# *Data-Subject Rights under GDPR*

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| Data-Subject Right | Meaning | Who can make request? | How to handle? | | | | | | | | | | Legal Framework | | | | Caselaw | | Best practice |
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| | | | | Data-Subject request | | | | | | | | Restrictions | GDPR Articles | GDPR Recitals | EDPB | | CJEU | ECtHR | |
| | | | Obligations | Request has to be granted | | | | Request does not have to be granted | | | | | | | | | | | |
| | | | | Circumstances | Modalities | | Deadline | Circumstances | Modalities | Deadline | Abusive requests | | | | | | | | |
| **Information** | The right to obtain information regarding processing of data | N/A | · Provide information contained in art. 13.1 and 13.2 GDPR, when personal data are collected from the data subject.<br>· Provide information contained in art. 14.1 and 14.2 when personal data have not been obtained from the data subject<br>· If controller intends to further process personal data for a different purpose, controller shall provide the data subject prior to that further processing with information on that other purpose and with any relevant further information as referred to in art.13.2 and 14.2 GDPR.<br>· No need to provide information in art. 13 if data-subject already has this information.<br>· No need to provide information in art. 14 if:<br>a. data-subject already has this information;<br>b. provision of such information proves impossible or would involve a disproportionate effort;<br>c. obtaining or disclosure is expressly laid down by Union or Member State law, or<br>d. where the personal data must remain confidential subject to an obligation of professional secrecy.<br>· Art. 14.3 GDPR<br>· Arts. 12.1, 12.5, 12.7 GDPR | N/A | | | | | | | Spain AEPD E/06593/2019 Data-subjects behavior was identified as abusive and lacking in good faith. Complaint was rejected by AEPD. | · Right to data protection is not an absolute right; it must be considered in relation to its function in society and be balanced against other fundamental rights, in accordance with the principle of proportionality (Recital 4 GDPR).<br>· Art. 23 GDPR:<br>Union or Member State law may restrict by way of a legislative measure the scope of the obligations and rights provided for in Articles 12 to 22 and Article 34, as well as Article 5 in so far as its provisions correspond to the rights and obligations provided for in Articles 12 to 22, when such restrictions respect the essence of the fundamental rights and freedoms and is a necessary and proportionate measure in a democratic society to safeguard:<br>a. national security;<br>b. defence;<br>c. public security;<br>d. the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, including the safeguarding against and the prevention of threats to public security;<br>e. other important objectives of general public interest of the Union or of a Member State, in particular an important economic or financial interest of the Union or of a Member State, including monetary, budgetary and taxation a matters, public health and social security;<br>f. the protection of judicial independence and judicial proceedings;<br>g. the prevention, investigation, detection and prosecution of breaches of ethics for regulated professions;<br>h. a monitoring, inspection or regulatory function connected, even occasionally, to the exercise of official authority in the cases referred to in points a) to e) and g);<br>i. the protection of the data subject or the rights and freedoms of others;<br>j. the enforcement of civil law claims.<br>Any such legislative measure shall contain specific provisions at least, where relevant, as to:<br>a. the purposes of the processing or categories of processing;<br>b. the categories of personal data;<br>c. the scope of the restrictions introduced;<br>d. the safeguards to prevent abuse or unlawful access or transfer;<br>e. the specification of the controller or categories of controllers;<br>f. the storage periods and the applicable safeguards taking into account the nature, scope and purposes of the processing or categories of processing;<br>g. the risks to the rights and freedoms of data subjects; and<br>h. the right of data subjects to be informed about the restriction, unless that may be prejudicial to the purpose of the restriction.<br>· Chapter IX GDPR<br>· Comply with: Charter of fundamental rights of the European Union & European Convention for the Protection of Human Rights (Recital 73 GDPR) | Arts. 12, 13, 14 | 58, 59, 60, 61, 62 | Guidelines on Automated individual decision-making and Profiling for the purposes of Regulation 2016/679, WP251rev.01 (Sections III.D; IV.E)<br>Guidelines 2/2018 on derogations of Article 49 under Regulation 2016/679 (Section 2.1.3)<br>Guidelines 03/2020 on the processing of data concerning health for the purpose of scientific research in the context of the COVID-19 outbreak (Section 5.1)<br>Guidelines 05/2020 on consent under Regulation 2016/679 (Sections 3.3; 5.2; 8) | Guidelines 3/2019 on processing of personal data through video devices - Adopted after public consultation (sections 6 and 7)<br>Guidelines 4/2019 on Article 25 Data Protection by Design and by Default - version for public consultation<br>Guidelines 1/2020 on processing personal data in the context of connected vehicles and mobility related applications - version for public consultation (section 2.6)<br>Guidelines 2/2020 on articles 46 (2) (a) and 46 (3) (b) of Regulation 2016/679 for transfers of personal data between EEA and non-EEA public authorities and bodies (Section 2.4)<br>Guidelines 03/2020 on the processing of data concerning health for the purpose of scientific research in the context of the COVID-19 outbreak (Sections 5.1; 6)<br>Guidelines 04/2020 on the use of location data and contact tracing tools in the context of the COVID-19 outbreak.<br>**Endorsement of GDPR WP29 Documents:**<br>Guidelines on the application and setting of administrative fines for the purposes of the Regulation 2016/679, WP 253<br>Adequacy Referential, WP 254 rev.01 (Ch. 3)<br>Working Document setting up a table with the elements and principles to be found in Binding Corporate Rules, WP 256 rev.01<br>Working Document setting up a table with the elements and principles to be found in Processor Binding Corporate Rules, WP 257 rev.01<br>Guidelines on Transparency under Regulation 2016/679 (wp260 rev.01) | Institut professionnel des agents immobiliers (IPI), Case C‑473/12, 7 November 2013<br>Ryneš, Case C-212/13, 11 December 2014<br>Smaranda Bara et al, Case C-201/14, 1 October 2015<br>Opinion 1/15 of the Court (Grand Chamber), 26 July 2017<br>Fashion ID, Case C-40/17, 29 July 2019 | Copland v. United Kingdom, 62617/00, 3 April 2007<br>Bărbulescu v. Romania, 61496/08, 5 September 2017<br>López Ribalda v. Spain, 1874/13 and 8567/13, 17 October 2019 | Données & Design par LINC https://design.cnil.fr/en/ (Data Protection Authority France, CNIL)<br>Children https://www.jedecide.be/privacy (Data Protection Authority Belgium, APD-GBA) |
| **Access** | The right to obtain from the controller:<br>· confirmation as to whether or not personal data are being processed, and,<br>· if so, access to the personal data and information provided in art. 15.1 GDPR. | · Individual<br>· Legal/voluntary representative | · Provide confirmation as to whether or not personal data are being processed, and, if so, access to the personal data and the following information (Art. 15.1 GDPR):<br>a. the purposes of the processing;<br>b. the categories of personal data concerned;<br>c. the recipients or categories of recipient to whom the personal data have been or will be disclosed, in particular recipients in third countries or international organisations;<br>d. where possible, the envisaged period for which the personal data will be stored, or, if not possible, the criteria used to determine that period;<br>e. the existence of the right to request from the controller rectification or erasure of personal data or restriction of processing of personal data concerning the data subject or to object to such processing;<br>f. the right to lodge a complaint with a supervisory authority;<br>g. where the personal data are not collected from the data subject, any available information as to their source;<br>h. the existence of automated decision-making, including profiling, referred to in Article 22(1) and (4) and, at least in those cases, meaningful information about the logic involved, as well as the significance and the envisaged consequences of such processing for the data subject.<br>· If personal data are transferred to a third country or to an international organisation, provide information on appropriate safeguards pursuant to Article 46 GDPR (Art. 15.2 GDPR) | Whenever data subject exercises right unless art. 12.5 GDPR. | · Must provide a copy free of charge. Fee can be required if extra copies requested.<br>· A summary can be provided. Does not have to be a copy of the document.<br>· Shall not adversely affect the rights and freedoms of others.<br>· If request made by electronic means: information provided in commonly used electronic form (unless otherwise requested by data subject).<br>· Remote access allowed (Recital 63 GDPR)<br>· If reasonable doubts concerning identity of the natural person making the request: controller may request additional information to confirm identity of data subject (Art. 12.6 GDPR) | Art. 12.1, 12.2, 12.3, 12.5 GDPR | · Answer without undue delay and in any event within 1 month of receipt of request.<br>· May be extended further 2 months, taking into account the complexity and number of requests<br>BUT<br>Controller shall inform data subject about extension within 1 month of receipt of request.<br>(Art. 12.3 GDPR) | Requests are manifestly unfounded or excessive. Burden of proof: controller (Art. 12.5 GDPR) | If request is not granted, Controller must inform of:<br>1) Reasons for not granting request<br>and<br>2) Data subject can complain with supervisory authority & seek judicial remedy<br>(Art. 12.4 GDPR) | Answer without undue delay and in any event, within 1 month of receipt of request (Art. 12.4 GDPR) | | | Art. 15 | 63 | Guidelines on Automated individual decision-making and Profiling for the purposes of Regulation 2016/679, WP251rev.01 (Sections III.D; IV.E) | | Case C-553/07, College van burgemeester en wethouders van Rotterdam, 7 May 2009<br>C-486/12, X, 12 December 2013<br>Cases C‑141/12 and C‑372/12, YS, 17 July 2014<br>Case C‑434/16, Nowak, 20 December 2017<br>Case C‑272/19, V.Q., 9 July 2020 | Leander v. Sweden, 9248/81, 26 March 1987<br>Gaskin v. UK, 10454/83, 07 July 1989<br>Odièvre v. France, 42326/98, 13 February 2003<br>Segerstedt-Wiberg and Others v. Sweden, 62332/00, 6 June 2006<br>K.H. and others v. Slovakia, 32881/04, 28 April 2009<br>Haralambie v. Romania, 21737/03, 27 October 2009<br>Jarnea v. Romania, 41838/05, 19 July 2011<br>Godelli v. Italy, 33783/09, 25 September 2012<br>Joanna Szulc v. Poland, 43932/08, 13 November 2012<br>Antoneta Tudor v. Romania, 23445/04, 24 September 2013 | |
| **Rectification** | The right to obtain from the controller the rectification of inaccurate or incomplete personal data. | | · Carry out, without undue delay, rectification of inaccurate personal data. Taking into account purposes of processing, data subject shall have the right to have incomplete personal data completed, including by means of providing a supplementary statement (art. 16 GDPR).<br>· Notification obligation (Art. 19 GDPR) | When data is inaccurate or incomplete. | · Art. 16 GDPR<br>· If reasonable doubts concerning identity of the natural person making the request: controller may request additional information to confirm identity of data subject (Art. 12.6 GDPR) | | | Requests are manifestly unfounded or excessive. Burden of proof: controller (Art. 12.5 GDPR) | | | | | Arts. 16, 19 | 65 | Guidelines on Automated individual decision-making and Profiling for the purposes of Regulation 2016/679, WP251rev.01 (Section III.D) | | Case C-553/07, College van burgemeester en wethouders van Rotterdam, 7 May 2009<br>C-362/14, Schrems, 6 October 2015<br>Case C‑434/16, Nowak, 20 December 2017 | Leander v. Sweden, 9248/81, 26 March 1987<br>Rotaru v. Romania, 28341/95, 4 May, 2000<br>Cemalettin Canli v. Turkey, 22427/04, 18 November 2008<br>Dalea v. France, Decision 964/07, 2 February, 2010<br>Ciubotaru v. Moldova, 27138/04, 27 July 2010 | |
| **Erasure ("right to be forgotten")** | The right to obtain from the controller the erasure of personal data concerning him/her. | | · Erase personal data without undue delay (Art. 17.1 RGPD).<br>· Notification obligation (Art. 19 GDPR) | Circumstances Art. 17.1 GDPR:<br>a. the personal data are no longer necessary in relation to the purposes for which they were collected or otherwise processed;<br>b. the data subject withdraws consent on which the processing is based according to Art. 6.1.a), or point Art. 9.2.a), and where there is no other legal ground for the processing;<br>c. the data subject objects to the processing pursuant to Art. 21.1 and there are no overriding legitimate grounds for the processing, or the data subject objects to the processing pursuant to Art. 21.2;<br>d. the personal data have been unlawfully processed;<br>e. personal data have to be erased for compliance with a legal obligation in Union or Member State law to which the controller is subject;<br>f. personal data have been collected in relation to the offer of information society services referred to in Art. 8.1. | · If controller has made personal data public and is obliged to erase data, controller - taking account of available technology and cost- shall take reasonable steps, to inform controllers that data subject has requested erasure by such controllers of any links to/copy/replication of, those personal data (Art. 17.2 GDPR)<br>· If reasonable doubts concerning identity of the natural person making the request: controller may request additional information to confirm identity of data subject (Art. 12.6 GDPR) | | | · If processing is necessary (Art. 17.3 GDPR):<br>a. for exercising the right of freedom of expression and information;<br>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;<br>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;<br>d. for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes; or<br>e. for the establishment, exercise or defence of legal claims.<br>· Requests are manifestly unfounded or excessive. Burden of proof: controller (Art. 12.5 GDPR) | | | | | Art. 17 | 65, 66 | Guidelines on Automated individual decision-making and Profiling for the purposes of Regulation 2016/679, WP251rev.01 (Section III.D)<br>Guidelines 2/2019 on the processing of personal data under Article 6(1)(b) GDPR in the context of the provision of online services to data subjects - version adopted after public consultation (section 2.6)<br>Guidelines 5/2019 on the criteria of the Right to be Forgotten in the search engines cases under the GDPR (part 1) - version adopted after public consultation<br>Guidelines 05/2020 on consent under Regulation 2016/679 (sections 5; 7.1.4; 7.3) | | Case C-131/12, Google Spain and Google, 13 May 2014<br>Case C-398/15, Manni, 9 March 2017<br>Case C-136/17, GC and others, 24 September 2019<br>Case C-507/17, Google (Territorial scope of the right to de-referencing), 24 September 2019 | Rotaru v. Romania, 28341/95, 4 May, 2000<br>M. K. v. France, 19522/09, 18 April 2013<br>Węgrzynowski and Smolczewski v. Poland, 33846/07, 16 July 2013<br>Delfi AS v. Estonia, 64569/09, 16 June 2015<br>M.L. and W.W. v. Germany, 60798/10 and 65599/10, 28 June 2018 | |
| **Restriction of processing** | To right to obtain the marking of stored personal data with the aim of limiting their processing in the future. | | · Restrict processing of personal data.<br>· Notification obligation (Art. 19 GDPR) | Circumstances Art. 18.1 GDPR:<br>a. accuracy of the personal data is contested by the data subject, for a period enabling the controller to verify the accuracy of the personal data;<br>b. processing is unlawful and the data subject opposes the erasure of the personal data and requests the restriction of their use instead;<br>c. controller no longer needs the personal data for the purposes of the processing, but they are required by the data subject for the establishment, exercise or defence of legal claims;<br>d. data subject has objected to processing pursuant to Article 21.1 pending the verification whether the legitimate grounds of the controller override those of the data subject. | · Marking of stored personal data with the aim of limiting their processing.<br>· If restriction:<br>Personal data shall, with the exception of storage, only be processed with the data subject's consent or for the establishment, exercise or defence of legal claims or for the protection of the rights of another natural or legal person or for reasons of important public interest of the Union or of a Member State (Art. 18.2 GDPR).<br>Data subject shall be informed by the controller before the restriction of processing is lifted (Art. 18.3 GDPR).<br>· If reasonable doubts concerning identity of the natural person making the request: controller may request additional information to confirm identity of data subject (Art. 12.6 GDPR) | | | Requests are manifestly unfounded or excessive. Burden of proof: controller (Art. 12.5 GDPR) | | | | | Arts. 4.3, 18 | 18 | Guidelines on Automated individual decision-making and Profiling for the purposes of Regulation 2016/679, WP251rev.01 (Section III.D)<br>Guidelines 05/2020 on consent under Regulation 2016/679 (Section 7.3) | | N/A | N/A | |
| **Data portability** | The right to receive personal data (provided by data subject to a controller), and the right to transmit those data to another controller. | | · Provide personal data to data subject in a structured, commonly used & machine-readable format. | · Circumstances Art. 20.1 GDPR:<br>a. data-subject has provided personal data to controller;<br>b. processing is based on consent or contract; and<br>c. processing is carried out by automated means. | · Data transmission in a structured, commonly used & machine-readable format (Art. 20.1 GDPR).<br>· Data transmitted directly from one controller to another, where technically feasible. (Art. 20.2 GDPR)<br>· Exercise of right without prejudice to right to be forgotten (Art. 20.3 GDPR)<br>· Must not affect rights/freedoms of others (Art. 20.4 GDPR)<br>· If reasonable doubts concerning identity of the natural person making the request: controller may request additional information to confirm identity of data subject (Art. 12.6 GDPR) | | | · Right shall not apply to processing necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller (Art. 20.3.2º GDPR).<br>· Requests are manifestly unfounded or excessive. Burden of proof: controller (Art. 12.5 GDPR) | | | | | Art. 20 | 68 | Guidelines on the right to data portability under Regulation 2016/679, WP242 rev.01<br>Guidelines on Automated individual decision-making and Profiling for the purposes of Regulation 2016/679, WP251rev.01 (Sections III.D; IV.E) | | N/A | N/A | |
| **Objection** | The right to object to processing of personal data concerning data subject, on grounds relating to his/her particular situation. Includes profiling. | | · Restrict processing (art. 18.1.d GDPR).<br>· Controller only allowed to continue processing:<br>a. once demonstrates compelling legitimate grounds which override the interests, rights and freedoms of the data subject; or<br>b. for the establishment, exercise or defence of legal claims. | Circumstances Art. 21.1 and 21.2 GDPR:<br>· Data subject objects, on grounds relating to his or her particular situation, at any time to processing of personal data concerning him or her which is based on Art. 6.1.e) or 6.1.f) GDPR, including profiling.<br>· Right to object at any time to processing of personal data for direct marketing purposes, which includes profiling to the extent that it is related to such direct marketing. | · Stop processing of personal data unless compelling legitimate grounds or processing required for legal claims (Art. 21.1, 2º GDPR).<br>· If Direct marketing purposes: stop processing (Art. 21.3 GDPR)<br>· Inform data subjects (Art. 21.4 GDPR)<br>· Information society services (Art. 21.5 GDPR)<br>· If reasonable doubts concerning identity of the natural person making the request: controller may request additional information to confirm identity of data subject (Art. 12.6 GDPR) | | | · If processing for scientific/historical research/statistical purposes and necessary for reasons of public interest (Art. 21.6 GDPR)<br>· Requests are manifestly unfounded or excessive. Burden of proof: controller (Art. 12.5 GDPR) | | | | | Arts. 21; 6.1.e; 6.1.f | 69; 70 | Guidelines on Automated individual decision-making and Profiling for the purposes of Regulation 2016/679, WP251rev.01 (Section III.D)<br>Guidelines 2/2019 on the processing of personal data under Article 6(1)(b) GDPR in the context of the provision of online services to data subjects - version adopted after public consultation (section 3.3) | | Case C-131/12, Google Spain and Google, 13 May 2014<br>Case C-398/15, Manni, 9 March 2017<br>Case C‑434/16, Nowak, 20 December 2017 | M. S. v. Sweden, 20837/92, 27 August 1997<br>Mosley v. UK, 48009/08, 10 May 2011 | |
| **Not to be subject to a decision based solely on automated processing** | The right not to be subject to a decision evaluating personal aspects, based solely on automated processing. Includes profiling. | | · Do not take decisions based solely on automated processing, including profiling, which produce legal effects or similarly significantly affects data subject.<br>· Further restrictions for sensitive data (Art. 22.4 GDPR)<br>· Should not concern a child (Rec. 71 §1 GDPR) | · Circumstances Art. 22.1 GDPR:<br>a. decision is taken;<br>b. decision must be based solely on automated processing, and<br>c. decision must produce legal effects or significantly affect data subject. | Stop processing of personal data in the sense of art. 22.1 GDPR. | | | · If decision (Art. 22.2 GDPR):<br>a. is necessary for a contract<br>b. is authorised by Union or Member State law<br>c. is based on explicit consent.<br>· Exceptions contemplated in art. 22.2.a and 22.2.c GDPR require that controller implements suitable measures to safeguard the data subject's rights and freedoms and legitimate interests, at least:<br>a. the right to obtain human intervention on the part of the controller,<br>b. to express his or her point of view and<br>c. to contest the decision.<br>· Exceptions contemplated in art. 22.2 GDPR do not apply whenever decisions are based on special categories of personal data, unless:<br>a. explicit consent given by data subject, or<br>b. processing is necessary for reasons of substantial public interest.<br>· Requests are manifestly unfounded or excessive. Burden of proof: controller (Art. 12.5 GDPR) | | | | | Art. 22 | 71 | Guidelines on Automated individual decision-making and Profiling for the purposes of Regulation 2016/679, WP251rev.01<br>Guidelines 05/2020 on consent under Regulation 2016/679 (sections 3.3.1; 4) | | N/A | N/A | |