



The Data Protection (Bailiwick of Guernsey) Law, 2017 ("the Law")

Data Portability

Overview

On 25 May 2019 all local citizens gain the legal right of data portability under section 14 of the Law.

This means citizens will be able to tell an organisation to give them a machine-readable copy of the personal data they have provided to them so that it can be easily transported and entered into another organisation's IT system.

This could include requests like: moving medical records from one GP practice to another; moving insurance policy information; or retrieving a contact list from a webmail application.

The Law sets out certain requirements for controllers to ensure such requests can be handled easily. Because this may require system changes for many organisations, they were given until 25 May 2019 to get ready for any requests from citizens exercising this right. There is not one universal way that personal data is recorded and stored across all organisations, so it was recognised that more time was needed to prepare.

All local organisations should investigate how they could easily transfer or copy all data relating to a specific person from their system and provide it to that person in a structured, 'machine readable' format that can be plugged into another organisation's system. This could be as simple as using specific types of software files.

The ODPA is here to help everyone achieve compliance with *The Data Protection (Bailiwick of Guernsey) Law, 2017*. You will find more guidance, templates, checklists, Q&As at www.odpa.gg.

Please visit www.odpa.gg/contact-us for details of our fortnightly drop-in sessions, how to book an appointment, how to request a study visit, and how to keep up-to-date with our activities via LinkedIn and our monthly newsletter.

Q: What’s the difference between asking an organisation for your personal data under the right of ‘data portability’ and a ‘subject access request’?

A: This is a good question as there are three important differences between these two rights related to the: scope, format, and circumstances of the personal data. These three differences are summarised in the table below:

	Data Portability	Subject Access <small>(see https://odpa.gov.uk/your-rights/#access for details)</small>
Scope of personal data that must be included in the organisation’s response to the data subject* who is making the request	Only data provided by the data subject* that is processed electronically	All personal data. Including all data created by the organisation itself which relates to the data subject* and data from other organisations for which the organisation itself becomes a controller.
Format of personal data provided in response to data subject*	Machine-readable only	Any format understandable by a person
Circumstances when this right can be exercised	Only when data subject* has provided their personal data by consenting to processing, or in relation to a contract with the organisation	Applies in all circumstances regardless of the circumstances that led to the processing of the data
* ‘Data subject’ = this is the legal term for <u>the living person</u> the personal data is about, or relates to.		

Under [your legal right of ‘subject access’](#) you can request a copy of **all** the personal data an organisation has on you, **including** all information **created by the organisation itself** which relates to you, **collected in any circumstances**. For example, an assessment of credit worthiness or special rates being offered. When an organisation responds to your subject access request they must provide the information to you in a format that **a person** can read and make sense of. But, only as long as the transfer is technically feasible.

However, when you exercise your right of data portability, you are asking that organisation to copy the personal data **only you** have provided them from their system or generated on it. This could include when you have used a device or raw data collected from smart meters or wearable tech. They are **not** obliged to provide any information which **they have created** about you. They are also **only** obliged to give you personal data that they have been processing under the circumstances where you have **consented** to the processing, or you have a **contract** with them.

Q: How do I go about asking an organisation to transfer my personal data?

A: You need to make your request **directly to the organisation**. You can make your request verbally or in writing. You need to state what you want and once you do it's advisable to follow up any verbal request in writing to ensure that the organisation has received it. It also provides clear proof of your actions if you decide to challenge the organisation's initial response.

Q: How long is given for an organisation to respond to a data portability request?

A: The Law says that the request should be acted on "without undue delay" but **within at least one month of receipt**. However, for complex cases this can be extended to three months, in total, as long as the data subject is told there is a delay and why within the original one month.

Q: Will I be charged for making a data portability request?

A: Generally, controllers are **not** allowed to charge a fee unless they can **demonstrate** that the requests are manifestly unfounded, vexatious, unnecessarily repetitive or otherwise excessive.

Q: Can my request be denied?

A: Again, **only** if the organisation can **demonstrate** that a request is, as the Law states, "manifestly unfounded, vexatious, unnecessarily repetitive or otherwise excessive", can it refuse to deal with the request, or ask for a reasonable fee to do so. In both cases the organisation must tell you and justify its decision. For example, if a request is made repeatedly. An organisation can also refuse a request or limit the amount of data provided where an exemption applies.

Q: If an organisation responds to a data portability request will they then delete the data in question?

A: No. The point of data portability is to give people a **machine-readable copy** of the personal data held by an organisation. The organisation is under **no legal obligation** to delete their own record of the personal data in question. In fact, the request should not affect the original retention period of the data. If you want your data to be erased you may need to exercise your [right to erasure](#).

CASE STUDY: Data portability in action

To help you understand this more complex area of the Law we have written this case study about a hypothetical insurance company. We've called them 'Blame & Claim' and we hope this explains how the right of data portability could be used in a real-world situation. Data protection can sometimes seem complex, and we hope that this approach makes it easier to understand.

Overview

So, let's meet Blame & Claim – they are a Guernsey-based insurance company that employs 15 people.

They handle all kinds of insurance for people in Guernsey. This includes insurance for cars, private health care, travel, household contents, and structural insurance.

They are a well-regarded, professional organisation who take their legal duties and corporate governance seriously. They know that as a controller of the personal data they hold on their staff, clients, suppliers and other people that they are responsible for: how that data is used, how it is kept safe, and respect the legal rights of the people the data relates to.

Blame & Claim keep themselves up to date with all the new legislation regarding data protection. In the run up to strengthened data protection laws being introduced in May 2018 they were focused on amending and updating their processes and procedures to ensure that any new processing of personal data was compliant with new legal requirements.

Fast-forward to the run-up to May 2019, with the transition period of the Law ending, they then turned their attention to the personal data they held before May 2018. They ensured they are processing it legally and that all clients, new and existing, had access to up-to-date privacy notices, were aware of the data the organisation held on them, and the processing that was involved.

So, we know that Blame & Claim are a responsible company in terms of complying with data protection regulations.

They probably made use of our '*Transition: a plain English guide*' to help them do everything correctly. This can be found at: <https://odpa.gg/all-about-transition/>

The challenge of data portability

However, they are now faced with a new challenge. Individuals gain the right of 'data portability' on 25 May 2019. It means a person can tell an organisation to extract a copy of their personal data from an organisation's systems and give it to them in a format that is 'machine readable' so that it can be easily transported and entered into another organisation's IT system.

Blame & Claim expect that they will soon be asked to provide data to enable clients to move insurers.

What do they need to do?

The company is hoping to install new software and a means of storing client data. Their old system is very out-dated and doesn't have the ability to export any information in a format that could be shared with other insurers. They knew that with the new laws coming into effect they needed to show that any new system they installed would have this facility. So, the first thing they must do is make sure they can export files in, for example, .csv or .xml formats.

Once the new system is up and running then what kind of data portability requests do they expect to get?

Blame & Shame try hard to hold on to all their clients, but some occasionally change car insurers. They expect they will need to be able to transfer the claims history of clients so that they do not lose their no-claims bonus.

Similarly, some clients have never claimed on their household insurance and benefit from preferential rates. Customers want to be able to transfer this history to a new insurance provider.

A number of customers are also changing health insurers as they are joining company schemes. Their claims history is needed by the new insurance company so Blame & Claim expect that they will get data portability requests for this too.

Luckily, the new software system will make all these requests quite simple. Once they receive the data portability request they have one month to provide it to the client. At the moment they may need to ask for extra time while the new software system is installed. They need to respond to the requests within the one month but where the request is complex can extend the deadline by an additional two months.