Policy on processing special categories of personal data & criminal convictions data V1.0

Document Approval and Version Control

Document Title	Policy on processing special categories of personal data & criminal convictions data
Prepared by	Hazel Lauder
Approved by	Executive Board
File Location	W:\Common\Information Compliance\Data Protection\Legislation\GDPR\Policy Guidance\SpecialCategories
Publication Location	https://www.gcu.ac.uk/dataprotection/
Related documents	• Information Assurance Charter • Information & Records Management Policy • Information Classification & Handling Policy • Records Retention Schedules • Data Protection & Privacy Policy
Last Review Date	5 August 2020
Next Review Date	5 August 2021

Version No.	Status	Date Issued	Author	Update Information
V0.1	Draft	30/8/19	Hazel Lauder – Head of Information Compliance	New Policy
V0.5	Draft	7/1/20	Hazel Lauder – Head of Information Compliance	Revisions to draft
V0.5	Approved	5/8/20	Hazel Lauder – Head of Information Compliance	New policy approved
V1.0	Approved	11/8/20	Hazel Lauder – Head of Information Compliance	Published version

Contents

Introduction

1.1   Data protection legislation including the General Data Protection Regulation (GDPR) and the Data Protection Act 2018 and any other laws and regulations relating to the processing of personal data and privacy which apply to the University ("data protection law") set out the obligations and responsibilities of organisations which process special category data and data relating to criminal convictions.

1.2   The legislation requires the University to have an appropriate policy document in place in relation to the processing of special categories of personal data and criminal convictions data.

1.3   Special category data is defined in Article 9 GDPR as personal data revealing:
- Racial or ethnic origin;
- Political opinions;
- Religious or philosophical beliefs;
- Trade union membership;
- 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.

1.4   Criminal convictions data is described in Article 10 GDPR as data related to criminal convictions and offences or related security measures. Section 11(2) of the DPA 2018 specifically confirms that this includes personal data about the alleged commission of offences or proceedings for an offence committed or alleged to have been committed, including sentencing.

Purpose of this Policy

This Policy aims to ensure that the University satisfies the requirements of data protection law in terms of having a policy statement in place, setting out an explaining the safeguards in place when processing special category data and criminal convictions data.

2.1 This policy supplements our Data Protection and Privacy Policy [https://www.gcu.ac.uk/dataprotection/], our student privacy notice [https://www.gcu.ac.uk/student/policiesprocedures/regulations/studentprivacynotice/] and our staff privacy notice [https://www.gcu.ac.uk/dataprotection/staffprivacynotice/].

2.2   This policy will be published on the University website and any amendments or revisions will be noted within the document control section.

2.3   A review will be undertaken on an annual basis with content being updated as appropriate. The Policy may be altered at any time if amendments are deemed necessary.

Policy Statement

3.1   The University is committed to protecting the rights and freedoms of individuals in respect of processing their personal data. Any processing of special categories of personal data and criminal convictions data will be done in accordance with the requirements of Article 9 and 10 of the General Data Protection Regulation ('GDPR') and Schedule 1 of the Data Protection Act 2018 ('DPA 2018').

3.2   The University will identify this processing in its records of processing activity held in the Information Asset Register (IAR). The legal condition being relied on to process the information and the arrangements for retention and disposal of the information will be identified and recorded in accordance with Article 30 of GDPR.

3.3   The University is committed to processing of special category data and criminal convictions data only where there is a lawful basis to do so and processing will be conducted in accordance with the data protection principles in Article 5 of the GDPR as set out below:

(a) Lawfulness, fairness and transparency
Prior to processing special category and criminal convictions data the University will give careful consideration as to whether the processing is necessary. This data will only be shared and disclosed with authorised University staff where strictly necessary for business purposes.

(b) Purpose Limitation
Any special category and criminal convictions data processed by the University will be restricted to that which is necessary for the purposes of the processing and ensuring that this is not excessive or processed for a matter which is not compatible with that purpose.

(c) Data minimisation
The University will ensure that the special category and criminal convictions data it collects is restricted to only that which is necessary for the purpose it was collected.

(d) Accuracy
When the University becomes aware that personal data is inaccurate or out of date, having regard to the purpose for which it is being processed, the University will take reasonable steps to ensure that the data is promptly erased or rectified.

(e) Storage Limitation
The University will only keep personal data for the minimum amount of time necessary. This time period may be set down in law or be identified according to the needs of the University. The University maintains record retention schedules which set out how long we will hold different types of special category and criminal convictions data. A limited set of personal data is required for research and archiving purposes. The University has put in place appropriate safeguards for these activities as required by Article 89 of GDPR.

(f) Security

The University has developed and implemented appropriate technical and organisational measures to protect against unauthorised and unlawful processing and against accidental loss, destruction or damage of special category and criminal convictions data.

(g) Accountability

The University has appointed a data protection officer who reports to the most senior levels of the University and receives support to perform the role. The University takes a data protection by design and default approach, completing data protection impact assessments where necessary, maintaining a record of processing activities and adopting and implementing data protection policies and procedure.

Scope

4.1   This Policy applies to all staff and all special category data and criminal convictions data that is processed by the University where the University is the Data Controller.

Responsibilities of Staff & Students

5.1   The University Secretary has overall responsibility for, and ownership of, the Policy.

5.2   Members of the Executive are responsible for endorsing, implementing and supporting the Policy and any amendments.

5.3   Directors, Deans and Heads of Department are responsible for ensuring that their School/ Department adopt and conform to this Policy.

5.4   The Data Protection Officer (DPO) is responsible for the implementation and management of this Policy.

5.5   The Information Compliance Team within the Department of Governance are responsible for providing advice and guidance in relation to Data Protection matters and for managing requests made by Data Subjects.

5.6   Other roles within the University support the management and security of information and records including Information Services, IT security and physical security.

5.7   The Information Governance Committee (IGC), Information Management Forum (IMF) and Information Co-ordinators have key information governance roles.

5.8   All staff must undertake relevant Data Protection and Privacy and information security training.

5.9   All staff and students are individually responsible for ensuring that the processing of personal data is in accordance with University policy and guidelines.

5.10   Students who are considering processing special category data or criminal convictions data as part of their studies must gain approval from the appropriate member of academic staff before processing this data. Academic staff will advise students on the safe and appropriate management of this data.

Types of special category data processed

6.1   The University may process special categories of personal data to fulfil its obligation to its students as an educational provider and to University staff as an employer. Special category data may also be processed by University staff for research purposes. This includes data about racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, and the processing of genetic data, data concerning health or data concerning sex life or sexual orientation. Please refer to the [student privacy notice link] or the [staff privacy notice link] for more information.

What is the lawful basis for processing special category data

7.1   In order to lawfully process special category data, a lawful basis under GDPR must be identified, along with a separate condition for processing special category data.

7.2   The University will ensure that there is a legal basis or condition under data protection law to process special categories of data. To be compliant, a legal basis or condition from Article 6 and an additional legal basis from Article 9 of GDPR are required. (See Appendix) Advice should be obtained from dataprotection@gcu.ac.uk on the relevant legal basis/condition.

Criminal Convictions data

8.1   The University has a duty of care to protect the safety and wellbeing of the University community. In order to do so, it may be necessary for the University to process criminal convictions data relating to student applicants and registered students and employees and contractors where it has a legal basis to do so.

8.2   There must be a legal basis for processing criminal conviction data. Article 10 of GDPR covers processing in relation to criminal convictions and offences. The conditions under which the University is authorised to process this data are set out in Schedule 1, Part 2 of the Data Protection Act 2018.

       The University processes criminal convictions data under the following conditions:

Paragraph 10 of Part 2, Schedule 1 DPA 2018 (processing is necessary for the purposes of prevention or detection of an unlawful act), on the basis that the University processes the criminal convictions data to prevent students and staff coming to harm because of further unlawful acts by an individual;

Paragraph 18 (1) of Part 2, Schedule 1 DPA 2018 (processing is necessary for safeguarding, i.e. protecting under 18s and "at risk" adults from neglect or physical, mental or emotional harm).

9. Data Protection Officer

If you have any questions about this policy, please contact the Data Protection Officer. Email: dataprotection@gcu.ac.uk

Appendix

Conditions for Processing Personal Data (Article 6 (1), GDPR)

(a) the data subject has given consent to the processing of his or her personal data for one or more specific purposes;

(b) processing is necessary for the performance of a contract to which the data subject is party or in order to take steps at the request of the data subject prior to entering into a contract;

(c) processing is necessary for compliance with a legal obligation to which the controller is subject;

(d) processing is necessary in order to protect the vital interests of the data subject or of another natural person;

(e) processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller;

(f) processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party; except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject; which require protection of personal data, in particular where the data subject is a child.

Point (f) of the first subparagraph shall not apply to processing carried out by public authorities in the performance of their tasks.

Conditions for Processing Special Categories of Personal Data (Article 9 (2) GDPR)

(a) the data subject has given explicit consent to the processing of those personal data for one or more specified purposes, except where Union or Member State law provide that the prohibition referred to in paragraph 1 may not be lifted by the data subject;

(b) processing is necessary for the purposes of carrying out the obligations and exercising specific rights of the controller or of the data subject in the field of employment and social security and social protection law in so far as it is authorised by Union or Member State law or a collective agreement pursuant to Member State law providing for appropriate safeguards for the fundamental rights and the interests of the data subject;

(c) processing is necessary to protect the vital interests of the data subject or of another natural person where the data subject is physically or legally incapable of giving consent;

(d) processing is carried out in the course of its legitimate activities with appropriate safeguards by a foundation, association or any other not-for-profit body with a political, philosophical, religious or trade union aim and on condition that the processing relates solely to the members or to former members of the body or to persons who have regular contact with it in connection with

its purposes and that the personal data are not disclosed outside that body without the consent of the data subjects;

(e) processing relates to personal data which are manifestly made public by the data subject;

(f) processing is necessary for the establishment, exercise or defence of legal claims or whenever courts are acting in their judicial capacity;

(g) processing is necessary for reasons of substantial public interest, on the basis of 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;

(h) processing is necessary for the purposes of preventive or occupational medicine, for the assessment of the working capacity of the employee, medical diagnosis, the provision of health or social care or treatment or the management of health or social care systems and services on the basis of Union or Member State law or pursuant to contract with a health professional and subject to the conditions and safeguards referred to in paragraph 3;

(i) processing is necessary for reasons of public interest in the area of public health, such as protecting against serious cross-border threats to health or ensuring high standards of quality and safety of health care and of medicinal products or medical devices, on the basis of Union or Member State law which provides for suitable and specific measures to safeguard the rights and freedoms of the data subject, in particular professional secrecy; L 119/38 EN Official Journal of the European Union 4.5.2016;

(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.