

Handbook for Journalists on DATA PROTECTION

The General Data Protection Regulation (GDPR) in a nutshell

The GDPR is intended to stimulate the creation of an area of freedom, security and justice and of an economic union, to economic and social progress, to the strengthening and the convergence of the economies within the internal market, and to the well-being of natural persons (Recital 2). It is aimed at guaranteeing an adequate balance between data protection and privacy and some other fundamental rights, such as freedom of speech.

The journalistic exemption in the GDPR: Article 85

1. Member States shall by law reconcile the right to the protection of personal data pursuant to this Regulation with the right to freedom of expression and information, including processing for journalistic purposes and the purposes of academic, artistic or literary expression. [...]

- Article 85 of the GDPR provides a very broad framework for action to Member States. They are to figure out the scope of the journalistic exemption and the circumstances in which it applies.
- However, for their regulatory developments to be valid, they must be aligned with the provisions of the GDPR and the European Convention of Human Rights.

What does “journalistic purposes” mean?

- There is nothing similar to a definition of journalism in the GDPR
- However, it seems quite clear that the Regulation opts for an open, inclusive meaning of the term, which might be applicable even though national laws do not reflect it.

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The legal bases for data processing in journalism

Three of the legal bases listed in Article 6 of the GDPR usually apply for journalism:

- **Consent.** Data can be processed if each of the persons who are the subject of the information have given consent. This must be freely given, specific and informed.
- **Public interest.** This is the most recommendable legal basis if you are part of a public institution that is acting as such (if consent is not applicable).
- **Legitimate interest.** Legitimate interests will include a media organization's commercial and journalistic interests in gathering and publishing material, as well as the public interest in freedom of expression and the right to know. Thus, it is a wide legal basis that comprises public interest but not only public interest.

Special categories of data

Some data are specially protected by the GDPR and journalists must be extremely careful if they are willing to process them. These special categories comprise: data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, and the processing of genetic data, biometric data for the purpose of uniquely identifying a natural person, data concerning health or data concerning a natural person's sex life or sexual orientation.

The subject's rights and the controller's duties

The GDPR provides data subject with some essential rights that must be respected:

- The right to access
- The right to rectification
- The right to erasure (right to be forgotten)
- The right to restriction of processing
- The right to data portability

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Takeaway points

- Publication of personal data means data processing. Be sure that you are allowed to show these data before proceeding to do so. You must have a legal basis that allows processing. Otherwise, you're acting unlawfully.
- If personal data is processed to serve the public interest, the processing won't have to comply with some or all the GDPR articles. If personal data is collected, analysed or otherwise processed for other reasons, the GDPR will apply in full.
- Publishing sensitive information might harm the private life of the data subject. Be sure that benefits to the public interest justify such harm. Only when public interest considerations clearly prevail against privacy you are allowed to publish this information.
- The intervention of a senior editorial or the contribution of expert input might be of great help to ensure this requirement applies. As a journalist it's hard to be objective while balancing the different interests involved.
- You should only gather data that are relevant to your investigation and might be of public interest. This is an essential requirement of the minimisation principle, a key concept in the GDPR.
- When it's not clear if or to what extent the “journalistic exemption” applies to data processing, an audit trail should be kept to explain the data protection considerations, and you should seek for a consultation from the lead supervisory authority.
- Special precautions must be taken when dealing with personal data revealing racial or ethnic origin, political opinions, religion or philosophical beliefs, trade union membership, genetic and health information, sexual life and orientation, criminal convictions or security measures.
- Data concerning vulnerable populations and especially minors should only be processed if strong reasons justify it. You must be absolutely sure that they apply to the concrete processing before proceeding.



PARTICIPATORY APPROACHES TO A NEW ETHICAL AND LEGAL FRAMEWORK FOR ICT

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The document will soon be uploaded on the project website in English, Italian, Spanish, French and German. Check here for updates: <https://www.panelfit.eu/>