

STATES OF JERSEY

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DRAFT DATA PROTECTION (JERSEY) LAW 200 (P.70/2004): AMENDMENTS

**Lodged au Greffe on 11th May 2004
by Deputy J.L. Dorey of St. Helier**

STATES GREFFE

DRAFT DATA PROTECTION (JERSEY) LAW 200- (P.70/2004): AMENDMENTS

PAGE 36, ARTICLE 13 –

For paragraph (2) substitute the following paragraph –

“(2) An individual who suffers distress by reason of any contravention by a data controller of any requirement imposed by or under this Law is entitled to compensation from the data controller for that distress.”.

PAGE 61, ARTICLE 53(4) –

Delete the words “may, if the Commissioner thinks fit,”.

DEPUTY J.L. DOREY OF ST HELIER

REPORT

When P.70/2004 was first lodged, I made enquiries about a number of matters, some technical, some relating to policy. The vast majority of these queries received a satisfactory reply. The present amendments relate to two questions which have not been satisfactorily resolved.

Amendment (1):

In terms of Article 13 on page 36, my original question was as follows–

“What is the rationale behind allowing compensation for distress without damage, *only* in the case of journalistic/artistic/literary processing?”

The response, essentially, was that “the rationale relates to the increased potential for distress in connection with ‘special purposes’ processing”, and that “the whole area of journalistic exemption is complex and evolving”.

It may well be true that greater distress can sometimes be caused by ‘literary’ processing than by other forms of data processing. Nevertheless, if it is acknowledged that distress without damage merits compensation in some cases, it should surely merit compensation in all cases.

Amendment (2):

My original question, in this case, was –

“Why is the Commissioner given discretion, in this case, as to whether to supply a reason for a decision?”

The reply consisted of the single word, ‘Policy’. Such a response is inadequate.

The Data Protection Law is about openness and accountability. It would be ironic indeed, in a Law requiring data processors to give reasons for their actions in so many areas, if the Commissioner was alone left free to take decisions without a word of explanation to anyone.

In this particular case, the decision taken by the Commissioner is a decision not to assist an individual with proceedings related to data processing. It is only reasonable to expect that such a refusal should be supported by reasons.

These amendments have no implications for the financial or manpower resources of the States.