

Advice Services Knowledgebase:

Title	Section 10 and the right to request an Assessment
Body	<p>The sixth principle of the Data Protection Act 1998 (DPA) echoes the rights provided to an individual under s.10 of the DPA.</p> <p>Section 10 (1) of the DPA provides an individual with the right to request, in writing, that a data controller cease, or not begin, processing personal information where that processing is likely to cause unwarranted substantial damage or substantial distress.</p> <p>The right to serve a s.10 notice only applies where the data controller is processing personal information under the conditions for processing in paragraphs 5-6 of schedule 2. It does not apply in cases where any of the conditions in paragraph 1-4 of schedule 2 are met.</p> <p>Section 10 (4) provides that, if the court decides that a s.10 (1) notice is justified, the court is empowered to order the data controller to take such steps as the court thinks fit.</p> <p>On the other hand, the obligations under s.10 (3) are not for the court to consider. As such, a data subject may request that the Commissioner make an assessment as to whether it is likely or unlikely that a data controller has satisfied its obligations under s.10 (3) which provides:</p> <p>The data controller must within twenty-one days of receiving a notice under subsection (1) ("the data subject notice") give the individual who gave it, a written notice—</p> <ul style="list-style-type: none">a) stating that he has complied or intends to comply with the data subject notice, orb) stating his reasons for regarding the data subject notice as to any extent unjustified and the extent (if

any) to which he has complied or intends to comply with it.

Therefore, an individual may make a request for an assessment under s.42 of the DPA where:

- A data controller has not responded to a notice at all.
- A data controller has not responded within the 21 day timeframe.
- A data controller has not provided its reasons for refusing to comply with a notice.
- A data controller has failed to comply with the data subjects request to cease processing.

Legislation	DPA
Subject area	Other
ICO area	Advice services

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