

Annex A

The DPA – lawful processing of data

1. In terms of IDR cases, there are two stages of processing under the DPA – the employer processes data by transferring it and SME processes data by accepting it. The DPA makes a distinction between processing 'personal data' and 'sensitive personal data' (set out in Schedules 2 and 3 of the DPA respectively). In both cases, a key principle is that the individual has given consent for parties to process data. For 'sensitive' data, this must be 'explicit' or 'express' consent. The second stage IDR appeal form includes a section for giving or refusing consent. SME will only ask for files where the individual has given full consent for their release.

NOTE: The DPA does not apply where the employee/member has died, so employers/SME do not need consent to process data in such cases – for example, when someone makes an IDR appeal in respect of a deceased member's benefits, survivor's pensions or death benefits.

2. As well as requiring consent, the DPA states that data processing must be necessary, proportionate and for a legitimate aim. It is SME's statutory duty to carry out second stage IDR investigations and establish the legal rights of the scheme member. In that respect, there is, therefore, a legitimate aim making the data processing lawful. The second stage investigation itself involves a full review and SME giving a full written explanation of a final decision in the hope of resolving the dispute. SME makes decisions on behalf of the Minister for the Civil Service and, in accordance with the PCSPS rules, those decisions are final. A key aim is also to avoid further appeal to the Ombudsman.

Why does SME usually need all files?

3. In many cases, when making first stage decisions, MyCSP may not have seen the entire personal file, if indeed, any personal papers at all. In SME's experience, not seeing vital pieces of information from a personal file has sometimes led MyCSP to make decisions they might not have made otherwise. SME has a legal duty of care to ensure that it carries out a proper review of the case and not to make wrong/perverse decisions. Not doing so runs the real risk of decisions from the Ombudsman against the scheme and the employer, which may involve not only financial penalty, but (public) embarrassment for the employer, SME, and ultimately the Minister.

4. Because each case is different, and because of the complex nature of the scheme rules, it is impossible to give employers a definitive list of what papers might be relevant for them to send simply those papers. From experience, something relevant may be scribbled on a Post-It note. For the same reasons, it would be unreasonable to expect HR teams, who are not pension experts, to be able to correctly identify what might be relevant. Instead, SME will usually identify from complete original files what papers are irrelevant and, as such, need no further processing. The act of eliminating evidence in this way also constitutes lawful processing.