be likely to have a significant bearing on any such cases, and in this respect it is perhaps worth mentioning that this document has been read and approved by the DPO.

Data Controllers in charge of Alumni Databases will clearly need to develop a broad working knowledge of the Act, as each potential new use of data that comes along will need to be considered in the light of four factors: the Act itself; the notification under which alumni data is registered; the level of consent received and required for the relevant processing, and the latest guidance received from the DPO.

The above disclaimers aside, we found the meeting informative, useful and (in some key respects) reassuring regarding alumni databases. We are also reasonably confident that taking the sort of precautions listed below should ensure relatively trouble-free processing of alumni-related information in the future.

It is envisaged that a further meeting will take place, perhaps in late 2000/early 2001, to ensure that the guidelines below remain up-to-date, and to highlight any further concerns and issues which develop after the Act goes 'live' from March 2000 onwards. A subsequent meeting will also provide an opportunity to pick up on any important questions that were not raised at this first meeting. We would encourage colleagues to pass through any such questions or on-going concerns to the four University representatives involved.

For information, CASE was represented at the meeting by:

Christine Jeffery, Head of Research, University of Oxford Development Office

Adrian Beney, Deputy Director of Development and Alumni Relations, University of Durham
Christopher Cox, Alumni Development Officer, University of Newcastle

Sue Rees, Alumni Officer at the University of Ulster, was involved in preliminary discussions and in preparing agenda papers, but was unable to make the meeting itself due to heavy fog in Belfast airport.

Adrian is preparing a separate paper which will cover issues raised at the meeting relating to fund-raising prospect research, which will follow in due course, after further consultation with the DPO.

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1. Notification of Purposes.

Standardisation for Universities

The DPO is working towards a 'standard' notification ('registration' under the previous Act) for all Universities, which could be amended by individual institutions for any additional needs, but which would be likely to cover their day to day data processing needs. A draft version has recently been sent to Universities for comment.

It was suggested, and in principle agreed, that it would be helpful to add 'Alumni Relations and Development' as a separate heading within this document, in order to ensure that any such template would cover the needs of Alumni and Development offices consistently and in one section, which could then be up-dated for all universities at the same time, as and when necessary.

Need for separate Notification for certain affiliated bodies

If a body associated with the University (e.g. University Trust) constitutes a separate legal entity, a separate notification should be registered with the DPO.

2. Processing where positive consent is not required.

The DPO agrees that alumni might 'reasonably expect' Alumni Offices to process their data for the following purposes, which do not therefore require explicit 'positive' consent.

- Sending University mailings (e.g. Alumni magazines, Newsletters, Annual Reports)
- Sending University mailings to offer benefits, services and affinity products to alumni (although see 5. Below)
- University-related fund-raising initiatives (although see 7. below)
- Seeking non-financial alumni support (e.g. careers advice to students, help with student recruitment)
- Contacting alumni regarding events and reunions which are relevant to them
- Use of Mailing Houses for large-scale mailings (with confidentiality agreements in place)
- Forwarding of messages from other graduates (without disclosing data)
- Including information on products and services which may be of interest to alumni within University mailings (e.g. Affinity Card materials)

Although explicit positive consent is not required for these purposes, the DPO advises that Alumni data controllers need to let alumni know that they have certain rights relating to the data held on them, and that they have the right to object to use of their data for direct marketing purposes. As long as these rights were communicated, consent for the above purposes could be considered to be on-going. Best practice would also see the inclusion of 'opt out' statements when we use their data for a particular purpose.

For example, if we forward a message on behalf of another graduate, the DPO advises that we should enclose with that message a standard statement, explaining that we have forwarded the message without disclosing the address, but that if they would prefer us not to forward similar messages in future, they have the right to request this.

We do not, therefore, need to include several tick boxes on questionnaires to allow individuals to opt 'in' or 'out' of each of the specific purposes listed above. Questionnaires should, however, include a reasonably detailed statement about the purposes for which data is processed (see Appendix A for a suggested statement, although each institution will clearly wish to tailor this to match their own data processing needs).

Data controllers will also need to ensure that databases can flag up those individuals who request that their data is not used for a particular purpose, and will need to ensure that this data is cross-referenced before future communications relating to a particular purpose are processed.

To summarize on this point, the DPO advises that the first question it is likely to ask of an institution (following a complaint from one of their data subjects) is “what opportunity was the individual given to object to the use of their data for that purpose, and, if any objection was made, was it acted upon?”

3. Sharing of data with branches of Alumni Associations, and other recognised affiliated bodies, individuals, organisations or agents, for University/Alumni Association purposes.

Examples of groups/organisations/individuals which might be involved:

World-wide branches run by volunteers under the umbrella of the University Alumni Association.*

‘American Friends of the University of XX’*

In-country University employees with in-country responsibility for alumni relations*

Other less formal groups of alumni and alumni contacts*

British Council Offices for the purposes of publicising joint alumni events*

Publishing Companies acting on behalf of the University in preparing an Alumni Directory*

** See also 8. Below on Transfer of Data outside of the EU.*

The DPO is reasonably comfortable with sharing of data with such groups for alumni purposes, on four conditions:

1. That Data Protection statements circulated to alumni (such as on questionnaires and mailing cover sheets) make mention of this generic type of purposes (see suggested statement on Appendix A)
2. That alumni are given the opportunity to object to the disclosure of their data for this type of purpose.
3. That confidentiality agreements are in place, whereby those receiving data guarantee not to disclose it to third parties.
4. That where an agent (e.g. publishing company) is involved, a contract is in place that stipulates that the company is acting as a Data Processor for the University, and that where the company makes direct contact with alumni, any materials sent out make it clear that they are acting as an agent of the University.

4. ‘Host’ mailings for outside companies.

‘Host’ mailings are those undertaken by an organisation on behalf of an outside company, where no data is shared. For example, Universities are occasionally approached by outside organisations (such as recruitment consultants) to send a mailing to a particular set of alumni, sometimes in exchange for a fee. There is a distinction here between this type of mailing and including ‘inserts’ in a University-related mailing (e.g. of an Alumni Magazine), a purpose which is included under 2. above. Where a ‘host’ mailing is concerned, the purpose (and target audience) of the mailing is driven by the wishes of the Company, without whose involvement the mailing would not take place.

The DP Office considers ‘host’ mailings to be ‘trading in personal information’ and advises that it should not be undertaken without the prior positive consent of individuals (see 6. Below). The mailing could therefore only go ahead for those alumni providing such consent. It would also be best practice to include a further ‘opt out’ clause within each resulting mailing, in case individuals wish to object at a later stage.

Since the meeting, Phil Boyd (Senior compliance Manager at the DPO, who was present at the meeting) has advised that:

“the position of universities differs significantly from that of other organisations which may be offering host mailing facilities. This is to do with the circumstances under which the University obtains the personal data of its alumni and the period of time that is almost certain to elapse between first obtaining these details and subsequently offering a host mailing facility.”

5. Sharing of Data with Banks and other commercial partners for Affinity products and services

The DPO does not consider that alumni might ‘reasonably expect’ Alumni Offices to share their data with Banks and other affinity partners for the purposes of marketing Affinity Credit Cards or other products or services, and advises that we should not share any data in this way without the prior positive consent of individual data subjects (see 6. below).

The DPO staff advise that they have received a number of complaints from alumni data subjects on this particular issue.

Inserting information from affinity partners inside University mailings (without disclosure of data) has been included under section 2. above, where positive consent is not required. Similarly, mailings sent by a University to its alumni specifically to offer affinity services (but without disclosure of data to affinity partners) are covered under section 2.

6. Interpretation of ‘positive consent’ as and when it is needed for alumni processing.

The optimum form of positive consent is to have a signed copy of a Data Protection or other Statement where the individual has positively opted ‘in’ to the type of processing mentioned.

However, where alumni databases are concerned the DPO is happy to include within its definition of positive consent an individual *not* ticking an ‘opt out’ box on a form, where mention is made of a purpose, ***but only under circumstances where the form itself must be returned.***

In seeking further clarification, three specific scenarios were discussed :

Scenario 1: Where a student has to sign and return a form in order to receive their degree.

Assuming the relevant purpose was included in a data protection statement on that form with a separate ‘opt out’ box, and the individual does not tick the box, then the DP Office would consider this adequate consent.

Scenario 2: Where an individual alumna/us returns a questionnaire

If a similar ‘opt out’ box is included as part of a data protection statement on an alumni questionnaire, and an individual returns that questionnaire without ticking the box, that would also be interpreted as adequate positive consent for that purpose.

Scenario 3: Where an individual alumna/us does not return a questionnaire

If a similar ‘opt out’ box is included as part of a data protection statement on an alumni questionnaire, those who do *not* return the questionnaire cannot be considered to have offered adequate consent for any of the particular purposes listed which require positive consent.

7. Processing of Sensitive Data

It was felt by those present that alumni databases were unlikely to be processing sensitive data (as defined in the Act) on a regular basis. Storing of information such as ethnic origin for monitoring purposes is acceptable, but must not be processed for any other purposes without the explicit consent of the data subject.

8. Telephone Preference Service

The DPO's current interpretation of an 'unsolicited' telephone call to any individual signed up to the Telephone Preference Service (TPS) is a call that has not been specifically requested, irrespective of the nature of any on-going relationship between the individual and the organisation.

The DPO agreed to look further into the definition of 'unsolicited', and how it applies to alumni databases and telephone-based fund-raising programmes. Clarification was sought, for example, on where a University stands if an individual who is signed up to TPS returns a questionnaire to which they have added their telephone number, and signs a data protection statement which mentions fund-raising and the possible use of data provided for direct marketing purposes.

Since the meeting, Phil Boyd has passed on the following advice:

"So far as the TPS is concerned, it seems to me that the position is that fund-raising approaches by telephone should not be made to any alumni who have registered with the TPS unless they have indicated that they are happy to receive calls from the University. While in some cases it may be difficult to judge whether the call has been invited, it would seem to me that if an alumna/us has provided a telephone number on a questionnaire which itself clearly refers to fund-raising and marketing activities then it would be reasonable to make use of that telephone number. We would certainly be content for you to proceed on that basis providing that there was a general commitment to review the position in the event of any complaints."

9. Transfer of Data outside of the European Economic Area.

The DPO is waiting for some sort of consensus to emerge out of meetings of EU Data Protection Commissioners and also wishes to take further legal stock of the situation. In the meantime the DPO were able to confirm that data could be transferred outside of the European Economic Area if the specific consent of the data subject had been obtained.

It was confirmed that any data posted on the Internet should be considered as data transferred outside of the European Economic Area. However, the DPO would only be concerned if data were published about an individual that was either sensitive, or which provided a means of contacting that individual without his or her prior positive consent. Publishing of 'lost' alumni lists on the Internet, where information was limited to name, department and year of graduation, for example, would not worry the DPO.

10. Maintaining a 'skeleton' record when removing an individual from the Database.

The DPO advises that the Act recognises that where an individual requests to be removed from the database, data controllers need to be able to maintain a 'skeleton' record, flagged up to make sure that further contact is not made, to safeguard against re-entering that individual from a separate data source in the future.

11. Checking validity of addresses

The DPO encourages Alumni data controllers, where possible, to check addresses against the electoral roll, particularly where no response has been received from a particular address for several years. The DPO does, however, appreciate that Universities will need to use their own discretion here, as in some circumstances mail may be reaching an individual even though the officially registered surname at that address does not match the surname on the institution's database.

Appendix A

Suggested Data Protection Statement for Alumni Questionnaires

1998 Data Protection Act

All data is securely held in the University Alumni/Development Office and will be treated confidentially and with sensitivity for the benefit of the University of X and its members. The data is available to our international offices, colleges, faculties, academic and administrative departments, recognised alumni societies, sports and other clubs associated with the University, and to agents contracted by the University for particular alumni-related projects.

Data is used for a full range of alumni activities, including the sending of University publications, the promotion of benefits and services available to alumni, notification of alumni events and of programmes involving academic and administrative departments. Data may also be used in fund raising programmes which might include an element of direct marketing.

Under the terms of the 1998 Data Protection Act you have the right to object to the use of your data for any of the above purposes.