



## Data Protection and the Right to Erasure Policy

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*State whether this document is applicable to the University's collaborative partners*

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**University document:** Yes

*A University document applies across the institution, is approved by a committee of Council or Senate and is held in the University Policy Directory on SharePoint.*

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# Data Protection and the Right to Erasure Policy

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## Data Protection and the Right to Erasure Policy

### 1 Overview and purpose

- 1.1 In accordance with Data Protection legislation the University processes personal data relating to several individuals, such as staff, students, research participants and other third parties. Those individuals have several rights in relation to how their personal data is processed.
- 1.2 This policy relates specifically to the right to erasure, also known as the 'right to be forgotten'.

### 2 Scope

- 2.1 This Policy applies to any individual who wishes to remove/erase their personal data held by the University, under Article 17 of the UK General Data Protection Regulation (GDPR).<sup>1</sup> *"The data subject shall have the right to obtain from the controller the erasure of personal data concerning him or her without undue delay and the controller shall have the obligation to erase personal data without undue delay"* where certain grounds apply.
- 2.2 Individuals have the right to request their personal data be erased if:
  - a. the personal data is no longer necessary for the purpose in which the University collected/processed it for;
  - b. the University relied on consent as its lawful basis for processing, and the individual has withdrawn their consent;
  - c. the University relied on legitimate interests as its lawful basis for processing the personal data, but the individual has objected to the processing and there is no overriding legitimate interest to continue the processing;
  - d. the personal data has been processed for direct marketing purposes and the individual objects to that;
  - e. the personal data has been processed unlawfully; or
  - f. the personal data must be erased to comply with a legal obligation.
- 2.3 The right to erasure does not apply if processing is necessary for one of the following reasons:
  - a. to exercise the right of freedom of expression and information;
  - b. to comply with a legal obligation;
  - c. for the performance of a task carried out in the public interest or in the exercise of the University's official authority;
  - d. 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
  - e. for the establishment, exercise or defence of legal claims
- 2.4 Under the UK GDPR, there are also two circumstances where the right to erasure will not

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<sup>1</sup> Art. 17 GDPR; Right to erasure ('right to be forgotten'): <https://gdpr-info.eu/art-17-gdpr>

apply to special category data:

- a. if the processing is necessary for public health purposes in the public interest; or
- b. in certain circumstances, if the processing is necessary for the purposes of preventative or occupational medicine.<sup>2</sup>

### **3 Responsibilities**

- 3.1 The University Leadership Team (on behalf of the University, as Controller) have overall responsibility for ensuring that the organisation complies with its legal obligations.

**A** Information Governance Committee (IGC)

- 3.2 IGC is responsible for ensuring that individuals can exercise their right to obtain the erasure of their personal data from the University and shall ensure via appointed System Owners that systems can fulfil the University's obligation and documented processes are in place to enable personal data to be erased or to be put beyond use where the right applies.

**B** Data Protection Officer

- 3.3 The Universities Data Protection Officer or staff instructed by the Data Protection Officer will consider erasure requests on behalf of the University. They act as a first point of contact for individuals who wish to exercise their right of erasure and will liaise with the relevant internal colleagues/departments to comply with the request.

**C** Staff

- 3.4 All staff are responsible for familiarising themselves with this policy and must ensure that:
- a. any request for the erasure of personal data is brought to the attention of the Data Protection Officer immediately; and
  - b. they act in accordance with any advice or request from the Data Protection Officer to respond to an individual's request for erasure.

### **4 Policy**

- 4.1 The UK GDPR sets out a number of principles relating to the processing of personal data including:
- a. personal data shall be processed lawfully, fairly and in a transparent manner;
  - b. personal data shall be collected for specified, explicit and legitimate purposes and, generally, not used for other purposes; and
  - c. personal data should not be kept in a form that enables an individual to be identified for longer than is necessary for the purposes for which the personal data are processed.
- 4.2 An individual can request the erasure of some or all their personal data or from a particular system or file. The request can be made verbally or in writing. It can be made to any part of the University and does not need to be made to a specific person or contact point. Proof of identity will be required by the University before a request will be considered valid.

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<sup>2</sup> Art. 9 GDPR; Processing of special categories of personal data: <https://gdpr-info.eu/art-9-gdpr>

- 4.3 The University publishes details about 'Right to Erasure' requests on the external webpage.<sup>3</sup>
- 4.4 The University will not generally charge a fee for complying with a request for erasure, unless the request is manifestly unfounded or excessive in which case a reasonable fee may be charged for the administrative costs of complying with the request.
- 4.5 On receipt of a request and proof of identity, the University will consider whether the individual has a right to erasure of their data. The right to erasure is not absolute and the University will take account of the limitations in the UK GDPR as well as the exemptions within the Data Protection Act 2018, in considering the request e.g. core student record.
- 4.6 Where the individual has a right to erasure, the University may refuse to comply with the request if it is manifestly unfounded or excessive. The University will consider whether the request is repetitive in nature. If the request is manifestly unfounded or excessive, the University may refuse to deal with the request or may ask for a reasonable fee to deal with the request.
- 4.7 Before the erasure of any personal data, the University will advise the individual as to what will happen to their data and if their erasure request fulfilled, including in respect of backup systems, and the impact on their other data rights under the UK GDPR, such as the right of access.
- 4.8 Erasure means, where possible, the University will ensure destruction of personal data, i.e. its irretrievable removal. This will mean physically destroying the data (such as paper records) or permanently removing the data from electronic systems or devices, to ensure it can never be restored.
- 4.9 In some instances, it is not possible to destroy data and, instead it will be deleted so that it is no longer available for use, although it would still be recoverable. This is in line with guidance published by the Information Commissioners Office (ICO) which recognises that is not always possible to permanently remove data from systems. Instead, data will be 'put beyond use' as follows:
  - a. personal data has been deleted no intention on the part of the University to use or access the data again;
  - b. the University is not able, or will not attempt, to use personal data to inform any decision in respect of the individual or in a manner that affects the individual in any way;
  - c. there are appropriate technical and organisational security measures in place in relation to the personal data; and
  - d. the personal data will be permanently destroyed if, or when, that becomes possible.
- 4.10 In dealing with a request for erasure, the University will also take steps to ensure erasure from backup systems as well as live systems. Those steps will depend on the circumstances of the request, the University's Backup Retention Schedule and the technical mechanisms that are available. For example, personal data may remain within the backup environment for a certain period until it is overwritten.
- 4.11 The University will tell other organisations about the erasure of personal data in the

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<sup>3</sup> Data Protection and Subject Rights: <https://www.hull.ac.uk/policies-and-information/data-protection-and-subject-rights>

following circumstances:

- a. where the personal data has been disclosed to others; and
  - b. the personal data has been made public in an online environment
- 4.12 Where the personal data has been disclosed to others including other departments, the University will contact each recipient and inform them of the erasure, unless that is not possible or involves disproportionate effort.
- 4.13 Where the 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 erasure links to, copies or replication of that data. When deciding what steps are reasonable, the University will take account of available technology and the cost of implementation.

## **5 Legislation and good practice**

- 5.1 Data Protection Act 2018.<sup>4</sup>
- 5.2 ICO guidance on individual rights.<sup>5</sup>
- 5.3 ICO guidance on right to erasure.<sup>6</sup>

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<sup>4</sup> Data Protection Act 2018: <https://www.legislation.gov.uk/ukpga/2018/12/contents/enacted>

<sup>5</sup> A guide to individual rights: <https://ico.org.uk/for-organisations/uk-gdpr-guidance-and-resources/individual-rights/individual-rights>

<sup>6</sup> Right to erasure: <https://ico.org.uk/for-organisations/uk-gdpr-guidance-and-resources/individual-rights/individual-rights/right-to-erasure>

## 6 Version control

| Version | Author                  | Date approved | Relevant sections |
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