

# Public Protection Partnership Right to be Forgotten Policy

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## Introduction

The new General Data Protection Regulation (GDPR) replaces the longstanding Data Protection Act in May 2018. It significantly tightens up the rules on privacy and consent. The new General Data Protection Regulation increases individuals' rights on personal data and will be fully enforceable by May 2018. Under Article 17 of the GDPR individuals have 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.

## At a glance

- The GDPR introduces a right for individuals to have personal data erased.
- The right to erasure is also known as 'the right to be forgotten'.
- Individuals can make a request for erasure verbally or in writing.
- PPP have one month to respond to a request.
- The right is not absolute and only applies in certain circumstances.
- This right is not the only way in which the GDPR places an obligation on PPP to consider whether to delete personal data.

## When does the right to erasure apply?

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.

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

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. Therefore, if PPP process data collected from children, PPP 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.

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

The GDPR specifies two circumstances where PPP 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).

If PPP 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, PPP must also inform the individuals about these recipients.

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.

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.

### **When does the right to erasure not apply?**

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;
- 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.

The GDPR also specifies two circumstances where the right to erasure will not apply to special category data:

- if the processing is necessary for public health purposes in the public interest (eg protecting against serious cross-border threats to health, or ensuring high standards of quality and safety of health care and of medicinal products or medical devices); or
- if the processing is necessary for the purposes of preventative or occupational medicine (eg where the processing is necessary for the working capacity of an employee; for medical diagnosis; for the provision of health or social care; or for the management of health or social care systems or services). This only applies where the data is being processed by or under the responsibility of a professional subject to a legal obligation of professional secrecy (eg a health professional).

### **Can we refuse to comply with a request for other reasons?**

PPP can refuse to comply with a request for erasure if it is manifestly unfounded or excessive, taking into account whether the request is repetitive in nature. In either case a justification your decision will need to be made.

### **What should we do if we refuse to comply with a request for erasure?**

Inform the individual without undue delay and within one month of receipt of the request.

PPP should inform the individual about:

- the reasons PPP are not taking action;
- their right to make a complaint to a supervisory authority; and
- their ability to seek to enforce this right through a judicial remedy.

Also provide this information if PPP request a reasonable fee or need additional information to identify the individual.

### **Can we charge a fee?**

No, in most cases PPP cannot charge a fee to comply with a request for erasure.

However, as noted above, where the request is manifestly unfounded or excessive PPP may charge a “reasonable fee” for the administrative costs of complying with the request.

### **How long do we have to comply?**

PPP must act upon the request without undue delay and at the latest within one month of receipt.

PPP should calculate the time limit from the day after you receive the request (whether the day after is a working day or not) until the corresponding calendar date in the next month.

### **Can we extend the time for a response?**

PPP can extend the time to respond by a further two months if the request is complex or PPP have received a number of requests from the individual. PPP must let the individual know without undue delay and within one month of receiving their request and explain why the extension is necessary.

### **Can we ask an individual for ID?**

If PPP have doubts about the identity of the person making the request PPP can ask for more information. However, it is important that PPP only request information that is necessary to confirm who they are.

PPP must let the individual know without undue delay and within one month that you need more information from them to confirm their identity. PPP do not need to comply with the request until you have received the additional information.

### **PPP Processes**

GDPR requests will be processed by PPP in the same way as we currently process FOI requests. The Information compliant Officer for each of the council's we support will email the request to the Management Support officer. On receipt it will be recorded in the audit spreadsheet and the request will be directed to the correct Team Manager/s and System operators within the service to remove the data. They will reply when the request has been completed (within the 1 month time limit) and that will be recorded on the audit spreadsheet and the applicant informed that their request has been completed.

### **Monitoring and review:**

This process will be reviewed on an annual basis by the Senior Management Team. The Management Support Officer will hold in a secure folder the audit log of those who have used their right to be forgotten.

## Appendix A

### Checklists

#### Preparing for requests for erasure

- We know how to recognise a request for erasure and we understand when the right applies.
- We have a policy for how to record requests we receive verbally.
- We understand when we can refuse a request and are aware of the information we need to provide to individuals when we do so.

#### Complying with requests for erasure

- We have processes in place to ensure that we respond to a request for erasure without undue delay and within one month of receipt.
- We are aware of the circumstances when we can extend the time limit to respond to a request.
- We understand that there is a particular emphasis on the right to erasure if the request relates to data collected from children.
- We have procedures in place to inform any recipients if we erase any data we have shared with them.
- We have appropriate methods in place to erase information.



