



# Data Protection:

## EXEMPTIONS

### What are they?

The Data Protection Act 2004 (the “DPA”) provides exemptions from particular provisions of the Gibraltar General Data Protection Regulation (the “Gibraltar GDPR”) and the DPA itself. Mostly detailed in **Schedules 2 and 3 of the DPA**, these are separate to exceptions already built into Gibraltar GDPR provisions.

Exemptions only apply in certain circumstances and should not routinely be relied upon or applied in a blanket fashion.

Consider each exemption on a case-by-case basis and conduct regular reviews of your use of exemptions!

If you cannot identify an exemption that covers what you are doing with personal data, you must comply with the Gibraltar GDPR and DPA requirements as normal.



The above is an outline only. Please refer to the Guidance Note on “Exemptions” on the GRA’s website for full details:

[www.gra.gi/data-protection/general-data-protection-regulation](http://www.gra.gi/data-protection/general-data-protection-regulation)

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### How do they work?

Ability to rely on some exemptions is dependant on the purpose of processing, whilst other exemptions only apply to the extent that complying with the Gibraltar General Data Protection Regulation (“Gibraltar GDPR”) would:

- be likely to prejudice your purpose (e.g. have a damaging or detrimental effect on what you are doing); or,
- prevent or seriously impair you from processing personal data in a way that is required or necessary for your purpose.

The Data Protection Commissioner has powers to request information and investigate the use of exemptions. In line with the accountability principle of the Gibraltar GDPR, you should justify and document your reasons for relying on an exemption.



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# Data Protection:

## EXEMPTIONS

### Crime, Law and Public Protection

In some circumstances, the Data Protection Act 2004 (“DPA”) provides exemptions from particular provisions of the Gibraltar General Data Protection Regulation and the DPA itself. If an exemption applies, you may not have to comply with all the usual rights and obligations set therein.

Exemptions relating to crime, law and public protection include –

- Crime and taxation: general.
- Crime and taxation: risk assessment.
- Information required to be disclosed by law or in connection with legal proceedings.
- Legal professional privilege.
- Self incrimination.
- Functions designed to protect the public.
- Audit functions.

The above is an outline only. Please refer to section 4.1 of the Guidance Note on “Exemptions” on the GRA’s website for full details:

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# Data Protection:

## EXEMPTIONS

### Regulation, Parliament and the Judiciary

In some circumstances, the Data Protection Act 2004 (“DPA”) provides exemptions from particular provisions of the Gibraltar General Data Protection Regulation and DPA itself. If an exemption applies, you may not have to comply with all the usual rights and obligations set out therein.

Exemptions available relating to regulation, parliament and the judiciary include –

- Regulatory functions relating to legal services, the health service and children’s services.
- Parliamentary privilege.
- Judicial appointments, independence and proceedings.



The above is an outline only. Please refer to section 4.2 of the Guidance Note on “Exemptions” on the GRA’s website for full details:

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# Data Protection:

## EXEMPTIONS

### Journalism, Research and Archiving

In some circumstances, the Data Protection Act 2004 (“DPA”) provides exemptions from particular provisions of the Gibraltar General Data Protection Regulation and the DPA itself. If an exemption applies, you may not have to comply with all the usual rights and obligations set therein.

Exemptions available relating to journalism, research and archiving include –

- Journalism, academia, art and literature.
- Research and statistics.
- Archiving in the public interest.



The above is an outline only. Please refer to section 4.3 of the Guidance Note on “Exemptions” on the GRA’s website for full details:

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# Data Protection:

## EXEMPTIONS

### Health, Social work, Education and Child abuse

In some circumstances, the Data Protection Act 2004 (“DPA”) provides exemptions from particular provisions of the Gibraltar General Data Protection Regulation and the DPA itself. If an exemption applies, you may not have to comply with all the usual rights and obligations set out therein.

Exemptions available relating to health, social work, education and child abuse include –

- |  |   |
|--|---|
| • Health data – processed by a court.      | • Health data – an individual’s expectations and wishes.      |
| • Health data – serious harm.              | • Health data – restriction of the right of access.           |
| • Social work data – processed by a court. | • Social work data – an individual’s expectations and wishes. |
| • Social work data – serious harm.         | • Education data – processed by a court.                      |
| • Education data – serious harm.           | • Child abuse data.   |



The above is an outline only. Please refer to section 4.4 of the Guidance Note on “Exemptions” on the GRA’s website for full details:

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# Data Protection:

## EXEMPTIONS

### Finance, Management and Negotiations

In some circumstances, the Data Protection Act 2004 (“DPA”) provides exemptions from particular provisions of the Gibraltar General Data Protection Regulation and the DPA itself. If an exemption applies, you may not have to comply with all the usual rights and obligations set out therein.

Exemptions available relating to finance, management and negotiations include –

- Corporate finance.
- Management forecasts.
- Negotiations



The above is an outline only. Please refer to section 4.5 of the Guidance Note on “Exemptions” on the GRA’s website for full details:

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# Data Protection:

## EXEMPTIONS

### References and Exams

In some circumstances, the Data Protection Act 2004 (“DPA”) provides exemptions from particular provisions of the Gibraltar General Data Protection Regulation and the DPA itself. If an exemption applies, you may not have to comply with all the usual rights and obligations set out therein.

Exemptions available relating to references and exams include –

- Confidential references.
- Exam scripts and exam marks.



The above is an outline only. Please refer to section 4.6 of the Guidance Note on “Exemptions” on the GRA’s website for full details:

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# Data Protection:

## EXEMPTIONS

### Subject Access Requests and Trusts

In some circumstances, the Data Protection Act 2004 (“DPA”) provides exemptions from particular provisions of the Gibraltar General Data Protection Regulation and the DPA itself. If an exemption applies, you may not have to comply with all the usual rights and obligations set out therein.

Exemptions available relating to subject access requests (“SAR”) and trusts include –

- Exemption applicable upon receipt of a SAR for information containing the personal data of more than one individual, although efforts should be made to redact data where possible.
- Exemption applicable where personal data is processed in connection with a Gibraltar trust, although this is subject to the terms of the trust or any court order.



The above is an outline only. Please refer to section 4.7 and 4.8 of the Guidance Note on “Exemptions” on the GRA’s website for full details:

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### Provisions with similar effect

Some matters are not listed as exemptions under data the Gibraltar General Data Protection Regulation (“Gibraltar GDPR”) or Data Protection Act 2004 (“DPA”) but have a similar effect in practice. For example –

- **Personal or household activities.** Personal data processed in the course of a purely personal or household activity, with no connection to a professional or commercial activity, falls outside the scope of the Gibraltar GDPR.
- **Law Enforcement.** The processing of personal data by competent authorities for law enforcement purposes is subject to the rules in Part III of the DPA and not the Gibraltar GDPR.
- **National Security.** Personal data processed for the purposes of safeguarding national security or defence is covered by Part 2, Chapter 3 of the DPA and not the Gibraltar GDPR.



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