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# Section 56 of the Data Protection Act

## 1 INTRODUCTION

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In 2015 a previously inactive provision of the 1998 Data Protection Act (DPA) was brought into UK law: Section 56 of the DPA made it a criminal offence for employers (companies or individuals) to require applicants or existing employees to supply them with a copy of their criminal record obtained via Subject Access Request.

## 2 SUBJECT ACCESS REQUESTS

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Amongst the rights afforded to the individual by the Data Protection Act 1998 (DPA) was the ability to request copies of the information held about them by organisations, including the police. This is commonly referred to as a 'Subject Access Request' (or SAR).

The ability to request such information was in theory supposed to strengthen the position of the individual by giving them access to records held in relation to them, increasing transparency and allowing them to challenge inaccurate information or exercise other rights.

## 3 REHABILITATION OF OFFENDERS LEGISLATION

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It is important to note a criminal record SAR would return information relating to both 'spent and unspent' criminal convictions. The term 'spent conviction' relates to a concept from the Rehabilitation of Offenders Act 1974: when a period of time (in law) has passed after an individual has been convicted of an offence and that individual has been deemed rehabilitated and the conviction is deemed to be 'spent'.

In the majority of instances a 'spent' offence would no longer be taken into account (unless it had resulted in a prison sentence of over four years). By contrast offences that have not yet reached their rehabilitation period, or are deemed suitably serious, will be deemed 'unspent'.

Under the UK Rehabilitation of Offenders (Exemptions Order) legislation only certain professions require the disclosure of both spent and unspent criminal convictions. To enforce this legislation the bodies responsible for disclosing criminal records (eg Disclosure Barring Service (DBS) and Disclosure Scotland) will not release information relating to spent convictions and cautions in instances where they were not required/permitted in law.

**See Disclosure and Barring Service Eligibility Guidelines:**

<https://www.gov.uk/government/collections/dbs-eligibility-guidance>



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## 4 ENFORCED SUBJECT ACCESS

It was noted that in some sectors employers were circumventing the procedures intended to enforce the Rehabilitation of Offenders Act (Exceptions Order) by 'requiring' Candidates to exercise their subject rights under the DPA to access their criminal record, instead of using the prescribed government bodies. This practice was termed 'enforced subject access' and resulted, in some instances, in employers gaining access to information about Candidates' cautions and spent convictions to which they were not entitled.

**See ICO guidance on Enforced Subject Access:**

<https://ico.org.uk/media/for-organisations/documents/1042608/enforced-subject-access-s56.pdf>

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## 5 SECTION 56

Section 56 of the DPA made it a criminal offence for an employer to require a prospective or existing employee to use their subject access rights to request their criminal record information (ie make an enforced subject access) and states as follows:

**1) A person must not, in connection with**

- a) the recruitment of another person as an employee,**
- b) the continued employment of another person, or**
- c) any contract for the provision of services to him by another person**

**require that other person or a third party to supply him with a relevant record or to produce a relevant record to him.**

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## 6 LEGITIMATE ACCESS TO CRIMINAL RECORD INFORMATION

While the practice of enforced subject access is now illegal, there is nothing preventing employers from requesting criminal information through approved and authorised channels such as Disclosure Scotland and the Disclosure Barring Service, as and when it is legitimate to do so. As a recognised umbrella body for the Disclosure Barring Service Vero are able to provide such a service

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## 7 FURTHER INFORMATION

Vero maintain an extensive library of documents relating to screening specific topics, including legislation and regulation. If you require further information on this or any other topic, please contact your Client Relationship Manager or get in touch via the 'contact us' page on our website.