



Fife Centre for Equalities
Equality Briefing:
GDPR and Equal Opportunities Monitoring – May 2018



Key points

- GDPR introduces several controls on sensitive data that safeguard the privacy and safety of individual's personal data.
- Information collected on the protected characteristics of service users, staff or volunteers is considered sensitive or 'special category' data.
- Organisations legitimately can and should continue to monitor protected characteristics data under the GDPR, as Equal Opportunities Monitoring is a legal basis for processing information that is required for compliance with legislation or funding requirements.
- Equal Opportunities data collection that is completely anonymised is not subject to GDPR and is recommended as the least resource-intensive practice for meeting monitoring compliance.

What is GDPR (briefly)?

The GDPR is the General Data Protection Regulation, a European-wide law that replaces the [Data Protection Act 1998](#), which was based on the 1995 European Data Protection Directive and is part of the EU's body of privacy and human rights law. This comes in place on 25 May 2018.

Who does it concern and apply to?

GDPR concerns **any** organisation that collects or processes personal data and requires that records must be maintained when processing, sharing data and also when retaining this data in the longer term. This is what the ICO defines as '[documentation](#)' of data processing.

It applies to organisations operating within the EU **and also** organisations outside the EU that offer goods or services to individuals in the EU (e.g. a social media platform providing mail for a Scottish charity). After the UK exits the EU, the GDPR will be enshrined in EU law through the UK's government Data Protection Bill.

In the UK, GDPR is overseen by the [Information Commissioner's Office \(ICO\)](#) and will have the powers to defend consumer interests and issue fines up to €20 million or 4% of annual global turnover (whichever is higher). There are specific regulations depending on organisation size:

- Organisations with 250 or more employees must document all their data processing activities.
- Small and medium-sized organisations (i.e. fewer than 250 people) need only document: processing activities that:
 - are not occasional (e.g. a one-off engagement survey does not need to be recorded, unless it becomes a regular event)



- could result in a risk to the rights and freedoms of individuals (e.g. profiling of service users for workplace health insurance or public liability insurance quotes):
 - [GDPR L 119/14 \(71\)](#): “*‘profiling’ to analyse or predict aspects concerning the data subject’s performance at work, economic situation, health, personal preferences or interests, reliability or behaviour, location or movements, where it produces legal effects concerning him or her or similarly significantly affects him or her*”
- involve special category data or criminal conviction and offence data, i.e. **Equal Opportunities Monitoring** data:
 - [GDPR L 119/14 \(71\)](#): “*the controller should implement ... technical and organisational measures that prevents discriminatory effects on natural persons on the basis of racial or ethnic origin, political opinion, religion or beliefs, trade union membership, genetic or health status or sexual orientation, or that result in measures having such an effect*”

Equal Opportunities Monitoring: Employees, Job Candidates and Volunteers¹

Under the General Data Protection Regulation (GDPR), employers are legally authorised to gather and analyse information about employees for equality monitoring purposes, provided that they have established their legal basis for processing the data.

This involves obtaining employees' and job candidates' consent either by a statement or through clear, affirmative action to signify agreement to personal data being processed to monitor Equal Opportunities within the organisation.

Note that an employee or job applicant is in their rights to ask an employer to stop processing this data for that purpose by giving written notice.

Equal Opportunities Data Monitoring: Service Users

Provided that there is no possible way of identifying an individual to whom data relates, the GDPR would not apply. It is therefore recommended as the least resource-intensive practice for meeting basic compliance in equality monitoring.

As this is not always possible for services where it is necessary to track individuals, for example casework, or ongoing monitoring of data on promotions or resignations with reference to protected characteristics.

Where identification of services users can be carried out directly using the data itself or by combining it with other information. This can be for instance a list of service users with user ID numbers rather than names, along with a separate list of the ID numbers which give the corresponding names to identify the service users in the first

¹ More details at XPERTHR through [this link](#).



list – in those cases first list also is considered as containing personal data. In those situations, GDPR regulations and principles would apply.

New GDPR Terms / Jargon-busting:

- **‘controllers’** determine the purposes and means of processing personal data – e.g. as well as large organisations, a charity or a community group can be data controllers
- **‘processors’** are responsible for processing personal data on behalf of a controller – e.g. a direct mail company, a third-party fundraiser or a data destruction company, HMRC, FVA Payroll (this also means that staff, volunteers, contractors and temporary staff are not classified as data processors)
- **‘personal data’** means any data or information relating to a person who can be identified (directly or indirectly) – for example name, NIN, location data, online identifier, IP addresses (e.g. Mailchimp), Facebook tracking etc.
- **‘sensitive personal data’** covers:
 - racial or ethnic origin;
 - political opinions;
 - religious beliefs or beliefs;
 - membership of a trade union;
 - physical or mental health condition;
 - sexual life or orientation;
 - commission or alleged commission of an offence
 - biometric or genetic data (e.g. fingerprint payment systems)
- **‘data breach’** is a breach of security leading to the destruction, loss, alteration, unauthorised disclosure of, or access to, personal data (i.e. a breach is more than just loss of personal data)



Key GDPR Principles (Article 5):

Personal data, for example a person's name, National Insurance Number, location data, online identifier, IP addresses (e.g. Mailchimp), Facebook tracking etc, needs to be:

1. processed lawfully, fairly and in a transparent manner in relation to individuals;
2. collected for specified, explicit and legitimate purposes and not further processed in a manner that is incompatible with those purposes; further processing for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes shall not be considered to be incompatible with the initial purposes;
3. adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed;
4. accurate and, where necessary, kept up to date; every reasonable step must be taken to ensure that personal data that are inaccurate, having regard to the purposes for which they are processed, are erased or rectified without delay;
5. kept in a form which permits identification of data subjects for no longer than is necessary for the purposes for which the personal data are processed; personal data may be stored for longer periods insofar as the personal data will be processed solely for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes subject to implementation of the appropriate technical and organisational measures required by the GDPR in order to safeguard the rights and freedoms of individuals;
6. processed in a manner that ensures appropriate security of the personal data, including protection against unauthorised or unlawful processing and against accidental loss, destruction or damage, using appropriate technical or organisational measures.



References

- General Data Protection Regulation (ICO UK)
<https://ico.org.uk/for-organisations/guide-to-the-general-data-protection-regulation-gdpr/>
- Frequently Asked Questions about the incoming GDPR (EU GDPR guide)
<https://www.eugdpr.org/gdpr-faqs.html>
- GDPR Regulation (EU law)
http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CONSIL:ST_5419_2016_INIT&from=EN
- Freedom of Information Act (UK law)
<http://www.legislation.gov.uk/ukpga/2000/36/schedule/1>
- European handbook on equality data (in depth)
http://ec.europa.eu/newsroom/just/document.cfm?action=display&doc_id=43205

Key Resources

- Preparing for the law enforcement requirements (part 3) of the Data Protection Bill: 12 steps to take now
<https://ico.org.uk/media/for-organisations/documents/2014918/dp-bill-12-steps-infographic.pdf>
- GDPR Self-assessment (for organisations) (ICO UK)
<https://ico.org.uk/for-organisations/resources-and-support/data-protection-self-assessment/>
- GDPR Lawful basis self-assessment tool (ICO UK)
<https://ico.org.uk/for-organisations/resources-and-support/getting-ready-for-the-gdpr-resources/lawful-basis-interactive-guidance-tool/>
- GDPR FAQs for Charities (ICO UK)
<https://ico.org.uk/for-organisations/charity/charities-faqs/>
 - Phone helpline for small businesses and charities: 0303 123 1113
- GDPR A Guide for Charities (CFG)
<http://thirdsectordumgal.org.uk/wp-content/uploads/2018/02/General-Data-Protection-Regulation-A-guide-for-charities.pdf>
- GDPR for marketers: The essentials (DMA / DPN / ISBA)
https://dma.org.uk/uploads/misc/5a8eea20f3566-gdpr-essentials-for-marketers---an-introduction-to-the-gdpr-amendment-v1_5a8eea20f34aa.pdf



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