



PRACTICAL GUIDANCE AND EXPERT TIPS

# THE RIGHTS OF DATA SUBJECTS UNDER THE GENERAL DATA PROTECTION REGULATION (GDPR)

# THE RIGHTS OF DATA SUBJECTS UNDER THE GENERAL DATA PROTECTION REGULATION (GDPR): HOW THE CHANGES WILL AFFECT YOUR ORGANIZATION

If your organization holds or processes personal data on individuals, EU Data Protection law provides these people (data subjects) with certain rights. Until recently these rights were codified under an EU Directive, which was then transposed into the national laws of each member state. This EU Directive has now been superseded by the General Data Protection Regulation (GDPR), published in May 2016 and due to come into effect from May 2018.

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## WHO IS AFFECTED

GDPR is a significant piece of legislation that will affect anyone who is based or conducts business in the EU. Much of GDPR brings together and standardises existing legislation across the EU, but there are also some important changes. Many of these expand individuals' rights over the personal data organizations hold on them. GDPR also introduces important new rights for data subjects such as the rights to erasure and data portability.

Organizations now have a brief window to familiarize themselves with these changes and prepare themselves for them. The most important ones, as they relate to data subjects, are outlined below:

## CHANGES THAT MAY INCREASE YOUR OBLIGATIONS

### 1. Time limits for complying

New time limits have been introduced for controllers to provide information to data subjects. In most cases this is one month, but where there are large numbers or complex requests, this may be extended by a further two months.

### 2. Rights of access

The categories of information which must be supplied in connection with a data subject access request have been expanded, placing a further administrative burden on organizations.

### 3. Eliminating fees for access

In most cases organizations will no longer be able to charge a small fee to respond to requests from data subjects. This opens up the possibility that groups of individuals may exercise their rights as a cheap but effective means of protest against an organization.

### 4. Broadening the right to be forgotten

Under GDPR the conditions under which people have a right to have their personal data erased (the right to be forgotten) have been clarified and thereby broadened. Organizations will now face a wider spectrum of requests with which they must comply.

### 5. The right to restrict processing

As with the right to be forgotten, GDPR specifies a much broader range of circumstances in which data subjects can require that the processing of personal data is restricted.

### 6. Notifying third parties

Organizations will now be required to implement systems and procedures for notifying affected third parties with whom they have shared personal information over which data subjects have exercised their rights.

### 7. Right of data portability

The right of data subjects to move their personal data between controllers (eg when moving an account from one company to another) may require a significant investment in new systems and processes.

## 8. Right to object to processing

Under GDPR, the onus has been reversed, so that instead of individuals having to object on compelling legitimate grounds relating to his/her particular situation to the processing, the controller must now establish on compelling legitimate grounds that the processing is in the public or the controller's legitimate interests.

## 9. Obligation to inform data subjects of the right to object

This is further information organizations will be obliged to provide to data subjects, requiring revisions to standard data protection policies and privacy notices.

## CHANGES THAT MAY MAKE YOUR LIFE EASIER

### 1. Identifying data subjects

Individuals must now provide proof of their identity before they can activate their rights.

### 2. Cases where you cannot identify data subjects

Controllers are not obliged to comply with certain rights of data subjects if they can no longer link the data (because it has been de-identified) to that data subject.

### 3. Right of data portability

Because data subjects have the right to transfer personal data between controllers, it is now easier for businesses to attract customers from competitors. Under GDPR the competitor must allow account information to be transferred.

## 4. Right not to be evaluated on the basis of automated processing

People have the right not to be evaluated (for offers of employment, insurance etc) solely on the basis of automated processing of their personal data. GDPR clarifies that data subjects may give their consent for this.

## 5. A single EU-wide policy

Providing their processing operations are the same across the EU and the policy is made available in the local language, organizations will now be able to have a single EU-wide privacy policy.

## THE NEXT STEP

Many of the changes are quite detailed, with subtleties that cannot be fully expressed in a short document. Organizations must use the time between now and 2018 to familiarize themselves with how GDPR will affect them and the steps they will need to take. Once GDPR is fully enforced there will be serious fines for breaches of compliance.

For over 60 years Iron Mountain has been advising organizations of all sizes across all sectors on best practice in managing their information. Our consultants are happy to discuss how they can help your business navigate its way through the maze of becoming GDPR compliant. In the meantime, download our latest ebook on GDPR for Information Governance Professionals.

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