

Right to rectification, restriction, erasure and objection

Legislative context:

- GDPR article 16; definition of a data subject's right to rectification and when it applies
- GDPR article 17 (1); definition of a data subject's right to erasure (right to be forgotten) and when this applies
- GDPR article 18; definition of a data subject's right to restriction of processing and when this applies
- GDPR article 21; definition of a data subject's right to object and when this applies

What are the individual rights under GDPR?

There are 8 rights in total under GDPR that individuals can exercise at any given time. There is detailed specific scope to when these can be exercised dependent on the situation and the circumstances involved. These rights are as follows –

- The right to be informed
- The right of access
- The right to rectification
- The right to erasure
- The right to restrict processing
- The right to data portability
- The right to object
- Rights in relation to automated decision making and profiling.

What should you know?

- An individual can make a request at any time to exercise one or more of these rights
- They do not need to provide you with a reason for the request
- You need to comply with the request within one month
- No charge can be made to the individual only when meeting specific criteria (please see guidance on Subject Access Request and Disclosures)

How to recognise when a request is being made?

An individual does not have to use specific terminology within GDPR, there is no specific identification in GDPR to validate a request. A valid request can be made by a clear indication that an individual is asking to action one or more of their rights.

THE RIGHT TO RECTIFICATION

Individuals have the right to have inaccurate personal data rectified and may also be able to have incomplete personal data completed. This right is closely linked to the data accuracy principle in GDPR where controllers have a legal obligation to ensure data is correct. Steps may have been taken to ensure it was correct when it was first obtained however, re-consideration should be made if a request is made.

WHAT YOU NEED TO KNOW

- Individuals have a right to have inaccurate personal data rectified, or completed if it is incomplete
- A request can be made in writing or made verbally
- Requests need to be responded to within one calendar month. Extensions can be requested if it's been acknowledged within a month of receiving the request and a valid reason for the extension has been provided
- The right is closely linked to the accuracy principle 1 (d) under Article 5 of the GDPR where data must be accurate and where necessary kept up to date

WHAT YOU NEED TO DO?

- Take reasonable steps to satisfy yourself that the data is accurate and to rectify the data if necessary, taking into account the arguments and evidence provided by the data subject
- Be confident that the individual making the request is the data subject
- It's important that the personal data is accurate, therefore greater effort should be put into checking its accuracy and, if necessary, steps taken to rectify it. Other parties who the data may have been shared with will need to be contacted
- It's good practice, to restrict the processing of the personal data in question whilst you are verifying its accuracy, even if the individual has exercised their right to restriction

WHAT IF THE DATA RELATES TO AN OPINION THAT'S BEING DISPUTED?

- It's difficult to conclude that the record of an opinion is inaccurate
- Records should be kept of both opinions as long as clearly shows the information is an opinion and who's opinion it is

WHAT IF THE DATA IS ACCURATE?

- Let the individual know that you are satisfied that the personal data is accurate, and tell them that you will not be amending the data
- Explain your decision, and inform them of their right to make a complaint to the ICO or another supervisory authority; and their ability to seek to enforce their rights through a judicial remedy
- Keep a record of the request to show that the individual challenged the accuracy of the data and the reasons for doing so

CAN WE REFUSE TO COMPLY?

- Should you feel a request for rectification is manifestly unfounded or excessive, for example where a request is repetitive in nature, you can apply a 'reasonable fee' or refuse to comply
- In either case you will need to strongly justify your decision

REMEMBER - GDPR does not give a definition of the term accuracy. However, the Data Protection Act 2018 (DPA 2018) states that personal data is inaccurate if it is incorrect or misleading as to any matter of fact.

THE RIGHT TO RESTRICT PROCESSING

Individuals have the right to restrict the processing of their personal data in certain circumstances. This means that an individual can limit the way that an organisation uses their data. Individuals have the right to restrict the processing of their personal data where they have a particular reason for wanting the restriction. This may be because they have issues with the content of the information you hold or how you have processed their data. In most cases you will not be required to restrict an individual's personal data indefinitely, but will need to have the restriction in place for a certain period of time.

WHAT YOU NEED TO KNOW

- Individuals have the right to request the restriction or suppression of their personal data. (Note – applies only in certain circumstances).
- When processing is restricted, you are permitted to store the personal data, but not use it.
- A request can be made verbally or in writing.
- Requests need to be responded to within one calendar month. Extensions can be requested if it's been acknowledged within a month of receiving the request and a valid reason for the extension has been provided.
- A fee cannot be charged.
- The right is closely linked to the right to rectification and the right to object.

WHEN DOES THE RIGHT APPLY?

- When an individual contests the accuracy of the data and you are in the process of verifying
- Data has been unlawfully processed and opts to restrict the processing.
- Data is no longer needed but data subject wishes you to keep it in relation to a claim.
- When an individual objects to the processing and consideration is being given to determine if there is legitimate grounds to override the objection.

WHAT DO WE NEED TO DO?

- A process should be in place to deal with requests.
- Be confident that the individual making the request is the data subject.
- Consider how you will store personal data for which processing is restricted.
- Ensure there are clear notes confirming that the processing of the data has been restricted and technical measures are in place to ensure that any further processing cannot take place and data cannot be changed whilst the restriction is in place.
- The use of data should not be used other than to store it unless you have the individual's consent, it is for the establishment, exercise or defence of legal claims, it is for the protection of the rights of another person or it is for reasons of important public interest.
- Inform others whom the information has been disclosed to that a request to restrict processing has been received.

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WHEN CAN THE RESTRICTION BE LIFTED?

- In many cases the restriction is only temporary, either when the accuracy of the data is in dispute or when the individual has objected to the processing and you are considering if there are legitimate grounds to override the request.
- Once a decision has been made and/or the appropriate action has been taken the restriction may be lifted. NOTE – Individuals must be informed first.

CAN WE REFUSE TO COMPLY?

- Should you feel a request to restrict the processing of personal data is manifestly unfounded or excessive, taking into account whether the request is repetitive in nature, you can apply a 'reasonable fee' or refuse to deal with the request.
- In all cases you will need to justify your decision.
- Inform the individual within one month of the receipt of the request of the reasons why no action is being taken, their right to complain to the ICO and the ability to enforce this right through a judicial remedy.

REMEMBER - The definition of processing includes a broad range of operations including collection, structuring, dissemination and erasure of data. Different methods can be used such as temporarily moving the data to another processing system, making the data unavailable to users or temporarily removing published data from a website

THE RIGHT TO ERASURE

The right to erasure gives individuals the right to have personal data erased. This is also known as the 'right to be forgotten'. The right is not absolute and only applies in certain circumstances.

WHAT YOU NEED TO KNOW

- The GDPR introduces a right for individuals to have personal data erased (Note – applies only in certain circumstances).
- The right to erasure is also known as 'the right to be forgotten.'
- A request can be made in writing or made verbally.
- You have one month to respond to a request. Extensions can be requested if it's been acknowledged within a month of receiving the request and a valid reason for the extension has been provided.
- A fee cannot be charged.
- This right is not the only way in which the GDPR places an obligation on you to consider whether to delete personal data.

WHEN DOES THE RIGHT APPLY?

- If the personal data is no longer necessary for the purpose which you originally collected or processed it for.
- Consent is used as the lawful basis for holding the data, and the individual withdraws their consent or on legitimate interests as a lawful basis and consent is withdrawn and there is no overriding legitimate interest to continue this processing.

Right to rectification, restriction, erasure and objection

- Data is processed for direct marketing purposes and the individual objects.
- Data is processed unlawfully (in breach of 1st principle of the GDPR).
- To comply with a legal obligation.
- Personal data has been processed to offer information society services to a child.

WHEN DOES THE RIGHT NOT APPLY

When you are processing information for the following:

- to exercise the right of freedom of expression and information;
- to comply with a legal obligation;
- to perform a task that is carried out in the public interest or in the exercise of official authority;
- for archiving purposes in the public interest, scientific research historical research or statistical purposes where erasure is likely to render impossible or seriously impair the achievement of that processing;
- for the establishment, exercise or defence of legal claims.

WHAT DO WE NEED TO DO?

- Any data that has been made public in an online environment reasonable steps should be taken to inform other controllers who are processing the personal data to erase links to, copies or replication of that data.
- Be confident that the individual making the request is the data subject.
- Any personal data disclosed to others, contact must be made to each recipient and inform them of the erasure, unless this proves impossible or involves disproportionate effort. If asked, individuals must be informed about these recipients.
- If the request stands (e.g. no exemptions applies) then all backup systems as well as live systems should be erased of the personal data.
- Be clear with the individual as to what will happen to their data when their erasure request is fulfilled.

CAN WE REFUSE TO COMPLY?

- Should you feel a request for erasure is manifestly unfounded or excessive, taking into account whether the request is repetitive in nature, you can apply a 'reasonable fee' or refuse to deal with the request.
- In either case you will need to justify your decision.
- Inform the individual within one month of the receipt of the request of the reasons why no action is being taken, their right to complain to the ICO and the ability to enforce this right through a judicial remedy.

KEY TIP – If no exemption applies, a request for erasure is immediate. You must stop to all processing and putting back up data 'beyond use'

THE RIGHT TO OBJECT

Individuals have the right to object to the processing of their personal data under Article 21 of GDPR. As a result of exercising this right, individuals can ask to put a stop to all processing of their personal data.

WHAT YOU NEED TO KNOW

- GDPR introduces a right for individuals to object to the processing of their personal data (Note – applies only in certain circumstances).
- The right is an absolute right when processing is used for direct marketing.
- Individuals must be informed of their right to object and how to exercise this right.
- Processing may continue when a request is received if there is a compelling reason for doing so.
- A request can be made in writing or made verbally.
- You have one month to respond to a request. Extensions can be requested if it's been acknowledged within a month of receiving the request and a valid reason for the extension has been provided.
- A fee cannot be charged.

WHEN DOES THE RIGHT APPLY?

- Individuals can object to the processing of their personal data if it's used for direct marketing purposes.
- Individuals request to object to the processing of their personal data if it's based on legitimate interest or in the public interest or under official authority (Note – you do not need to comply if there are legitimate grounds for the processing).
- Individuals request to object to the processing of their personal data if it's used for scientific or historical research or statistical purposes (Note – the right is more limited, no need to comply if the processing is necessary for the performance of a task carried out for public interest reasons).

WHAT DO WE NEED TO DO?

- Inform individuals of the right to object from the first point of communication.
- Be confident that the individual making the request is the data subject.
- If an objection is received to the processing of personal data and you have no grounds to refuse, you need to stop processing the data and consider erasing the data as processing is defined under the GDPR as 'storing'. However, this may not always be the appropriate action to take, e.g. if the data needs to be kept for other purposes then this should be kept separately so your still complying with the objection.

CAN WE REFUSE TO COMPLY?

- Should you feel a request to object is manifestly unfounded or excessive, taking into account whether the request is repetitive in nature, you can apply a 'reasonable fee' or refuse to deal with the request.
- In all cases you will need to justify your decision.
- Inform the individual within one month of the receipt of the request of the reasons why no action is being taken, their right to complain to the ICO and the ability to enforce this right.