



Briefing Paper

GDPR – The Rights of Data Subjects

Introduction

The third paper in the series looking at the impact of the new GDPR (General Data Protection Regulations) coming in to force on 25th May 2018. This paper looks at the rights that the GDPR gives data subjects; the next paper will explore how these rights impact on Data Processors and Data Controllers running helpdesk/CRM software applications.

GDPR Data Subjects' Rights

Along with the direct responsibilities placed on data controllers and processors there are a number of rights granted to data subjects that indirectly, by their very existence, place an obligation on the data controller / processor, in as much as they must act to support the data subjects' rights.

The key rights that data subjects have are:

- Right to access
- Right to rectification
- Right to erasure (Right to be forgotten)
- Right to restriction of processing
- Right to data portability
- Right to object
- Right not to be subjected to automated individual decision-making

We will look at each of these rights and explore when they are applicable and what exclusions there might be.

Right to Access ([Article 15 GDPR.](#))

One of the first significant rights data subjects have is the “right to access”, this is the right for a data subject to be told whether or not personal data in relation to them is being processed, when and who accesses the personal

data and advised, on request, such things as:

1. The purposes of the processing.
2. The categories of personal data in question.
3. The recipients or categories of recipient to whom the personal data have been or will be disclosed, such as recipients in third countries or international organisations.
4. If it is possible, the period for which controllers are planning to store the personal data or, if it is not possible, the criteria used to determine that period.
5. If the personal data is not collected from the data subject, any available information as to its source.
6. The existence of automated decision-making, including profiling and meaningful information in these cases about the logic applied and the significance of this processing for the data subject and the envisaged consequences.

Right to Rectification ([Article 16 GDPR](#))

If controllers store personal data of individuals, these persons are further entitled to the right to rectify any errors or omission in that data without any undue delay.

Right to Erasure (Right to be forgotten) ([Article 17](#))

The following right is the right to erasure laid down in Article 17 GDPR or the right to be forgotten, as it is sometimes, not entirely correctly called.

Some of the key grounds where a data subject is entitled to have personal data regarding him/her deleted are:

1. The data is no longer needed for the purpose it was collected.
2. Data subjects withdraw their consent and there is no other legal ground for processing.
3. Data subjects object to the processing and there are no overriding legitimate grounds for this processing.

This right is however limited and the data controller may decide not to erase the data where it is needed for:

1. The exercise of the right to freedom of expression and information.
2. Compliance with a legal obligation of a controller.
3. Reasons of public interest in the area of public health.
4. Public interest, scientific or historical research purposes or statistical purposes.
5. Establishment, exercise or defence of legal claims.

Right to Restriction of Processing ([Article 18 GDPR](#))

Data subjects have the right to request that data controllers restrict data processing of their personal data.

Generally, the situations where a data subject can request restriction of processing are:

Where the data subject contests the accuracy of the data being held or the legality of a decision by the controller to override the rights of the data subject. For example, a decision not to delete information at the request of the data subject.

Or

The data subject requests the data is not deleted, where the data controller may wish to delete, as the data subject needs the data retained for legal reasons; for example an ongoing dispute.

Right to Data Portability ([Article 20 GDPR](#))

Data subjects have a right to receive personal data concerning them that had been provided by them to controllers. This data must be provided in a structured, commonly used and machine-readable format.

Right to Object ([Article 21 GDPR](#))

The data subject shall have the right to object, on grounds relating to his or her particular situation, at any time to processing of personal data concerning him or her. If an objection is received Data controllers will need to demonstrate that the data is being processed lawfully (see Article 6).

In such cases the Data Controller MUST discontinue processing the personal data in question unless the processing is necessary for the purposes of the legitimate interests pursued by the controller or he is

able to demonstrate compelling legitimate grounds for the processing that override the rights of the data subject or finally if the data is needed for the establishment or defence of legal claims.

Additionally, this right to object exists where the processing is carried out in connection with direct marketing. IF such an objection is registered the data processor MUST discontinue such processing.

For example:

A service desk may hold information regarding customers using the company's software which is used to control an automated vehicle used in warehouses. This information is used to send details of updates, or alerts about the software to these customers.

One customer may object to receiving these updates and request that his personal data no longer be processed in that way.

The controller may decide to continue processing the data subject's data as using unpatched software may cause a risk to people's safety. This concern would override the rights of the data subject.

[Right not to be Subjected to Automated Individual Decision-making \(Article 22 GDPR\)](#)

This grants data subjects a right not to be subject to a decision that is based only on automated processing where the decision significantly affects them, for example, by creating legal implications and disproportionate financial costs.

However, in certain situations, such automated processing is acceptable, for example;

Where such an automated individual decision is needed for entering into or performing a contract. A good example here would be processing related to a data subjects work, where the contract of employment would constitute a good reason for the processing.

Or when such a decision is based on an explicit consent of data subjects, this right does not apply.

However where the automated decision is based on the special categories of personal data, the persons' consent has been obtained or

the processing must be required for reasons of substantial public interest.

Conclusion

We have seen that the GDPR give data subjects, your customers and contacts, rights over how, or indeed whether or not, their personal data can be used. It is the responsibility of the data controller, and the data processor under his instruction, to have processes and procedures in place that allow the data subject to exercise those rights.

In our next paper we will be looking at how data controllers can demonstrate they are protecting the rights of data subjects and facilitating data subjects exercising those rights.

References

[The full text of the GDPR](#)

[Additional Resources](#)

