



The Opt-Out Register for Fax and Telephone

Guidance Note 09/13

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Gibraltar Regulatory Authority
Data Protection Division
Suite 603, Europort
Gibraltar
Telephone +350 20074636 Fax +350 20072166
Email: privacy@gra.gi
Web: <http://www.gra.gi>

The Opt-Out Register for Fax and Telephone

Foreword

The opt-out register ("the Register") is a service provided by the Gibraltar Regulatory Authority ("GRA"), as the Data Protection Commissioner ("the Commissioner"), for fixed line and mobile subscribers who do not want to receive unsolicited direct marketing calls and/or faxes.

This facility is open to both residential and business phone subscribers and is a free service. Residential subscribers can opt-out from unsolicited direct marketing calls, and business subscribers can opt-out from both unsolicited direct marketing calls and faxes. Residential subscribers do not need to opt-out from unsolicited direct marketing via fax because it is prohibited by the law, unless the residential subscriber has given consent.

It is a legal requirement that all organisations do not make such calls or send faxes to the numbers recorded on the Register unless they have the subscriber's consent to do so. The Register allows marketing companies to check telephone and fax numbers to ensure that they do not inadvertently call or fax a number that has opted out of direct marketing calls and/or faxes.

It is important to note that the opt-out register only applies to marketing from within Gibraltar.

Subscribers should be advised that it takes 28 days for a preference to opt-out to be recorded in the Register.

It is an offence to make an unsolicited marketing call or fax, when a subscriber has opted out from the said communication(s). Enforcement is a matter for the Commissioner.

Key points

- The Register is open to both residential and business phone subscribers.
- It is a free service.
- Its aim is to stop unsolicited marketing messages.
- After 28 days of opting out, no unsolicited direct marketing calls and/or faxes should be received.
- Marketing companies who break the rules face prosecution by the Commissioner.

Relevant Legislation

The maintenance of the Register, for the use of fax machines and telephones in direct marketing, are contained in Regulations 26 and 27 of the Communications (Personal Data and Privacy) Regulations 2006 (the "Regulations").

Direct marketing faxes

Regulation 26(1) reads:

"For the purposes of regulation 21, the Authority shall maintain and keep up-to-date, in printed or electronic form, a register of the numbers allocated to subscribers or users, in respect of particular lines, who have notified it (notwithstanding, in the case of individual subscribers or users, that they enjoy the benefit of regulation 21(1)(a) and (2)) that they do not for the time being wish to receive unsolicited communications for direct marketing purposes by means of facsimile machine on the lines in question".

A marketing fax cannot be sent to an individual (as opposed to a business) without prior consent. However, if you have a home office or work from home and use the fax in that context (even in part) then your prior consent is not required. In that situation you can notify the sender that you do not wish to receive such marketing faxes and that person is obliged to respect your preference. If your preference is ignored you can make a complaint to the Commissioner.

Direct marketing phone calls

Regulation 27(1) reads:

"For the purposes of regulation 22, the Authority shall maintain and keep up-to-date, in printed or electronic form, a register of the numbers allocated to individual subscribers, in respect of particular lines, who have notified it that they do not for the time being wish to receive unsolicited calls for direct marketing purposes on the lines in question".

Individuals may record the preference to opt-out from unsolicited direct marketing calls in the Register. This should prevent unsolicited direct marketing phone calls to a subscribers fixed phone number (landline) or mobile phone.

If your preference is ignored, without the caller having some form of consent to make such a call, the subscriber can make a complaint to the Commissioner.

The Regulations provide safeguards for subscribers against intrusion of their privacy by unsolicited communications for direct marketing purposes, in particular, by means of phone/automated calling machines, and telefaxes. These forms of unsolicited commercial communications may on the one hand be relatively easy and cheap to send and on the other may impose a burden and/or cost on the recipient. Moreover, in some cases their volume may also cause difficulties for electronic communications networks and terminal equipment.

Further guidance on the Register is provided in the following documents, which are available on the GRA's website:

- The Opt-Out Register for Fax and Telephone - Guidance for Subscribers
- The Opt-Out Register for Fax and Telephone – Guidance for Marketers