LIVERPOOL HOPE UNIVERSITY

Guidance for Researchers

The General Data Protection Regulation (GDPR) governs the process or use of personal data. It stipulates that the law data processing must be lawful, fair and transparent. It protects the rights of the research participants of a particular study and ensures that their data is used according to the information they have been given about this particular study. Thus, the GDPR guarantees the fair and transparent use of the research data.

Under this Regulation, researchers may either be

a data controller: the body who determines the purposes and means of processing personal data.
or
a data processor: the body responsible for processing personal data on behalf of a controller.

The controllers are legally liable if data breaches occur and they are required to maintain records of detailing how personal data is processed.

Researchers are likely to fulfill both data controller and data processor roles at different stages of a research process. For example, a funder poses a research question/topic area and provides a budget for the study and a university research team is contracted to address the question. The funder is asking the research team to process data on the funder's behalf. The university team, however, decides on what to collect, how to do it, how to analyse and how to present the data. This makes the university team data controllers in their own right even although the funder retains overall control of the data as they commissioned it and can determine how they ultimately use the final data report. This may not always be the case in contract research and role clarification may be necessary. Advice is available from the Data Protection Officer.

The GDPR applies to **Personal Data**, which, as per Information Commissioner's Office's (ICO) definition, is "any information relating to an identifiable person who can be directly or indirectly identified in particular by reference to an identifier" such as name, identification number, location data or online identifier, and the like.

The GDPR's Article 9 requires the **Special Category Data** to have extra protective safeguards. These sensitive data pertain, for example, to race, politics, ethnic origin, religion, trade union membership, genetic, biometrics (where used for ID purposes), health, sexual orientation, sex life, medical or health conditions, disabilities, and the like.

> **NB**: Personal data that relate to **Criminal Convictions and Offences** are not included, but their processing requires extra safeguards, which Article 10 states as follows:
>
> "Processing of personal data relating to criminal convictions and offences or related security measures based on Article 6(1) shall be carried out only under the control of official authority or when the processing is authorised by Union or Member State law providing for appropriate safeguards for the rights and freedoms of data subjects. Any comprehensive register of criminal convictions shall be kept only under the control of official authority."

GDPR Requirements for Research

Researchers must specify the lawful basis for data processing: in most cases, this basis is the necessity for the university to perform a task in **the public interest or for its official functions**, and the task or function has a clear basis in law.

Note that the processing of **Special Category Data** as mentioned above requires an additional legal basis and normally such data processing is '**necessary for scientific or historical research for archiving in the public interest in accordance with safeguards**'.
The GDPR names 10 conditions for processing the Special Category Data (https://ico.org.uk/for-organisations/guide-to-the-general-data-protection-regulation-gdpr/lawful-basis-for-processing/special-category-data/), of which the following three are particularly noteworthy:

> Article 9 (a): the data subject has given explicit consent to the processing of those personal data for one or more specified purposes, except where Union or Member State law provide that the prohibition referred to in paragraph 1 may not be lifted by the data subject. In this context, informed consent is part of ethics; but it is not the legal basis for university research.
>
> Article 9 (e): processing relates to personal data which are manifestly made public by the data subject.
>
> Article 9 (j): processing is necessary for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes in accordance with Article 89 (1) based on Union or Member State law which shall be proportionate to the aim pursued, respect the essence of the right to data protection and provide for suitable and specific measures to safeguard the fundamental rights and the interests of the data subject. **This is the one most likely to be used.**
>
> Processing **Data Related to Criminal Offences** for research must still specify a lawful basis for processing under Article 6, but also needs to comply with the above-quoted Article 10.
>
> "*Processing of personal data relating to criminal convictions and offences or related security measures based on Article 6 (1) shall be carried out only under the control of official authority or when the processing is authorised by Union or Member State law providing for appropriate safeguards for the rights and freedoms of data subjects. Any comprehensive register of criminal convictions shall be kept only under the control of official authority.*"
>
> The ICO is due to issue further guidance on **Data Related to Criminal Offences**, which the researcher should consider and / or be aware of.

The GDPR requires **pseudonymised data**, which are neither anonymised qualitative data from interviews or focus groups nor anonymised quantitative data in longitudinal or experimental studies. According to GDPR's Article 4 (5), pseudonymisation "means the processing of personal data in such a manner that the personal data can no longer be attributed to a specific data subject without the use of additional information, provided that such additional information is kept separately and is subject to technical and organisational measures to ensure that the personal data are not attributed to an identified or identifiable natural person." Thus, pseudonymisation prevents the identification of the data subject. At the same time, it keeps within the university the personal data of the data subjects safely and separately. For further guidance pseudonymisation, see ICO 'Anonymisation code of practice' available online at https://ico.org.uk/media/1061/anonymisation-code.pdf).

Safeguards applied to research in the University context include conformity with its *Research Ethics Policy* (https://www.hope.ac.uk/media/research/documents/Research%20Ethics%20Policy.pdf), *Data Protection Policy* (https://www.hope.ac.uk/media/gateway/itservices/documents/Data%20Protection%20Policy.pdf), *Information Security Policy* (https://www.hope.ac.uk/media/gateway/itservices/documents/Information%20Security%20Policy.pdf) and other Policies and Procedures pertaining to data minimisation, (i.e. only collecting personal data that is essential for a study) and anonymising or pseudonymising (see below) such data whenever possible.

Demonstrating Transparency

The GDPR requires the researchers to inform their data subjects about how the data, which they provide for research, is handled. This information must be plain, concise and clear so that the data subjects can readily understand it. Information that is provided via web links should also be available in print format (e.g. as leaflets and posters) for participants who may not have easy web access. To ensure transparency to data subjects, the researchers can consider the following measures:

a) Privacy Notice for Researchers is available online and in a printed form in other places such as the library, schools, departments, centres and laboratories on university campus.

b) Departments and Research Centers can have personalised Privacy Notice for Research provided that the Data Protection Officer and relevant Research Ethics Committee have approved it.

c) Subject and study-specific information should be found in the *Information Sheet*, *Consent Forms* and other equal documents. GDPR's Article 7 (2) requires the researchers to ensure that the language used in such documents is plain, clear, concise, straightforward and distinguishable from general information. Where necessary, the language should be designed to suit the age/cognitive capacity of the data subjects. Thus, the data subjects can give specific and informed consent. GDPR's Article 4 (11) defines consent as ""any freely given, specific, informed and unambiguous indication of the data subject's wishes by which he or she, by a statement or by a clear affirmative action, signifies agreement to the processing of personal data relating to him or her".

d) Data subjects' right to withdraw data: researchers, following best ethical practices, will help their data subjects to fully and unambiguously understand their right to refuse and withdraw their data without detriment up until the time specified in the Information Sheet (usually two weeks via email to the researcher). The data subjects should fully and clearly know that the researchers collect their personal data to carry out their professional research. After the stipulated time is over and the data subjects had sufficient clarity about the nature, requirements and safeguards of the research, as explained in the Information Sheet, they cannot withdraw their data: These safeguards include:

i) The right of the data subject to access the data they have provided
ii) The right to rectify such data
iii) The right to restrict processing
iv) The right to object to processing.

If a data subject wishes to exercise their wider rights under GDPR, they should first seek the advice of the University Information Officer at gittinl@hope.ac.uk.

International Research

There are specific requirements to meet if personal data is to be transferred to non-EU countries. In this case, researchers must seek prior advice from the University Data Protection Officer at gittinl@hope.ac.uk.

Further Information
Hope's Research Ethics: http://www.hope.ac.uk/research/researchethics/
Information Commissioner's Office: https://ico.org.uk/

These details were correct in January 2019.