



Overview of

'Public Sector Data Sharing – Guidance on the Law'

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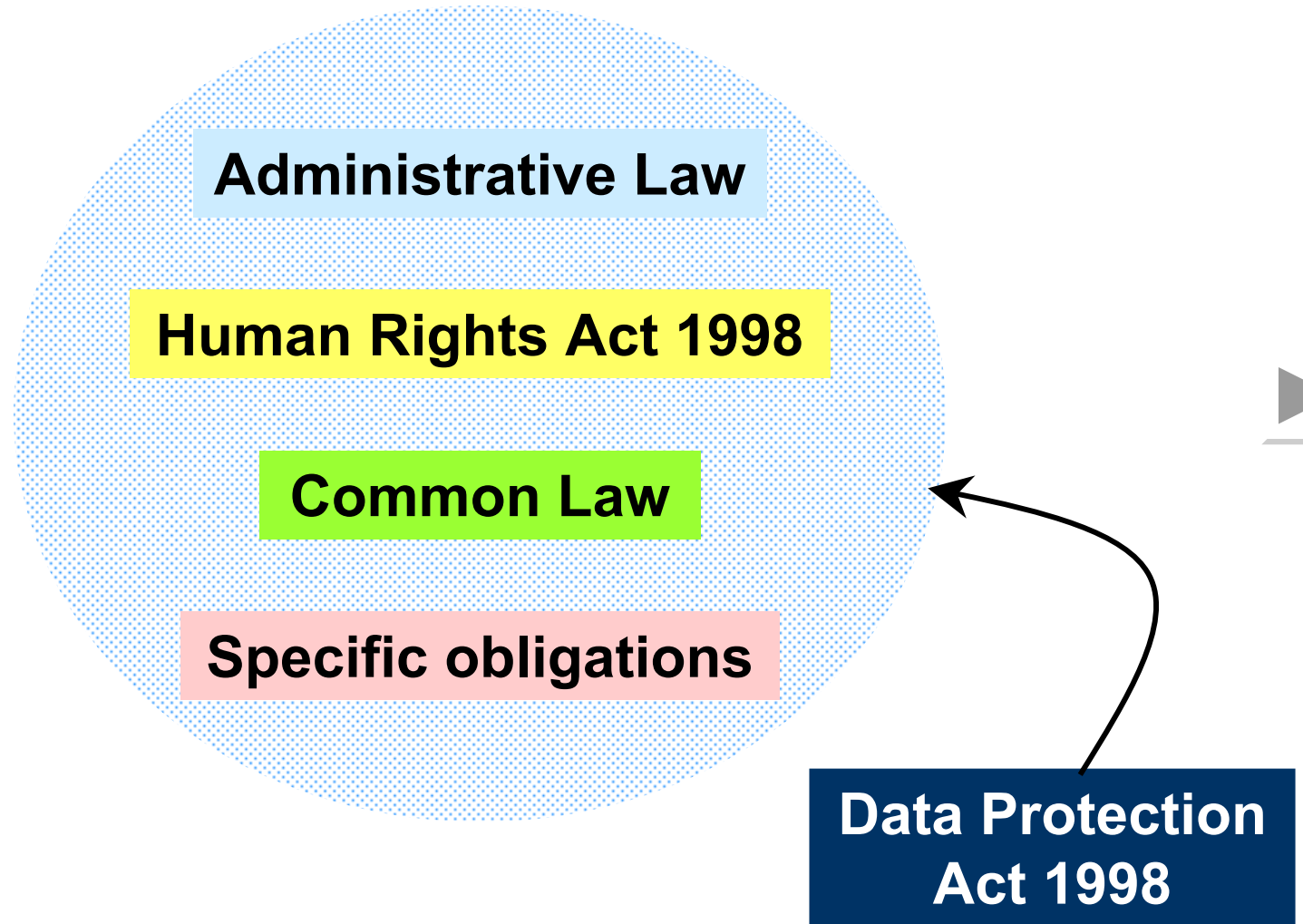


Listener beware !

- **Law on data sharing is complex**
- **This overview fleshes out Experian's flow-chart, but**
 - **is only a layman's understanding**
 - **is stripped of case law**
- **For further information, consult a lawyer, and /or read the original Guidance document, available at:**

<http://www.dca.gov.uk/foi/sharing/toolkit/>

So you, a public servant, want to share some data ?



Administrative Law

- A public body may not act in excess of its powers (**vires**)

- Powers derive from:

<i>Ministerial departments</i>	<i>Other public bodies</i>
Statute Common Law Royal Prerogative	Statute only

- Statutory powers extend to acts ‘reasonably incidental’ to those authorised, i.e. data sharing often allowed by implication rather than explicitly




Human Rights Act 1998

Based on the European Convention on Human Rights, of which:

Article 8.1 **Everyone has the right to respect for private and family life, his home and his correspondence**

Article 8.2 **There shall be no interference by a public authority with the exercise of this right except such as is:**

- in accordance with law
- in the pursuit of a legitimate aim
- & is necessary in a democratic society



NB : Intentional tension between these two criteria



- **Common law duty of confidence exists**
- **Infringement may be actionable as a civil law tort of ‘breach of confidence’ provided that information:**
 - was not in public domain
 - was communicated in circumstances giving rise to an obligation of confidence
 - was used without authorisation (detriment not necessary)
- **Public interest defence**
- **Overlap with Human Rights Act ‘98**

“For the purpose the law of confidence, it is clear that different government departments are treated as separate legal persons, which means that information cannot be freely shared between them” *Quote from DCA Guidance*



Specific obligations of confidence

Various statutory obligations prohibit the disclosure of certain types of information. These include information:

- arising from **medical** treatment (*Abortion Act '67, Access to Medical Reports Act '88*)
- supplied in connection with **legal** proceedings (*various rules of court*)
- arising from implementation of **Health & Safety** (*Health & Safety at Work Etc Act '74*)
- supplied to the **Inland Revenue** (*Finance Act '89, & Taxes Mngmnt Act '70*)
- supplied to the **Child Support Agency** (*Child Support Act '91*)
- obtained under powers in the **Companies Act '85**
- acquired by a public authority pursuant to the **Enterprise Act '02**

Specific obligation to, or discretion to, disclose

Some statutes impose an **obligation to disclose** personal information in specific circumstances. These include:

- an obligation on local authorities and Crown servants to furnish information required by the Child Support Agency (*Child Support Act '91*)

Other statutes give **discretion to disclose**. These include:

- Crime & Disorder Act '98, where necessary for the purposes of the Act
- Anti-Terrorism, Crime & Security Act '01, for 'fairly broad purposes connected with criminal investigation and prosecution'.

NB: The onus here is on the discloser to satisfy himself that the action is proportionate to the aim that is being achieved (c.f. HRA balancing act)



- UK's implementation of the EC's Data Protection Directive (95/46/EC)
- See Experian / Jim Lound's flowchart
- Eight principles, of which the first 2 are:
 - i. Personal data shall be processed fairly & lawfully and, in particular, shall not be processed unless:
 - one of the conditions in [Schedule 2](#) is met; &
 - in the case of sensitive personal data, at least one of the conditions in [Schedule 3](#) is also met.
 - ii. Personal data shall be obtained only for one or more specified legal & lawful purposes, and shall not be processed [in any manner incompatible](#) with that purpose or those purposes.
- Various [exemptions](#) to the DPA



Schedule 2 places few constraints upon government

Schedule 2 Conditions include:

- Subject has given consent
 - Where ordered by the Secretary of State
 - Necessary:
 - a) for the exercise of any statutory functions
 - b) for the exercise of any functions of the Crown, a Minister of the Crown, or a government department
 - c) for the exercise of any functions of a public nature in the public interests by **any** person
 - for the legitimate purposes of the data controller, or of a third party to whom data is disclosed, except where unwarranted by reason of prejudice to the rights (etc) of the data subject
- + contracts, administration of justice, vital interests, compliance with law

One of these conditions must be met for processing of **non-sensitive** data to be fair & lawful



Similarly, Schedule 3 has little effect on government

Schedule 3 Conditions include:

- Subject has given **explicit** consent
- Necessary:
 - a) in the vital interests of the subject, or another, where consent cannot be obtained
 - b) for the exercise of any statutory functions
 - c) for the exercise of any functions of the Crown, a Minister of the Crown, or a government department
- + employment, medical purposes, justice, legal proceedings, ethnic monitoring, non-profit bodies, info made public,

One of these conditions must be met for processing of **sensitive** data to be fair & lawful



Nor is the 2nd principle a tight constraint

Reminder of the 2nd DPA Principle :

Personal data shall be obtained only for one or more specified legal & lawful purposes, and shall not be processed in any manner **incompatible** with that purpose or those purposes.

“

- Compatible does not mean identical to.
- Purposes which are quite different from the original purposes can still be compatible with those original purposes
- Provided that the further processing is not contradictory to the originally specified purpose, or purposes, it will be - in our view - consistent with the second principle. ”

Quotes from DPA Guidance



Exemptions to the DPA

- **National Security**
- **Crime & taxation**
- **Research (anonymised)**
- **Information available to the public by statute**
- **Disclosures required by law**
- **Confidential employment references**



If a public sector entity wants to share data for a 'reasonable' purpose, it can probably find the legal means to do so.