

Data Protection and Personal Information

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Introduction

The purpose of data protection legislation is to ensure the proper use of personal information about living individuals. The legislation imposes obligations on those who hold such personal information, while giving rights to those the information is about – data subjects.

Archivists have a different role in relation to personal data from those who collected the personal data in the first place. Firstly, they do not control the type of data collected, because they were not involved in why, when and how it was originally collected and used for business purposes; secondly, their interest in the personal information lies in its value as a record of its time that can be used in future research, and its current accuracy is therefore not of concern; and thirdly, they have no interest in the future of the individual data subject, only their past.

This means that the activities of archivists can sit uneasily within the data protection legislative field, as at times they are obliged to comply with provisions which were designed for a different purpose. However the [Data Protection Act 1998](#) (DPA), which came into force in March 2000 (amended by the Freedom of Information Act (FOIA) in 2005), does recognise the importance of data being kept for historical purposes, and contains provisions for this to be achieved within the framework of the legislation.

The DPA imposes a duty on those holding personal data to register such data with the Information Commissioner, to comply with eight data protection principles, and to allow individuals to access and, in certain circumstances, to correct data that relates to them. With the implementation of the FOIA, the DPA has been extended in scope so it that it applies to all information about living individuals held by public authorities, whatever the format or structure of the records.

The National Archives, Society of Archivists, Records Management Society and National Association for Information Management produced a [Code of practice for records managers and archivists under s 51\(4\) of the Data Protection Act 1998](#) which may be of interest.

Archiving personal data for research purposes, s33

The definition of research purposes in the DPA includes processing for historical research purposes. This is an important section for records managers and archivists, as it lays down the

conditions with which the data controller of an archive should comply if the archive is to be exempt from compliance with various other requirements of the act.

Without the benefit of such provisions, archiving data could be in breach of the second and fifth data protection principles. The second data protection principle requires that personal data shall only be obtained for one or more specified and lawful purposes and shall not be further processed in a manner which is incompatible with such purpose(s). The fifth data protection principle requires that personal data shall not be kept for longer than is necessary for such purpose(s).

Section 33 provides that processing for research purposes is compatible with the purposes for which the data were collected, and the data may be kept indefinitely if the relevant conditions apply. These are:

- that the data are not processed to support decisions about individuals, and
- that substantial damage or substantial distress is not likely to be caused to any data subject

Personal data can be selected for permanent preservation, and stored, if these two conditions apply, on condition that the other data protection principles are complied with.

Note that The National Archives has registered personal data in transferred records to the Information Commissioner with the special purpose of processing for the purposes of archival preservation.

Closure of personal information

The most common reason for records at archives services to be closed is that they contain personal information about an identifiable living individual and disclosure would breach one of the Data Protection Principles (and consequently is exempt under FOI exemption 40).

Note that the name of a person may not in itself be enough to make the person identifiable and it usually depends on the context in which it appears or the presence of supplementary information enabling a person to be identified.

Usually such information falls within the DPA's definition of sensitive personal data, namely information on a data subject's:

- racial or ethnic origin
- political opinions
- religious, or other, beliefs
- trade union membership
- health (physical or mental)
- sex life
- offences, committed or allegedly committed
- details of proceedings for offences

The Information Commissioner's Office has issued guidance on what personal information should be considered exempt. Note that not all sensitive personal information must be withheld for the full lifetime of the data subject. The particular content and context of the information may allow earlier access. Guidance on closure periods should be applied on a case-by-case basis.

One difficulty is establishing whether the person to whom the information relates is still alive. In practice, it is usually impossible for a department or archives service to know if an individual is still living and impracticable for them to find out. The Advisory Council has recommended that a lifetime of 100 years should be assumed. Thus if a person is aged 30 in a 1950 record and the information should not be released during their lifetime, the closure period would last until the end of 2020 (open on 1 January 2021).

If a person's age is unknown, estimate the closure period. If it is obvious the person is an adult then the estimated age at the time of the record should be 16. If it is not obvious what age a person is from contextual evidence then the full 100 year closure period should be used, for example, a child who is the victim of crime.

It may be possible from contextual evidence to reduce the closure period, for example, if it is known a person has a professional qualification that requires several years of training or where a person is applying for a benefit such as a pension that has a minimum age. In these circumstances the closure period should be reduced accordingly.