

# General Data Protection Regulations (GDPR) fact sheet number 3

## Processing data collected with the consent of the individual

If you use information about living individuals in your work or research, then this information will ideally have been gained directly from the individuals themselves. We need to consider though, what our reason / basis for processing this data is.

We were always required to have a 'condition of processing' when handling personal data under the Data Protection Act 1998, but the new GDPR now requires a 'legal basis' for this processing. There are six legal basis – one of them is consent. We now need to meet certain further criteria to ensure the consent is appropriate.

A person's consent to allow us to use their personal data must now be specific, informed, unambiguous and freely given, and must be given by a statement or a clear affirmative action. In simple terms, we need to ask people to opt in rather than opt out. What does that mean in practice?

In order to ensure that the consent we gather is **specific**, we must make sure that it is "unbundled". For instance, where we are asking the individual to agree to take part in a research project, we will need to ask for a separate indication that they also agree to us collecting, using and storing their data in the ways we say we will use it.

This will also mean that the consent is **unambiguous**; that is, the individual knows that they are signing up to something and what they are signing up to. This means we cannot make use of a pre-ticked box to indicate consent – a person must now always tick to either agree to a statement ("I agree to ....") or to express a choice between giving or not giving consent i.e. opt in rather than opt out. We also need to ensure that we can record this consent either in the form of a hard copy of the document signed or by capturing the fact that a box has been ticked on an electronic form.

A person's consent to us processing their data can only be **informed** if we make it clear who needs the data, what data we need to gather from them, what we will do with it once we have been given it, and how we will store / delete it in time. We already have what are known as fair processing / data collection notices which detail much of this information but it will be necessary to look at these again to make sure they contain as much information as possible. Further information about this subject is available in fact sheet number 4 – *Privacy / Fair Processing Notices*. In practice, the more information you give people, the more likely they are to provide us with their data.

Finally, for consent to be **freely given** there can be no issue of coercion, that is, "if you don't provide this information you won't be able to ....", and a person must be able to withdraw their consent at any time. If you think that it is not possible to carry out your work without the individual's data, then we are not able to rely on an individual's consent to carry out that processing. For example, we cannot award a student a degree without them providing details of who they are and what they are studying, or pay a member of staff without them providing details about themselves, their job and bank details. Therefore, their consent to providing their data cannot be freely given (even if it is specific, informed and unambiguous) because it is required. In this example, we can rely on another legal basis - that we need the data to complete a contract we have with the student / member of staff as our condition of processing / legal basis for processing.

If you gather any data locally using consent as your legal basis, you will need to review the information you provide to individuals and the forms you use to collect the personal data to see if it

is specific, informed, unambiguous and freely given. The following text can be used as a template for your own forms.

#### DRAFT TEXT

The [enter name of department /school /project team etc] of the University of Portsmouth wishes to process your personal data (that is, collect, use, store and destroy data that identifies you) as part of the [enter name of the project / survey / reason for requiring the data]. If you have any queries about this [project / survey / other reason for processing] please contact [enter contact details of someone in the dept / school or project team etc] or if you have any general queries about how your data will be processed, please contact the University's Data Protection Officer at [information-matters@port.ac.uk](mailto:information-matters@port.ac.uk) .

We ask for your consent to process the data we ask for in the [project / survey / other reason for processing], so that we can [enter here a description of why we need the data]. We will only share your personalised data with [enter here anyone with whom we might share the data outside of the Uni]. We will (not) store your data outside the EU.

Your personal data will be held securely on [University servers / held on paper in cabinets] for [how long do we keep the data in a way that can identify anyone?], and securely destroyed after that date. (If we might keep the information anonymously after this date it is best to explain that here and why we might do this).

You have the right to request a copy of the personal data we hold about you, to restrict the use of your personal data, the right to be forgotten, the right to data portability and the right to withdraw your consent to the use of your data. For more information on these rights, please see the information at the following links:

<http://www.port.ac.uk/departments/services/corporategovernance/gdpr/> or contact [enter here the contact details given in the first paragraph]. You also have the right to lodge a complaint about the use of your personal data to initially the University (email [information-matters@port.ac.uk](mailto:information-matters@port.ac.uk)) then to the Information Commissioner's Office (ICO) – for more information please see <https://ico.org.uk/for-the-public/raising-concerns/> .

#### END OF TEXT

If you have any queries on whether your forms – in hard or soft copy - will need changing and how, please contact the University's Data Protection Officer on x 3642 or [information-matters@port.ac.uk](mailto:information-matters@port.ac.uk)