The Data Protection Acts (1988 and 2003) give individuals rights and afford them with certain key protections. At the same time, the Data Protection Acts create obligations and impose responsibilities on those who gather and keep personal information [data controllers].

For the most part, organisations [e.g. schools, hospitals, employers, government departments, banks, libraries] and individuals [e.g. doctors, pharmacists] that hold personal information relating to individuals do so in a responsible manner. It is possible however, that:

- The information kept about you may be wrong or out of date;
- It may be given to someone not entitled to see it;
- You may find yourself receiving ‘junk mail’ or unsolicited texts or emails;
- Your privacy might be threatened in other more serious ways.

Before proceeding to examine ‘Rights and Responsibilities’ in detail, students need to explore the concept of ‘processing’ further. Photocopy and distribute a copy of the diagram overleaf to each student and ask them to study the diagram. Ensure they understand that ‘processing’ does not just involve performing an electronic operation.
Your personal data must be processed in accordance with the Data Protection Acts, 1988 and 2003.

Processing of data covers a whole range of activities with regard to personal data. The Data Protection Acts apply to all personal data held manually in a filing system or electronically.

Rights of Data Subjects

Individuals (data subjects) are often requested to provide personal information about themselves to a variety of organisations and individuals (data controllers) for a whole range of purposes on a daily basis.

Responsibilities of Data Controllers

Data Controllers (organisations and individuals) collect personal information about individual data subjects.
Activity 1

Brian's Call Card: Further Action Required

This practice is difficult to substantiate as there are a select group of companies in the telecoms sector who make a living from using personal data for further purposes, purposes that may not have been specified at the time of sign-up. Often, customers signing up may have agreed unknowingly to receive further 'offers'. Operators are legally obliged to offer customers a way to 'unsubscribe' from theses kinds of services. How to 'unsubscribe' should be indicated in each communication but there are cases where customers are told it will cost them money to unsubscribe. The Office of the Data Protection Commissioner has successfully prosecuted a number of operators in this field and will continue to so in order to ensure the law is fully observed.

Sarah and DVD store: No Further Action Required

The store has most likely adopted a policy of requiring proof of residence in the event that the customer would fail to return the DVDs or try to dodge overdue fines. If someone were to provide a false address this would give them more scope to abuse their membership.

Retention and disposal practices: Further Action Required

Lucy should notify management immediately and suggest the documents be shredded and marked for secure disposal. Poor security practices with regard to personal data heighten the risk of disclosure to third parties and possible fraud, abuse or identity theft.

Accuracy of Data: No Further Action Required

Dad should contact the Irish Credit Bureau to ascertain what his credit history is and to sort out the mix-up. Many financial institutions use the Irish Credit Bureau as a screening process to investigate people's credit history. If a person has defaulted on a loan this will be marked on the Irish Credit Bureau database. Mistakes due to inaccurate data entry or similar names can occur and the person affected is entitled to have their personal data rectified and amended so that it is accurate.
Activity 1

Read the scenarios below and tick the appropriate box.

Do you need to take action?

- Is the level of data being requested acceptable?
- Would you have concerns as to how the data is being obtained or used?

There is no definitive answer for any of these scenarios as not all the facts are known but your teacher can talk through the answers provided and see whether the majority of the class are in agreement as to what is acceptable practice.

<table>
<thead>
<tr>
<th>Scenario</th>
<th>Further action required</th>
<th>No further action required</th>
</tr>
</thead>
<tbody>
<tr>
<td>Brian bought some sports gear over the internet and now he’s receiving all sorts of emails concerning sports gear, fitness equipment and vitamin pills. He knows it’s not spam or junk mail because it’s coming from the same supplier he purchased the gear from. Also, his name is featured within the text of the message and the content is directly targeted at him based on what he bought online.</td>
<td>✔️</td>
<td>✔️</td>
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<tr>
<td>A few months ago Dad purchased a ticket for a charity event which he attended two weeks later. At the time of purchase Dad gave his contact details so he could be contacted to confirm times and venue details. Since then Dad has been receiving follow-up texts encouraging him to contribute to various appeals.</td>
<td>✔️</td>
<td>✔️</td>
</tr>
<tr>
<td>When Lucy starts her new part-time job she is asked to present her birth certificate on her first day and provide her PPS Number to her employer. The Employer enters her PPS number onto the system and looks at the birth certificate, returning it to Sarah immediately without making a copy.</td>
<td>✔️</td>
<td>✔️</td>
</tr>
<tr>
<td>Brian attends an outdoor concert and avails of a free call card offering €15 worth of mobile calls. He fills out a few details about himself on a card in order to receive the free credit. He is now receiving texts about all sorts of offers and holiday deals.</td>
<td>✔️</td>
<td>✔️</td>
</tr>
<tr>
<td>Mam gets a text when she’s in the supermarket to say there is a special offer on detergents in the third aisle. Mam has a loyalty card and so she knew she gave the store her mobile phone number at one stage, but she is confused as to how the supermarket knew when she was in the store or whether it’s just a coincidence.</td>
<td>✔️</td>
<td>✔️</td>
</tr>
<tr>
<td>When Sarah goes to sign up with a local DVD store they refuse her initial application on the basis that they require two letters displaying proof of her home address. Once examined the letters are returned to Sarah.</td>
<td>✔️</td>
<td>✔️</td>
</tr>
<tr>
<td>Lucy is clocking out from her part-time job when she notices a huge pile of recently discarded customer files are visible from the rubbish bins located to the side of the premises. Lucy knows the files contain details of customers’ credit cards.</td>
<td>✔️</td>
<td>✔️</td>
</tr>
<tr>
<td>Dad applies to a bank for a loan to build an extension onto the house and is horrified when the bank tells him he has a bad credit history and several outstanding debts. The bank refuses Dad’s loan application. Dad knows he has no outstanding debts and has never had problems in the past with repaying loans.</td>
<td>✔️</td>
<td>✔️</td>
</tr>
</tbody>
</table>
The categories of data featured in the wheel diagram receive extra protection under the Data Protection Acts. Data Controllers must be able to justify why they need this data and they must take extra care when processing this data.

**Activity 1**

The newspaper headlines below could be breaches of data protection laws. Circle which of the options below you think could also be categorised as relating to sensitive personal data.

- **The Times**
  Local Authority justifies publishing names and addresses of planning applicants on the web.

- **Daily Star**
  Medical Association admits release of details on trainee doctors’ race and religious beliefs on to MA website was technical blunder.

- **The Sentinel**
  Retail giant admits hackers have gained access to credit cards details of customers.

- **The Tribune**
  Mandatory register for Palestinians: a recipe for genocide.

- **The Herald**
  Trial aborted as prosecution admits disclosing series of allegations against the accused to jury.

- **The Voice**
  Union membership payroll deductions used to dock striking teachers pay.

- **The People**
  Camera lens zoom into private party in star’s home.
SECTION 3.3

AGE OF CONSENT

Discuss information below with the class.

Section 2A(1)(a) of the Data Protection Acts state that if the data subject by reason of his/her physical or mental incapacity or age, is or is likely to be unable to appreciate the nature and effect of such consent, it can be given by a parent or guardian etc.

A person aged eighteen or older can give consent to their data being processed themselves.

Judging the maturity of 12-18 year olds will vary from case to case and depending on the circumstances.

Generally, in the case of children under the age of twelve, the explicit consent of a parent or guardian is necessary.
Within the context of a post-primary school environment, data protection law allows both students and their parents or guardians to have a role to play in supplying consent to process the personal data of students. Teachers also have a right to request to view any personal data held about them by the school.

1. Name some of the key rights you have with regard to your data [see ‘Rights and Responsibilities’ Chart for answers].
2. How can you take steps to be more in control of your data?
3. Have you ever needed to assert your rights in relation to how your data was being processed?

If you would like to receive a free mousemat based on the above design, please email us at info@dataprotection.ie with ‘Mousemat’ as the subject.
An access request is where you (the data subject) make a formal request to a data controller under the Data Protection Acts requesting they supply you with a copy of all the personal data held about you.

**How to make an access request:**

Dear ...  

I wish to make an access request under the Data Protection Acts 1988 and 2003 for a copy of any information you keep about me, on computer or in manual form. I am making this request under section 4 of the Data Protection Acts. I enclose a cheque/money order for €6.35.

**Things you should know about an access request:**

- You may be asked to pay a fee, but this cannot exceed €6.35.
- Once you have made your request, you should also include any additional details that may be necessary to enable the organisation to locate your record; e.g. account number or PPS number (if you are writing to a public-sector organisation). When requesting some types of record, such as credit records or Garda records, it may also be useful to provide a list of previous addresses, previous names and your date of birth.
- You must be given the information within 40 days, although most organisations manage to reply much sooner.
- You can complain to the Office of the Data Protection Commissioner (www.dataprotection.ie) if your access request is refused or not fully complied with.

**SECTION 3.4**

**ACCESS REQUESTS**

Below is an information sheet on how to access personal information held about you.

**ACCESS REQUESTS**

Compare and contrast Data Protection and Freedom of Information as presented below with the class.

There are two main options available to individuals in Ireland in terms of seeking access to information held about them. Some access requests can be made either under the Data Protection Acts or the Freedom of Information Acts.

<table>
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<tbody>
<tr>
<td>Data Protection concentrates exclusively on personal data belonging to living persons. Data Protection legislation is designed to safeguard your personal data from its creation to how it is obtained, processed, used, stored right through to its disposal. The right of access to one’s personal data is only one aspect of data protection legislation and it is designed to allow the individual to know what data is held about them.</td>
<td>Freedom of Information (FOI) is essentially about the right of individuals to seek information held by public bodies including, information about how decisions are made within the civil and public service. For instance, as well as seeking information behind the award of a tender or a decision to fund a school in a certain location, citizens are also entitled to seek information about themselves. In some circumstances, access to this information can be refused.</td>
</tr>
<tr>
<td><strong>Human Rights</strong></td>
<td><strong>Citizen Rights</strong></td>
</tr>
<tr>
<td>Data Protection is based on an individual’s basic human right to privacy with regard to their home, correspondence and private life.</td>
<td>‘Freedom of Information’ is based on the citizen’s ‘right to know’ and focuses on the core values of openness, transparency, accountability.</td>
</tr>
<tr>
<td><strong>The Data Protection Acts 1988 and 2003 cover all organisations in Ireland – public, private or voluntary.</strong></td>
<td><strong>Over 600 public sector bodies are covered under the Freedom of Information Acts.</strong></td>
</tr>
<tr>
<td><strong>Data Protection Commissioner</strong></td>
<td><strong>Information Commissioner</strong></td>
</tr>
<tr>
<td><a href="http://www.dataprotection.ie">www.dataprotection.ie</a></td>
<td><a href="http://www.oic.gov.ie">www.oic.gov.ie</a></td>
</tr>
</tbody>
</table>
**ACTIVITY 2**

Read the following case study and answer the questions asked by the teacher.

Sometimes there is an overlap between access request cases handled by the Office of the Data Protection Commissioner and the Information Commissioner (F.O.I.) The following case was dealt with under Freedom of Information but has many resonances with Data Protection.

### CASE STUDY

Request to access daughter’s hospital records under Freedom of Information Act. McK v Information Commissioner:

At issue was the right of a father under the FOI Act to see the hospital records of his daughter. The parents had separated some years previously. The two children from the marriage remained with the mother but after she died the two children went to live with an aunt and uncle who were appointed joint guardians by the court. In 2002, the Information Commissioner dealt with an appeal from the father who had been refused access to his daughter’s records by the hospital.

Freedom of Information legislation provides that a parent will be given access to a child’s records where to do so is in the best interests of the child. The Information Commissioner decided that the hospital was correct to refuse to supply the records, taking into account that the child’s other legal guardians objected to the father receiving them. The father appealed to the High Court which, in January 2004, ruled in his favour. The Information Commissioner decided to appeal the decision. In January 2006 the Supreme Court upheld the principle that the father must be presumed to be acting in the best interests of his child, but crucially, it did allow for this presumption to be challenged and for the views of the child to be taken into account. In the new appeal, following the Supreme Court’s decision, the views of the child were taken into account. The Information Commissioner decided that release of the girl’s hospital records to her father would not be in her best interests.

### Questions and Answers

**Question:** Do G.P.’s or hospitals have the right to make a judgement as to whether records should be released?

**Answer:** Yes.

**Question:** Can this right be challenged?

**Answer:** Yes.

**Question:** Do you agree young people should have a say in terms of any access requests made concerning them by their parents or legal guardians?

**Answer:** Opinions of class.

**Question:** Do G.P.’s or hospitals have the right to make a judgement as to whether records should be released?

**Answer:** Yes.
In this section (3) students have become familiar with the Data Protection laws. In Ireland it is the Data Protection Commissioner’s role to see that these laws are upheld in this country.

The Data Protection Commissioner has a wide range of enforcement powers which include:

- Serving of legal notices compelling data controllers to provide information needed to assist with enquiries.
- Compelling a data controller to implement the Acts.
- Investigating complaints made by the general public.
- Authorising officers to enter premises and to inspect the type of personal information kept, how it is processed and the security measures in place.

A data controller found guilty of an offence under the Acts can be fined amounts up to €100,000, on conviction on indictment and/or may be ordered to delete all or part of the database.

**Divide the class into groups of four.** Distribute one case study to each group. Ask the students to read through the case study and to name the Data Protection issues that they think might be in question. Students can again refer to the ‘Rights and Responsibilities’ Chart.

- Each group should nominate a spokesperson. Allow 10 minutes for students to read the piece and to talk about it themselves.
- When everybody is finished ask the spokesperson to stand up and to give a brief description of the complaint and the issue in question. A note could be made of these on the board.

**Follow-up activity**

- Ask students to think about how they would raise awareness about Data Protection amongst young people?

**Case Study 1**

A man complained to the Data Protection Commissioner that his ten-year-old daughter had got a letter from a bank asking did she want a credit card. The man also contacted the bank and was told the mailing list used by the bank had been bought from a marketing company. The marketing company said they had bought data from a UK company. The UK company said they had gotten the man and his daughter’s details from a post-holiday survey. The survey form clearly showed the girl was only ten. The UK company said they normally would not use details of under 18’s and that the girl’s details were passed on by mistake. The company corrected their error and changes were put in place to make sure that this type of mistake never happens again.

**Case Study 2**

A parent contacted the Office of the Data Protection Commissioner to complain that the local primary school had been publishing details of pupils on the school web site, without looking for permission from the parents first. Photographs and names of pupils, as well as information about the children’s hobbies, likes and dislikes were on the school web site pages. The parent had already raised the matter with the school but was not happy with the response she had received.

The Data Protection Commissioner asked the school to take all personal details down from the web site. The Commissioner then met with the school principal who explained that all the pupils had been very positive about the new web site and that the web site had even won some awards. As regards getting the permission of parents, the principal said that the new web site had been mentioned in a recent school newsletter, and that parents had been invited to come to the school to check it out for themselves. However, the Data Protection Commissioner felt that the clear permission of parents or guardians must be obtained before using children under 12’s data in this way. The Principal accepted this and undertook not to put personal details of school children on the web site without the permission of a parent or guardian.
Case Study 3

A research company sent out a survey along with prepaid envelopes and asked people to reply to questions on the form and to return it unsigned (anonymously). However, the prepaid envelopes had unique four digit numbers, suggesting that the survey was not really anonymous and that replies could be traced back to individual people.

The Office of the Data Protection Commissioner arranged a meeting with the company. The company explained that the numbers on the envelopes were used to check who had sent back replies and for the company to be able to send reminders to those who had not. Once the replies were taken out of the envelopes there was no way of connecting them back to any one person. The Commissioner was satisfied that the survey form responses could not be traced back to individuals.

Case Study 4

A woman wanted to buy a fridge in a shop. She asked the shop assistant if she could pay by instalment scheme. The shop assistant went to check her details on the computer. Other customers who were at the counter were able to clearly see personal information and details about the woman such as her date of birth.

The lady made a complaint to the Data Protection Commissioner. When this case was followed up it was found that the computer screen was badly situated and that it was possible for other customers to see details on the screen even though the staff did try to be discreet.

The owners remodelled the shop and the computer screen was placed in a much more private position.

Case Study 5

Some years ago a young man was convicted of a minor offence. He appealed the sentence and was happy when the conviction was ‘struck out’ (removed from the man’s ‘record’). In 1996 the man decided to emigrate in and needed a statement of character from the Gardaí. He made an access request to the Gardaí under section 4 of the Data Protection Acts. When the Gardaí responded he was disturbed to find that the original conviction was shown on his file. The man contacted the Data Protection Office because he was worried that his original conviction was still kept on computer by the Gardaí. The Commissioner told the man that even convictions that have been ‘struck out’ remain on gardaí files together with information on the successful appeal. The Gardaí gave the man a Character Reference for Emigration, which showed correctly that he had no recorded convictions.

Case Study 6

A woman attended the accident and emergency department of a public hospital. A few months later she was contacted by a company carrying out research. The researchers knew when she had attended the hospital and why, and they asked her to answer some questions. The woman objected to the fact that the hospital had told the researchers about her visit. She took this up herself with the hospital but was not happy with the response so she complained to the Data Protection Commissioner.

The hospital said they had a notice in the waiting area of the accident and emergency department informing patients that the hospital was going to give their information to the researchers and invited them to let the receptionist know if they objected to this.

The Data Protection Commissioner said that the hospital should have asked each person separately whether they wished to participate in the research.
CASE STUDY 7

The Data Protection Commissioner received a complaint about a woman who had changed the telephone account details over to her own name after separating from her husband. The husband contacted the phone company and managed to get the access codes for her voicemail. The woman found out that her husband was able to listen to her messages.

The phone company looked into this complaint thoroughly. They were not able to find out exactly how this situation had happened but they did accept that if the man had made up a story to get the details then their procedures for protecting customer data were not good enough in this instance. The company started a review of the security procedures in their call centres. The phone company now has a strict set of rules for dealing with transfer of telephone services particularly in cases of couples who have separated.

CASE STUDY 8

A number of employees within a particular company complained to the Data Protection Commissioner because their individual ‘performance at work’ assessments had been made available to a wide range of managers. The employees felt their confidential details should not be available to people who were not involved in managing them.

When the issue was raised with the company, it was explained that the manager of a particular unit had created a file on computer, setting out performance ratings for staff under his supervision. However the “access permissions” on this file had accidentally been set to allow other people outside of his management team to read it. A staff member had brought the problem to the attention of management, and the file in question was destroyed. The company arranged for a formal investigation into the matter. The company took immediate steps to tackle the issues involved in this case, particularly making sure that proper security measures were in place from then on.
Photocopy the complaint form on the opposite page for every member of the class.

Make several copies of each case study and ask students to select a case study that they didn’t discuss as a group. Ask the students to read their new case study individually and to fill out the complaint form based on their analysis of the situation. Students are free to elaborate or invent details that are not provided in the case study.

Consult the annual reports on the website of the Data Protection Commissioner www.dataprotection.ie to find out what is the breakdown in terms of the nature of queries and complaints received each year.

Complaint to the Data Protection Commissioner

My name: ____________________________
My address: ____________________________
My e-mail address: ____________________
(Include this if you would like to deal with us by e-mail)
My complaint is against: ____________________________
(name of organisation or individual)
Their address: ____________________________

I have been dealing with: ____________________________
(name of your contact person, if any, within the organisation)

My signature: ____________________________
Today’s date: ____________________________

This is my complaint:

________________________________________________________________________________________
________________________________________________________________________________________
________________________________________________________________________________________
________________________________________________________________________________________
________________________________________________________________________________________
________________________________________________________________________________________

You can attach separate pages if necessary.
Remember to include copies of any letters between you and the organisation or individual.
Give details, including dates if possible, of any attempts you have made to have this matter dealt with by the organisation, and how they have responded to you.
Post your complaint to: The Data Protection Commissioner, Canal House, Station Road, Portarlington, Co. Laois.