



Privacy and your data

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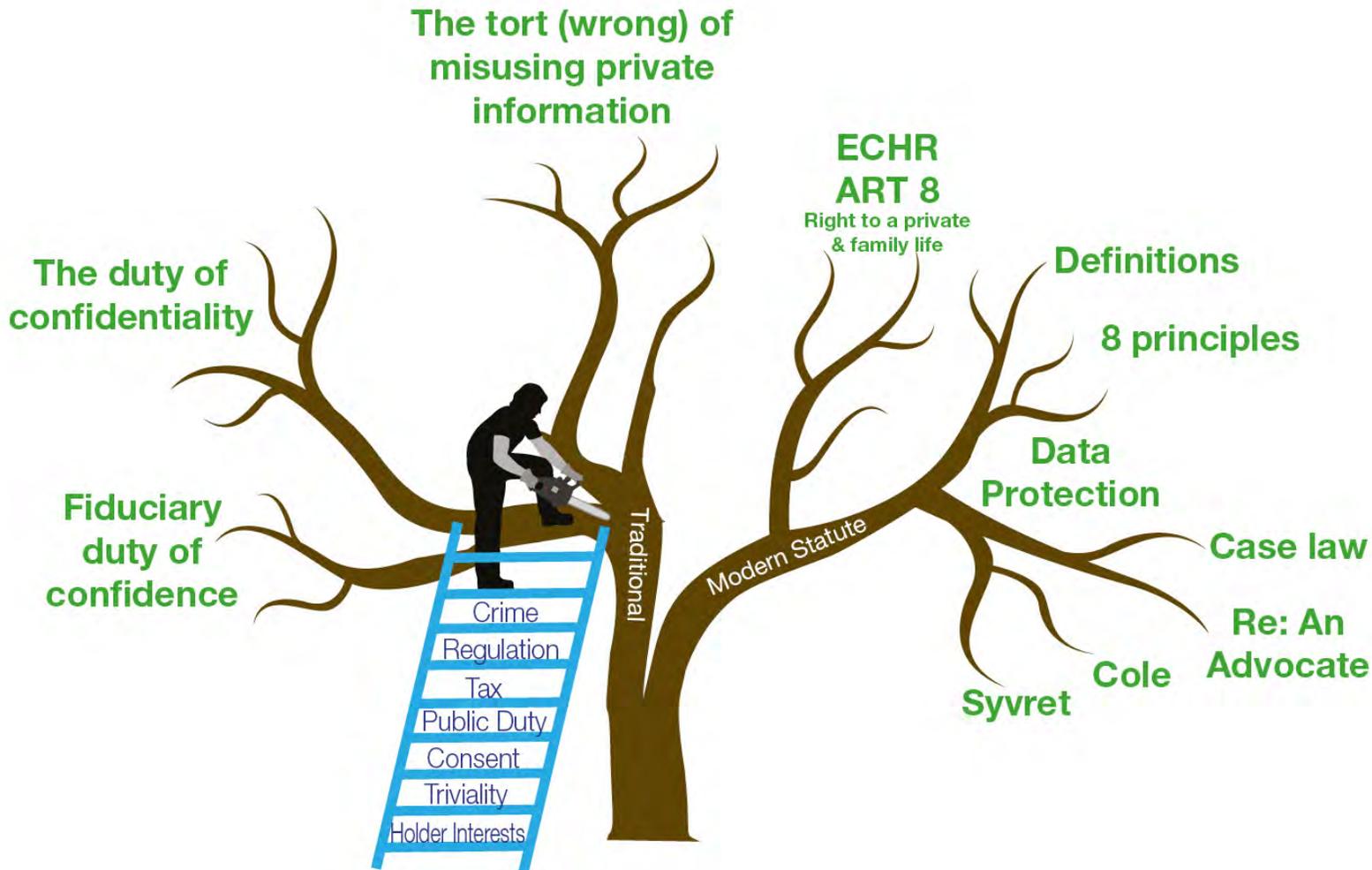
 **VIBERTS**

Data protection

What are we talking about?

- What is personal data?
- Rights of the data subject
- Where is my data and how is it used under the law?

The privacy tree



Personal data – what is it?

Personal data is information (e.g. words and/or pictures) which relates to a living individual (the data subject) who can be identified:

- From those data; or
- From those data **and** when combined with any information which is already in the possession of, or which is likely to come into the possession of the data controller.

Personal data includes information about the data subject such as their name, address or medical or banking details.

How is data protected in Jersey?

Data Protection (Jersey) Law 2005 governs the law of data protection and the law contains important key definitions.

Personal data is defined as information that is:

- Automatically processed; or
- Recorded with the intention of being automatically processed; or
- Recorded as part of a relevant filing system.



Collection of data

The spectrum ranges from:

- Walking around town to Employer's HR records
- It is obvious that an employer would hold your data, but it is not so obvious that data could be collected from when just walking around St Helier
- With Jersey Police wanting to increase levels of surveillance in St Helier, we may find that even more data is collected about us when we are going about our daily lives in St Helier

Collection of data

Our data is collected all the time and most of us probably do not consider when, say, making a purchase that our data is being recorded.

- Internet browsing
- Amazon purchase / store card
- Car loan
- Text message / telephone call / social media
- Weekly shop
- Bank / cashpoint
- Competition entry
- Voting form
- Swipe card
- Tax
- Doctor

The examples are endless but each time we carry out tasks like the above or similar, our information is being collected.

Sensitive personal data – what is it?

There is a distinction drawn between personal data and “sensitive” personal data. Sensitive personal data includes information relating to:

- Racial or ethnic origin (even though you would think this would be obvious by seeing the data subject);
- Political opinions;
- Religious or other beliefs;
- Trade union membership;
- Physical and mental health;
- Sexual life; and
- Criminal offences.

There are fewer safeguards regarding the processing of personal data than there are for sensitive personal data. In most cases a person must be asked specifically if sensitive data may be kept about them.

What is meant by “processing of data”?

Includes:

- Obtaining;
- Holding; and
- Carrying out any operation or procedure using the data.

Before the processing of any data takes place the question that should be asked is
“Does the data subject know you have their data?”

Pre-conditions for processing of personal data

Before processing a person's personal data it is necessary for any one of the following conditions to be satisfied to ensure the processing is lawful:

- Explicit consent of the individual;
- Being required by law to process the information for employment purposes;
- Needing to process the information in order to protect the vital interests of the individual or another person;
- Dealing with the administration of justice or legal proceedings.

A Jersey case to consider Cole v. Chief Officer of States of Jersey Police [2007]

Brief facts

- The claimant sued the SoJP for misuse of private information/breach of confidence following disclosure by the States of Jersey Police of the claimant's criminal record to a potential employer without his explicit consent.
- At the time of disclosure the claimant was confused about the application of the UK Rehabilitation of Offenders Act in Jersey, believing that old convictions would be treated as spent. Because of the nature of the records disclosed, the court had to determine whether the claimant had provided explicit consent to disclosure of his criminal record.

Rights of the data subject i.e. you

Individuals are entitled to exercise the following rights:

- Prevent processing that is likely to cause them, or another person, damage or distress;
- Prevent processing for the purposes of direct marketing;
- Object to automated decision making – where decision making has no human involvement;
- Be told the logic behind such automated decisions;
- Seek compensation for damage or distress (for any breach of the Law);
- Access to information – to find out information that is held about them.

Duties of the data processor

There are 8 principles that protect the data subject's data. Anyone processing personal data must comply with the eight enforceable principles of good data handling practice. These say that data must be:

- Fairly and lawfully processed;
- Processed for limited purposes;
- Adequate, relevant and not excessive;
- Accurate and up to date;
- Not kept longer than necessary;
- Processed in accordance with the individual's rights;
- Secure; and
- Not transferred to countries outside the European Economic Area unless that country has adequate protection for the individual.

A real Jersey example – the purposes of obtaining and using your data

The Jersey Football Association website advises users of its purposes for obtaining information. It states that it may request that users provide information at a number of points on the website such as when users:

- (i) e-mail enquiries, contributions or your views to us;
- (ii) enter competitions;
- (iii) register to receive or download information, newsletters or other documentation; or
- (iv) purchase goods or services from us.

A real Jersey example – the purposes of obtaining and using your data

The website goes on to say what the users' personal information will be used for:

- (i) to respond to your enquiry;
 - (ii) to acknowledge any contribution that you may make;
 - (iii) to administer the relevant competition;
 - (iv) to send information to you;
 - (v) to fulfil any contract that we may enter into with you;
 - (vi) for research purposes;
 - (vii) to send marketing information to you in accordance with the provisions set out below;
- or
- (viii) for other reasonable purposes for which you have provided such information.

A real Jersey example – the purposes of obtaining and using your data

The Jersey FA website makes clear that it will share users' information with its affiliates and third party service providers if this is necessary or reasonably required for any of the purposes above.

Such third party service providers are not entitled to use your information for their own purposes. We may also share your information with third parties for marketing purposes if you have indicated that you are happy to receive such information.

The website warns users of the risk that some of these third parties may be located outside of the United Kingdom, including in countries where data protection laws might not exist or be of a lower standard than the EU.

Common misunderstandings and issues

- Is CCTV allowed to protect a fly-tipping hot spot?
- *“I can’t give you a list of the people who donated money to cancer relief in memory of your late mother because of data protection”.*
- Are you allowed to video your child’s nativity play?
- *“I never give accurate employee references – they just insist on seeing them and create problems”.*

If you have any questions on privacy and your data,
please contact:

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