

# Guide to archiving personal data

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Any enquiries regarding this publication should be sent to:  
[asd@nationalarchives.gov.uk](mailto:asd@nationalarchives.gov.uk)

*Please note that The National Archives is unable to advise data controllers of how to fulfil the provisions of data protection law in specific circumstances. You should contact your data protection officer.*

## **Acknowledgements**

This guide is the result of co-creation with the archives sector. It is the work and views of a number of individuals, groups and organisations. The co-creators of the guide included members of the Steering group and the Review group. There were also numerous contributions after a period of public comment. Thanks to all these individuals that provided their suggestions, time and support to create this guide.

Particular thanks for their suggestions and contributions must go to the members of the Steering group:

- Chair, University College London – Elizabeth Lomas
- The National Archives – Stuart Abraham, Malcolm Todd and Anna Sexton
- National Records of Scotland – Laura Mitchell and John Simmons
- Museums, Archives and Libraries, The Welsh Government – Mary Ellis and Sarah Horton
- Public Record Office of Northern Ireland – David Huddleston and Jayne Hutchinson
- Archives and Records Association (UK and Ireland) – Jon Elliott
- National Archives, Ireland - Niamh McDonnell

The National Archives is very grateful to Susan Healy for discussing her early thinking on archiving in the public interest with us and permitting those discussions to inform the preparation of this Guide.

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## Foreword

Archives are special places. They are our collective memory. They help us to understand the past, make sense of the present, and guide us for the future. And in an age of fake news, misinformation and opaque institutions, archives are more important than ever in helping to uphold democracy and hold power to account.

They also hold a special place in my heart. I began my professional career in local government archives. My first leadership role was City Archivist for the City of Calgary in Canada. Making decisions about the preservation and accessibility of information laid the foundation for my current work in helping individuals and organisations navigate the digital age.

As the UK's Information Commissioner I oversee information rights legislation that, on the one hand, promotes openness, transparency and access to information, and on the other, requires data privacy for individuals. It is my job to balance these competing rights and interests.

The General Data Protection Regulation (GDPR) and the Data Protection Act 2018 set the rules for data privacy. They place obligations on organisations and give people control over their personal data. Amongst other things, people have the right to know why their data is being used, and can request that it is corrected or erased.

But data protection is not an end in itself. It does not prevent archiving, it supports it. Good data protection leads to effective data governance and records management - two essential elements of archiving. Data protection law also specifically recognises the importance of archives. There is no inherent conflict with archiving in the public interest; data protection law provides for it through various provisions.

This guide identifies, clarifies and explains those provisions relevant to the use of personal data in archiving. It underpins and supports the continued important work of archivists - preserving and making available records for the needs of society now and in the future. I hope this guide helps ensure that this important work continues.

Elizabeth Denham  
Information Commissioner

### **Key messages in this Guide**

- Data Protection law shapes archiving of personal data. It supports it and does not prevent it;
- Personal data worthy of permanent preservation should be safeguarded by record keepers until it is archived;
- The new archiving in the public interest purpose adapts the operation of various principles and maintains exemptions from data subject rights such as the right to be forgotten and data rectification where the necessary safeguards are met.

## Summary

- The Data Protection Act 1998 has been replaced by new legislation;
- The new laws enhance the protection of information about people, giving them greater control over it, while still enabling legitimate use by others;
- Data protection applies to processing of digital information about people, and information about people in manual filing systems;
- In general, personal data must be processed for a specified purpose, and kept for no longer than that purpose requires. Individuals have greater rights over their data, including the so-called 'Right to be forgotten';
- However, the law recognises there is a public interest in permitting the permanent preservation of personal data for the long-term benefit of society;
- There is a specific purpose for this – 'archiving in the public interest' with various exemptions. This can apply to archiving by public, private or voluntary bodies;
- The use of exemptions is subject to the implementation of appropriate safeguards to minimise any adverse impact on living individuals;
- In general, 'archiving' which complied with the 1998 Data Protection Act will continue to be permitted under the new law. There are some changes affecting archiving but they are not drastic;
- Those archiving will need to be more transparent than previously and ensure the archival processing of data is distinguished from processing that supports daily business. The archiving purposes in the public interest provisions do not apply to the daily business of a body e.g. marketing;
- Personal data preserved in archives is not expected to be kept 'up-to-date' in the same way as data still subject to operational use;
- Public use of 'archived' personal data will generally be possible once the people concerned are dead, and may be possible earlier if the [use is fair](#) to the individuals in the records.

## Introduction

1. The rules for handling information about living people in [archives](#) and records intended for transfer to archive services changed on 25 May 2018 with a new explicit provision, archiving purposes in the public interest. In practical terms, processing for archiving purposes under the new legislation is not very different from the previous Act and its effective safeguards. This guide helps you consider what is required for archiving. The change is more significant for the creation and processing of daily business information. The Information Commissioner's Office has published detailed guidance and resources on this.<sup>1</sup>
2. This guide concerns records that contain or consist of personal data that has been acquired by an archive service for preservation as part of its collections or is being assessed for this purpose. [Personal data](#) can be recorded in any form or format: databases and datasets, websites, digitised images, email, audio-visual material, as well as traditional paper files and registers. [Archive services](#) (defined in a wide sense as set out in annex A) may handle records of enduring value containing personal information about people who are still alive (e.g. school admission registers, court records, hospital records) and may create personal data themselves that is subject to the legislation (e.g. search room attendance registers, correspondence with owners of private records). Archive services sit in many different types of organisations – galleries, libraries, schools and museums as well as voluntary and community bodies and private companies. In this guide, the term archive services refers to all these different types of organisations that archive records in many formats. Some bodies may also be archiving without formally calling their collections an archive.
3. Inevitably archive collections contain personal information about people's public and private lives, but the purpose of archiving is primarily to maintain this information for use over the very long-term, when the potential for impact on individuals is low or non-existent. The new data protection law explicitly introduces the principle of transparency and highlights the importance of people's awareness and control over what happens to their personal data. For archiving purposes in the public interest, there are exemptions from some of the data protection obligations, but these are still subject to the implementation of appropriate safeguards. Other data protection purposes interrelate with archiving purposes in the public interest such as scientific and historical research (any research done with archive collections will be 'historical' in its widest sense), and freedom of expression and information may also be relevant to archives, either instead or in addition to archiving purposes in the public interest, but this guide does not cover them. There is also an ethical consideration to protect the privacy of people mentioned in records whilst they are alive.

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<sup>1</sup> <https://ico.org.uk/>



## Key concepts

### Personal data

4. Data protection law applies to 'personal data' meaning any information relating to an identifiable living person who can be directly or indirectly identified. It applies to both automated personal data and to manual filing systems where personal data are accessible according to specific criteria. This could include systematically ordered sets of manual files containing personal data. The Data Protection Act 2018 applies GDPR standards to [unstructured manual files](#) held by public authorities (manual personal data not held in a structured set), although there are several exemptions for this type of data.<sup>2</sup>

### Archiving

5. The activities involved in archiving purposes of records of enduring value are acquisition and selection/appraisal, accessioning, storage and preservation, arrangement and description, and provision of access for all types of research through inspection and publication. The UK archives sector spans public, private, charitable, voluntary, community and commercial organisations and groups. If personal data is being kept solely for a defined business or legal purpose and the intention is to destroy it after that has finished, this is not archiving purposes in the public interest.

### Scope

6. This guide provides important guidance on the purpose and exemptions for archiving in the public interest provided by data protection law which dictate how personal data is handled. It is intended for use by those working with potential or existing archive collections around the exemptions in data protection law for archiving. Many of the users of this guide will be archivists although it is intended to be used and referenced by anyone involved in archiving. With the repeal of the 1998 Data Protection Act, the previous code of practice for archivists and records managers is now obsolete. This guide has a narrower scope as set out in the table below.

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<sup>2</sup> See Data Protection Act 2018 section 24

Activity	Covered by Guide ✓	Not covered by Guide ✗
Business processing before archiving	Bodies holding personal data with the intent that they be part of an archive in the future either as part of their organisation or by transfer to an archives service.	Business purpose storage of data and general information management including offline storage. No intention to preserve beyond business use or records not of enduring value.
Archive service activities	Records received for in-house appraisal as well as material already appraised and held in collections.	Processing by archive services of data not held for archiving in the public interest purposes e.g. for marketing and fundraising or about staff and users.
Archive collections	Public and private bodies and voluntary groups preserving and making personal data directly or indirectly available, either now or in the future, to enable research, provide corporate memory or as continuing evidence of rights and obligations.	Research and re-use by members of the public of records held in or published by archive services.
Other		General compliance with data protection law or for other purposes such as for statistical or scientific and historical research purposes.

### Purpose of this guide

7. GDPR sets out a specific purpose which enables a number of exemptions for archiving, providing it complies with safeguards. This guide helps those intending to use such exemptions ([data controllers](#) and [data processors](#)). The data controller is the person (an individual or other legal person such as a company) who determines why, as well as how, personal data are to be processed. It is their duty to ensure that the collection and processing of any personal data within the organisation complies with the requirements of data protection law. A processor is responsible for processing personal data on behalf of a controller. Processing for archiving purposes relates to the many

formats in which records are held as well as the many types of organisations and groups that archive and provide archive services.

8. There are other purposes with exemptions from data protection duties that may also be relevant to archive services and especially their users, such as processing for freedom of expression and information (journalistic, academic and artistic or literary expression). The diagram below shows how the archiving purposes in the public interest exemptions described in this guide are part of a wider range of exemptions for specific purposes. This guide covers the archiving purposes in the public interest exemptions only.



9. This guide can also be used by those transferring records to archive services as they judge appropriate. This guide recommends how archive services should process records that contain personal data to enable the use of the records for research, now or in the future. It reflects article 89 of the GDPR and section 19 and schedule 2 part 6 of the Data Protection Act 2018 which, amongst other provisions, set out the special rules for archiving purposes in the public interest.
10. Following this guide will carry weight in the event that the actions of those involved in archiving processes are challenged. Departure from its provisions is not unlawful but will need to be otherwise justified in terms of compliance with the law. This guide is intended to be used in conjunction with general guidance published by the Information Commissioner. This guide does not constitute legal advice which should be sought as required. This guide does not reflect good practice and expertise in archiving from the past two decades under the previous Data Protection Act.

### Responsibilities of the archives sector

11. Archive services and organisations that archive need to understand the general principles, individuals' rights and particular safeguards that govern

personal data and its management and to ensure that their handling of it complies with the law. Ultimate responsibility for compliance with data protection law rests with the highest level of management, with advice from a Data Protection Officer if applicable. Archive services should ensure policies and procedures are compatible with the legislation, particularly in relation to storage, security and access to personal data.

12. There is a risk that over-cautious or inaccurate interpretation may lead to the weeding, anonymising or destruction of files containing personal data that would otherwise be passed to the archive service with managed access over time. An archive service's ability to permanently retain personal and special categories of personal data for the purposes of archiving in the public interest should therefore be made clear internally and to potential depositors. The law contains the necessary safeguards to permit archiving.

## Data protection law and archiving

### Data protection law has changed

14. The Data Protection Act 2018, plus its associated secondary legislation and the European Union's General Data Protection Regulation (GDPR), together referred to in this guide as Data Protection law, began to apply from May 2018. They supersede the provisions of the Data Protection Act 1998. The preservation and management of archives must take into account the new laws.



The law aims to:

- To protect individuals' fundamental rights and freedoms, in an increasingly data-driven world, in respect of personal data processing;
- To enable organisations to process personal information, with due regard for the rights and freedoms of individuals, in the course of their legitimate business.

15. The law applies to any processing of personal information. 'Processing' is the term used for virtually anything that can be done with or to recorded information, including acquisition, storage and destruction as well as active use. Controllers must have a lawful basis for any processing of personal data undertaken, ensure processing is in accordance with the principles described in the law and comply with the rights of the people to whom the data relates – 'data subjects'. Archive services may claim exemption from certain provisions in data protection law, such as the obligation to respond to access requests from data subjects and requests to erase data (right to be forgotten) when archiving in the public interest. Personal data is that of living people - 'This Regulation does not apply to the personal data of deceased persons'.<sup>3</sup>

### What does the change mean?

16. Data protection is not new. For the previous twenty years the UK archives sector followed the 1998 Data Protection Act without significant issue using guidance from the Information Commissioner and a code of practice aimed at

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<sup>3</sup> GDPR recital 27

archivists and records managers.<sup>4</sup> The guiding principle remains, namely that record creators and archive services can continue to process personal data in their collections for archiving purposes but should not cause substantial distress or substantial damage to the person whose data is being archived. Generally, processing for archiving purposes that has been legal under the Data Protection Act 1998 will likely continue to be lawful under the new data protection law. GDPR will not apply directly after UK withdrawal from the EU and the Data Protection Act does not transpose it. This is expected to be done via the European Union (Withdrawal) Act.

17. It is important to have a clear definition of what the scope of a body's archiving activity is, and what it seeks to achieve. This should be combined with a clear archiving function and policies within the organisation itself, so that the nature and scope of the archiving activity is distinguished from other purposes of processing. Indiscriminate or random archiving of personal data is unlikely to be compliant – and is in any case bad professional practice. Archive services (and those transferring records to archive services) need to update their awareness and documentation of their processing in line with the new legislation and ensure greater transparency for the archiving of personal data.

## What has changed?

### General Data Protection Regulation (GDPR)

18. The GDPR applies to records that contain personal information about identifiable living people. The previous concepts of a lawful basis, compliance with principles and exemptions with safeguards remain. There is a new explicit concept of '[archiving purposes in the public interest](#)' in the regulation rather than all archiving coming under the historical research provisions, as it did under the 1998 Act. Processing for archiving purposes in the public interest is not defined within GDPR itself although it is described in a recital. The term is explored in more detail elsewhere in the guide. The provision for archiving purposes in the public interest distinguishes between the:
  - collection, preservation and management, including dissemination, activities required to ensure that data is permanently preserved in a usable state (archiving purposes in the public interest); and
  - use of the data by the public or others, which may or may not take place for many years, such as for scientific or historical research purposes or for freedom of expression and information (journalistic, academic, artistic and literary expression) purposes.<sup>5</sup>

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<http://webarchive.nationalarchives.gov.uk/20170907054556/http://www.nationalarchives.gov.uk/documents/information-management/dp-code-of-practice.pdf> produced jointly by The National Archives, the Society of Archivists, the Records Management Society and the National Association for Information Management

<sup>5</sup> See GDPR articles 85 and 89(2)

19. Historical research (any research done in an archive repository will be 'historical' in its widest sense) is likely to be relevant to archive services either instead of or in addition to archiving purposes in the public interest. In addition, certain archival collections will have reason to take account of processing for scientific purposes as well as processing for journalistic, academic, artistic and literary purposes. Their relevance may depend upon the nature and content of the records held as well as the purposes for which any archive records are accessed and used. Data protection law also recognises the public interest in freedom of expression and information. Further information is available from the Information Commissioner and the Archives and Records Association (UK & Ireland)<sup>6</sup>. As a result there is greater visibility for archiving in the new data protection law. GDPR contains:
- [Adaptions](#) to certain [Principles](#).
    - Purpose limitation. It provides for compatible further processing, beyond the purpose for which the data was originally collected; and
    - Storage limitation. It allows the retention of personal data for longer periods than normally permitted under the storage limitation principle;
  - [Exemptions](#) from certain rights;
    - The right of [erasure](#) / the right to be forgotten;
    - The [right to be informed](#) for indirectly collected personal data where it would be impossible or involve disproportionate effort; and
    - Article 89 makes specific provision for exemptions from a number of [data subject rights](#): access, rectification, restriction, notification, data portability and right to object, insofar as they are derogated for in member state law (The Data Protection Act 2018 in the UK);
  - [Conditions](#) for processing of [special category and criminal offence/conviction data](#).
20. Where only unstructured manual data is processed, GDPR will not apply directly, but care is needed. For example, if the records are digitised or catalogued online, this will bring any personal data into scope of GDPR. The Data Protection Act 2018 applies GDPR standards to the processing of unstructured manual files by public authorities, albeit with several exemptions from its principles, rights and obligations.<sup>7</sup>

## Data Protection Act 2018

### Exemptions

21. The new Data Protection Act contains all the additional exemptions for archiving purposes in the public interest permitted under GDPR. It states;

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<sup>6</sup> The [Archives and Records Association, UK and Ireland](#) (ARA) have been discussing and planning a revised Code for record-keepers with colleagues across the public, private and voluntary sectors. It will be different from, but will complement, this guide.

<sup>7</sup> See Data Protection Act 2018 sections 22 and 24

*The listed GDPR provisions do not apply to personal data processed for archiving purposes in the public interest to the extent that the application of those provisions would prevent or seriously impair the achievement of those purposes*

....

*Article 15(1) to (3) (confirmation of processing, access to data and safeguards for third country transfers);*

*Article 16 (right to rectification);*

*Article 18(1) (restriction of processing);*

*Article 19 (notification obligation regarding rectification or erasure of personal data or restriction of processing);*

*Article 20(1) (right to data portability);*

*Article 21(1) (objections to processing).<sup>8</sup>*

22. If complying with a data subject's request to exercise a right would not prevent or seriously impair the processing purposes, the request must be dealt with as normal, e.g. by providing a data subject with a copy of their personal data, adding a supplementary statement to a record or withdrawing from public access inaccurate historical data at a data subject's request.

### Safeguards

23. The exemptions are not automatic. Their use is subject to appropriate safeguards for the rights and freedoms of data subjects. Article 89(1) of the GDPR says that those safeguards must include the implementation of technical and organisational measures. Amongst other things, such measures should respect the principle of data minimisation. This means having a process in place to help identify the minimum amount of personal data needed for archiving processing purposes. Additionally, section 19 of the Data Protection Act 2018 says that processing for archiving purposes in the public interest will not meet the GDPR's safeguard requirements if it is:

*'likely to cause substantial damage or substantial distress to a data subject'*  
or:

*'carried out for the purposes of measures or decisions with respect to a particular data subject, unless the purposes for which the processing is necessary include the purposes of approved medical research'.*

24. The safeguards correspond to those at section 33 of the 1998 Data Protection Act. There are also conditions to allow processing of special categories of personal data<sup>9</sup> (previously known as sensitive personal data under 1998 Act).

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<sup>8</sup> Data Protection Act 2018 schedule 2 part 6

<sup>9</sup> Data Protection Act 2018 section 10 & schedule 1 Part 1



### **What is meant by “substantial damage or distress”?**

The Act does not define this. However, in most cases:

- substantial damage would be financial loss or physical harm; and
- substantial distress would be a level of upset, or emotional or mental pain, that goes beyond annoyance or irritation, strong dislike, or a feeling that the processing is morally abhorrent

### **Lawful basis for different types of archive service**

25. Processing of personal data requires a lawful basis (article 6 GDPR). Archive services are not required to obtain consent from data subjects if an alternative lawful basis is more appropriate such as a task carried out in the public interest, exercise of official authority or a legitimate interest. Further processing of data for archiving purposes in the public interest, should be considered to be a compatible lawful processing operation<sup>10</sup> so no additional lawful basis would be required. This will apply primarily to organisations with in-house archive services (e.g. company, school and charity archives).
26. The UK is distinctive in its legal framework, which reflects its legal systems. The main legislation that imposes archiving obligations relates to UK central and local government records, Scottish judicial records, and to certain records of the Church of England. Because of, the Public Records Act 1958, Public Records (Scotland) Acts 1937 and 2011 and Public Records Act (Northern Ireland) 1923, the national record offices and places of deposit will, in relation to public records, be acting under official authority for a lawful basis. The Government of Wales Act 2006 created a class of records known as ‘Welsh Public Records’ and makes provision for them to be managed as though they were UK Public Records for the time being.
27. Many organisations with archiving functions will also be public authorities able to rely on a statutorily-defined public task basis for processing personal data. Local authorities benefit from legislation permitting them to accept responsibility for and apply resources to archives received from private sources as well as to their own records. For example, under the Local Government (Records) Act 1962 and Local Government Act 1972, Local Government (Wales) Act 1994, Local Government etc. (Scotland) Act 1994, the Public Libraries and Museums Act 1964, or other national libraries and museums legislation. Church of England records, including baptism registers, will be processed under the Parochial Registers and Records Measure 1978. More detail about archival related legislation is available from The National Archives’ website.

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<sup>10</sup> GDPR recital 50

28. Other archiving, indeed the majority of UK archiving, takes place without a specific mandate in law but is nonetheless lawful. The expectation that archiving of material in private hands will take place and is in the public interest is reflected in the establishment of the Historical Manuscripts Commission with a remit to enquire into the whereabouts of archives and manuscripts in private hands, report on their contents and promote their preservation and use.<sup>11</sup> The Royal Warrant now appoints the Keeper of Public Records as the sole Historical Manuscripts Commissioner and the work is done from within The National Archives. Where an organisation does not have an explicit archiving task laid down in statute, it is possible for this to be derived indirectly from other legal provisions, such as the Royal Warrant of the Historical Manuscripts Commission or section 1(4) of the Local Government (Records) Act 1962, which refer to the public interest served by voluntary private archiving activity. As GDPR recitals 41 and 50 make clear, and especially given the common law system of England and Wales, a legal basis does not have to be under specific statutory powers. Private organisations may also be able to demonstrate a legitimate interest basis for processing by pointing to funding agreements, management agreements or constitutional documents which set out the purposes of the archive.

#### Right to Erasure (Right to be forgotten)

29. Under data protection law 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. Importantly, the right to erasure does not apply if processing is necessary for archiving purposes in the public interest, where erasure is likely to render impossible or seriously impair the achievement of that processing.<sup>12</sup> Decisions as to whether the exemption applies should be taken on a case-by-case basis, but given that the purpose of an archive service is to ensure the integrity and authenticity of archived records and future analysis would be affected by the removal of data, erasure may often be likely to seriously impair the processing. Archive services may still wish to consider requests to have personal data removed from public view on ethical grounds under takedown and reclosure policies if data subjects have expressed their concern and the wider balance with freedom of expression and information is not significantly affected. If a data subject complains of distress, archive services should consider if the following is appropriate to make processing fair, especially if the data is available to search engines and the data is inaccurate:

- Reclosure / takedown (removal from public access);
- Adding a supplementary statement to the record;
- Amending or adding metadata or catalogue description.

30. Consideration should be given to how this might be done when paper records have been digitised, both as to how the 'correction' could be displayed on the digital display image or equivalent, and how to keep the digital surrogate and paper original in sync.

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<sup>11</sup> <http://www.nationalarchives.gov.uk/archives-sector/our-archives-sector-role/historical-manuscripts-commission/>

<sup>12</sup> GDPR Article 17(3)(d)

### Access to data by data subjects

31. Although those archiving may find they have no legal obligation to respond to a data subject access request (SAR), bodies may choose to respond to access requests, especially when an individual's rights or entitlements seem to be at stake. Standard practice for responding should be followed, such as confirming the identity of the requester. In most cases you cannot charge a fee to comply with a subject access request. However, you may charge a reasonable fee for additional copies or where the request is manifestly unfounded or excessive.

### Unstructured manual records

32. GDPR does not apply to unstructured manual data although in the UK more manual data is likely to be considered structured under GDPR than previously under the Data Protection Act 1998. For FOI authorities, the Data Protection Act 2018 partly applies to the personal information in unstructured records<sup>13</sup> as before. Data protection law does not apply to manual unstructured data held by non-FOI bodies. Archive services may add a structure to data through additional metadata or by digitisation. If personal data is digitised then it is processed by automated means and is therefore covered by the GDPR regardless of its structure.

33. There are exemptions for manual unstructured data used in longstanding historical research.<sup>14</sup> These include certain principles and rights of the data subject when personal data was processed before 24 October 1998 providing it is not carried out for measures or decisions to an individual, or likely to cause substantial damage or distress to the subject. The limit of 24 October 1998 is consistent with the 1998 Act. These exemptions maintain the protections of the previous act for manual unstructured record series processed only for the purposes of longstanding historical research.

### Data Protection Officers and records of processing

34. Under the GDPR, a body must appoint a DPO if:

- It is a public authority (except for courts in their judicial capacity);
- Its core activities require large scale, regular and systematic monitoring of individuals (for example, online behaviour tracking); or those activities consist of large scale processing of special categories of data or data relating to criminal convictions and offences.

35. If a body has a Data Protection Officer (DPO) it should include the purpose of archiving in their records of processing activities and privacy notices (which are required even if there is no DPO). In some organisations the person responsible for archives may themselves be the DPO, while some bodies will not need to have one. ICO guidance should be consulted about the role of the

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<sup>13</sup> 2018 Data Protection Act 2018 section 24

<sup>14</sup> 2018 Data Protection Act 2018 section 25

DPO.<sup>15</sup> Like the rest of data protection law, the need to keep records of processing activities only applies to the data of living persons, not all records in an archive service. Even storing data without any public access counts as processing that may need to be publicly acknowledged and recorded.

### Sanctions

36. There are sanctions to ensure compliance with data protection legislation. The Information Commissioner has powers to enter premises, to inspect or seize material and to prosecute offenders. Compensation or fines may be payable. Personal data breaches that present a likely risk to people's rights and freedoms must be reported to the Information Commissioner without undue delay, but not later than 72 hours after discovery. If you take longer than this, you must give reasons for the delay.

### Specific processing

37. Organisations processing personal data for law enforcement purposes (police forces for example) that are archiving information in the public interest<sup>16</sup> are only permitted to do so if the processing:

- is not carried out in connection with measures or decisions in relation to individual data subjects; and
- is not likely to cause substantial damage or substantial distress to a data subject.

38. Those working in specialist repositories will probably need to seek additional advice.

### Dual purpose processing and updating data

39. An organisation can continue to allow use of the data in its archives for other purposes as long as that additional use is otherwise compliant. In the event of dual-purpose processing, the archiving exemptions apply only to the processing for archiving purposes.<sup>17</sup> Where data is used for business purposes under dual processing, requests from data subjects must be dealt with as normal.

40. However, personal data preserved as archives is not expected to be kept 'up-to-date' in the same way as data still subject to operational use. Archives are concerned with historical integrity rather than current accuracy. In the event of complaints being brought by a data subject over inaccuracy, exemptions may be claimed from right of rectification, or data could be supplemented by a statement of the requested correction rather than replaced. Archive services may often be able to rely on the use of supplementary statements to make the rectification without damaging the archival integrity of the original data.

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<sup>15</sup> <https://ico.org.uk/for-organisations/guide-to-the-general-data-protection-regulation-gdpr/accountability-and-governance/data-protection-officers/>

<sup>16</sup> Data Protection Act 2018 section 41

<sup>17</sup> GDPR article 89(4)

## What do I need to do to start?

41. Exemptions for archiving are not automatic. Before relying on an exemption, consideration needs to be given to several different factors including:
  - The necessity of the processing;
  - The specific circumstances of the processing (e.g. the extent to which compliance with a data protection provision would prevent or seriously impair the processing purposes);
  - The public interest in the processing; and
  - The safeguards implemented for the rights and freedoms of data subjects.
42. The exemptions for archiving purposes in the public interest may need to be explained to the public, data protection officers and business areas. The application of an exemption in particular circumstances may need to be articulated to the Information Commissioner's Office.
43. Everybody involved in archiving needs to be aware of the exemptions in data protection law. They should continue to respect the privacy of individuals and remain confident that archiving of personal data is legal, subject to safeguards. Processing should ensure there is the right balance with individuals' rights. This may mean certain collections of personal data of living people are not publicly available whilst the individuals are known or believed to be alive as making the records available would be unfair to the data subjects (see [Access](#)).
44. Under the new law, there is a greater emphasis on processing being documented and transparent so that controllers are accountable for their use of personal data. Where appropriate, this can be done through publishing collection policies and inclusion of archiving processing in privacy notices. While organisations will often need to pay a fee under the Data Protection Act 2018, registration (providing the ICO with registrable particulars) is no longer required. Personal data not being processed for archiving purposes, such as current staff records or marketing and subscription data, must also comply with the data protection legislation. The Information Commissioner's Office gives guidance on general matters such as marketing.

## Archiving purposes in the public interest

### What is archiving under GDPR

46. The activities that form archiving purposes in the public interest are described in GDPR at [recital 158](#)

*Public authorities or public or private bodies that hold records of public interest should be services which, pursuant to Union or Member State law, have a legal obligation to acquire, preserve, appraise, arrange, describe, communicate, promote, disseminate and provide access to records of enduring value for general public interest.*

47. Archiving covers activities designed to ensure the permanent preservation and usability of records of enduring value. Note that this may be spread over a number of bodies working in partnership to the same end. The activities specified in Recital 158 should be carried out in accordance with the law and with due regard for accountability and transparency of operations, as required by GDPR.

48. Recital 41 clarifies that a legal basis does not have to be an explicit statutory archiving role, as long as the application of the legal basis is clear, precise and foreseeable to the people subject to it. This means that it includes clear common law tasks, functions or powers as well as those set out in statute or statutory guidance. The government supports the continuation of archiving by private as well as public bodies and individuals. It has explained the term archiving purposes in the public interest in reply to a parliamentary question<sup>18</sup> (see [Annex B](#) for full text)

*We recognise the importance of the permanent preservation of archives for long-term public benefit by museums, galleries, archives and libraries.....This is likely to apply to a wide variety of community, private, public sector, charitable/trust and voluntary sector archives. It could also include archives that may be closed to researchers at the present time, but which would become accessible at some future date, and archives which are held in analogue or digital format. The definition would not, however, cover organisations which gather and use data, information and records purely for their own commercial gain or that have no enduring public value.*

### Establishing ‘archiving purposes’

49. Archives are our collective and personal memory, a unique and irreplaceable part of our heritage. They contain reliable evidence of past actions and decisions, of the reasons for them and of their impact on those affected. Inevitably archive collections contain personal information about people’s public and private lives. As well as their cultural value, archives are about long-term accountability. They provide the evidence required to protect people’s rights and seek remedies when necessary. They enable the rights to freedom of expression and information through journalistic and academic expression,

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<sup>18</sup> <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2017-11-03/111381/>



historical research and public access to official documents and are an essential resource for business, writers, genealogists, researchers and historians.

Many UK organisations preserve a proportion of their records, either in-house or through a specialist archival institution. The UK archives sector spans public, private, charitable, voluntary, community and commercial organisations and groups. In a few cases, a specialist body undertakes the archiving – The National Archives, National Records of Scotland and the Public Record Office of Northern Ireland are obvious examples. Usually archiving is not the primary function of the organisation but is undertaken as part of its operations to serve its own needs and for wider purposes. Archival collections will sit in galleries, libraries, museums, universities, as well as the collections of schools, businesses and charities. All of this archiving makes up the rich heritage resources of the UK. This allows society to benefit from past experience and provides long-term public accountability. Archiving is processing to secure the permanent availability of recorded memory, i.e. evidence and information, for a wide range of current and potential future purposes, including:

- Enabling research and investigation of all kinds, from academic to genealogical research;
- Enabling long-term accountability, such as public inquiries and other official investigations like cold case murder investigations;
- Enabling the discovery and availability of personal, community and corporate identity, memory, culture and history;
- Enabling the establishment and maintenance of rights and obligations and of precedent decisions;
- Enabling educational use; and
- Enabling commercial and non-commercial re-use.

### Establishing the public interest in archiving

50. Archiving will normally be in the public interest. Archiving purposes in the public interest should serve the public good and not be purely for personal or corporate interest and private gain. It should not support discrimination or criminality. Archiving records of enduring value for general public interest benefits administrative efficiency, transparency and legal accountability.

51. Archives and archiving are important. The Universal Declaration on Archives<sup>19</sup> states:

*Archives record decisions, actions and memories. Archives are a unique and irreplaceable heritage passed from one generation to another. Archives are managed from creation to preserve their value and meaning. They are authoritative sources of information underpinning accountable and transparent administrative actions. They play an essential role in the development of societies by safeguarding and contributing to individual and community memory. Open access to archives enriches our knowledge of human society, promotes democracy, protects citizens' rights and enhances the quality of life.*

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<sup>19</sup> The Universal Declaration on Archives, prepared by the International Council on Archives, was adopted by UNESCO on 26 October 2011 – see <http://unesdoc.unesco.org/images/0021/002134/213423e.pdf>

52. The Council of the European Union in a 2003 resolution on archives<sup>20</sup> stressed the importance of archives for the understanding of history and culture. In particular, that 'well-kept and accessible' archives contribute to the democratic functioning of society. Such well-kept and accessible archives:

- Provide individuals, organisations and states with the evidence that enables them to justify their rights;
- Enable citizens to exercise their right of access to official information and the state to account for its actions;
- Preserve the memory of society by constituting the sources of its individual and collective history;
- Enhance the sound functioning of public and private, administrative and commercial organisations.

53. Some archiving takes place by organisations under legislation for that specific purpose. Archiving in local authorities takes place under legislation that permits the establishment of a record office or archive service. The existence of the legislation demonstrates that this archiving can be considered to be in the public interest. Other archiving takes place in non-government bodies that do it as part of their normal operations for a variety of purposes with a strong public interest element.

- Heritage and cultural bodies such as the national museums and galleries, the British Library, The National Libraries of Scotland and Wales, undertake archiving in relation to both their own archives and to deposited collections, gifts and purchases, many of great historical significance;
- Universities undertake archiving on a similar basis, the deposited collections usually being part of Special Collections within the university library. These collections support academic research and teaching. University archive services collect and preserve published and unpublished materials, including data sets that are increasingly being mandated for preservation by research funders;
- Charities and voluntary bodies undertake archiving. This enables long-term accountability, helps support personal identity and the establishment and maintenance of rights as part of a duty of care and to promote public understanding of their mission;
- Private sector bodies such as banks, organisations in the creative industries manufacturing and retail companies maintain archive services for various reasons: to provide corporate memory, for commercial exploitation, to provide continuing evidence of rights and obligations, to support corporate social responsibility and to demonstrate their place in society, sometimes over a very long period. The archives of landed estates fall into this category also. A company archive will tell a story of that company, its industry as well as the people and communities it affected;
- There are also community archives and the archives of families and individuals which support community identity, the maintenance of family relationships and personal identity, and understanding of the development of society at large.

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<sup>20</sup> [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32003G0513\(01\)&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32003G0513(01)&from=EN)



54. The eventual availability of archives for public use is a factor that would make archiving likely to be in the public interest even if the data by then ceases to be technically personal data as the individuals are no longer alive. An important factor is that evidence and information are available for purposes having public value beyond the immediate interests of the creating organisation itself. For example, records may provide public accountability via regulators or historic inquiries, or support use for research having outcomes of wider value to the public. Bodies may be subject to one, or even both, of the Freedom of Information (FOI) Acts which means that information must be provided as a matter of course unless exemptions apply (which is commonly the case with personal data). Some archive services are within organisations that are not subject to the FOI Acts but nonetheless allow and indeed promote research using their archives, or provide information from their archives. There is an expectation that archiving purposes in the public interest will involve potential use of preserved data at some stage in the future. That may be direct public access, or appropriate indirect or limited access with public benefit. Transparency of operation is particularly important, as this further purpose of processing is not one which most data subjects will have particularly thought about. Conversely, the archiving of illegally acquired records or data derived from illegal processing is unlikely to be in the public interest although it may still have historical evidential value.

#### Criteria for archiving purposes in the public interest

55. The public interest is not defined in UK law as it can change over time and circumstance. Suggested criteria of processing for archiving purposes in the public interest are below. There may be other factors in particular circumstances. Not all of these criteria will need to be met (although more than one would be expected) as they are indicators and circumstances will vary between sectors and orders of magnitude of the size and resources of the archive service:

- Purpose – the purposes for archiving are enabling research and investigations of all kinds; long-term accountability; discovery and availability of personal, community and corporate identity, memory and history; establishment and maintenance of rights, obligations and precedents; educational use; and commercial and non-commercial re-use;
- Activities – are some or all of the activities outlined at Recital 158 of GDPR undertaken by or on behalf of the organisation? The activities are to ‘acquire, preserve, appraise, arrange, describe, communicate, promote, disseminate and provide access to records of enduring value’;
- Enduring value – does the archiving relate to records that have been selected for permanent preservation? Does it relate to appraisal of records and activities designed to secure their permanent preservation, such as their safekeeping, preparation for transfer, arrangement and description of those selected for preservation? Records of enduring value could be held by creating functions as well as archive services;
- Transparency – is the body transparent about the fact and nature of its archiving of personal data, how it manages that data and how data subjects can contact it? Does it highlight archiving, e.g. on its website, through relevant policies, privacy notices or provide online catalogues, guides and

other material produced by the archive service? Does it supply details of its archives for inclusion in the National Register of Archives (maintained by The National Archives) or the National Register of Archives for Scotland (maintained by National Records Scotland) or elsewhere;

- Standards - Does the archiving pay due regard to relevant standards? Conformance to standards ensures that the archiving activities support data protection compliance as well as protect the authenticity and integrity of the archives. Are there clear policies, procedures and documentation? Where appropriate is a professional archivist employed or professional guidance sought? One way of demonstrating conformance is recognition by the national accreditation scheme, which provides an over-arching, proportionate and externally validated framework for assessing archiving operations and is available to most organisations with archiving functions, whatever their size. Organisations that have not sought accreditation may need to find alternative ways of demonstrating that their archiving conforms to relevant standards albeit that this takes account of community needs and management as appropriate;
- Access – is some form of public access in line with the data protection principles permitted, or is it likely to be permitted at some future date when the archives are no longer confidential? Otherwise are the archives available to a limited audience having a public interest purpose, such as academic researchers, regulators or official investigators, or is information made available indirectly through responses to written enquiries? Are the archives used for purposes other than the holding body's commercial gain or private interest e.g. for education?

#### What archiving purposes in the public interest is not

56. Archiving should be distinguished from long-term, but finite, retention of records to support current business or legal requirements (e.g. for pension purposes). Archiving should not be confused with sending records to cheaper offsite storage or moving data from a live system. The term archiving is sometimes used this way in computing to mean storing data in offline systems. If personal data or records containing the information are being kept solely for a defined current business or legal purpose and the intention is to destroy them after that has been finished, this is not for archiving purposes in the public interest.

- Processing for archiving purposes in the public interest does not include processing of personal data solely for current business needs and activities;
- It does not include processing of personal data in records being stored for a specified limited period;
- It does not include records that have been designated as having no potential or confirmed enduring value.

## Processing for archiving purposes

### Why are there special data protection rules for archiving?

57. Archive services hold archives kept for their evidential value to an organisation or person in the widest sense. As primary sources, archives transmit authentic evidence of human activity and experience through time to current and subsequent generations. For records to retain their value and integrity, crucially to maintain their impartiality to bear witness to past events, the preservation of the personal data they contain is essential.
58. Records being archived are often unique in content and context, are usually not published at creation, nor acquired directly from the data subject and are arranged according to the business process that generated them. Sensitive personal data is likely to be unavailable to the public for several decades to protect the privacy rights of individuals. Processing for archiving purposes of such sensitive data is required well in advance of any use by researchers and is unlikely to have a significant impact on privacy especially if publicly unavailable. Archiving purposes are as much about ensuring survival of personal data to enable future research use as they are about facilitating current research use. Archive services may manage the collections created by many different organisations and individuals within their archives. Typically archive services do not have a current relationship or contact with the individuals whose data they hold as they often did not create many of the records. As a result, it is more difficult to locate particular personal data, especially in older paper records, so responding to data subject rights would be far more arduous than for most data controllers.
59. The nature of the agreement made with the depositor or donor will determine the role of the archive service in relation to a collection. The responsibilities of each party in relation to data protection must be clear. As a general rule archives received by an archives service can fall into three categories:
- Records transferred from within the organisation, which may be a public authority or a private sector body such as a company or historic house. Corporate policy should set out the basis on which archives containing personal data will be passed to the archives service and the level of control and responsibilities that will be passed with them such as responding to people's requests for data;
  - Gifts, legacies or purchases, the common factor being that physical ownership of the archives passes to the archives repository or its parent organisation. The data controller will be the organisation of which the archives repository is a part, unless there is explicit provision to the contrary;
  - Deposits on loan from external sources, whereby custody passes to the archives repository but ownership remains with the depositor or another party, such as a trust. In such cases the organisation of which the archives service is a part may become sole data controller or may share that responsibility with the owner as joint data controllers, or may act merely as

a data processor, leaving control wholly in the hands of the owner. Which applies will depend on the terms of the deposit. As a general rule, the more control over access and use passed to the archives repository, the more likely it will be that its parent organisation has acquired data controller responsibilities. A variant of this last option occurs when control passes to the archives service in whole or in part, but storage is contracted-out to a third party which is a data processor. Where a data processor is used, a written contract must be put in place. The Information Commissioner provides guidance on the identification and duties of data controllers and processors. What is vital is that the owner's continuing interest in the records and the obligations of all parties are set out clearly in the deposit agreement. If the terms of deposit are unclear and the current owner is unknown or cannot be contacted, the organisation of which the archives repository is a part should be regarded as data controller by default. Transfer and deposit agreements should clarify the responsibilities of the archives service, stating whether the originating person or body is retaining or transferring data controller responsibilities. It may be necessary to obtain legal advice to ensure that the wording of these agreements is accurate.

60. Usually, archiving processes are undertaken by a single organisation. However, in some situations, the activities involved in archiving are shared between two organisations or distributed in some other way. For example, storage and conservation work may be contracted-out to a specialist company which is answerable to the contracting organisation in respect of that work or management of the operation may be contracted-out to an arms-length trust or joint service. Another example occurs with UK government records where pre-transfer activities - appraisal, arrangement and description - are completed by the government departments that created and have custody of the records prior to transfer,<sup>21</sup> then other activities - acquire, preserve etc. - are undertaken by The National Archives or another place of deposit. The pre-transfer activities are usually undertaken under the general guidance or supervision of The National Archives<sup>22</sup> or other place of deposit. This work constitutes processing for archiving purposes, regardless of where it takes place or who does it.<sup>23</sup>

### Appraise (selection)

61. When considering the permanent preservation of personal data, serious consideration should be given as to how far this will be in the public interest. This will mean weighing up whether society as a whole, and in particular researchers, will benefit from preservation of the data for historical research and other purposes. All appraisal decisions should be documented as a matter of good professional practice and collection policies published as appropriate. The documentation will help demonstrate that the preserved data is of enduring value having been through a selection process.

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<sup>21</sup> Set out in Part 2 of the Code of Practice issued under section 46 of the FOI Act and the equivalent code under section 61 of the Scottish FOI Act.

<sup>22</sup> Public Records Act 1958 section 3(2)

<sup>23</sup> The Public Records (Scotland) Act 2011 provides for oversight by the Keeper of an authority's management of its records - <http://www.legislation.gov.uk/asp/2011/12/contents>

62. All archive services acquiring personal data must be able to show that their processing of that data is lawful, fair and transparent, in accordance with principle (a): lawfulness, fairness and transparency. Those involved in the appraisal of digital records prior to their transfer should ensure that personal data of enduring value is identified as soon after creation as possible and digital continuity methods applied accordingly to preserve the authenticity of the record. Once selected, archiving exemptions may apply to handling data subject rights even whilst the data is in the custody of the creating function.
63. The GDPR specifies what you need to tell individuals when you obtain their personal data (privacy information). When an archive service obtains personal data from a source other than the data subject, it is exempt from the need to provide them with privacy information if doing so would be impossible or involve a disproportionate effort. This is most likely to be the case where the archive service holds no relevant contact details for the data subject and has no reasonable means to obtain them.<sup>24</sup> Where an archive service does not provide privacy information to data subjects, it must take other appropriate measures to protect their rights and freedoms. Two measures that must always be taken are making the privacy information publicly available (e.g. on a website) and carrying out a data protection impact assessment to assess and mitigate risks of processing potentially unknown to data subjects. Other relevant measures for archives services to mitigate the potential unfairness of not providing data subjects with privacy information may include:
- processing the data in an otherwise transparent manner;
  - keeping records closed for an appropriate period;and
  - restricting access and use only for research (the results of which will be anonymised).

A case by case assessment will be required as the exemption is not blanket. The Information Commissioner's website has more guidance on what privacy information should be provided to individuals.

## Acquire

64. All newly received archives, whether digital or manual, should be risk assessed and sampled as appropriate to ascertain whether they include personal data, especially special categories of personal data, covered by the legislation, for example a database or a series of case files about named living individuals. Bodies that are not subject to the FOI Acts will find that some manual unstructured records fall outside the legislation. Bodies subject to the FOI Acts should assume that all records containing personal data about identifiable living individuals are subject to the legislation.
65. As a general rule, it is simpler to accept only those sets of personal data that are no longer required for current business and hence can be retained for the sole purpose of archival preservation. This is because it will be clear that they are historical records, although still with potential business use. However, this may not always be practicable and further dual use may prove necessary. It should also be clear to someone consulting the data whether the records are

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<sup>24</sup> GDPR article 14(5)(b)



still in active use and have been kept up-to-date, or instead reflect a historical position.

66. Transparency is specified in principle (a) (lawfulness, fairness and transparency) and suggested at Recital 39, where lawful processing is linked to data subject awareness of that processing. Where necessary, Article 14(5)(b) offers greater flexibility in respect of archiving purposes in how transparency information for data subjects is provided. Whatever the source of the material, an archives service will need to discuss how transparency data is provided effectively to data subjects via privacy notices, as well as ensuring that clear agreements are in place defining what responsibilities both parties have for the archived data and its future use. This is sector good practice. Clear, published policies on what types of material an archives service aims to archive will help demonstrate that personal data in collections is relevant and not excessive.

### Security and Preservation

67. Those responsible for personal data should ensure that adequate levels of security are provided. These will depend on the nature and age of the information and the extent to which it requires protection. For example, special categories of personal data are more likely to need restricted access to the minimum necessary staff. The Information Commissioner provides further guidance on information security and risk assessment. The security measures that are appropriate for an archive service will depend on its circumstances, so a risk-based approach should be adopted.
68. Digital preservation should be taken into account when assessing security needs. An archives service may need the assistance of others to carry out digital preservation activities. This relationship needs to be clearly identified and expected service levels formally agreed and documented to ensure the accountability of all parties. It is important to note that where service providers are used, it is the commissioning organisation that remains responsible for the digital records at all times. Digital preservation activities should ensure there is a verifiable and trusted means of preserving the integrity of digital records. This gives continued access to digital information in the future. Likewise, if paper storage or specialist services have been contracted-out, the commissioning body remains the data controller.

### Arrange and describe – metadata, catalogues and finding aids

69. Online catalogues and finding aids made available to the public are covered by the Data Protection Act 2018 if they include entries containing personal information. Manual finding aids will also be covered if they hold personal information in a sufficiently structured format or are held by an FOI body. Depending on the sensitivity of the information it may not be suitable to provide public access to all metadata and finding aid content if individuals are identifiable (see [Access](#) below). Carrying out a Data Protection Impact Assessment (DPIA) may be appropriate. A DPIA is a good framework to work in so that privacy issues can be identified and mitigated. Further details of these can be found on the Information Commissioner's website. By restricting

the description and access to personal details (e.g through pseudonymisation or redaction) for a finite period if required, archiving purposes in the public interest respects the principle of data minimisation in terms of limiting processing to what is necessary. A record/object level description may be innocuous in itself but when read in conjunction with the higher level contextual information may infringe the individual's data protection rights. For example a name and date of birth alone may seem harmless but in the context of case files of mental health hospital patients it becomes sensitive.

70. As a general rule, assessment of the sensitivity of descriptions requires consideration of the same factors as for third party access to the record. If a name is sensitive but central to the reason for selecting the file and should therefore be in the description, the description should be withheld or redacted while the document is closed. If a name need not be included in the description (because, for example, the file deals with a precedent) and there are no other reasons why the description should not be released, then the description can be open. A number of questions can be asked:
- Is the person alive or dead? Assume a lifespan of 100 years if you do not know the individual's date of death;
  - Is the person identifiable? Note that a name in itself (John Smith) may not make a person identifiable; it is the name's association with other information, such as the position held or an event or location that will usually enable the individual to be identified. If the document is closed and the description does not provide sufficient information to identify the individual, a personal name can be included in an open description. For example, an item about a criminal trial might be described as "Trial of J Jones" but while the item is closed, J Jones is not identifiable from the description itself unless further contextual information is provided;
  - Is it really necessary to identify the individual in a description? If the archives have been selected because they contain policy or precedent papers, there is usually no need to include in the description the names of individuals because the focus should be on the policy or precedent;
  - Is there a statutory restriction on releasing information in the description? For example, some laws protect the confidentiality of personal information such as victims of sexual offences;
  - Is the related record open or closed to the public? If the record is closed, consider whether the description reveals the information which the closure is designed to protect. If it does, it may be necessary to amend the description or redact it until the record can be released, often by removing the name. If absolutely necessary the full description should be withheld. If the record is open, the description should be open but it must be fair, accurate and unlikely to cause substantial damage or substantial distress to a data subject;
  - Is the information in the public domain already? Information reported from open court is in the public domain unless it is clear that reporting restrictions have been imposed and not lifted. However, it may not always be clear from a court record what was reported at a trial. If the data subject has put the same information about themselves in the public domain, then archive services are more likely to be justified in disclosing it. However, the fact that information was once public knowledge, for example in a localised area and

if this happened some time ago, is not of itself a justification for disclosure by the archive as further distribution may be unfair so a risk assessment is useful;

- Is it likely that release of personal information in a description could cause distress or damage to the data subject? This applies particularly but not exclusively to special categories of personal data. It is necessary to exercise judgement to assess the severity of distress or damage that might be caused and whether that is fair to the individual.

71. Bodies subject to the FOI Acts may receive a request for personal information in a closed description, often as a precursor to a request for the information itself. While there is a duty to confirm or deny that information is held and to provide that information, an exemption from that duty applies if to do so would release exempt information.

## Access

### Communicate / inspect

72. Data protection law does not give third parties rights of access to personal data. Access to personal data in archives by someone other than the data subject or the data controller should take place only after assessment of the likely impact on the data subjects' right of privacy. It may be impossible until data subjects are, or can be presumed to be deceased.

73. Archive services should be able to show disclosure of personal data is fair, lawful and transparent in accordance with Principle (a). Access for scientific (in its widest sense), historical or statistical research may be possible within the [safeguards](#). Decisions to allow or refuse access should be explained and documented so that archive services can demonstrate that they have acted in accordance with the law and in good faith if similar requests are received. Requests for access by the data subject themselves should be treated differently under the data protection law.

### **Lifespan assumption**

Given the large number of individuals commonly featuring in archive collections, archive services will not be in a position to ascertain whether they are still alive. If it is not known whether a data subject is alive or dead, the following working assumptions can be used:

- Assume a lifespan of 100 years;
- If the age of an adult data subject is not known, assume that they were 16 at the time of the records;
- If the age of a child data subject is not known, assume person was less than 1 at the time of the records.

If the individual is known to be more than 100 years old and still living then compliance with data protection law is still required. They are entitled to make a subject access request or to exercise any of their other rights.



74. If personal data is held in archives that are subject to FOI, i.e. they are held by, or on behalf of, a public authority, third parties seeking access to personal data subject to the Act have the right to be told whether it is held and to be provided with it, unless an exemption applies. There is a presumption that information provided to an enquirer under FOI is available to any other enquirer, i.e. access to one means access to all. The most relevant exemption in the UK Act is at section 40 and in the Scottish Act at section 38. It requires archive services to consider whether confirming the existence of the data or releasing it would breach any of the Principles. If so, the exemption should be applied. Note that it is not possible when providing access under the FOI Act to impose any conditions on access to personal data communicated by the Act.
75. Even where access is not prevented by Data Protection law, other FOI exemptions may need to be considered also. For example, the exemption at section 38 of the UK FOI Act and section 39 of the Scottish FOI Act, which allow information to be withheld if release would endanger the physical or mental health or the safety of a living individual such as a relative, or the exemption at section 41 of the UK Act and section 36 of the Scottish Act for information to which a duty of confidence is owed, may apply.
76. Archive services in public authorities should note that unstructured personal data in records collections of private origin may fall within the UK FOI Act by virtue of being held by a public body subject to the UK FOI Act.<sup>25</sup> The position is different for archive services in public authorities which are subject to the Scottish FOI Act, where such records are held on behalf of the private person. Unstructured personal data of private origin held by Scottish public authorities will fall within the scope of the Act only if ownership has passed to archive service or its parent body.
77. Access must be lawful. Principle (a) requires personal data to be processed lawfully and so, even if the Act seems to provide no impediment to access, other aspects of lawfulness must be considered. Statutes protecting the confidentiality of personal information must be respected and the right to respect for private and family life in the Human Rights Act 1998. For example, the Sexual Offences (Amendment) Act 1992 protects the anonymity of victims of certain offences during their lifetime. Archive services should check whether any statutory bars to access apply to personal data they propose to release. Other common law provisions such as confidentiality remain. A duty of confidence may attach to particular records, for example health records, where the consent of the individual is required unless there is an overriding public interest in disclosure. An individual's expectation of confidence in their patient records is such that medical records may not be disclosed until sometime has elapsed after their death. The information made available must not be libellous or obscene.

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<sup>25</sup> Data Protection Act 2018 section 7

78. Access must be fair. Note that this is a separate requirement under Principle (a) to that in order to make use of the provisions for archiving purposes in the public interest with its safeguard of avoiding substantial distress and damage. The archiving provisions do not change processing under Principle (a), which requires data to be processed fairly. In data protection terms, fairness is about handling personal data only in ways that individuals would reasonably expect and not using it in ways that have unjustified adverse effects on them. This will necessitate consideration of the way in which the information was originally acquired (web archived and published data is much less likely to have access restrictions due to personal data), its nature and age, and whether research will make possible the identification of individuals. Fairness to data subjects is the main concern of the law and the guiding principle when in doubt about fairness is withhold the data. More guidance about fairness can be found on the Information Commissioner's website and detail about third party access to personal information in an FOI context can be found on The National Archives' and Information Commissioner's websites. The impact of disclosure should be assessed, taking into account the following factors:

- The nature of the information must be considered. Some personal information, including some special category personal data, is comparatively innocuous, some is not. To take medical information as an example: the simple mention of a person's broken leg 20 years ago is not something people would generally feel a need to keep secret, although context is important. If the information about the broken leg is in a medical record then the rules around extended expectation of confidence relating to medical records apply. On the other hand, information about treatment for a mental illness 40 years ago is still considered by some people to carry a stigma and hence is not suitable for disclosure. In both cases, the information is 'special category of personal data' but different judgements as to the fairness of disclosure can be formed. Likewise a person's religious affiliation, which may be obvious from their job title or mode of address - Imam, Rabbi, Archbishop, etc. At the other extreme, in certain contexts, disclosing information about someone's religion could endanger their physical safety;
- The age and context of the information may be relevant. The need to provide protection generally diminishes over time although in certain cases the expectation of privacy many decades after an event can also apply. The age and status of the data subject should also be considered as this can affect the extent of distress they might feel. Was the individual acting in a public or official capacity? Criticism of a government Minister by a colleague in an official file is less likely to be unfair to disclose once historical than criticism by family members about each other in recent private email or correspondence;
- Genuine information (as opposed to speculation) already in the public domain because it is a matter of public record should normally be accessible. An example would be conviction for an offence in a court where no restrictions on naming the person apply (although note that a court case file may contain a mixture of information placed in the public domain at the time of the trial and information that was not made public). Potentially, sensitive information deliberately made public by the data subject may also be made accessible. It is impossible to anticipate what research may be

done on any particular set of data and how that could be linked to other data but, if damage or distress to any individual would be a likely consequence of any research, the data should generally remain closed.

#### Disseminate– publish /online access/exhibition material

79. Careful consideration must be given to personal information in records that are to be made available online, especially if that information will be exposed to search engines. Placing personal data on a website, including digitised copies of manual records, is different from processing paper records for onsite viewing, by its order of magnitude and greater ease of access. Data or digitised version of records should not be placed online unless their contents have been reviewed and it is fair to the data subjects to make the archives available in this way. It is possible that onsite inspection of paper records is fair because there is no way of searching by name, whereas online access would be unfair if there is searchable metadata by name. In that case, those who come across the index data by using a search engine might not be aware of the archival context or age of the information.
80. Care is required with photographs, paintings, etc. Even if a photograph is anonymous in the sense that it is not captioned with names, nor tagged with names in the metadata, it is still possible that the individual could be identified. In all cases the likely effect on people of their image being made available must be taken into account. Bear in mind that photographs are often depict special categories of personal data: people undergoing medical treatment, people being arrested, attending trade union demonstrations, etc. Care must also be taken with records that at first glance would not contain personal data, for example maps and plans. These may contain the name of the surveyor or architect, but occasionally they can be annotated with opinions or decisions, in a manner that may identify living individuals. Some categories of born digital records may also contain personal data that is not always immediately obvious, for example, Geographical Information Systems (GIS). These may contain a layer of personal data that maps individuals, or groups of people that may be identifiable. Therefore, the same criteria for deciding suitability for wider access must be applied.
81. Any external contractors employed to undertake imaging and transcription must be made aware, via the contract, of their responsibilities as a Data Processor. Digitisation work is sometimes undertaken in countries outside the European Economic Area. Archive services and contractors must consider their responsibilities under GDPR Chapter 5. Careful consideration should also be given when selecting material that contains personal data for an exhibition. Again, the greater access and attendant publicity around an exhibition may make it less fair to the individual and may cause them distress. Similarly, care is required when including material in a book to be published by the archive service.

#### Removing access (takedown and reclosure)

82. If it becomes apparent that personal data is available to the public and risks causing distress to the individuals, archives may wish to consider closing the data concerned (reclosure or takedown if data is online). Examples include:

- Because of changed circumstances, information in records previously opened in good faith is now considered to require closure (e.g. if someone is alive after 100 years or the information was not highlighted at transfer or accession as requiring closure);
  - Where the material contains sensitive personal information about someone who is still alive and continued public access would be unlawful or unfair to them under data protection law.
83. When assessing cases, archive services should take into account how long the information has been in the public domain, whether it is likely to be available elsewhere, and the public interest in withholding the record from public access. For FOI authorities, reclosure does not affect the statutory rights of members of the public to request access to a closed record by making a request under the FOI Acts.
84. If the archive service's website allows tagging of catalogue entries or other content by members of the public, it is important that people adding tags should be made aware of their responsibilities not to invade the privacy of living individuals, by drawing potential taggers' attention to a terms of use policy. The archive service will remain the data controller so needs to act on any instances drawn to its attention.

#### Responsibilities of users of archived personal data

85. When people obtain copies of personal data from an archive service they become the data controllers in respect of those copies and must observe the data protection principles, unless they can claim an exemption, or they are not covered by data protection law, for example because their processing is for domestic purposes only, i.e. personal, family or household use. However, archive services cannot control subsequent use of personal data and it is advisable to assume that researchers will be subject to the Act, and ethical to make researchers aware of their responsibilities. Steps to safeguard the fair and lawful use of data by users of archived records include:
- Informing researchers that they are responsible under the GDPR and DPA 2018 for any processing by them of personal data disclosed to them, including publishing;
  - Explaining to intending researchers the 'safeguards' that apply to the research use of particular data;
  - Requiring researchers to sign a declaration or undertaking that, as a condition of access to data that might otherwise be closed, they will comply with the legislation and not identify individuals. Undertaking forms to consult specific personal data subject to these conditions should be signed and kept as an audit trail. If researchers are bound by a sectoral code of practice or particular employer requirements, e.g. guidelines produced by a university ethics committee, making access conditional on the researcher undertaking to comply with that as well as with any special conditions applying to specific sets of personal data. This is particularly relevant if they intend to publish or to make use of the data for purposes other than personal or household activities.

## Annex A Explanation of terms used in this guide

### **Acquire**

The receipt of data and records from an external person or organisation or from another part of the same organisation. The term represents a transfer of responsibility and is not necessarily intended to imply that they become the property of the archives service.

### **Anonymisation**

The masking or removal of personal data from documents. This could be by redaction so that data subjects can no longer be identified from the information in a particular document. In a structured digital dataset this could be by removal of identifiers at record level or additionally by aggregating up the record so that it refers not to an individual but to all individuals in a particular set, such as a geographical area. The standard set by the Information Commissioner for anonymisation is that it should prevent a 'motivated intruder' from discovering information about individuals.

### **Archives**

Materials created or received by a person, family or organisation, public or private, in the conduct of their affairs and preserved because of the enduring value contained in them or as evidence of the functions and responsibilities of their creator, especially those materials maintained using the principles of provenance, original order and collective control; permanent records. (ISO 16175-1:2010). Archives may be informal in terms of their format and the 'business' to which they relate: for example, a group of love letters may be created and maintained for 'the conduct of...affairs' of a personal and private nature and in some circumstances include published material that is being permanently preserved.

### **Archive Service**

A public or private organisation that is responsible for the management of records selected for permanent preservation for historical purposes and undertakes the archiving purpose. Some archives services are legal entities in their own right; other archives services are a function within a larger legal entity. At times archive services may be organised through a voluntary or community group. Archive Services will normally have custody of the archives of their own parent organisation but may also have custody (but not necessarily ownership) of the archives of other organisations or persons.

### **Archivist**

An archivist is a professionally recognised role fulfilled by a person having undertaken specific education and training in managing, appraising, preserving and using original records through time. Archivists work with all forms of records, including paper documents, photographs, maps, films, and digital records. They assist a wide range of stakeholders to access and use records.

### **Closed record**

This is a record that is not available for general public access. Note that it may be possible to provide access to information within the record in response to an FOI

request, for example by redacting the record to remove information that should be withheld, such as information identifying individuals. It may also be possible to provide access outside FOI to those agreeing to specified restrictions on use and for data subjects.

**(Data) Controller** has the meaning given to it in the Regulation.

A controller determines the purposes and means of processing personal data. This is the person (an individual or other legal person such as a company) who determines why, as well as how, personal data are to be processed. It is their duty to ensure that the collection and processing of any personal data within the organisation complies with the requirements of the Data Protection Act. An archive service may be a joint controller even if another party such as a depositor retains some level of control of the data.

**(Data) Processor** has the meaning given to it in the Regulation.

A processor is responsible for processing personal data on behalf of a controller. This is any person (other than an employee of the data controller) who processes the data on behalf of the data controller. Data processors must have a written contract in which the data controller defines how personal data, including sensitive personal data, is to be processed and what security measures will be appropriate. While data controllers maintain overall responsibility for any processing carried out on their behalf, data processors do have some direct responsibilities under the GDPR and may be subject to fines or other sanctions if they don't comply.

### **Data Subject**

The person who is the subject of the personal data. To count as a data subject the person must be living and capable of being identified from the data or other data in or likely to come into the possession of the data controller.

### **Historical research**

Any research done in an archive repository will be "historical" in its widest sense.

### **Inspection**

Disclosure of documents containing personal data to one or more identified or identifiable natural or legal persons other than the data subject or a data processor. This includes making documents available for consultation and use, providing copies or enabling copying of documents, and enabling the interrogation of documents. (See also Publication)

### **Manual unstructured data**

Manual personal data **not** held in a structured set. A structured set is accessible according to specific criteria, whether held by automated means or manually and whether centralised, decentralised or dispersed on a functional or geographical basis.

### **Open record**

This is a record that is available for public access on an unconditional basis.

**Personal data** has the meaning given to it in the Regulation.

Any information relating to an identifiable person who can be directly or indirectly identified in particular by reference to an identifier. This provides for a wide range of personal identifiers to constitute personal data, including name, identification number, location data or online identifier. The GDPR applies to both automated personal data and to personal data contained in (or intended to be contained in) manual filing systems where personal data is accessible according to specific criteria. This could include systematically ordered sets of manual records containing personal data.

**Processing** has the meaning given to it in the Regulation.

This has a very wide meaning. Passively holding information counts as processing as well as actively obtaining, recording, using, amending or destroying it.

**Pseudonymisation** has the meaning given to it in the Regulation.

The process of distinguishing individuals in a dataset by using a unique identifier which does not reveal their 'real world' identity (see ICO Anonymisation code of practice).

### **Publication**

Disclosure of documents containing personal data to natural or legal persons without regard to their identity, making them available for consultation and use and enabling perusal of them. Applies to online digitisation and born digital data sets and web archives. (See also Inspection)

### **Records**

Information created, received, and maintained as evidence and information by an organization or person, in pursuance of legal obligations or in the transaction of business.

### **Special personal data**

The GDPR refers to sensitive personal data as "special categories of personal data" (see Article 9). The special categories specifically include genetic data, and biometric data, where processed to uniquely identify an individual. Personal data relating to criminal convictions and offences are not included, but similar extra safeguards apply to its processing (see Article 10).

## Annex B Parliamentary Question reply to what is meant by the term Archiving Purposes in the Public Interest

We recognise the importance of the permanent preservation of archives for long-term public benefit by museums, galleries, archives and libraries. The General Data Protection Regulation (GDPR) and the Data Protection Bill permit such organisations to process personal data (including sensitive personal data) without consent, where necessary for “archiving purposes in the public interest”, subject to appropriate safeguards for the rights and freedoms of data subjects. It also exempts archiving services from complying with certain rights of data subjects (for example, rights to access, rectify or erase their data), where the exercise of such rights would seriously impair or prevent them from fulfilling their objectives.

‘Archiving in the public interest’ is a new term in data protection law. The Data Protection Act 1998 made no express reference to it and it is not defined in the GDPR, but Recital 158 to the GDPR may help to understand it. It says:

“Public authorities or public or private bodies that hold records of public interest should be services which, pursuant to Union or Member State law, have a legal obligation to acquire, preserve, appraise, arrange, describe, communicate, promote, disseminate and provide access to records of enduring public value for general public interest.” This is likely to apply to a wide variety of community, private, public sector, charitable/trust and voluntary sector archives. It could also include archives that may be closed to researchers at the present time, but which would become accessible at some future date, and archives which are held in analogue or digital format. The definition would not, however, cover organisations which gather and use data, information and records purely for their own commercial gain or that have no enduring public value.

We recognise that concerns have been raised about the reference in the Recital to archiving organisations being under a ‘legal obligation’ to archive. While this may reflect the archival system in some other EU member states, it does not reflect the position in the UK. Many smaller archives, particularly in the private sector, are unlikely to have any statutory obligations to archive.

We do not think the best approach is to create new statutory duties requiring organisations to archive. This could force organisations to archive that had no intention or means of doing so. Instead, we want to reassure bona fide archiving services that they will be able to continue to process personal data for the purposes of archiving in the public interest, regardless of whether they have a statutory obligation to do so. The reasons for this are:

Recitals act as explanatory notes to European regulations and have no direct legal effect. They may be taken into account by regulators and the courts when interpreting and applying the law, but they are not the law.

In any event Recital 158 should be read in conjunction with Recital 41 which says that “where this regulation refers to a legal basis or legislative measure, this does not necessarily require a legislative act adopted by a parliament”, providing that such a legal basis is clear and precise and its application is foreseeable to persons subject to it.



In the UK, most archives operate on a permissive basis under the general provisions of common law or statutory permissive powers, such as the British Library Act 1972 or the Local Government (Records) Act 1962. It may be open to organisations to rely on such a basis to satisfy the requirements of Recital 158.

Where there are no clear permissive powers, organisations may still be able to point to funding agreements, management agreements or constitutional documents which set out the purposes of the archive, particularly if the failure to adhere to such purposes could have legal or quasi-legal effects, for example for a body's charitable status. Although this may not amount to a statutory obligation to archive, it would give organisations a legal basis upon which to rely.

Up until now, organisations responsible for archiving may have relied on exemptions from subject access rights under the 'historical research' provisions in section 33 of the Data Protection Act 1998. These provisions will continue in the new Data Protection Bill, and have not been abolished by GDPR. Most of the exemptions from data subjects' rights in relation to archiving also exist in relation to historical research. If archiving services cannot confidently rely on the exemptions for archiving in the public interest, they may be able to rely on exemptions for historical research as an alternative. We recognise that there is some debate about this point within the sector because some archives may not exist for historical research purposes. In that case, a legal basis for archiving will be needed, but it does not need to be statutory.

<https://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2017-11-03/111381/>

## Annex C Main references to archiving in GDPR and Data Protection Act 2018

### GDPR

#### Recital 158

Where personal data are processed for archiving purposes, this Regulation should also apply to that processing, bearing in mind that this Regulation should not apply to deceased persons. Public authorities or public or private bodies that hold records of public interest should be services which, pursuant to Union or Member State law, have a legal obligation to acquire, preserve, appraise, arrange, describe, communicate, promote, disseminate and provide access to records of enduring value for general public interest. Member States should also be authorised to provide for the further processing of personal data for archiving purposes, for example with a view to providing specific information related to the political behaviour under former totalitarian state regimes, genocide, crimes against humanity, in particular the Holocaust, or war crimes.

#### Article 5 Principles relating to processing of personal data

Personal data shall be: ....

(b) collected for specified, explicit and legitimate purposes and not further processed in a manner that is incompatible with those purposes; **further processing for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes shall, in accordance with Article 89(1), not be considered to be incompatible with the initial purposes ('purpose limitation');**

...

(e) 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; **personal data may be stored for longer periods insofar as the personal data will be processed solely for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes in accordance with Article 89(1) subject to implementation of the appropriate technical and organisational measures** required by this Regulation in order to safeguard the rights and freedoms of the data subject ('storage limitation');

#### Article 9 Processing of special categories of personal data

Processing of personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, and the processing of genetic data, biometric data for the purpose of uniquely identifying a natural person, data concerning health or data concerning a natural person's sex life or sexual orientation shall be prohibited.

Paragraph 1 shall not apply if one of the following applies:

....

(j) **processing is necessary for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes** in accordance with Article 89(1) based on Union or Member State law which shall be proportionate to the aim pursued, respect the essence of the right to data protection and provide for suitable and specific measures to safeguard the fundamental rights and the interests of the data subject.

#### **Article 14 Information to be provided where personal data have not been obtained from the data subject**

Where personal data have not been obtained from the data subject, the controller shall provide the data subject with the following information:

the identity and the contact details of the controller and, where applicable, of the controller's representative;

the contact details of the data protection officer, where applicable;

the purposes of the processing for which the personal data are intended as well as the legal basis for the processing;

the categories of personal data concerned;

the recipients or categories of recipients of the personal data, if any;

where applicable, that the controller intends to transfer personal data to a recipient in a third country or international organisation and the existence or absence of an adequacy decision by the Commission, or in the case of transfers referred to in Article 46 or 47, or the second subparagraph of Article 49(1), reference to the appropriate or suitable safeguards and the means to obtain a copy of them or where they have been made available.

.....

5. Paragraphs 1 to 4 shall not apply where and insofar as:

the data subject already has the information;

**the provision of such information proves impossible or would involve a disproportionate effort, in particular for processing for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes, subject to the conditions and safeguards referred to in Article 89(1) or in so far as the obligation referred to in paragraph 1 of this Article is likely to render impossible or seriously impair the achievement of the objectives of that processing. In such cases the controller shall take appropriate measures to protect the data subject's rights and freedoms and legitimate interests, including making the information publicly available**

#### **Article 17 Right to erasure ('right to be forgotten')**

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 one of the following grounds applies: ...

Paragraphs 1 and 2 shall not apply to the extent that processing is necessary: ....

**for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes in accordance with Article 89(1) in so far as the right referred to in paragraph 1 is likely to render impossible or seriously impair the achievement of the objectives of that processing**

#### **Article 89 Safeguards and derogations relating to processing for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes**

Processing for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes, shall be subject to appropriate safeguards, in accordance with this Regulation, for the rights and freedoms of the data subject. Those safeguards shall ensure that technical and organisational measures are in place in particular in order to ensure respect for the principle of

data minimisation. Those measures may include pseudonymisation provided that those purposes can be fulfilled in that manner. Where those purposes can be fulfilled by further processing which does not permit or no longer permits the identification of data subjects, those purposes shall be fulfilled in that manner.

Where personal data are processed for scientific or historical research purposes or statistical purposes, Union or Member State law may provide for derogations from the rights referred to in Articles 15, 16, 18 and 21 subject to the conditions and safeguards referred to in paragraph 1 of this Article in so far as such rights are likely to render impossible or seriously impair the achievement of the specific purposes, and such derogations are necessary for the fulfilment of those purposes.

**Where personal data are processed for archiving purposes in the public interest, Union or Member State law may provide for derogations from the rights referred to in Articles 15, 16, 18, 19, 20 and 21 subject to the conditions and safeguards referred to in paragraph 1 of this Article in so far as such rights are likely to render impossible or seriously impair the achievement of the specific purposes, and such derogations are necessary for the fulfilment of those purposes.**

**Where processing referred to in paragraphs 2 and 3 serves at the same time another purpose, the derogations shall apply only to processing for the purposes referred to in those paragraphs**

## **UK Data Protection Act 2018**

### **10 Special categories of personal data and criminal convictions etc data**

Subsections (2) and (3) make provision about the processing of personal data described in Article 9(1) of the GDPR (prohibition on processing of special categories of personal data) in reliance on an exception in one of the following points of Article 9(2)—

point (b) (employment, social security and social protection);

point (g) (substantial public interest);

point (h) (health and social care);

point (i) (public health);

point (j) (archiving, research and statistics).

The processing meets the requirement in point (b), (h), (i) or (j) of Article 9(2) of the GDPR for authorisation by, or a basis in, the law of the United Kingdom or a part of the United Kingdom only if it meets a condition in Part 1 of Schedule 1.

### **19 Processing for archiving, research and statistical purposes: safeguards**

This section makes provision about—

processing of personal data that is necessary for archiving purposes in the public interest,

processing of personal data that is necessary for scientific or historical research purposes, and

processing of personal data that is necessary for statistical purposes.

Such processing does not satisfy the requirement in Article 89(1) of the GDPR for the processing to be subject to appropriate safeguards for the rights and freedoms of the data subject if it is likely to cause substantial damage or substantial distress to a data subject.

## **25 Manual unstructured data used in longstanding historical research**

The provisions of the applied GDPR listed in subsection (2) do not apply to personal data to which this Chapter applies by virtue of section 21(2) (manual unstructured personal data held by FOI public authorities) at any time when— the personal data—

is subject to processing which was already underway

immediately before 24 October 1998, and

is processed only for the purposes of historical research, and

the processing is not carried out—

for the purposes of measures or decisions with respect to a particular data subject, or

in a way that causes, or is likely to cause, substantial damage or substantial distress to a data subject.

Those provisions are—

in Chapter II of the applied GDPR (principles), Article 5(1)(d) (the accuracy principle), and

in Chapter III of the applied GDPR (rights of the data subject)—

Article 16 (right to rectification), and

Article 17(1) and (2) (right to erasure).

The exemptions in this section apply in addition to the exemptions in section 24.

## **41 Safeguards: archiving**

This section applies in relation to the processing of personal data for a law enforcement purpose where the processing is necessary—

for archiving purposes in the public interest,

for scientific or historical research purposes, or

for statistical purposes.

The processing is not permitted if—

it is carried out for the purposes of, or in connection with, measures or decisions with respect to a particular data subject, or

it is likely to cause substantial damage or substantial distress to a data subject.

### **SCHEDULE 1**

#### **SPECIAL CATEGORIES OF PERSONAL DATA AND CRIMINAL CONVICTIONS**

##### **ETC DATA**

###### *Research etc*

4 This condition is met if the processing—

is necessary for archiving purposes, scientific or historical research purposes or statistical purposes,

is carried out in accordance with Article 89(1) of the GDPR (as supplemented by section 19), and is in the public interest.

## **SCHEDULE 2 PART 6 DEROGATIONS ETC BASED ON ARTICLE 89 FOR RESEARCH, STATISTICS AND ARCHIVING**

.....

### *Archiving in the public interest*

28 (1) The listed GDPR provisions do not apply to personal data processed for archiving purposes in the public interest to the extent that the application of those provisions would prevent or seriously impair the achievement of those purposes.

This is subject to sub-paragraph (3).

For the purposes of this paragraph, the listed GDPR provisions are the following provisions of the GDPR (the rights in which may be derogated from by virtue of Article 89(3) of the GDPR)—

Article 15(1) to (3) (confirmation of processing, access to data and safeguards for third country transfers);

Article 16 (right to rectification);

Article 18(1) (restriction of processing);

Article 19 (notification obligation regarding rectification or erasure of personal data or restriction of processing);

Article 20(1) (right to data portability);

Article 21(1) (objections to processing).

The exemption in sub-paragraph (1) is available only where the personal data is processed in accordance with Article 89(1) of the GDPR (as supplemented by section 19).