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Data Protection and Freedom of Information

The University holds a vast amount of information including personal data about staff and students, minutes from meetings, financial records, research data and numerous other types. As an employee of the University it is vital that you have an understanding of how to manage this information and of what the law says.

This leaflet looks at two relevant pieces of legislation. Firstly, the Data Protection Act which protects the rights of individuals with regard to their ‘personal data’ and regulates how the University can process personal data. Secondly, the Freedom of Information Act which aims to increase confidence in Public Authorities through creating a right of access to information held by the University.

It is important not to think of these Acts as creating extra work and preventing reasonable practice, but as a framework for ensuring that we handle personal information securely and that as a Public Authority we are accountable for decisions made. Remember, the Acts give you rights too.

Data Protection

The Data Protection Act applies to ‘personal data’, that is, data about identifiable living individuals. Personal data includes facts and opinions about an individual and information regarding the intentions of the University towards the individual.

The Data Protection Act applies to personal data held on computers and to paper records forming part of a ‘relevant filing system’, i.e. structured by reference to individuals or to criteria relating to individuals, so that ‘specific information relating to a particular individual is readily accessible’.

The Data Protection Principles

Anyone processing personal data must comply with the eight principles of good practice. They say that:

1. Personal data shall be processed fairly and lawfully.
2. Personal data shall be obtained only for one or more specified and lawful purposes, and shall not be further processed in any manner incompatible with that purpose or those purposes.
3. Personal data shall be adequate, relevant and not excessive.
4. Personal data shall be accurate and, where necessary, kept up to date.
5. Personal data processed for any purpose or purposes shall not be kept for longer than is necessary.
6. Personal data shall be processed in accordance with the rights of data subjects under this Act.
7. Appropriate technical and organisational measures shall be taken against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data.
8. Personal data shall not be transferred to a country outside the European Economic Area unless that country ensures an adequate level of protection.

Processing Personal Data

‘Processing’ is broadly defined and takes place when any operation or set of operations is carried out on personal data. The Act requires that personal data be processed “fairly and lawfully”. The data subject should be informed of who the data controller is (the University); who the data controller’s representative is; the purpose or purposes for which the data are intended to be processed; and to whom the data will be disclosed. The University normally does this during registration for students and during the application process for staff; occasionally additional fair processing notices may be required.

Processing may only be carried out where one of the following conditions has been met:

• The individual has given his or her consent to the processing;
• The processing is necessary for the performance of a contract with the individual;
• The processing is required under a legal obligation;
• The processing is necessary to protect the vital interests of the individual;
• The processing is necessary to carry out public functions;
• The processing is necessary for the legitimate interests of the data controller or a third party (unless it could prejudice the interests of the individual).
**Processing Sensitive Data**

The Data Protection Act makes specific provision for sensitive personal data. Sensitive data include: racial or ethnic origin; political opinions; religious or other beliefs; trade union membership; health; sex life; criminal proceedings or convictions.

Sensitive data can only be processed under strict conditions, which include, having the explicit consent of the individual, being required by law to process the data for employment purposes, needing to process the information in order to protect the vital interests of the data subject or another and dealing with the administration of justice or legal proceedings.

**Security**

All staff are expected to abide by the University’s developing Information Security Policy. Data controllers must ensure that appropriate security measures are taken against unlawful or unauthorised processing of personal data and against accidental loss of, or damage to, personal data. These may include both technical measures (e.g. the regular backing up of data files, data encryption for information on portable devices) and organisational measures (e.g. staff awareness and training). For more information about the University’s Information Security Policy please see [www.exeter.ac.uk/it/regulations/infosec](http://www.exeter.ac.uk/it/regulations/infosec)

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### Frequently Asked Questions

1. **As a member of staff at the University, am I free to circulate data internally without specific consent?**

   It is unlikely that the University would have to seek specific consent for an internal data transfer. It will be seen as a legitimate requirement of any Institution to distribute data to relevant employees whenever there is an operational need and therefore there will be no particular need to warn students explicitly in advance. However, this does not mean all data regarding that individual(s) should be transferred – only what is necessary for operational needs.

2. **Can we disclose information about a student to their relatives and guardians?**

   No. We cannot disclose any information, without consent from the student. Students are private individuals and the University has no obligation to inform relatives of any aspect of a student's private life or studies. There may be occasions where a relative is particularly concerned about the well being of a student. Even in these circumstances we cannot disclose information, the best solution is for the University to contact the student and ask them to contact the relative concerned. Staff are permitted to discuss institutional procedures with parents. Thus it is possible to explain to a parent what, in principle, happens when a student hasn’t paid their fees etc, but the specific circumstances of an individual student cannot be discussed without the consent of that student.

3. **What about disclosure in an emergency?**

   There may be occasions, in exceptional circumstances when the usual need to get consent before disclosing to parents may be ignored. The University is likely to have the student’s next of kin details for just such purposes. Disclosures should be made only to these named individuals and, as appropriate, the emergency services.

4. **If an external person or organisation makes an enquiry to confirm facts they seem to already know (e.g. about a student’s qualification) is it acceptable to confirm those details?**

   Not necessarily. The confirmation of facts about a subject that an enquirer already appears aware of is no less a disclosure than telling an enquirer something they were unaware of. All enquiries about the status of students, staff etc. should be subject to the usual security checks before any disclosure is made.

5. **Can I publish student data on the web?**

   No. Data available on the Internet is available worldwide, and therefore Principle 8 applies. Such processing can only go ahead with the student’s consent; specific consent should be obtained in all cases.

6. **What about publishing staff details on the web?**

   If an individual’s job involves contact with the public, for example in dealing with Admissions enquiries, then it is legitimate for the institution to put work contact details into the public domain. However, there may be circumstances in which a member of staff has real concerns over the posting of their personal data on a website these cases should be carefully considered.

7. **Are students and staff entitled to find out what information is held on them and how can I find out what information is held about me?**

   A request for a copy of information held about you is known as a Subject Access Request and any student or member of staff can make a request. A request for such information should be made in writing to the Data Protection Officer. The current fee for a request is £10. Full procedures can be found on the Data Protection website.
What rights do students and staff have under the Data Protection Act?

The Act gives significant rights to individuals in respect of personal data held about them by the University. These include the right:

- To make a Subject Access Request – an individual is entitled to be supplied with a copy of all personal data held;
- To require the data controller to ensure that no significant decisions that affect them are based solely upon an automated decision-making process;
- To prevent processing likely to cause damage or distress;
- To prevent processing for the purposes of direct marketing;
- To take action for compensation if they suffer damage by any contravention of the Act by the data controller;
- To request the Information Commissioner make an assessment as to whether any provision of the Act has been contravened;
- To rectify, block, erase or destroy inaccurate data.

Freedom of Information

The Freedom of Information Act gives individuals/organisations the right to request information held by the University of Exeter. The University has a Publication Scheme and guide to information on the website which help users locate information that the University is committed to making available. This can be accessed at: www.exeter.ac.uk/foi.shtml

Individuals can also request information not included in the Publication Scheme and subject to exemptions the University must provide the information in the requested format, within 20 working days. 23 exemptions or reasons for not disclosing information exist, these help to protect the University and include factors such as Commercial interests, data protection and information intended for future publication.

What should I do if I receive a request?

A request for information must be in recorded format (e.g. written), it can be addressed to any member of staff and does not need to mention Freedom of Information. The request must be answered within 20 working days; it is vital that you act as soon as you receive a request. If the request is for information you regularly provide you should respond directly, however if the request seems unusual or you are unsure of whether to provide the information please contact the Freedom of Information Officer. Full details of how to deal with requests are available on the Freedom of Information web pages.

Do I always have to release all the information requested?

Not necessarily. There are over 20 exemptions or reasons for not disclosing information in the Act, these help to protect the University’s interests. The exemptions include information accessible to the applicant by other means, information intended for publication at a later date, personal information and commercial interests. The application of exemptions must be discussed with the Freedom of Information Officer and a formal refusal notice issued.

Can I charge for Freedom of Information requests?

The University policy on charging is available on the Freedom of Information web pages. In the majority of cases the University will not charge for providing information, however where costs incurred in determining whether information is held, locating, retrieving and extracting the information exceed £450 the University may charge.

What information can be accessed under the Freedom of Information Act?

The Act covers all recorded information held by the University and subject to the exemptions the University will provide the information requested. For example, the University has received requests for the following information:

- Statistics regarding plagiarism;
- Details of University Investments;
- Data on student recruitment;
- University Policies;
- Information regarding library fines.

Does Freedom of Information really affect me?

You may find that in your day-to-day work Data Protection is more likely to influence the way you work, however Freedom of Information does affect you. As an employee of the University you need to be aware that all University information and records, including those in your control, are potentially open to public access and be prepared to act quickly if you receive a request for information.