

What is data protection?

Data protection is a term that refers to the processing of personal data and the obligations to keep that data safe. The General Data Protection Regulation (GDPR) and the Data Protection Act are legislation that govern how the University must process personal data. The GDPR specifies 6 principles of data protection that the University must comply with. Personal data must be:

1. Processed lawfully, fairly and in a transparent manner
2. Collected and processed for specified, explicit and legitimate purposes
3. Adequate, relevant and limited to what is necessary for processing purposes
4. Accurate and up to date
5. Kept in a form which permits ID of data subjects for no longer than is necessary
6. Protected against unauthorised or unlawful processing, accidental loss or destruction or damage

There is a further principle of accountability which means that the University also has a requirement to demonstrate compliance with these principles.

These principles must always be adhered to when undertaking any form of data processing.

Key definitions

Below are definitions of some of the key terminology associated with data protection.

Personal Data

Personal data is data that relates to a living individual and includes information that affects the person's privacy in personal or family life, or in a business or personal capacity. Personal data is any data from which a living individual can be directly or indirectly identified and could be things like a student or staff file or number, an e-mail about someone, a personal home address or postcode.

Special Categories of Personal Data

There is a specific category of personal data that is referred to as a special category. This is data that may be considered to be sensitive. This is defined as data that reveals:

- Racial or ethnic origin
- Political opinions

- Religious or philosophical beliefs
- Trade Union membership
- Genetic and biometric data
- Health
- Sexual Orientation
- Sex Life

Processing of this type of data is prohibited unless it meets specific conditions. Read more about conditions of processing below.

Data Subject

An individual on whom data is being kept e.g. a student, member of staff, applicant etc.

Data Processing

Data processing is how personal data is treated and managed. This includes a variety of things including the collection, storage, use, transfer, alteration, erasure and destruction of personal data. It may also refer to disclosure of data.

Data Controller

A data controller is an organisation that is processing personal data and has authority to decide how and why it is to be processed. Where you are dealing with personal data it is likely that the University will most often be the Data Controller.

Data Processor

A data processor is an organisation that processes personal data on behalf of another organisation but does not have control over how and why the data is being processed.

Subject Access Request

Individuals have the right to be told what personal data an organisation is processing about them, and unless an exemption applies, to receive a copy of that information. It's important to understand that any and all data that the University holds about a specific individual can be requested through a Subject Access Request.

Conditions of Processing Personal Data

In order for the University to legally process personal data there must be a legal basis for carrying out this processing. Most commonly when processing personal data you will require the express consent of individuals. However, the GDPR has six conditions for processing and at least one of these must be met:

1. Consent of the data subject
2. Processing is necessary for the performance of a contract with the data subject or to take steps to enter in to a contract

3. Processing is necessary for compliance with a legal obligation e.g. HESA data collection
4. Processing is necessary to protect the vital interests of a data subject or another person e.g. for preservation of life.
5. Processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller
6. Necessary for the purposes of legitimate interests pursued by the controller or a third party, except where such interests are overridden by the interests, rights or freedoms of the data subject.

Processing of special category is prohibited unless it meets certain conditions. In order to process this type of data one of the below conditions **must** apply.

1. Explicit consent of the data subject
2. Processing is necessary for carrying out obligations under employment, social security or social protection law, or a collective agreement
3. Processing is necessary to protect the vital interests of a data subject or another individual where the data subject is physically or legally incapable of giving consent.
4. Processing carried out by a not-for-profit body with a political, philosophical, religious or trade union aim provided the processing relates only to members, or former members, and provided there is no disclosure to a third party without consent
5. Processing relates to personal data manifestly made public by the data subject
6. Processing is necessary for the establishment, exercise or defence of legal claims or where courts are acting in their judicial capacity
7. Processing is necessary for reasons of substantial public interest on the basis of union or member state law which is proportionate to the aim pursued and which contains appropriate safeguards.
8. Processing is necessary for the purposes of preventative or occupational medicine, for assessing the working capacity of the employee, medical diagnosis, the provision of health or social care or treatment or management of health or social care systems and services on the basis of union or member state law or a contract with a health professional
9. Processing is necessary for reasons of public interest in the area of public health, such as protecting against serious cross-border threats to health or ensuring high standards of healthcare and of medicinal products or medical devices.
10. Processing is necessary for archiving purposes in the public interest, or scientific and historical research purposes or statistical purposes in accordance with article 89(1)

What constitutes consent to process data?

The legislation is clear that consent must be freely given, specific, informed and an unambiguous indication of an individual's wishes. If you are processing personal data under consent there must be some form of clear affirmative action. Consent can-not be inferred from silence, pre-ticked boxes or inactivity. Consent must also be separate from other terms and conditions and there must be a simple mechanism for people to withdraw consent. It is advised that large organisations such as the university avoid using consent as a legal basis where possible. This is because if an individual was to withdraw consent, there must be no detriment to them as a result.

Individual Rights

Individuals have a number of rights which are emphasised in the legislation:

1. The right to be informed
There is an obligation to show transparency over processing of personal data. The University will meet this obligation usually through a privacy statement.
2. The right of access
Individuals have the right to obtain confirmation that their data is being processed and access to their personal data. This is achieved through a subject access request.
3. The right to rectification
Data should be rectified if it is inaccurate or incomplete. There are specific time-frames required for this. For more info please refer to X.
4. The right to erasure
Individuals have the right to request the deletion or removal of personal data. However this is subject to certain conditions and there are some exemptions. For more information, contact Information Governance.
5. The right to restrict processing
This is the right to block or suppress processing of personal data. This means that you are permitted to store the data but not further process it.
6. The right to data portability
This allows individuals to obtain and reuse their personal data for their own purposes across different services.
7. The right to object

Individuals can object to processing that is based on legitimate interests, direct marketing or processing for scientific/historical research and statistics.

8. Rights in relation to automated decision making and profiling
This right exists to protect individuals against the risk that a potentially damaging decision is taken without human intervention.

This is a brief overview of the individual rights. There are a number of conditions and exemptions associated with a number of these therefore if you have any questions on the above, please contact Information Governance (dp@rgu.ac.uk)