

STATE RECORDS

of South Australia

Advice Sheet General Data Protection Regulation

Introduction

The European Union (EU) General Data Protection Regulation (GDPR) came into effect on 25 May 2018 and brings consistency to data privacy across the EU as well as providing improved privacy protections for individuals.

The purpose of this information sheet is to provide general advice to South Australian (SA) public sector agencies regarding the application of the GDPR and how it may impact those agencies providing goods or services to EU citizens.

The GDPR primarily relates to personal information gathered voluntarily; thus, is unlikely to affect most of the information gathered by public sector agencies in their performance of their statutory functions. Please review [recital 31¹](#) and [articles 2.2, 23 and 85 - 91](#).

Public sector agencies that consider the GDPR may apply to their activities are strongly encouraged to seek advice from the Crown Solicitor's Office.

Scope

This advice sheet applies to all South Australian state Government agencies.

South Australian Government and the GDPR

Scope of the GDPR

The GDPR, although an EU regulation, applies to any organisation offering goods or services to individuals living in the EU. It also applies to any organisation monitoring the behaviour of individuals living in the EU.

This extra-territorial scope of the GDPR is designed to make organisations accountable when they are processing personal data of individuals in the EU.

Having a website which is accessible by individuals in the EU will not bring an agency under the scope of the GDPR. However, should sales be offered in Euros or should the website specifically target EU citizens then this may indicate an intention to offer goods or services to people in the EU.

GDPR Principles

The definition of 'personal data' in the GDPR is similar in scope to 'personal information' under the SA Information Privacy Principles Instruction (IPPI); which states

¹ Refer to page L119/6. Please note the Recitals are listed before the GDPR Articles and are numbered (1) to (173).

that *personal information means information or an opinion, whether true or not, relating to a natural person or the affairs of a natural person whose identity is apparent, or can reasonably be ascertained, from the information or opinion.*

The GDPR definition of personal data ([Article 4 of the GDPR](#)) provides specific examples including name, identification number, location data and online identifier, which can be seen as personal data.

[Article 5 of the GDPR](#), 'Principles relating to processing of personal data', includes six principles relating to personal data. The principles state data must be:

- a. processed lawfully, fairly and in a transparent manner in relation to a natural person (referred to as a data subject in the Regulations) ('lawfulness, fairness and transparency' principle);
- b. collected for specified, explicit and legitimate purposes and not further processed in a manner that is incompatible with those purposes ('purpose limitation' principle);
- c. adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed ('data minimisation' principle);
- d. accurate and, where necessary, kept up to date ('accuracy' principle);
- e. kept in a form which permits identification of individuals for no longer than is necessary for the purposes for which the personal data was collected ('storage limitation' principle);
- f. processed in a manner that ensures appropriate security of the personal data ('integrity and confidentiality' principle).

Whilst the language used in the GDPR is different, these principles are consistent with the management of personal information under the SA Government's IPPI.

Privacy rights under the GDPR

[Section 3 of the GDPR](#) establishes various privacy rights for the individual, including:

- » The right to rectification – meaning an individual has the right to the rectification of inaccurate personal data concerning him or her;
- » The right to erasure ('right to be forgotten') – meaning an individual has the right for the erasure of personal data concerning him or her;
- » The right to restriction of processing – meaning an individual has the right to obtain from the controller restriction of processing (e.g. collecting, storing, disclosing, erasing) in certain circumstances;
- » The right to data portability – meaning an individual has the right to receive the personal data concerning him or her, which he or she has provided to an organisation;
- » The right to object - meaning an individual has 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; and
- » Automated individual decision-making, including profiling – meaning an individual has the right not to be subject to a decision based solely on automated processing, including profiling, which produces legal effects concerning him or her or significantly affects him or her.

All of the above privacy rights are on the basis of certain grounds and these need to be reviewed under the applicable article under [Section 3](#).

Some of these differ from the management of personal information privacy through IPPI.

What you need to do

SA public sector agencies should assess the scope of their services and data monitoring activities to determine if the GDPR applies. *If you think the GDPR may apply we strongly encourage you to seek advice from the Crown Solicitor's Office.*

Subject to relevant legislative provisions, all agencies are encouraged to implement the following 'good practice' measures:

- » ensure Privacy Statements meet the requirements of Articles 13-14 of the GDPR, including ensuring they are clear and provide details of the necessary contact within the agency.
- » seek informed consent for the collection, use and sharing of personal information and ensure that individuals are given easy access to the agency's Privacy Statement
(Note – seeking informed consent won't always be necessary if collection is pursuant to a statutory function, or appropriate if seeking consent might breach a confidentiality provision or undermine the purpose of collection).
- » ensure privacy responsibilities are attributed to appropriate officers.
- » ensure your privacy management program is updated to reflect GDPR requirements and includes the use of privacy impact assessments and other 'Privacy by Design' techniques.

Further resources

The UK's Information Commissioners Office has also published a Guide to General Data Protection Regulation.

[The General Data Protection Regulation](#)

[PC012 - South Australian Government Information Privacy Principles Instruction](#)

Acknowledgements

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Need further assistance?

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