

Retention and Erasure of Personal Data

The General Data Protection Regulation (“GDPR”) is a European regulation that applies to all European Economic Area countries from 25 May 2018. The GDPR is intended to improve and update the rights of individuals in relation to the processing of their personal information by embedding data protection as a cornerstone of all business activity.

The GDPR definition for personal data is:

“Any information relating to an identified or identifiable natural person” and

“an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person”.

The main changes brought in by GDPR are the requirements for transparency and documentation. Transparency requires that all Data Subjects (ie the person to whom the personal data relates to) are adequately informed of all data processing activities at the point the data is gathered. Documentation (accountability) requires that there are regularly reviewed written policies and procedures concerning the Processing of Personal Data and that these are embedded throughout an organisation.

This policy sets out the retention and erasure of personal data.

Retention of Personal Data

Generally personal data should only be retained for as long as necessary for the purpose of processing and for which it is processed. The retention periods can differ based on the type of data processed, the purpose of processing or other factors. Issues to consider include:

- Whether any legal requirements apply for the retention of any particular data. For example:
 - o Trade Law;
 - o Tax law;
 - o Employment law;
 - o Regulations regarding certain professions.
- In the absence of any legal requirements, personal data may only be retained as long as necessary for the purpose of processing it. This means data is to be deleted e.g. when:
 - o The data subject has withdrawn consent to processing where consent has been sought and obtained;
 - o A contract has been performed or cannot be performed anymore;
 - o The data is no longer up to date.
- Has the data subject requested the erasure of data or the restriction of processing?
- Is the retention still necessary for the original purpose of processing?
- Exceptions may apply to the processing for historical, statistical or scientific purposes.

During the retention period

There is a need to:

- Establish and verify retention periods for data considering the following categories:
 - The requirements of the business;
 - The type of personal data
 - The purpose of processing
 - Lawful grounds for processing; and
 - Categories of data subjects
- If precise retention periods cannot be established, identify criteria by which the period can be determined.
- Establish periodical reviews of data that is retained.

Expiration of the retention period

After the expiration of the applicable retention period, personal data does not necessarily have to be completely erased. It is sufficient to anonymise the data such that individuals cannot be identified from the data and where identification is not likely to take place. This may, for example, be achieved by means of:

- erasure of the unique identifiers which allow the allocation of a data set to a unique person;
- erasure of single pieces of information that identify the data subject (whether alone or in combination with other pieces of information);
- separation of personal data from non-identifying information (e.g. an order number from the customer's name and address); or
- aggregation of personal data in a way that no allocation to any individual is possible.

In some cases, no action will be required if data cannot be allocated to an identifiable person at the end of the retention period, for example, because:

- the pool of data has grown so much that personal identification is not possible based on the information retained; or
- the identifying data has already been deleted.

Information obligations

In addition to other information obligations, in the context of data retention data subjects must be informed of:

- the retention period;
- if no fixed retention period can be provided – the criteria used to determine that period; and
- the new retention period if the purpose of processing has changed after personal data has been obtained.

Retention Periods

Data Controller Berry M&H Beccles (Sarah Rudd – Human Resources Manager)

- Personal data shall be retained in accordance with:
 - o specific periods set out in applicable privacy notices; or,
 - o where not specified, in accordance with the purpose of satisfying any legal, regulatory, tax, accounting, or reporting requirements; or,
 - o specific consent wherever it has been obtained and not withdrawn;
- All retention periods shall be reviewed on a regular basis (which shall be no less than annually) to ensure that they remain appropriate and, if amended for whatsoever reason, relevant data subjects shall be informed of such change(s).