

Universities and colleges running media courses risk breaching the Data Protection Act 1998 unless tutors ensure that they distinguish between news stories submitted for individual marks and articles prepared for inclusion in campus or other publications.

Lecturers need to exercise caution where students either seek or are encouraged to delve into third parties' private lives without their knowledge or consent - a practice which is becoming commonplace on courses offering modules in investigative reporting.

The structure of the Data Protection Act can cause compliance problems, particularly if students gather sensitive personal information for stories for their coursework and later try to get the material published, broadcast, or submitted for an industry award.

The Information Commissioner's Office (ICO) says personal data about third parties which undergraduates and postgraduates gather and process as part of their academic studies are not covered by the Section 32 exemption in the Act, which enables reporters to handle personal data without an individual's knowledge or consent and to publish the information where it is in the public interest to do so.

According to the ICO, the conditions of the "journalism" exemption are not satisfied if a media student gathers personal data about a third party for a print, radio, TV or website assignment which is submitted to a tutor as part of his or her studies.

Information Commissioner Christopher Graham told Orchard News Bureau Ltd: "There is a difference between 'real' journalism - even if it is only in a small-circulation student paper - and 'practice' journalism, for example done as part of a journalism course."

Anyone who wanted to rely on the section 32 exception for journalism, literature and art must first intend to publish the material - "This condition cannot be satisfied if an article is only being produced as part of an assignment," Mr Graham said.

Students and universities are not necessarily breaching the Act, however, as the ICO accepts that the processing of data in educational coursework may be permitted under the "domestic purposes" defined in Section 36 of the Act, which allows anyone to handle personal and sensitive information if doing so is a necessary and lawful part of an individual's personal affairs.

But it also says that the processing must only be done for an individual's personal affairs. The ICO says this may include educational activity, so media students who have to attend court, employment tribunals and inquests for formal assignments are protected by this exemption and third parties have no cause to complain if processing causes distress.

ICO group manager for policy delivery Iain Bourne told Orchard News Bureau Ltd: "In terms of a student processing personal data for his or her own educational purposes, the section 36 exemption would be more likely to be relevant.

"Individual students do not need to be registered as data controllers to process personal data to produce college assignments."

None of the Act's restrictions on usage, requirements to register as data controllers, or obligations to release information to data subjects on request apply, which leaves aggrieved third parties with no means under the Act to complain or seek rectification or deletion of personal data which is liable to cause offence.

Mr Bourne said: "The section 36 exemption can apply to a group of individuals acting in concert. Even though a mock-up newspaper might be a collective effort, the processing of personal data is still being done for each student's personal educational purposes."

A main condition for the Section 36 exemption is that the processing is restricted to personal use including personal correspondence, which the ICO says is capable of including some forms of communication such as a personal blog.

But publishing an assignment to a wider audience in a college magazine could take the processing outside the terms of this exemption, and might leave students and tutors open to compliance and enforcement action under the Act.

But what happens if a student submits an investigative news article for assessment (relying on the generous protection of Section 36) and later offers the piece to a college magazine or national newspaper or submits it to judges in a media competition?

The question does not arise within the industry as the NVQ "on the job" training model makes use of data which was previously processed for the purposes journalism and is in the public domain.

But the ICO acknowledges there is no clear answer where students gather "raw" and unpublished personal data for training purposes.

Mr Graham said: "It (the assignment) might be published later and if it is then the Act's (section 32) exemption might come into play."

If Section 36 is taken at face value, it would appear that colleges should exercise caution at least in relation to personal data which has been obtained without an individual's knowledge or consent.

Mr Bourne said: "If a student is using publicly-available resources to produce an article, or is collecting his or her own information in a fair and transparent way, then there would be no need to rely on an exemption."

Where personal data is obtained through "covert" or clandestine methods, the Act allows the processing providing the student genuinely intends to publish in the public interest (section 32). But the journalistic exemption states that the processing must not be for any other use - such as a coursework submission covered by section 36.

Publication under section 32 requires that the publisher or freelance journalist has registered as a data controller (section 17). Failure to register can be a criminal offence (section 21). So colleges must make sure that campus publications (whether 'in-house' or independently produced by students) are covered by registration under the Act.

Mr Bourne said: "Individual students do not need to be registered as data controllers to process personal data to produce college assignments. As colleges will be processing personal data as part of their ordinary functions, they should already be registered as data controllers. As such they are legally obliged to handle any personal data which they process in line with the requirements of the Act.

"We think it is in the interests of students and colleges to lay down ground rules for the content of journalistic assignments and the way students conduct themselves when carrying them out.

"I am sure colleges would like to avoid damage and distress being caused to individuals as the result of a student carrying out a journalistic assignment. This risk becomes more acute as it becomes easier and more common for students to post their work on the internet, even if the work was produced for educational rather than journalistic purposes."

Colleges running journalism courses must ensure that tutors are familiar with the different and mutually exclusive sets of rules governing newsgathering by students, particularly where there is "covert" data processing of the investigative or intrusive variety.

Students require clear directions as to whether the newsgathering is for the purposes of coursework, or for publication to a wider audience. Without case law or a definitive ruling from the Information Tribunal, the assumption has to be that material may be used for one or other purpose - personal or publication - but not for both.