

**GDPR FAQ**

Contents

[**What is the GDPR? 2**](#_Toc526924002)

[**How do you define Personal Data? 3**](#_Toc526924003)

[**Sensitive Personal Data/Special Category Data? 3**](#_Toc526924004)

[**What are the GDPR principles? 3**](#_Toc526924005)

[**What does “Processing” of personal data mean? 3**](#_Toc526924006)

[**What are the conditions for lawful processing of personal data under the GDPR? 3**](#_Toc526924007)

[**What is the difference between a Data Controller and a Data Processor? 5**](#_Toc526924008)

[**What are the new rules around consent? 5**](#_Toc526924009)

[**Can data subjects request their own data under the GDPR as they can do currently? 6**](#_Toc526924010)

[**What other rights do data subjects have? 6**](#_Toc526924011)

[**What is a Data Breach? 6**](#_Toc526924012)

[**Does the GDPR require the College to make anyone aware when there is a breach? 6**](#_Toc526924013)

[**What are the penalties for non-compliance with the GDPR? 7**](#_Toc526924014)

[**What does “Data Protection by Design” mean? 7**](#_Toc526924015)

[**What is a Privacy Impact Assessment? 7**](#_Toc526924016)

**As a Member of Staff - What do I need to do?........................................................................7**

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# **What is the GDPR?**

The General Data Protection Regulation (GDPR) will replace the current UK Data Protection Act as from 25 May 2018. It will establish new rules governing how personal data is handled by organisations, and extend the rights of individuals regarding their own personal data.

**Key themes for the GDPR:**

* Transparency

*A right to know what is happening with your information, who holds it and what it is being used for.*

* Accountability

*Organisations must be held accountable for what they do with your information. People have the right to remain in control of their data and regulators must have strong powers to enforce against organisations that may abuse these rights.*

* Security

*Organisations must keep the information they hold safe.*

# **How do you define Personal Data?**

Personal data is any information relating to an identifiable individual. It can identify the individual directly or indirectly (i.e. in combination with other information), so could include name, identification number, location data, or other factors specific to the physical, mental, economic, cultural or social identity of the person.

# **Sensitive Personal Data/Special Category Data?**

GDPR defines a subset of personal data as Special Category Data, namely information

concerning:

* Racial or ethnic origin
* Political opinions
* Religious or philosophical beliefs
* Trade Union membership
* Genetic or biometric data
* Physical or mental health
* Sexuality or sex life

The rules regarding Special Category Data are stricter.

# **What are the GDPR principles?**

GDPR contains six key principles, or golden rules, which say that personal data must be:

1. Processed lawfully, fairly and transparently.
2. Collected for specified and legitimate purposes and not further used for other purposes incompatible with these (however, this rule is amended where the further purpose involves research).
3. Adequate, relevant and limited to what is necessary.
4. Accurate and kept up to date.
5. Only kept for as long as necessary for the purpose it was obtained for (however, this rule is amended where the data is being used for research).
6. Processed in a manner ensuring appropriate security.

# **What does “Processing” of personal data mean?**

It means any operation or set of operations that is performed upon personal data or sets of personal data, whether or not by automated means, such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, erasure or destruction.

# **What are the conditions for lawful processing of personal data under the GDPR?**

## The conditions for processing personal data are:

* + Consent of the data subject
  + Processing is necessary for the performance of a contract with the data subject or to take steps to enter into a contract
  + Processing is necessary for compliance with a legal obligation
  + Processing is necessary to protect the vital interests of a data subject or another person
  + 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
  + 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

## The conditions for processing special categories of data are:

* + Explicit consent of the data subject, unless reliance on consent is prohibited by EU or Member State law
  + Processing is necessary for carrying out obligations under employment, social security or social protection law, or a collective agreement
  + 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
  + 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 (or those who have regular contact with it in connection with those purposes) and provided there is no disclosure to a third party without consent
  + Processing relates to personal data manifestly made public by the data subject
  + Processing is necessary for the establishment, exercise or defence of legal claims or where courts are acting in their judicial capacity
  + 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
  + 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
  + 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
  + 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 is the difference between a Data Controller and a Data Processor?**

“Data controller” means a natural or legal person, public authority, agency or any other body that, alone or jointly with other determines the purposes and means of the processing.

“Data processor”, means a natural or legal person, public authority, agency or any other body that processes personal data on behalf of the controller.

For example the College is a data controller. The companies which provide services such as storage of records or destruction of confidential records are data processors as these are performing this task/processing this data on behalf of the data controller.

# **What are the new rules around consent?**

The GDPR sets a high bar for consent and the GDPR has been designed to give data subjects more control over how their data is used. **Some of the most important elements of consent under The GDPR are:**

* + Consent requires a positive opt-in. The notions of having to opt-out, of pre-ticked boxes or any other method of consent by default are not allowed.
  + Consent needs to be explicit.
  + We need to be specific, clear and concise with regard to what people are consenting to.

We need to be granular, rather than asking for blanket consent to cover a number of different things.

* + Consent should not be a pre-condition of accessing a service.
  + People should be able to withdraw their consent at any time easily.
  + We need to retain records of what people have consented to, and consent should be regularly refreshed.

# **Can data subjects request their own data under the GDPR as they can do currently?**

The GDPR contains a provision for data subjects to make a Subject Access Request, however the specifics of this are somewhat different to under the current Data Protection legislation. Currently the College can charge a fee of £10 and has 40 calendar days to provide the information. Under GDPR we can no longer charge a fee and have one month to provide the information.

# **What other rights do data subjects have?**

1. The right to be informed
2. The right of access
3. The right to rectification
4. The right to erasure
5. The right to restrict processing
6. The right to data portability
7. The right to object
8. Rights in relation to automated decision making and profiling.

# **What is a Data Breach?**

A personal data breach means a breach of security leading to the destruction, loss, alteration, unauthorised disclosure of, or access to, personal data. This means that a breach is more than just loss of personal data.

For example the College could be responsible for a personal data breach if a student record is inappropriate accessed or disclosed due to lack of internal controls, but also even if a record is retained longer than is necessary.

**Please note that at the first indication of a data breach or suspected data breach all personnel must contact the Data Protection Officer and the Executive Director People and Organisational Development immediately: Victoria Eastwood –** [**Victoria.eastwood@bdc.ac.uk**](mailto:Victoria.eastwood@bdc.ac.uk)**; direct line: 020 3667 0084. Janet Curtis Broni –** [**Janet.Curtis-Broni@bdc.ac.uk**](mailto:Janet.Curtis-Broni@bdc.ac.uk)**; direct line: 020 3667 0073.**

# **Does the GDPR require the College to make anyone aware when there is a breach?**

The GDPR will introduce a duty on all organisations to report certain types of data breach to the Information Commissioner’s Office, and in some cases to the individuals affected.

The College will be required to notify the relevant supervisory authority of a breach where it is likely to result in a risk to the rights and freedoms of individuals. If unaddressed such a breach is likely to have a significant detrimental effect on individuals – for example, result in discrimination, damage to reputation, financial loss, loss of confidentiality or any other significant economic or social disadvantage.

This will need to be assessed on a case by case basis. For example, we will need to notify the relevant supervisory authority about a loss of student and/or staff details where the breach leaves individuals open to identity theft. On the other hand, the loss or inappropriate alteration of a staff telephone list, for example, would not normally meet this threshold.

Where a breach is likely to result in a high risk to the rights and freedoms of individuals, we will be required to notify those concerned directly, as well as notifying the Information Commissioner’s Office.

Under the GDPR a notifiable breach has to be reported to the relevant supervisory authority within **72 hours** of the organisation becoming aware of it.

# **What are the penalties for non-compliance with the GDPR?**

Currently the Information Commissioner’s Office can fine an organisation up to £500,000 in the wake of a data breach. Under GDPR the potential fines are much higher. Depending on the nature of the offence, and which provisions of the GDPR it infringes, there are two fine structures available to the ICO.

* + A fine of up to ten million euros, or up to 2% of the annual worldwide turnover of the preceding financial year in case of an enterprise, whichever is greater.
  + A fine of up to twenty million euros, or up to 4% of the annual worldwide turnover of the preceding financial year in case of an enterprise, whichever is greater

# **What does “Data Protection by Design” mean?**

Privacy by design is an approach to projects that promotes privacy and data protection compliance from the start. Although not a requirement under the current Data Protection Act, this has long been championed as good practice by the ICO.

Under the GDPR, you have a general obligation to implement technical and organisational measures to show that you have considered and integrated data protection into your processing activities.

# **What is a Privacy Impact Assessment?**

Privacy impact assessments (PIAs) are a tool which can help organisations identify the most effective way to comply with their data protection obligations and meet individuals’ expectations of privacy. An effective PIA will allow organisations to identify and fix problems at an early stage, reducing the associated costs and reputational damage which might otherwise occur. PIAs are an integral part of taking a privacy by design approach, and will be mandatory under the General Data Protection Regulations (GDPR) for processes and technologies that are likely to result in a high risk to the rights of data subjects.

**As a Member of Staff - What do I need to do?**

* Privacy Notices should be completed and issued in all areas - Students/Suppliers/Members of the Public etc should be aware of what data we collect, why we collect it, what we do with it, how long we keep it, how we store it and how we dispose of it
* **ALL waste must be shredded before it leaves the College and college procedures followed for the disposal of waste**
* Documentation that is no longer required should be disposed of (deletion of electronic records/shredding of hardcopies)
* Desks should be left as clear of any documentation as possible and ALL confidential or sensitive information should be securely stored (i.e in a locked drawer/cupboard)
* Offices/Staffrooms/Portakabins should be locked when not in use
* Please be mindful of what is visible on computer screens - ensure your screen is locked if you leave your desk
* Check when you are sending emails that the recipient is correct before you press send
* Consider the content of emails before CCing people - are you sharing personal information with more people than necessary?
* Ensure all third parties are GDPR compliant and that you are confident any data from the College is being processed and stored correctly
* **If a data breach occurs we only have 72 hours to report this to the ICO (including evenings and weekends). If you suspect a data breach please contact myself or Janet Curtis-Broni in the first instance.**

**Assessments/Assignments**

* Please ensure that assessment and assignment paperwork is securely stored in offices and not left on display
* Please advise your line manager if you do not have adequate storage within your area
* A data audit will be undertaken of all areas before the end of term to ensure GDPR compliance

**Please consider the following if you take work home with you:**

* Is it necessary to take all the documentation?
* Is it confidential?
* Is it stored securely in a folder or box?
* Are the contents visible to anyone else?
* Where will it be kept at home?
* Can you ensure the information will not be seen by ANY third parties?
* Is it secure in the boot of the car or visible on the seat?
* How do you dispose of any work that has been taken home and is no longer required?  Do you bring it back to College to ensure it is disposed of correctly?  Do you shred items at home?

**Please Ask!**

If you are unsure on any aspect of GDPR, require further clarification or have any issues please do not hesitate to contact me:

Data Protection Officer: Victoria Eastwood – [Victoria.Eastwood@bdc.ac.uk](mailto:Victoria.Eastwood@bdc.ac.uk) (Ext 7084).