

Appendix 1 – Data Protection Act 2018 Considerations

City of London Police is a *Competent Authority* for the purpose of Part 3 of the Data Protection Act and is therefore exempt from the General Data Protection Regulations where the processing of personal Data is for the purpose of Law Enforcement. Article 22 of the General Data Protection Regulation (GDPR) does not therefore apply to the processing of fraud reports by Action Fraud/NFIB. However, Section 49 a similar provision exists within Part 3 of the DPA:

Right not to be subject to automated decision-making

(1) *A controller may not take a significant decision based solely on automated processing unless that decision is required or authorised by law.*

(2) *A decision is a “significant decision” for the purpose of this section if, in relation to a data subject, it—*

(a) *produces an adverse legal effect concerning the data subject, or*

(b) *significantly affects the data subject.*

There is no further clarification in the Act or the ICO website regarding subsection (1), but the ICO provides the following advice in respect of the similar GDPR provision:

Significant Decision

If you are unsure whether a decision has a similarly significant effect on someone you should consider the extent to which it might affect, for example, their financial circumstances...

It is therefore reasonable to conclude that the decision is significant and this section is engaged.

Required or Authorised by law

The decision has to be authorised by law, but this doesn’t mean that there has to be a law which explicitly states that solely automated decision-making is authorised for a particular purpose. The Data Protection Act 2018 (DPA 2018) refers only to a decision which is ‘required or authorised by law’ (Chapter 2, Part 2, Section 14 (3)(b))

If you have a statutory or common law power to do something, and automated decision-making/profiling is the most appropriate way to achieve your purpose, then you may be able to justify this type of processing as authorised by law and rely on Article 22(2)(b). However you must be able to show that it’s reasonable to do so in all the circumstances.

Policing activity is extensively regulated and it is reasonable to conclude that the processing is lawful.

Safeguards

Section 50 requires the following safeguards to be in place where automated processing takes place in accordance with Section 49 above:

(2) *Where a controller takes a qualifying significant decision in relation to a data subject based solely on automated processing—*

(a) *the controller must, as soon as reasonably practicable, notify the data subject in writing that a decision has been taken based solely on automated processing, and*

(b) *the data subject may, before the end of the period of 1 month beginning with receipt of the notification, request the controller to—*

(i) *reconsider the decision, or*

(ii) take a new decision that is not based solely on automated processing.

(3) If a request is made to a controller under subsection (2), the controller must, before the end of the period of 1 month beginning with receipt of the request—

(a) consider the request, including any information provided by the data subject that is relevant to it,

(b) comply with the request, and

(c) by notice in writing inform the data subject of—

(i) the steps taken to comply with the request, and

(ii) the outcome of complying with the request.

We comply with the requirement to reconsider any automated decision via the established complaints procedure and, if escalated, via PSD.