

1 Introduction

- 1.1 The General Data Protection Regulation, under Article 17, introduces a right for individuals to have personal data erased. This right to erasure is also known as 'the right to be forgotten'.
- 1.2 Individuals can make a request for erasure verbally or in writing and the Commissioner's Office has one month to respond to the request.
- 1.3 The right is not an absolute and only applies in certain circumstances, however, the right is not the only way in which the GDPR places an obligation on the Commissioner's Office to consider whether to delete personal data.

2 Aims and Scope of this Policy & Procedure

- 2.1 The purpose of this policy is to set out the procedure that should be followed to ensure that a consistent and effective approach is in place for managing the erasure or deletion of data cross the Commissioner's Office. This policy applies to all Commissioner's Office staff, contractors and third party agents handling OPCC information assets. This policy is based on the guidance provided by the Information Commissioner's Office.

3 Who can make the requests

- 3.1 Any living individual whose personal data or information is stored, processed, or recorded through the Commissioner's Office.
- 3.2 A representative acting in a lawful capacity of another, such as a power of attorney.

4 Responding to Requests

- 4.1 The GDPR does not specify how to make a valid request, however, the Commissioner's Office has an application form to help facilitate the process. The request can be made verbally or in writing.
- 4.2 The request can be sent to any part of the Commissioner's Office, and staff will need to know how to process this and in the first instance forward to the Office Manager. The request itself need not even include the phrase 'right to erasure', Article 17, as long the request to erase personal data is understood as the purpose. If there is any doubt clarification should be sought from the individual.
- 4.3 Each request must be logged through the Office Manager.

4.4 In most cases the Commissioner's Office cannot charge a fee to comply with a request for erasure, unless the request is manifestly unfounded or excessive, in which case a "reasonable fee" for the administration costs with complying with the costs may be made.

5 Time Limits

5.1 The Commissioner's Office must act upon the request without undue delay and at the latest within one month of receipt. The time limit will start from the next day. One month is defined as one calendar month of 30 days. If the corresponding date falls on a weekend or a public holiday, you will have until the next working day to respond.

5.2 You can extend the time to respond by a further two months if the request is complex or if the Commissioner's Office have received a number of requests from the individual.

5.3 You must let the individual know without undue delay and within one month of receiving their request and explain why the extension is necessary. However, it is the ICO's view that it is unlikely to be reasonable to extend the time limit if:

- it is manifestly unfounded or excessive;
- an exemption applies; or
- you are requesting proof of identity before considering the request.

6 Processing a Right to Erasure Request

6.1 Similar to the process of a Subject Access Request, all of the information that is held on the individual needs to be identified and then established under what category it falls, whether there are any exemptions as listed in the next section.

6.2 Individuals have the right to have their personal data erased if:

- the personal data is no longer necessary for the purpose which you originally collected or processed it for;
- you are relying on consent as your lawful basis for holding the data, and the individual withdraws their consent;
- you are relying on legitimate interests as your basis for processing, the individual objects to the processing of their data, and there is no overriding legitimate interest to continue this processing;
- you are processing the personal data for direct marketing purposes and the individual objects to that processing;
- you have processed the personal data unlawfully (ie in breach of the lawfulness requirement of the 1st principle);
- you have to do it to comply with a legal obligation; or

- you have processed the personal data to offer information society services to a child.
- 6.3 Where data is to be erased it must also be ensured that further backup copies, or other information from emails, documents, or communications are likewise deleted or no longer retained.
- 6.4 While the right to erasure will remove most, if not all of the individual's data, we must retain the request and our action, to show that we have attempted to comply with Article 17. Until case law demands that we do not retain that information, good practice would deem we do so.

7 How does the right to erasure apply to data collected from children?

- 7.1 There is an emphasis on the right to have personal data erased if the request relates to data collected from children. This reflects the enhanced protection of children's information, especially in online environments, under the GDPR.
- 7.2 Therefore, if the Commissioner's Office has processed data collected from children, you should give particular weight to any request for erasure if the processing of the data is based upon consent given by a child – especially any processing of their personal data on the internet. This is still the case when the data subject is no longer a child, because a child may not have been fully aware of the risks involved in the processing at the time of consent.

8 Do we have to tell other organisations about the erasure of personal data?

- 8.1 The GDPR specifies two circumstances where you should tell other organisations about the erasure of personal data:
- the personal data has been disclosed to others; or
 - the personal data has been made public in an online environment (for example on social networks, forums or websites).
- 8.2 If you have disclosed the personal data to others, you must contact each recipient and inform them of the erasure, unless this proves impossible or involves disproportionate effort. If asked to, you must also inform the individuals about these recipients.
- 8.3 The GDPR defines a recipient as a natural or legal person, public authority, agency or other body to which the personal data are disclosed. The definition includes controllers, processors and persons who, under the direct authority of the controller or processor, are authorised to process personal data.
- 8.4 Where personal data 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. When deciding what steps are reasonable you should take into account available technology and the cost of implementation.

9 When Article 17 The Right to Erasure does not apply

9.1 The right to erasure does not apply if processing is necessary for one of the following reasons:

- to exercise the right of freedom of expression and information to comply with a legal obligation; this could include financial records or contracts that are required to be retained for a specific purpose of time period.
- for the performance of a task 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; or
- for the establishment, exercise or defence of legal claims.

10 Refusing a Right to Erasure Request

10.1 . The Commissioner's Office must inform the individual without delay and within one month of receipt of the request and must inform the individual about:

- The reasons you are not taking action
- Their right to make a complaint to the Data Protection Officer, or where needed the Information Commissioner's Office
- Their ability to seek to enforce this right through a judicial remedy.

11 Data Protection Officer

11.1 The Data Protection Officer is responsible for ensuring compliance and can investigate breaches or failures of legal compliance. The DPO does not determine how data is managed or the purpose for which it is used. If you wish to contact the DPO you can do so, by contacting The Data Protection Officer, Staffordshire Commissioner's Office, Block 9, Weston Road, Stafford, Staffordshire, ST18 0YY: The DPO can also be emailed at dpo@staffordshire-pfcc.pnn.gov.uk

Appendix A Flowchart for Right to Erasure

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1.0 Policy	10/4/2018	David Morris	Policy	Right to Erasure
0.1 Draft	6/4/2018	David Morris	Initial Draft	Right to Erasure

Attachments:

<https://ico.org.uk/for-organisations/guide-to-the-general-data-protection-regulation-gdpr/individual-rights/right-to-erasure/>