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# “When someone asks me to prepare a privacy notice, I find it hard to meet their expectations”

**If you haven't updated your privacy notice for a while, now is an excellent time – and if you're doing it as a box-ticking exercise, you're doing it wrong**

The most common request for data protection services that I receive is to prepare a privacy notice. Actually, a lot of people ask for a privacy *policy*, to which I reply that I can assist with their privacy *notice*. Then they say “policy”, and I say “notice”, and we go back and forth for a bit before I write “privacy notice” in my laminated engagement letter, and then that’s settled.

A privacy notice is an important step towards transparency in how you handle personal data. But there’s a popular belief that if you put a hastily typed-out privacy notice on your website, then that’s data protection done and dusted. As I touched on in my article six months ago (see issue 349, p116), this overlooks all the behind-the-scenes assessments that are needed to feed into the content of the notice.

So when someone asks me to prepare a privacy ~~policy~~ notice, I find it hard to meet their expectations. They’re assuming I will grab a template, press a few buttons, and generate a perfectly crafted notice within a matter of moments. I, on the other hand, envisage spending a few days understanding how the business uses data and helping to assess relevant risk and compliance matters, before putting pen to paper to draft a new bespoke notice. This gulf between our perspectives can cause disappointment for both of us.

## Unlawful use of data

Article 5 of the UK GDPR sets out seven principles that organisations must follow in their use of personal data. The first principle is “lawfulness, fairness and transparency”. If you write that you are doing something in a privacy notice, you may have started to tick off one-third of this principle



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in pursuit of transparency. So you still have 6.6666 (etc) principles to look at.

A business recently asked me for help in writing a section in its privacy notice about use of CCTV. I replied that I could do this, but that didn’t mean it would be lawful. The business decided not to engage me, and who can blame it? Unlawful advice is probably not what you’re looking for in a lawyer.

What I had intended to communicate was that by letting people know that you use CCTV, doesn’t necessarily mean that your use of CCTV meets all the principles of data protection. More work is needed to assess this. The first step is to understand why the CCTV system is being used, where it may be placed, when it may be active, what types of data it collects, where it stores recordings and for how long. Then you can think more about the principles: checking there is a legitimate purpose (for example, to detect and respond to unlawful activities), identifying a lawful basis (for example, a company’s legitimate interests in preventing or investigating illegal activities, or a public authority carrying out a public task), minimising data collection and use (for example, using the cameras only in particular areas at particular

times, capturing images but not audio), keeping records secure (for example, encrypting recordings), and setting retention periods (for example, deleting recordings after 30 days).

Carrying out a data protection impact assessment for high-risk scenarios, or other risk and compliance assessment, can assist in mapping out how the system will be used and identifying the required measures. These can address the data protection principles, and the related rights of individuals, such as how to give access to relevant recordings if an individual requests a copy of their personal data.

Once all these matters have been assessed, the outcomes can be reflected within the privacy notice (and other communications, as I raise below).

If I could leap back in time, maybe this would have been a better way to have phrased my response to the business’ query.

## Transparency

The purpose of the transparency requirement is to provide useful information, so people can understand how you use their data and are able to exercise their rights effectively. Too often, preparing a privacy notice is treated more as a box-ticking exercise; something that broadly refers to the required elements, without giving much thought to how informative the notice actually is. Let’s consider a couple of classic examples.

- Meaningless data retention wording: “We retain your data for as long as we need it.”
- Requiring the reader to obtain a legal qualification to decipher a



RIGHT CCTV cameras raise a number of data protection issues

description of international data transfers: “We may transfer your data outside the UK and the EEA, to countries where the UK has not deemed the laws to provide adequate protection for your personal data in accordance with Article 45 UK GDPR. We implement appropriate safeguards in accordance with Article 46 UK GDPR in relation to such transfers.”

It isn't enough to cover a particular topic without also thinking about your form of words, and whether the individuals it's aimed at will gain meaning from those words. Words are also not the only option. Other methods, such as icons, pictures and videos, may make the information easier to take in, particularly for certain audiences, such as children. A layered approach, with digestible summaries and links to more detail, can also assist.

A client was recently reviewing its privacy notice and wanted to add some wording about sharing data with companies conducting data analysis on its behalf. Two pieces of information that must be provided to individuals are the purposes for which data is used and the “recipients or categories of recipients” of personal data, meaning who the data is shared with. It may be tempting to consider these boxes ticked with something like this: “We may share your data with other companies for analysis purposes.” There are perceived benefits of the broad and generic phrasing, as the wording could capture different types of sharing and analysis in future, and not just the ones that are envisaged now.

But is this wording actually helpful for the reader? If it were addressed to me, I'm not much further forward in understanding what is going on than if you hadn't told me anything at all. What data is being shared? What does “analysis” mean? Who are these other companies? What will they do with the outputs?

How about this: “We may share information about the services you have purchased, together with your age and location, with [named company] or [UK companies providing data analytics services]. They identify trends in our customer base to assist us in improving our services and marketing strategies. These companies hold your data on our behalf, meaning that we remain responsible for how they use your data. We pseudonymise the information before sending it to these companies, so that they don't

know who you are when conducting the analysis.”

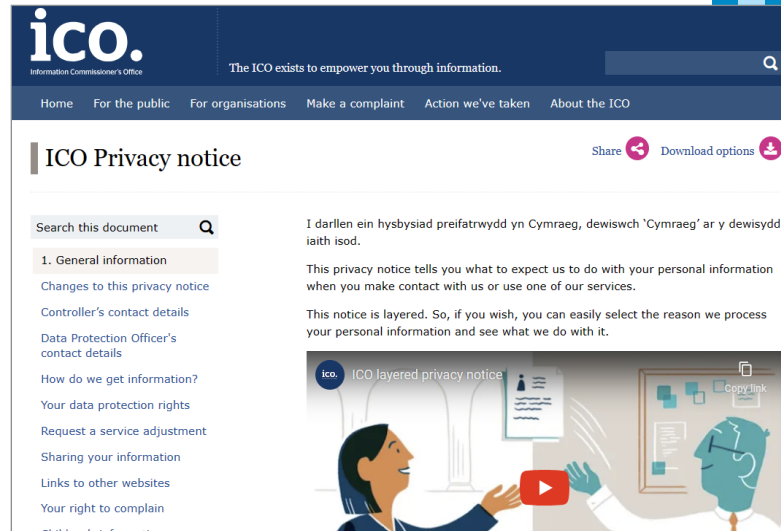
This wording is tailored to the particular scenario, so it gives me more understanding of the specific data-sharing activities. And I know that the original company is still responsible for use of my data, so I can contact it with queries, or if I want to exercise my rights (such as, where relevant, rights to object or to withdraw consents I have given). If different activities are planned in future, the notice can be updated at that stage.

### Is having a privacy notice enough?

Information generally needs to be provided in an easily accessible form at the time the data is collected. As well as thinking about how your notice is drafted, you must also consider how and when individuals will be presented with it. Will they actually see and read it? Having a privacy notice nestled deep within your website is ineffective if no-one ever looks there.

A related issue is whether your privacy notice alone is the most effective way to communicate all the information. However brilliantly drafted and presented, most people (alas) don't spend their days excitedly reading every privacy notice that comes their way. The law requires the information to be provided, but not a privacy notice as such. In context, other methods of communication may be preferable for transparency.

Let's take the CCTV example again. The business had decided to install a CCTV system within the reception area of its offices. I may be a visitor to the office, having had no previous relationship with the company. The business needs to inform me that it is capturing images of me at the time the system records them. Am I expected to go to its website and read the privacy notice before crossing the threshold? Or will there be someone at the door handing out paper copies as I enter? In this context, it's common to have prominent signs on the wall that inform me that CCTV is being used in the room, and providing contact details for who is in charge. As an example, the UK Information



**ABOVE** Make sure your privacy notice isn't hidden away deep within your website

**“Reading through my article now, it's a wonder I have any clients”**

**BELOW** A prominent sign is a good way of informing people about CCTV recording

Commissioner's Office suggests: “Images are being monitored and recorded for the purposes of crime prevention and public safety. The system is controlled by XXXXX. For more information, visit our website at (web address) or call 01234 567890.”

These “just-in-time” notifications are a common way to assist with transparency. They inform someone about a particular use of their data at the time it is relevant, rather than expecting them to dig around in a lengthy privacy notice, or to remember what was said in a notice given to them a long time ago. For example, if you're collecting information in an online form about someone's age, you could have a pop-up next to this field, which says why you need this information. Or, if someone hasn't used a feature on your platform before and one day decides to activate it, consider a short notice that explains how this feature impacts use of their data.

And how about talking to someone out loud? You could let them know that you're recording a meeting and why, or explain that you're making a note of their name and email address to contact them with any queries arising from a discussion.

### No more disappointment

Reading through my article now, it's a wonder I have any clients, when I criticise their terminology, offer them unlawful advice and cause disappointment with what I deliver. Perhaps the guidance I have provided on privacy notices may also be the way forward for my future responses to queries: properly thought through, clearly worded and communicated in an effective way. Something for me to consider, anyway.

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