

Policy on the Right of Erasure (Right to be Forgotten)



ÚDARÁS UCHTÁLA na hÉIREANN
THE ADOPTION AUTHORITY of IRELAND

Revision and Approval History

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1. Introduction

The purpose of this policy is to set out the procedure which will be required when a Data Subject exercises their Right of Erasure under Article 17 of the GDPR which is also known as ‘the right to be forgotten’.

The broad principle underpinning this right is to enable an individual to request the deletion or removal of personal data, subject to certain exemptions where there is no compelling reason for its continued processing.

This policy will have limited implementation in the Adoption Authority due to the large number of exemptions that can be used for certain types of processing, which are highlighted below.

Policy Scope

This policy sets out the procedures to be followed by the Adoption Authority of Ireland (“**Authority**”) to ensure we comply with our obligations under Article 17 of the GDPR “Right to erasure” (**‘Right to be Forgotten’**), (insofar as we legally can) to ensure the protection of the rights and freedoms of data subjects.

It outlines the Adoption Authority’s obligations with respect to the Erasure of data in certain limited situations.

Exceptions to this Regulatory Requirement

This obligation does not apply if processing is necessary;

- for the exercise of the right of freedom of expression and information;
- for compliance with a Union or Member State legal obligation;
- **for performance of a public interest task of exercise of official authority;**
- for public health reasons;
- **for archival, research or statistical purposes (if any relevant conditions for this type of processing are met); or**
- **it is required for the establishment, exercise or defence of legal claims.**

The Adoption Authority can refuse to comply with the request to erasure when one of the exceptions above as set out in Art 17.2 of the GDPR applies.

Definitions

The following definitions of terms used in this policy are provided to ensure clarity, please also refer to the Adoption Authority's **Glossary of commonly used Data protection and GDPR terms**.

What is “Personal Data”- Personal data is any information relating to an identified or identifiable natural person ('data subject'). An identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person Regulation. Examples of personal data include: Name & Address, Date of Birth, Email address and Bank Account Number

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

The “**Processor**” is a natural or legal person, public authority, agency or any other body which processes personal data on behalf of a Data Controller.

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

“**Recipient**” - means a natural or legal person, public authority, agency or another body, to which the personal data are disclosed, whether a third party or not. However, public authorities which may receive personal data in the framework of a particular inquiry in accordance with Union or Member State law shall not be regarded as recipients; the processing of those data by those public authorities shall be in compliance with the applicable data protection rules according to the purposes of the processing.

“**Supervisory Authority**” – is the independent public authority with responsibility for monitoring the application of the GDPR, in order to protect the fundamental rights and freedoms of the natural persons in relation to processing and to facilitate the free flow of personal data within the European Union. In the

context of the Irish Jurisdiction, this authority is vested in the office of the Irish Data Protection Commission.

“Accountability” – The controller shall implement appropriate technical and organisational measures to ensure and to be able to demonstrate that processing is performed in accordance with the GDPR. The measures implemented shall be reviewed and updated where necessary. (“Accountability Principle”)

2. Right to Erasure under the GDPR

Data Subjects have the right under Article 17 of the GDPR to have their data ‘erased’ in certain specific situations – essentially where processing fails to meet the requirements of GDPR. We undertake to respond to such a request without undue delay and in any event within one month, although this can be extended in difficult circumstances.

When does the Right to Erasure apply?

- When data are no longer necessary for the purpose for which they were collected or processed.
- If the individual withdraws consent to processing (and if there is no other justification for processing).
- When the data are otherwise unlawfully processed (i.e. in some way which is otherwise in breach of the GDPR).
- If the data have to be erased to comply with Union or Member State law which applies to the controller.
- When the data was relevant to the data subject as a child

The Adoption Authority is legally bound to hold information regarding children “in perpetuity” by the power vested in them as a public body under the Adoption Act 2010.

Other obligations to notify recipients

If the Adoption Authority has to erase personal data then we will also notify any third parties to whom we have disclosed such data, unless this would be impossible or involve disproportionate effort e.g. Tusla; The Child & Family Agency.

Data made available in the Public Domain

If we have made personal data public, and where we were obliged to erase the data, the Adoption Authority will also inform other controllers who are processing the data that the data subject has requested erasure of that data. Currently the Adoption Authority does not make any personal information available in the public domain.

3. Data Subject Erasure Request Procedure

Important Compliance Notes

1. We will always act on a request for erasure from a data subject unless we are unable to establish their identity.
2. Under Article 12.3 of the GDPR, we have 30 days to provide information on the action the organisation will decide to take on a legitimate erasure request. This timeframe can be extended up to 60 days depending on the complexity of the request
3. If it is decided by the Board of the Authority not to respond/comply to a request, we will inform the data subject within 30 days stating the reason(s) and informing the data subject of their right to complain to the Data Protection Commission.

The procedure for responding to requests for erasure is set out in Figure 1 and expanded on in Table 1. The specifics of each step will vary depending on the request and the systems where the data is held.



Step	Description	Responsibility
Data Erasure request received	<p>The Data Subject submits a request for erasure via one of a number of methods, including electronically (via email or website), by letter or by telephone. This may be received through any part of the organisation and should be channelled through to the DPO.</p>	
Log Data Erasure Request	<p>The fact the request was received should be logged in the Data Subject Access Request Register and the date of the request recorded.</p>	
Verify Identity of the data subject	<p>The identity of the data subject is confirmed via an approved verified method. Additional information may be requested to confirm identity. If the identity of the data subject cannot be confirmed the request is rejected and the reason for this communicated to the data subject.</p>	
Evaluate Validity of request or if an exception applies	<p>Is the request reasonable and lawful?</p> <p>If The Adoption Authority determines that it is appropriate to apply any of the exemptions set out Article 17.3 of the GDPR and deny the request of an individual to erase their data, a proper notice explaining the exception will be communicated to the data subject within 30</p>	

	<p>days, informing them they have the right to file a complaint to the DPC in their member state where they feel the request has been processed unlawfully or unfairly.</p>	
Locate the personal data and identify all processors and third parties that may also have the personal data.	<p>Notify all internal Units/sections that may store the requested personal data or that may come into contact with personal data to establish a thorough search so we can identify personal data in a timely manner.</p>	
Notify Third parties	<p>Notify all identified third parties that have access to the personal data to completely remove the data from their environments and confirm erasure</p>	
Confirm if any exemptions apply to the personal data	<p>Check data against requirements under Article 17 (3) Most commonly we will rely on Article 17 (b) :</p> <p>for compliance with a legal obligation which requires processing by Union or Member State law to which the controller is subject or for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller;</p> <p>If we receive a request to erase any data that is recorded on the NACPR the Standard Operating procedure for removal of this type of Data will be used.</p>	

	<p>All requests for other types of erasure will be decided by the Board of the Adoption Authority.</p>	
Remove the personal data from our environment.	<p>Remove the personal data from the Adoption Authority. There may be circumstances where erasing personal data from digital and physical backups is not required:</p> <p>If the Authority cannot easily delete individual subject data from backups without undue hardship, we will not be required to fulfil erasure requests</p>	
Respond to Data Subject	<p>Respond to the data subject to confirm personal data erasure from the Adoption Authority and all associated third parties. We have 30 days to respond to data subject erasure requests, and this may be extended depending on the excessiveness, repetitiveness, and complexity of the request.</p>	
Close Data Erasure Request	<p>The fact that the request has been responded to is logged in the Data Subject Request Register together with the date of closure.</p>	

Appendix 1 – Data Processing Activities

Personal information which is exempt from Erasure

No	Processing activity	Basis for Exception from Erasure
1	Employee data	<p>Art 17 (3) (e) for the establishment, exercise or defence of legal claims although certain records may sometimes be deleted if they do not relate directly to the employment contract.</p> <p>Preparation of Employment processes such as pensions</p>
2	Adoption Records	<p>Art 17 (3) (b) for compliance with a legal obligation which requires processing by Union or Member State law to which the controller is subject or for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller;</p>
3	Intercountry Adoptions Records;	<p>Art 17 (3) (b) for compliance with a legal obligation which requires processing by Union or Member State law to which the controller is subject or for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller;</p>

4	Gender Recognition Register of intercountry Adoption;	Art 17 (3) (b) for compliance with a legal obligation which requires processing by Union or Member State law to which the controller is subject or for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller
5	Birth Father Register	Art 17 (3) (b) for compliance with a legal obligation which requires processing by Union or Member State law to which the controller is subject or for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller
6	Social Work Records	Art 17 (3) (b) for compliance with a legal obligation which requires processing by Union or Member State law to which the controller is subject or for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller

Information that can be erased

No	Processing activity	Basis for Exception from Erasure
1	Data Processed in the National Adoption contact register	As this is processed on a consent basis it can be deleted – The Adoption Authority has a prepared Standard Operating Procedure for erasure of data from the NACPR
2	General Website Queries	Emails sent via web-form that do not relate to tasks carried out by the Adoption Authority under the Adoption Act.
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Appendix 2 – Letter template when responding to Erasure Request for Adoption File

[AAI Letterhead]

Name
Address
By email:

Confidential – Addressee only

Dear Applicants name

Re: Request for erasure

We have considered your request for erasure of personal data in accordance with Article 17 of the General Data Protection Regulation (the “**GDPR**”).

The Adoption Authority is required by law to keep records of adoptions, and because the maintenance of those records is necessary for the performance of a designated task in the public interest and in the exercise of our official authority, we are not required, as a result of Article 17(3)(b) of the GDPR, to erase the primary documents which make up your adoption file.

However, we are able to comply with your request with regard to personal data we hold about you which does not form part of your official file. In an attachment to this letter we set out the documents which will be erased in accordance with your request.

We will maintain more recent correspondence in accordance with our data retention policies in order to demonstrate compliance with your request, as it may become relevant in the event that we need to obtain legal advice in relation to your request, or your file generally.

Please let me know if you have any further queries in relation to this matter.

Yours sincerely

APPENDIX

Documents that can be erased

Document	Description	Reason
		Processing that was based on data subject consent which has now been withdrawn – Article 17(1)(b)
		Processing is no longer necessary in relation to the purposes for which the Personal Data were collected or otherwise processed – Article 17(1)(a)

Appendix 3 - Article 17 Right to Erasure

Article 17

Right to erasure ('right to be forgotten')

1. 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:

- (a) the personal data are no longer necessary in relation to the purposes for which they were collected or otherwise processed;
- (b) the data subject withdraws consent on which the processing is based according to point (a) of Article 6(1), or point (a) of Article 9(2), and where there is no other legal ground for the processing;
- (c) the data subject objects to the processing pursuant to Article 21(1) and there are no overriding legitimate grounds for the processing, or the data subject objects to the processing pursuant to Article 21(2);
- (d) the personal data have been unlawfully processed;
- (e) the personal data have to be erased for compliance with a legal obligation in Union or Member State law to which the controller is subject;
- (f) the personal data have been collected in relation to the offer of information society services referred to in Article 8(1).

2. Where the controller has made the personal data public and is obliged pursuant to paragraph 1 to erase the personal data, the controller, taking account of available technology and the cost of implementation, shall take reasonable steps, including technical measures, to inform controllers which are processing the personal data that the data subject has requested the erasure by such controllers of any links to, or copy or replication of, those personal data.

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

- (a) for exercising the right of freedom of expression and information;

- (b) for compliance with a legal obligation which requires processing by Union or Member State law to which the controller is subject or for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller;
- (c) for reasons of public interest in the area of public health in accordance with points (h) and (i) of Article 9(2) as well as Article 9(3);
- (d) 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; or
- (e) for the establishment, exercise or defence of legal claims.

Appendix 2 – Recital 65 & 66

Recital 65

*Right of rectification and erasure**

A data subject should have the right to have personal data concerning him or her rectified and a ‘right to be forgotten’ where the retention of such data infringes this Regulation or Union or Member State law to which the controller is subject. 2In particular, a data subject should have the right to have his or her personal data erased and no longer processed where the personal data are no longer necessary in relation to the purposes for which they are collected or otherwise processed, where a data subject has withdrawn his or her consent or objects to the processing of personal data concerning him or her, or where the processing of his or her personal data does not otherwise comply with this Regulation. 3That right is relevant in particular where the data subject has given his or her consent as a child and is not fully aware of the risks involved by the processing, and later wants to remove such personal data, especially on the internet. 4The data subject should be able to exercise that right notwithstanding the fact that he or she is no longer a child. 5However, the further retention of the personal data should be lawful where it is necessary, for exercising the right of freedom of expression and information, for compliance with a legal obligation, for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller, on the grounds of public interest in the area of public health, for

archiving purposes in the public interest, scientific or historical research purposes or statistical purposes, or for the establishment, exercise or defence of legal claims.

Recital 66

Right to be forgotten*

To strengthen the right to be forgotten in the online environment, the right to erasure should also be extended in such a way that a controller who has made the personal data public should be obliged to inform the controllers which are processing such personal data to erase any links to, or copies or replications of those personal data. In doing so, that controller should take reasonable steps, taking into account available technology and the means available to the controller, including technical measures, to inform the controllers which are processing the personal data of the data subject's request.