



DEPARTMENT OF JUSTICE AND EQUALITY

Data Protection Policy

May 2018

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1. Introduction

The Department of Justice and Equality (hereinafter referred to as DJE) works to make Ireland a safe, fair and inclusive place to live and work.

As the Government Department whose responsibilities include:

- the security of the State
- the protection of life and property
- the prevention and detection of crime
- maintaining and promoting fairness and equality
- managing inward migration to the State
- updating our criminal and civil laws
- various other regulatory services
-

DJE necessarily collects, processes and stores significant volumes of personal data from our customers, staff and service providers.

In accordance with the EU General Data Protection Regulation, 2016/679 (GDPR) as given further effect in Part 3 of the Data Protection Act 2018, DJE is a 'Data Controller' and, as such, has significant responsibilities for ensuring the privacy of data subjects and the protection of personal data processed.

GDPR defines personal data as

“any information relating to an identified or identifiable natural person (data subject)”

This definition provides for a wide range of personal identifiers to constitute personal data, including name, identification number (e.g. PPSN), location data or online identifier and covers all electronic, manual and image data which may be held on computer or on manual files.

Note: The key definitions used in the GDPR are set out in Appendix A.

2. Scope

This policy applies to DJE and is available to all agencies and executive offices to apply to data processing for which they act as 'Data Controller'.

This policy applies to all personal data collected, processed and stored by DJE in respect of all individuals, (i.e. staff, customers and service providers) by whatever means including paper and electronic records.

This policy takes account of best practice in the area of data protection using resources available on the website of the Data Protection Commission and the European Commission.

3. Data Protection Principles

The six principles¹ of the General Data Protection Regulation (GDPR) require that personal data is:

1. Processed in a way that is lawful, fair and transparent;
2. Collected for specified, explicit and legitimate purposes and not further processed in a manner that is incompatible with those purposes;
3. Adequate, relevant and is limited to what is necessary;
4. Accurate and kept up to date;
5. Kept in a form which permits identification of data subjects for no longer than is necessary for the purposes for which the personal data are processed; and
6. Processed in a manner that ensures appropriate security of the data.

Article 5(2) of the GDPR also obliges DJE to *“be responsible for, and be able to demonstrate, compliance with the principles”*.

Application of Data Protection Principles in the Department of Justice and Equality

GDPR requires that the processing of personal data is conducted in accordance with the data protection principles set out above. DJE’s policies and procedures are designed to ensure compliance with these principles.

3.1 Personal data must be processed in a way that is lawful, fair and transparent²

Article 6 of the GDPR sets grounds on which personal data processing is lawful. These grounds include:

‘processing is necessary for compliance with a legal obligation processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller

¹ Article 5

² Article 6 of the GDPR and Section 34 of the Data Protection Act, 2018 refer.

Section 37(1) of the Data Protection Act, 2018 further states that processing is lawful where it is required for:

'..... the performance of a function of a controller conferred by or under an enactment or by the Constitution.....'

Much of the personal data processing by DJE is carried out for the performance of the Minister's functions or in the public interest. The functions of the Minister for Justice and Equality, underpinned by Bunreacht na hEireann Article 28.12 and the Ministers & Secretaries Act 1924 (as amended), are included in Appendix 2, Table 1 to this document. Table 2 lists tasks carried out in the public interest in DJE, for which personal data may also be processed.

In addition, personal data is processed by DJE in compliance with certain legal obligations to which DJE is subject.

DJE may also process personal data in accordance with certain contracts it has put in place and, in limited circumstances, where it has a legitimate interest in processing specified personal data.

In very limited circumstances, DJE may request the consent of the data subject to process their data. In such cases, consent will be sought at the time that the data is collected and the data subject will be advised that they can withdraw their consent at any stage during processing.

DJE will be fully transparent in relation to how personal data collected is used, in particular ensuring that the data is not used in a way that a data subject would not expect. DJE will provide the required information to data subjects when the personal data is collected. DJE will ensure that the information is provided in an intelligible form using clear and plain language. In order to ensure that the information provided is comprehensive and always accessible, DJE may make detailed information available on its website or in booklet format.

3.2 Personal data can only be collected for specific, explicit and legitimate purposes

DJE processes personal data only for the purposes for which it is collected.

Any further proposed processing of data (regardless of apparent compatibility with original purpose) will be the subject of an impact assessment to ascertain if it poses a risk to the rights and freedoms of the data subject. This assessment may take the form of a data protection impact assessment (see Section 5.5 below).

3.3 Personal data must be adequate, relevant and limited to what is necessary for processing (data minimisation)

DJE will ensure that the data collected and held is the minimum amount required for the specified purpose. DJE will not collect personal data unnecessary to the business purpose. All personal data requests issued by DJE will clearly state the business purpose for the collection of such data.

3.4 Personal data must be accurate and kept up to date

In order to ensure that the functions of the Minister for Justice and Equality are delivered efficiently and effectively, DJE will ensure that, where possible, all personal data held is kept accurate and up to date. DJE Divisions holding personal data are responsible for ensuring that all manual/computer procedures are adequately maintained and that, where notified of inaccuracies, the personal data will be corrected in a timely manner.

Data subjects have the right to have inaccurate data held by DJE updated or erased, as appropriate.

3.5 Personal data is only held for as long as is necessary

DJE will ensure that a data retention policy is in place, which establishes the length of time that personal data is retained and the purpose(s) of its retention. DJE will ensure that data is not be retained for longer than it is required and will be properly destroyed/deleted when it is no longer needed.

In this regard, it is important to note that DJE has limited control in relation to record destruction due to obligations, which arise under the National Archives Act, 1986 and the Freedom of Information Act, 2014.

3.6 Personal data is processed in a manner that ensures appropriate security of the data

DJE maintains the highest standards of technical, organisational and physical security measures to ensure that personal data held/processed is secure at all times. Security systems, measures and policies are constantly reviewed and where necessary updated. DJE staff have undergone training in relation to their personal responsibilities for the protection of personal data.

4.0 GDPR - Rights of 'data subjects'

Subject to Section 60 of the Data Protection Act, 2018 and any associated Regulations, the GDPR specifies the following rights for data subjects:

- right to be informed/right of access

- right to rectification
- right to erasure
- right to restrict processing
- right to data portability
- right to object to processing
- rights in relation to automated decision making and profiling.

4.1 Right to be informed and right of access

As noted previously data subjects have the right to be informed by DJE about the collection and use of their personal data. In addition, they have the right to access their personal data and other supplementary information, as appropriate.

DJE has implemented procedures to ensure that all such Subject Access Requests (SARs) are responded to within the one month period as required under Article 12 of the GDPR.

Further information on making a Subject Access Request can be found on our website at http://www.justice.ie/en/JELR/Pages/Data_Protection

4.2 Right to rectification

Data subjects have the right to have inaccurate personal data held by DJE rectified and to have incomplete personal data updated so that it is complete.

On receipt of a request from a data subject for rectification of their personal data, DJE will take reasonable steps to ensure that the data held is accurate and will ensure that data is rectified, where necessary.

4.3 Right to erasure

Article 17 of the GDPR provides for the right of data subjects in certain circumstances to have their personal data erased ('right to be forgotten').

The right to erasure is not an absolute right and does not apply in circumstances where DJE's processing of personal data is necessary in particular:

- for the performance of a function of the Minister or a task carried out in the public interest (Appendix 2 Tables 1 & 2)
- for archiving purposes in the public interest, scientific research, historical research or statistical purposes; or
- where the data is required for the establishment, exercise or defence of legal claims.

Where a data subject is of the opinion that elements of personal data held by DJE are incorrect, they may make a request in writing to have such data permanently erased.

DJE will review all such requests and, where appropriate, will erase the data in question.

4.4 Right to restriction of processing³

A data subject has the right to obtain a restriction in relation to the processing of their personal data where any one of the following applies:

- the data subject contests the accuracy of their data. The restriction will apply for a period enabling DJE to verify the accuracy of the personal data;
- the processing is unlawful and the data subject does not wish to have the data erased, but rather wishes to restrict its' use;
- DJE no longer requires the data in question but the data subject seeks its' retention in order to establish, exercise or defend a legal claim; or
- the data subject has objected to the processing of their data by DJE. The restriction will apply pending verification on whether DJE's legitimate grounds for processing overrides the data subjects concerns.

As a matter of good practice, DJE will restrict the processing of personal data whilst a review of the accuracy of the data and/or the legitimate grounds for processing the data is carried out. This restriction of processing will take into account any Regulations made under Section 60 of the Data Protection Act, 2018.

4.5 Right to data portability

The collection of a significant proportion of personal data by DJE is lawful in accordance with Article 6.1(c) or 6.1(e) of the GDPR i.e. *'necessary for compliance with a legal obligation'* or *'necessary for a task carried out in the public interest or in the exercise of official authority vested in the controller'*.

In cases where DJE has collected personal data from a data subject by consent or by contract, that data subject can request DJE to provide the data in electronic format in order to provide it to another Data Controller. DJE will comply with all such legitimate requests.

4.6 Right to object to processing

Under Article 21 of the GDPR, data subjects have a right to object to the processing of their personal data in specific circumstances. Where such an objection is received, DJE will assess each case on its' individual merits.

³ Article 18

4.7 Right not to be subjected to automated decision making⁴

Data subjects have the right not to be subjected to a decision based solely on automatic processing, including profiling, that have a legal or similarly significant effect on them.

DJE will ensure that no decision issued to a data subject is based on automatic processing alone.

4.8 Complaints

Data subjects who may be concerned that their rights under the GDPR are not upheld by DJE can contact the DJE's Data Protection Officer (DPO). The DPO will engage with the data subject in order to bring their complaint to a satisfactory conclusion.

The DPO can be contacted at dataprotectioncompliance@justice.ie.

Where the complaint to the DPO cannot be resolved, the data subject will be informed in writing and will be further informed of their right to bring their complaint to the Data Protection Commission.

5.0 Responsibilities of DJE

DJE is responsible for the following:

5.1 Implementing and maintaining appropriate technical and organisational measures for the protection of personal data.

DJE has implemented appropriate technical and organisational measures to ensure that all data held under its control is secure and is not at risk from unauthorised access, either internal or external. Measures for the protection of personal data are reviewed and upgraded, where appropriate, on an ongoing basis.

5.2 Maintaining a record of data processing activities

DJE maintains a written record of all categories of processing activities for which it is responsible in accordance with GDPR Article 30.

5.3 Data Protection agreements with personal data recipients

On an ongoing basis, DJE puts in place appropriate contracts/memoranda of understanding/bilateral agreements with third parties where personal data is shared. This includes state agencies and other government departments. The agreements specify the purpose of sharing the data, the requirements for security of the data and

⁴ Article 22

the requirements for termination of the agreement and the return/deletion of the data shared.

5.4 Data Protection by design and default

In accordance with Article 25 of the GDPR, DJE implements technical and organisational measures to give effect to the principles of the protection of personal data and to ensure that, by default, only personal data necessary for each specific purpose of the processing are processed.

Such measures include the development of organisational policies and procedures such as Acceptable Usage Policy and Digital Communications Policy and the implementation of security measures to secure the data.

5.5 Data Protection Impact Assessment (DPIA)

Where DJE considers that proposed processing (in particular processing that involves new technology), poses a high risk to the rights and freedoms of the data subjects involved, DJE will carry out a DPIA.

DJE's Data Protection Officer will be consulted in relation to each DPIA completed. Where technical and/or organisational measures proposed will not mitigate the high risks previously identified, the Data Protection Commission will be consulted as appropriate.

5.6 Transfer of personal data outside of the European Union

DJE will ensure that appropriate safeguards are in place prior to transferring any personal data outside of the European Union.

5.7 Personal data breaches

The GDPR defines a personal data breach as meaning

'a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, personal data transmitted, stored or otherwise processed'.

Staff in DJE will notify DJE's Data Protection Officer where they identify or suspect a breach of personal data. In accordance with GDPR, the DPO will notify the Data Protection Commission without undue delay where a breach is likely to result in a risk to the rights and freedoms of the data subject(s) involved.

The DPO will also assess if the breach is likely to result in a high risk to the data subject(s) involved. Where a high risk is identified, the DPO will arrange for the data subjects to be notified.

5.8 Data Protection Governance

Compliance with the GDPR is a key requirement for DJE. DJE's compliance framework (a key element of DJE's Corporate Governance Framework) will detail the arrangements in place to oversee, monitor and ensure compliance with data protection legislation.

5.9 Data Protection Officer

In compliance with Article 37.1(a) of GDPR, DJE has a designated Data Protection Officer (DPO). In accordance with Article 38, DJE will involve the DPO in a timely manner in all issues, which relate to the protection of personal data and will support the DPO in performing the tasks referred to in Article 39 *Tasks of the Data Protection Officer*. The tasks assigned to DJE's Protection Officer in Article 39 include the following:

- Informing and advising DJE and staff who process personal data, of their obligations under data protection legislation;
- Monitoring compliance with the GDPR and the Data Protection Act, 2018 and the policies of DJE in relation to the protection of personal data, including the assignment of responsibilities, awareness-raising and training of staff and the related audits;
- Providing advice where requested as regards the data protection impact assessment and monitoring its performance;
- Cooperating with the Data Protection Commission;
- Acting as a contact point for the Data Protection Commission on issues relating to processing and prior consultation.

6.0 Data Protection Contacts

Data Protection Officer

Ms Eileen Tully
Data Protection Support and Compliance Office
Department of Justice and Equality
51 St. Stephen's Green
Dublin 2.

Phone: (01) 6028601 (Data Protection Support & Compliance Office)
Email: dataprotectioncompliance@justice.ie

The contact information for DJE's Data Protection Officer is published on DJE's website and has been notified to the Data Protection Commission.

Data Protection Commission

21 Fitzwilliam Square
Dublin 2.

and

Canal House
Station Road
Portarlinton
Co Laois.

Phone: (0761) 104 800

Email: info@dataprotection.ie

APPENDIX A

GDPR Key Definitions

Below are definitions of the key terminology used in the GDPR

Personal Data means any information relating to an identified or identifiable natural person ('data subject'); 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.

Data Subject is an individual whose personal data is processed.

Processing means any operation or set of operations which is performed on personal data, by manual or automated means, such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction.

Special categories of data means any data which reveals racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, genetic data, biometric data uniquely identifying a natural person, data concerning health or data concerning a natural person's sex life or sexual orientation.

Data Controller means the natural or legal person, public authority, agency or other body which, alone or jointly with others, determines the purposes and means of the processing of personal data.

Data Processor means a person, public authority, agency or other body who processes personal data on behalf of the controller

APPENDIX B

Table 1 - Functions of Minister for Justice and Equality
Provision of a Courts Service
Management of inward migration to the State (Immigration)
Ensuring the security of the State
Protection of life and property (Policing)
Provision of a Prison Service
Updating of criminal and civil laws (Law Reform)
Maintaining and promoting fairness and equality
Preventing and detecting crime
Ensuring access to justice
Administration of the Good Friday Agreement

Table 2 – Department of Justice and Equality - Public Interest Tasks
Communication with Citizens
Communication with Members of the Oireachtas
Internal Government Communications
Administration of Official Duties