

# Imperial College and the GDPR

Research and data protection

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## Research (1)



- Research data v. personal data? Are you dealing with personal data?
- Impact of the GDPR on how you store and process research data generally?
- Privacy notice at the time of collection where personal data obtained directly from the individual – challenge with providing upfront notice in a research context. Does it cover data linkage?
- Where personal data not obtained directly from the data subject, transparency information does not need to be provided:
  - If disproportionate effort, in particular for scientific or historical research purposes (subject to A89(1) safeguards)
  - If doing so would render impossible or seriously impair the achievement of the objectives of the processing
  - Appropriate measures: Make information publicly available

## Research (2)

- Research as a primary purpose: Must have a lawful basis for processing in a research context:
  - The data subject's consent? – Recital 33 (Consent to certain areas...parts of research projects)
  - Consent obtained via third parties, e.g. employers?
  - Processing that is necessary for the performance of a task carried in the public interest or in the exercise of official authority vested in the controller **[Note that this is the one College would be relying on in most instances as the legal basis for processing; however, individual consent may still be necessary for other reasons relevant to the research project e.g. confidentiality or agreeing to being sent emails about future research projects]**
  - Processing that is necessary for the purposes of the College's 'legitimate interests' except where the College's interests are overridden by the interests, fundamental rights or freedoms of the affected data subjects **[Note that legitimate interests cannot be relied on where the research is considered as being carried out by the College as a public authority in the performance of its duties or in the public interest i.e. this ground will not be available for most college research]**
- Note: Hybrid role of College as a public authority for core activities including research.
- Processing for scientific or historical research purposes is a legal basis for processing **special categories of personal data** where based on Union or MS law
- Research for secondary purposes: Scientific and historical research is not deemed to be an incompatible purpose. However, updated privacy notice must be provided if research purposes not originally specified.

## Research (3)

**If you conduct medical research that uses human health data (physical, mental, behavioural data), the Health Research Authority has produced helpful GDPR guidance that you are encouraged to consult – this is located here:**

<https://www.hra.nhs.uk/planning-and-improving-research/policies-standards-legislation/data-protection-and-information-governance/gdpr-guidance/>

## Research (4)

- Data-sharing, including with funders
  - C2C v. C2P disclosures
  - Transparency?
  - Legal basis for data sharing?
  - Data sharing contract/protocols
  - College Data Sharing Guidance: <http://www.imperial.ac.uk/admin-services/legal-services-office/data-protection/processing-personal-data/sharing-personal-data/>

## Research (5)

- Right to object to processing for scientific or historical research purposes on grounds relating to the data subject's situation. Counterbalance to the flexibility granted elsewhere
- However, no right to object if "the processing is necessary for the performance of a task carried out for reasons of public interest" with a basis in Union or Member State law
- Article 17 (Right of erasure): Exemption: Likely to render impossible or seriously impair the achievement of the research objectives
- Member states or the EU may further limit data subject rights to access, rectification, restriction, and the right to object where processing is for research purposes subject to the appropriate safeguards – Data Protection Act, 2018.

## Research (6)

- Article 89
  - Archiving for public interest, scientific or historical research purposes or statistical purposes must be subject to appropriate safeguards
  - Technical and organisational measures to ensure data minimisation
    - can include pseudonymisation
    - anonymisation if/where possible
- Appropriate technical and organisational measures (security) - consider use of particular cloud services.

## Data Protection Act 2018 – Schedule 2, Part 6

- Certain provisions of the GDPR do not apply to personal data processed for scientific or historical research purposes - to the extent that the application of the provisions would prevent or seriously impair the achievement of the purposes
  - Article 15(1)-(3) (Re subject access) (Results of the research must not be made available in identifiable form).
  - Article 16 (Rectification)
  - Article 18(1) (Restriction of processing)
  - Article 21(1) (Objections to processing)
- Safeguards as per Article 89(1) of the GDPR

# Questions?



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