

# DATA SHARING MASTERCLASS

Tim Turner  
Autumn / Winter 2019



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## What we will cover today

- What is 'data sharing'?
- Which laws apply?
- What is personal data?
- Justifying the reason to share data
- Impact assessments
- Risks associated with data sharing
- Q+A session

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## Data sharing risks

<b>SECURITY</b> See many ICO monetary penalties	<b>LACK OF TRANSPARENCY</b> (see Bara ECJ)	<b>LACK OF CONDITION</b> (see Scottish Government named person scheme)
<b>LACK OF DUE DILIGENCE</b> (see Optical Express & Quigley & Carter)	<b>INACCURATE DATA</b>	<b>DECISION MAKING PROCESS</b>

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<b>Personal Data</b>

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<b>Personal Data</b>		
Living	Identified	Identifiable

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<b>Personal Data</b>		
Living	Identified	Identifiable
Factual	Opinion	Held in any format

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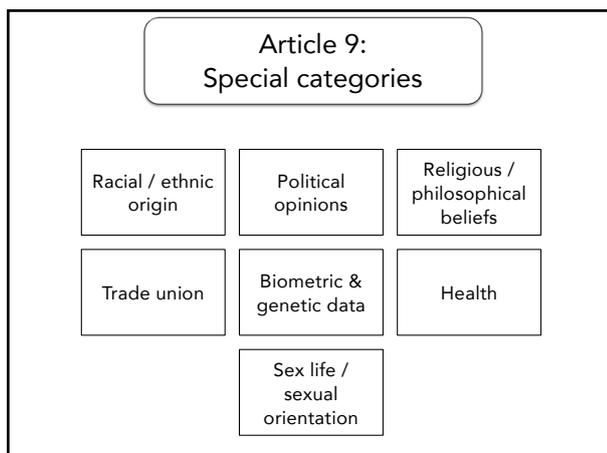
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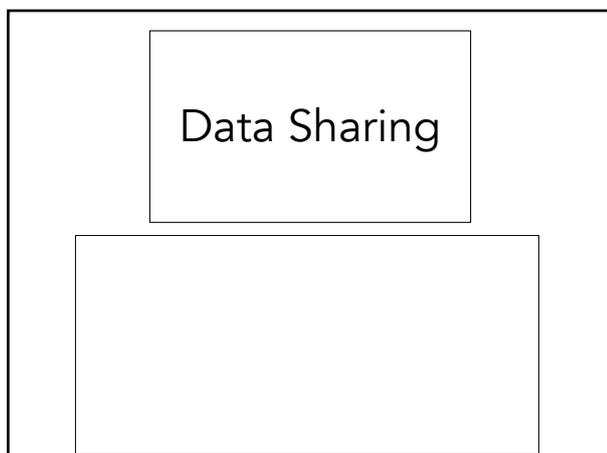
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'processing' means any operation or set of operations which is performed on personal data or on sets of personal data, whether or not by automated means, such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction

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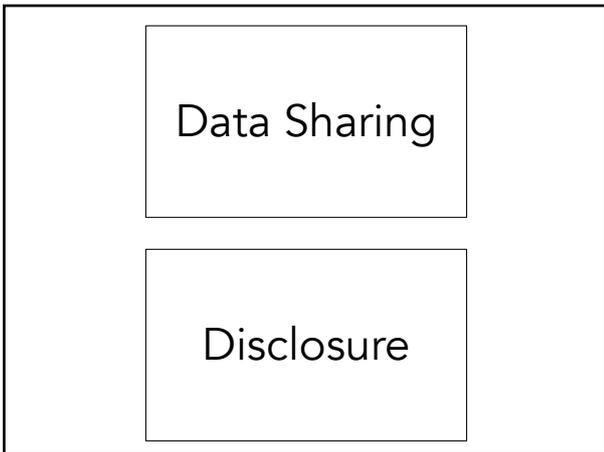
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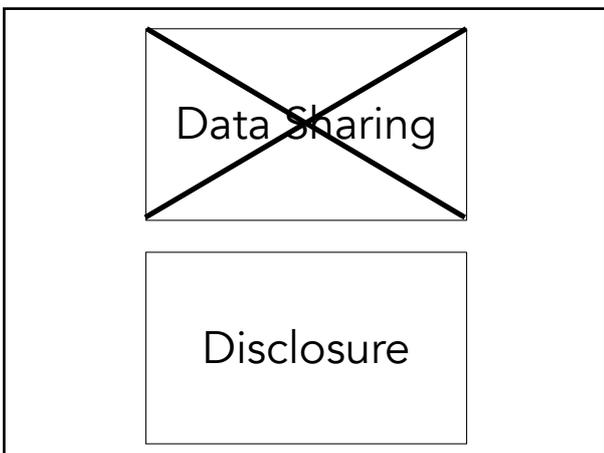
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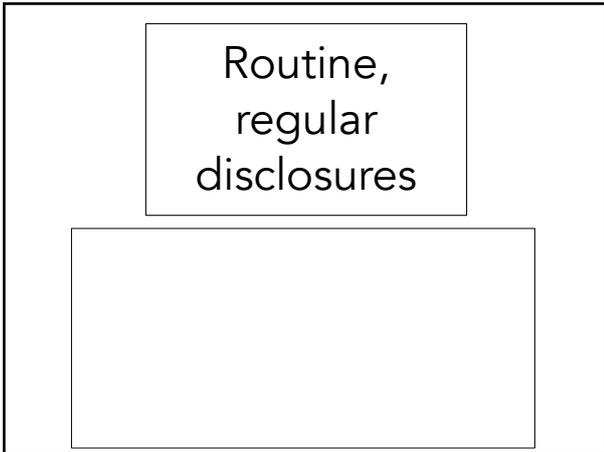
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Routine,  
regular  
disclosures



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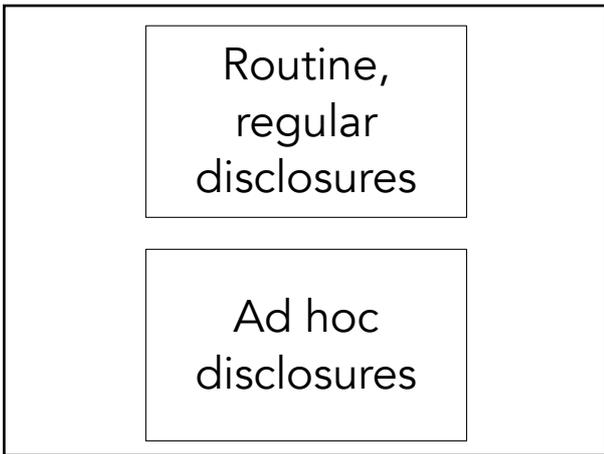
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Routine,  
regular  
disclosures

Ad hoc  
disclosures



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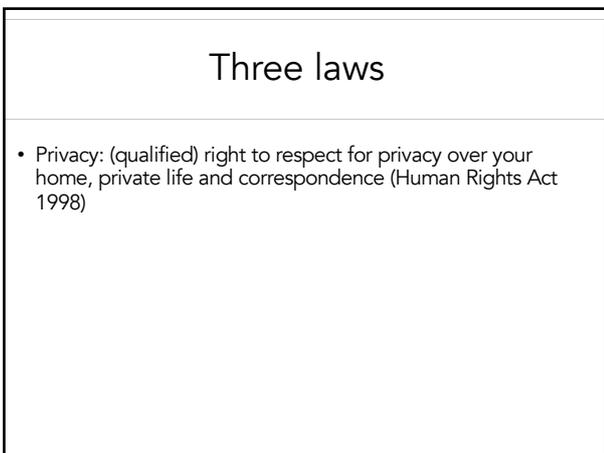
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Three laws

- Privacy: (qualified) right to respect for privacy over your home, private life and correspondence (Human Rights Act 1998)



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### Three laws

- Privacy: (qualified) right to respect for privacy over your home, private life and correspondence (Human Rights Act 1998)
- Confidentiality – a relationship or agreement based on keeping certain information secret or limited to specific people

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### Three laws

- Privacy: (qualified) right to respect for privacy over your home, private life and correspondence (Human Rights Act 1998)
- Confidentiality – a relationship or agreement based on keeping certain information secret or limited to specific people
- Data Protection – a set of principles and rights to ensure that personal data is properly and fairly managed (GDPR /DPA 2018)

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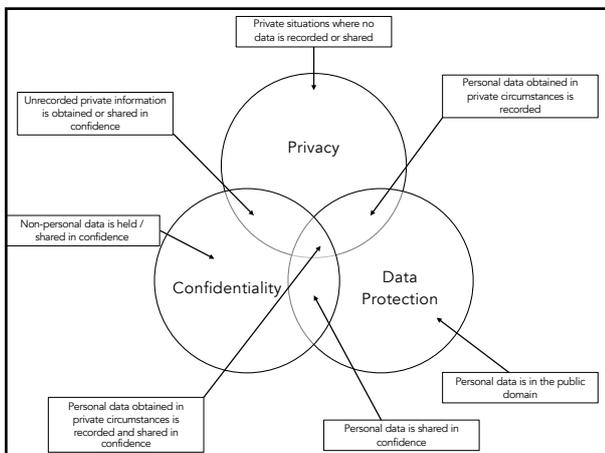
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If you could share data under the DPA 1998, you will be able to do so under the GDPR / DPA 2018

ICO Draft Data Sharing Code, 2019

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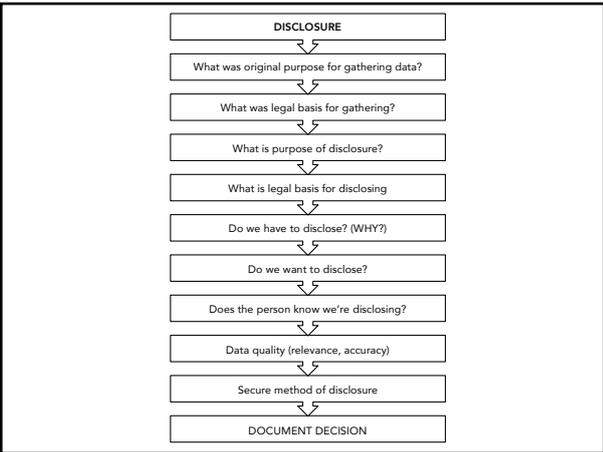
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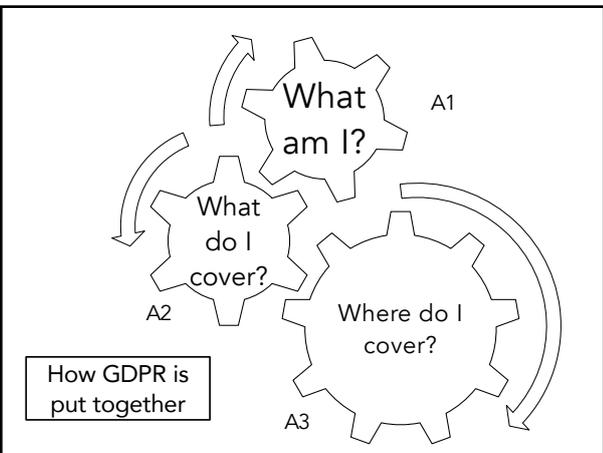
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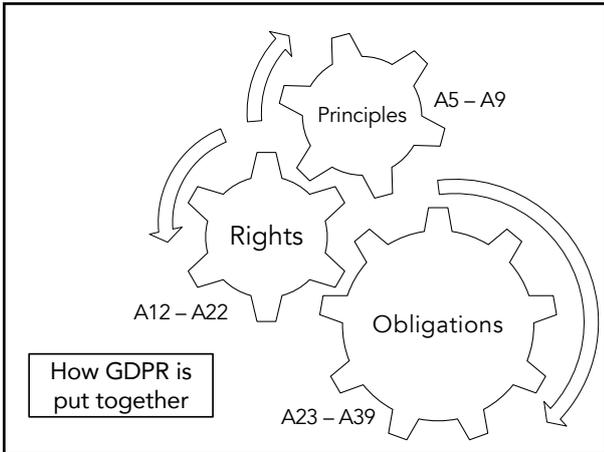
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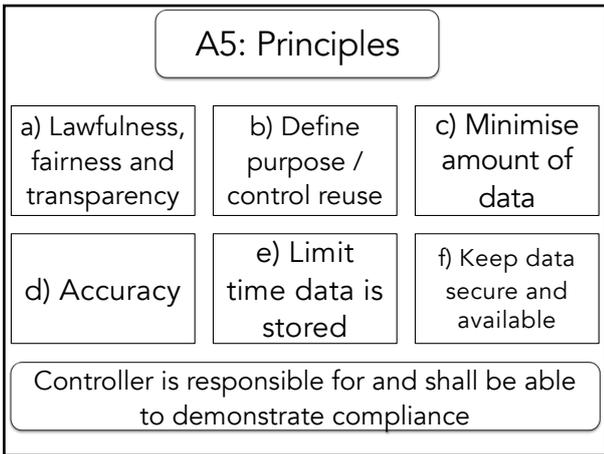
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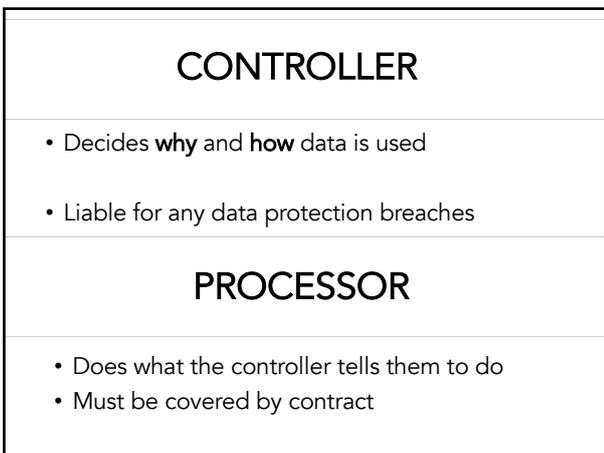
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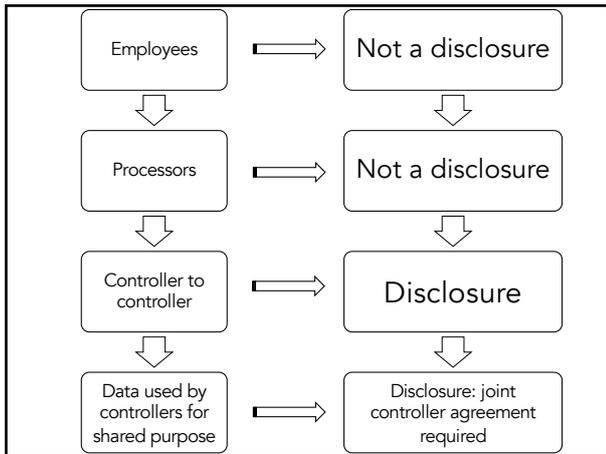
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1: Define the purpose of the disclosure

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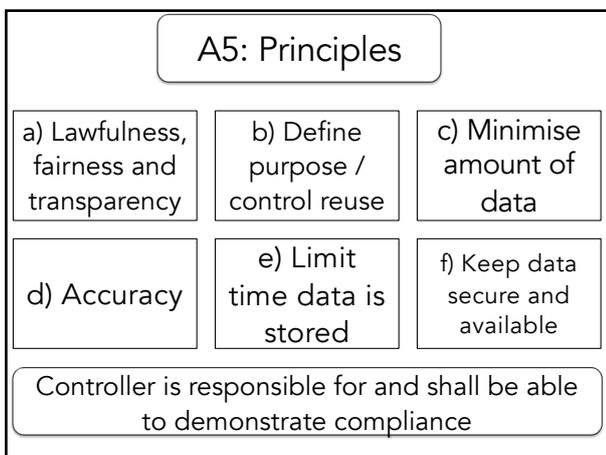
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<b>A5: Principles</b>		
a) Lawfulness, fairness and transparency	b) Define purpose / control reuse	c) Minimise amount of data
d) Accuracy	e) Limit time data is stored	f) Keep data secure and available
Controller is responsible for and shall be able to demonstrate compliance		

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<b>Purposes</b>
<ul style="list-style-type: none"> <li>• Foundation of data protection law</li> <li>• Objectives of disclosure must be clearly and explicitly set out</li> <li>• Disclosure purpose is very likely to be different from original purpose for which data was obtained</li> </ul>

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<b>Sharing with the media</b>
<ul style="list-style-type: none"> <li>• <b>Peck vs United Kingdom (2003) 36 EHRR 41; [2003] EMLR 287</b></li> <li>• Vulnerable man filmed in the street carrying a knife</li> <li>• Gathering of images was lawful</li> <li>• Disclosure of them was the problem</li> </ul>

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## Disclosures for legal purposes

- **Durham County Council v Dunn [2012] EWCA Civ 1654, Court of Appeal**
- Dunn is pursuing compensation case against the council, alleging historic abuse while in their care, and wants to locate possible witnesses.
- Court has to balance right to privacy (other people who were also boys in the care of the council at the time of the alleged abuse) and the right to a fair trial (Mr Dunn's case against the council).

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2: Identify your legal basis to process the data

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2: Identify your legal basis to process the data (NB: if special categories, you need an 'exemption' as well)

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### Lack of legal basis

- **The Christian Institute v Lord Advocate [2016]**  
UKSC 51, UK Supreme Court, 2016
- Scottish Government attempts to launch Named Person scheme to protect the safety and wellbeing of Scotland's children
- Lack of a proper lawful basis for sharing related to sharing outside clearly justified processes for safeguarding

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### Article 6: Legal basis

Consent

Necessary for contract

Necessary for legal obligation

Necessary to protect vital interests

Necessary for official authority / public interest

Necessary for legitimate interest

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### CONSENT REQUIRES

Unambiguous

Freely given

Specific

Informed

Demonstrable

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### Poor consent

- **Bounty, £400,000 penalty 12/04/2019**
- Cannot sign up to the service without agreeing to marketing – bundled consent that is invalid
- **Pharmacy 2 U, £130,000, 14/10/2015**
- Mention of sharing buried in terms and conditions
- Data shared with wholly unsuitable orgs

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### Lawful basis rights

- Consent can be withdrawn at any time
- Under Article 21, individuals have a right to object if you rely on
  - Official authority / public interest
  - Legitimate interests

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### Article 9: Special categories 'exemptions'

Explicit consent	Employment law	Vital interests no consent	Special category group use
Made public by subject	Substantial public interest	Establish / defend legal claims	Health / social care
	Public health	Archiving / research with safeguards	

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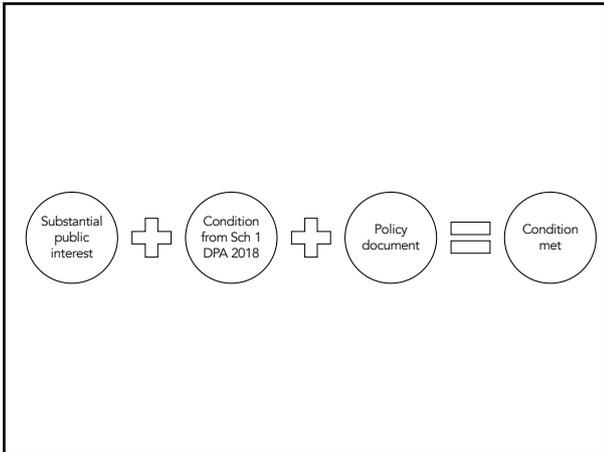
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Substantial public interest AND			
6 / 7: Government / legal	8: Equality of treatment	9: Preventing or detecting unlawful acts	10: Protecting public against dishonesty
11: protective *functions*	13: Disclosure for journalism	14 / 15: Fraud / terror financing	16: Support for disabled / medical conditions
17: Counselling	18 / 19: Safeguarding	20: Insurance (mainly third parties)	21: Pensions
	22: Political parties	23 / 24: Elected representatives	

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**CRIMINAL DATA**

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### Definition of criminal data

- the alleged commission of offences by the data subject, or
- proceedings for an offence committed or alleged to have been committed by the data subject or the disposal of such proceedings, including sentencing.

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### Schedule 1, Part 2 list reused

Government / legal	Equality of treatment	Preventing or detecting unlawful acts	Protecting public against dishonesty
Disclosure for journalism	Fraud / terror financing	Counselling	Insurance (mainly third parties)
	Political parties	Elected representatives	

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### Part 3 list of additional conditions

Consent	Vital interests (subject cannot consent)t	Activities of special category groups
Subject puts data into public domain	Legal claims	Judicial / tribunal purposes
	Credit card companies dealing with child abuse	

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3: Do you need to do an impact assessment?

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### Lack of DPIA

- **Southampton City Council vs ICO, EA/2012/0171, February 2013**
- Council fail to anticipate likelihood of disclosure requests from police after introduction of mandatory CCTV with sound recording in licensed taxis
- Receives large number of requests unrelated to the original purpose

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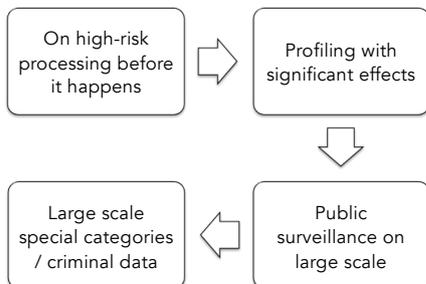
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### Article 35 IMPACT ASSESSMENTS



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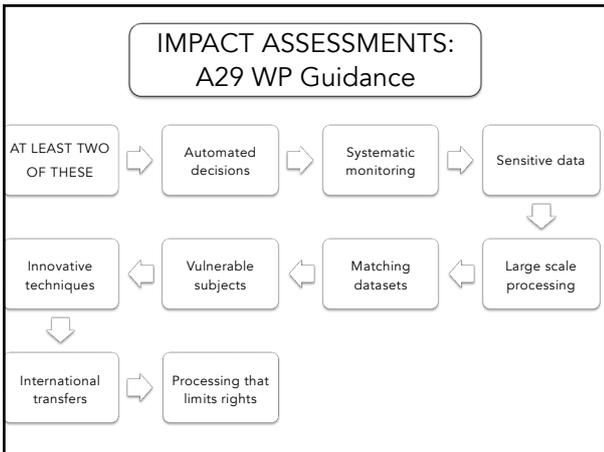
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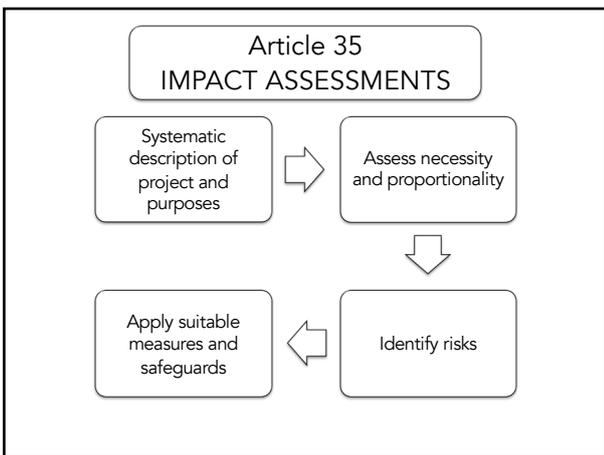
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4: Do we need a data sharing agreement?

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No, but...

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What should an agreement contain?

- Roles
- Purpose and legal basis
- When and how data should be disclosed
- Secure methods of transfer
- What triggers a disclosure?
- How will accuracy be maintained?
- How will partners ensure that data is being exchanged between compatible systems?
  
- Works for A26 joint controllers requirement

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5: Do we have to tell people about the disclosure?

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A5: Principles

- |  |                                   |                                   |
|--|-----------------------------------|-----------------------------------|
| a) Lawfulness, fairness and transparency | b) Define purpose / control reuse | c) Minimise amount of data        |
| d) Accuracy                              | e) Limit time data is stored      | f) Keep data secure and available |

Controller is responsible for and shall be able to demonstrate compliance

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A5: Principles

- |  |                                   |                                   |
|--|-----------------------------------|-----------------------------------|
| a) Lawfulness, fairness and transparency | b) Define purpose / control reuse | c) Minimise amount of data        |
| d) Accuracy                              | e) Limit time data is stored      | f) Keep data secure and available |

Controller is responsible for and shall be able to demonstrate compliance

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### Inter-Government sharing

- **Case C-201/14 Smaranda Bara and Others v Presedintele Casei Nationale de Asigurari de Sanatate and Others, European Court, 2015**
- Romanian Government uses data about self-employed workers collected for tax purposes for a secondary purpose
- Lack of transparency is a key issue

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### Enforcement (2018)

- **Lifecycle Marketing (Mother and Baby) Ltd, £140,000 penalty 08/08/2018**
- Labour Party hire Experian to source data about mums and young children for 2017 election (ICO think Experian is a processor)
- Experian get it from LCMB (AKA 'Emma's Diary')
- LCMB Privacy Policy doesn't mention political campaigns
- Consent not specific and informed

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### Other third party cases

- **Optical Express vs ICO, 2016 EA/2015/0014**  
Tribunal appeal on EN
- OE lose appeal on third party consent
- **Quigley and Carter Ltd vs ICO, 2016, EA/2016/0175 on MPN**
- Q&E lose appeal on due diligence for data supply
- **Better for the Country (AKA Leave.EU), 2016, £50000 ICO MPN**
- Mobile data bought from third party

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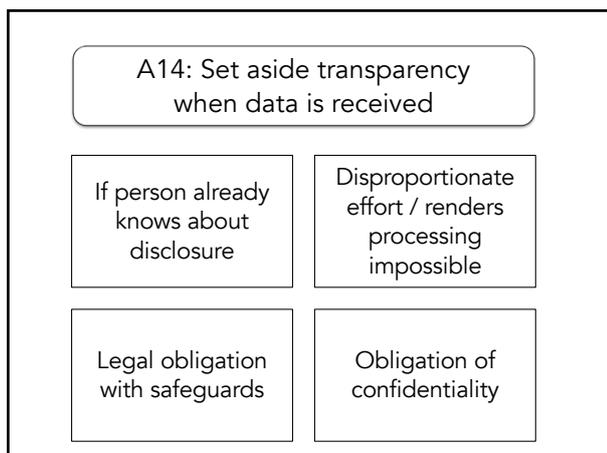
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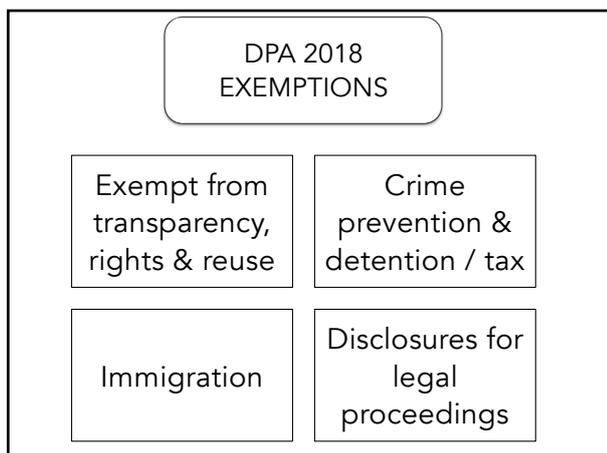
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# 6: Data Quality

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<b>A5: Principles</b>		
a) Lawfulness, fairness and transparency	b) Define purpose / control reuse	<b>c) Minimise amount of data</b>
d) Accuracy	e) Limit time data is stored	f) Keep data secure and available
Controller is responsible for and shall be able to demonstrate compliance		

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<b>Pseudonymisation</b>
<ul style="list-style-type: none"><li>• Remove identifiers so person cannot be identified</li><li>• Identity can be put back in</li></ul>
<b>Anonymisation</b>
<ul style="list-style-type: none"><li>• Identity is removed and process cannot be reversed</li></ul>

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<b>A5: Principles</b>		
a) Lawfulness, fairness and transparency	b) Define purpose / control reuse	<b>c) Minimise amount of data</b>
<b>d) Accuracy</b>	e) Limit time data is stored	f) Keep data secure and available
Controller is responsible for and shall be able to demonstrate compliance		

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7: What is the role of the DPO?

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DPO Role

- Advice on the legality / method of disclosure
- Quality of the DPIA
- Quality of the data sharing agreement
  
- NOT WHETHER DATA SHOULD BE DISCLOSED

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8: What is a breach?

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## Breaches

- DISCLOSURE LINKED TO MANY BREACHES
- Data sent to wrong place
- Wrong data sent
- Inaccurate data disclosed
- Data not sent by most secure method
- Data shared with too many people
- Lack of legal justification for disclosure

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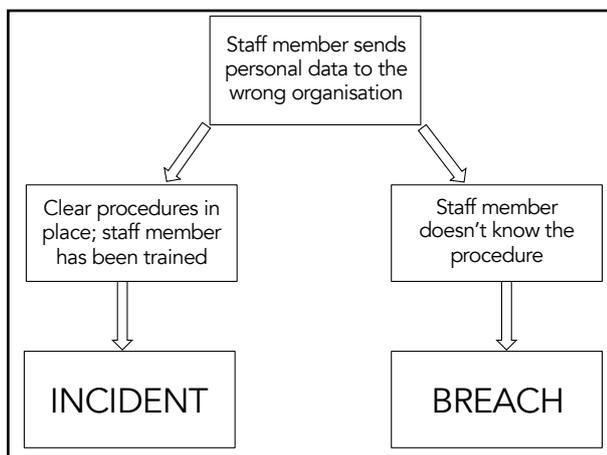
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## ICO fines on email CC problems

- £180,000, May 2016, Chelsea and Westminster Hospital NHS Foundation Trust (people with HIV)
- £80,000, June 2018, Gloucestershire Police (abuse victims)
- £200,000, July 2018, Independent Inquiry into Child Sexual Abuse (abuse victims)
- £145,000, April 2019, London Borough of Newham (victims of crime)

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### ICO fines on disclosure

- Information posted to wrong person because two patients have the same name (30/04/2012, Aneurin Bevan Health Board, £70,000)
- Information posted to wrong person because letter used as a template (12/07/2012, St George's Healthcare NHS Trust, £60,000)
- Information posted to wrong person because email is not properly transcribed (25/10/2012, Stoke Council, £120,000)

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### ICO fines on data disclosed under FOI

- £120,000, August 2013, London Borough of Islington (people who have been rehoused)
- £120,000, April 2018, Royal Borough of Kensington and Chelsea (people who own empty properties)

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9: What procedures do we need?

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### Processes

- Think about routine disclosures that can be controlled
  - e.g. Serious Fraud Office penalty
- Think about emergencies – what infrastructures can you create?

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### Processes

- THINK ABOUT THE PERSON ANSWERING THE PHONE OR REPLYING TO THE EMAIL
- Verification of requester
- Verification of validity of request
- Purpose / lawful basis
- Who decides whether data is disclosed?
- Are there clear rules about methods of disclosure?

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## 10: Shared databases

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### Sharing a database

- ICO Enforcement Notice on Metropolitan Police, November 2018
- Database of individuals associated with gangs, shared across London and accessed by variety of third party organisations

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### Sharing a database

- ICO Enforcement Notice on Metropolitan Police, November 2018
- Database of individuals associated with gangs, shared across London and accessed by variety of third party organisations
- Issues include:
  - Indiscriminate sharing
  - Lack of consistency
  - Insufficient differentiation between gang members and victims
  - Private / third sector users may not legal basis
  - Multiple security issues

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### Sharing warnings

- Clift v Slough Borough Council (CA) [2010] EWCA Civ 1171
- Warning marker issued to council officers and partner organisations about the conduct of a complainant
- Legitimate to share warning with staff likely to come into contact with her – not justifiable to share with other organisations

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### Is your database managed well?

- What data is needed and why
- Accuracy of data over time
- Retention
- Access control and revocation of rights
- Removal of information / entry onto other systems

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### Enforcement and compensation

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### ICO powers

Penalties: Maximum 4% of turnover or €20 million

Enforcement: enforce changes, stop processing

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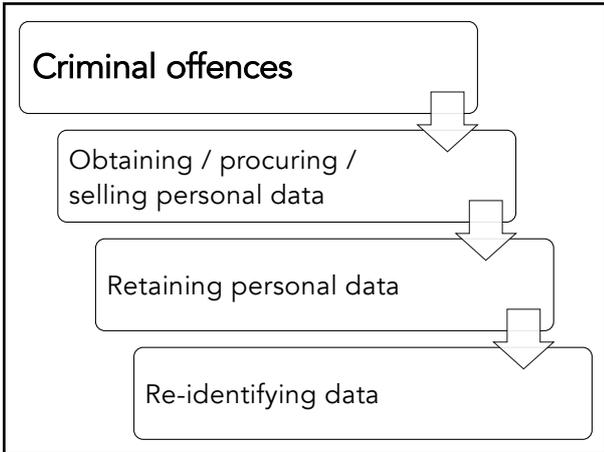
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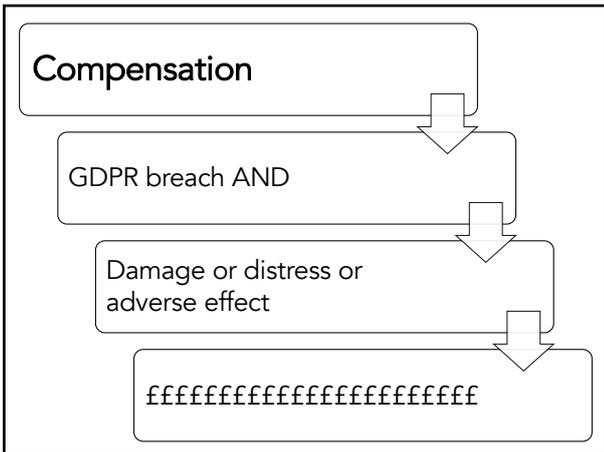
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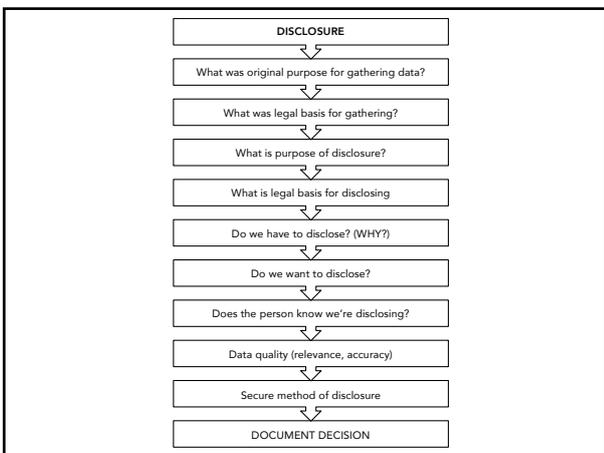
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ANY QUESTIONS?

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FOI - 8<sup>th</sup> October

Breaches and Enforcement -  
5<sup>th</sup> December

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Contact 2040 for more  
information and training

Email: [tim@2040training.co.uk](mailto:tim@2040training.co.uk)

Web: [www.2040training.co.uk](http://www.2040training.co.uk)

Twitter: @tim2040

LinkedIn: Tim Turner



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