



DATA PROTECTION ACT 2018
&
GENERAL DATA PROTECTION
REGULATION (GDPR)

WHAT ARE MY RIGHTS?

A GUIDE FOR PUBLIC CITIZENS USING SERVICES PROVIDED BY
THE AGRI-FOOD AND BIOSCIENCES INSTITUTE (AFBI)

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1. Introduction

UK Data Protection Law changed on 25 May 2018 to replace the UK Data Protection Act 1998 with the **General Data Protection Regulation (GDPR)** which is in force across all European countries and the **Data Protection Act (DPA) 2018** within the United Kingdom. The benefit to you of this new Law is:

- clearer information on the use and protection of your personal data;
- the provision of new and improved rights to increase your control over how your personal data is used;
- quicker responses to your subject access requests.

The Agri-Food and Biosciences Institute (AFBI) is committed to complying with the DPA 2018 and GDPR and has written this guide for all public citizens¹ using the Institute's services for testing, research or other contracted purposes.

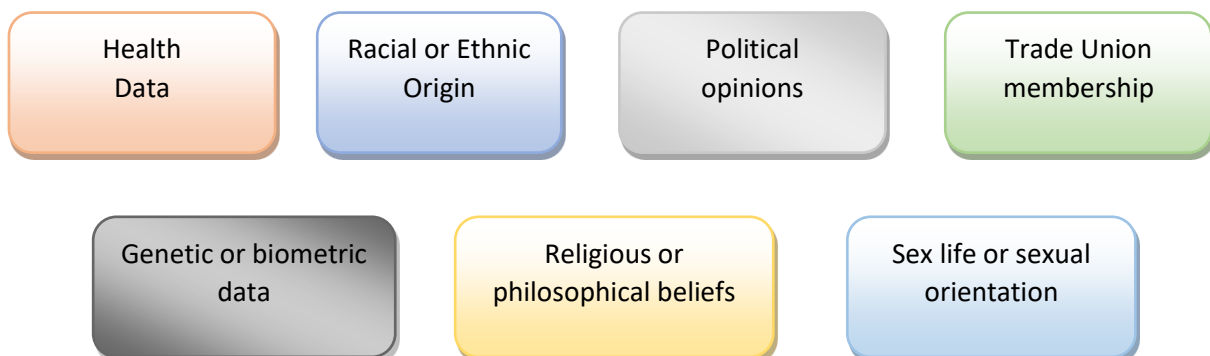
What is personal data?

Personal data is defined as any information relating to you (an individual living person) whereby you could be identified, either directly or indirectly. Examples include your name, address and photograph, as well as online identifiers such as usernames, or identifiers related to your devices such as an internet protocol (IP) address or cookies. "*Personal data*" does not refer to organisations.

References to physical, physiological, genetic, mental, economic, cultural or social factors may also be used to identify you, either by themselves or used alongside those previously mentioned and therefore could also be considered as personal data.

Special categories of data

AFBI will not normally request that you provide information about yourself or another living person which would fall within the following special categories of data; however if this becomes necessary, we shall ensure that a suitable lawful condition is met under Article 9 of the GDPR and that you are advised of this:



¹This guide is for public citizens only (AFBI staff to refer to AFBI Employee Privacy Notice)

Rights under GDPR

Under GDPR, some of your rights which existed under the DPA 1998 will remain the same, others will be more clearly defined and new rights will give you additional control over how your personal data is used and shared.

The chart below sets out in summary your rights under the new Regulation and the following pages will look at each of these rights in detail and in some cases with particular reference to your relationship with AFBI.

Right to be informed	Right to request access	Right to rectification	Right to erasure ("Right to be forgotten")
Right to restrict processing	Right to data portability	Right to object or withdraw consent	Rights regarding automated decision-making
Right to be informed of a personal data breach	Right to lodge a complaint	Right to compensation	Right to representation

2. Right to be informed

If we (AFBI) need to have your personal data in order to provide you with one of our services, for example, diagnostic testing on plant or animal samples, or for scientific research or commercial purposes, we will provide you with the following information, which you have the right to know:

- **Who we are and how you can contact us**
- **What personal data we need to have**
- **Why we need to collect your data**
- **What we are going to do with your data**
- **Who we might share your data with**
- **How long we might keep your data**
- **How to complain**

If we have been given your personal data by another organisation, for example as part of a joint scientific research project, and they have not already informed you that they have shared it with us, we will let you know that we have received it from them and provide you with information related to the points above.

We will also tell you that you have rights regarding access, rectification, erasure, restriction of processing, data portability and objection to processing – all of which will be explained later in this guide.

We comply with the ICO's publication "*Privacy notices, transparency and control: A code of practice on communicating privacy information to individuals*" to ensure that we are "*being transparent and providing accessible information*" to tell you clearly about our handling of your personal data. We publish privacy notices linked to our services on the AFBI website (www.afbini.gov.uk) or in the case of contracted work or scientific research projects, we may contact you directly.

3. Right to request access

You have the right to ask us to tell you if we have your personal data, what it is being used for and how. You can also ask us for a copy of this data free of charge. Before we release the data to you, we may need you to provide proof of your identity - a copy of a document with your photograph and name and address on it such as a passport or driving licence would meet this requirement.

We will normally give you the data within one month or else contact you to let you know if it will take longer (up to a maximum of three months) and the reason why.

There are some occasions when we will not be able to provide your personal data to you. We will refer to the Information Commissioner's Office (ICO) guidance document "*Subject Access: Code of Practice*" when considering your request to make sure we "*understand our obligations to provide you access to the data and follow good practice*". If your personal data has been supplied for scientific research or statistical purposes, it may be exempt from disclosure as per confidentiality conditions of any relevant contract or under Schedule 2, Part 6 "*Derogations etc based on Article 89 for Research, Statistics and Archiving*" of the Data Protection Act 2018.

If we decide to withhold your data, or are unable to release it, we will explain the reasons to you, along with the process you can follow to lodge a complaint.

Example 1

A previous member of AFBI's Cattle Health Scheme who left the scheme 6 years ago requests copies of all records still held by AFBI containing his personal details in relation to his membership. We abide by our "*Retention and Disposal Schedule*" which states that all submission and reporting records will be held permanently, but that execution of testing and membership records will be destroyed 5 years following closure. We are therefore only able to provide copies of all the submission and reporting forms and have to inform the ex-member that any membership or testing forms have been destroyed and are not available.

Example 2

A farmer claims that our researchers provided incorrect advice to him concerning a fertiliser he should use on his land and blames the failure of his crops that year on this advice. We dispute this claim as the weather that year was particularly wet and we argue that this is the reason for the failure. We have written an internal management paper that sets out our position on this matter and this includes information regarding AFBI's approach to potential court action. If the farmer makes a subject access request to us, we would not have to send him the internal paper because doing so would be likely to prejudice any legal negotiations.

Example 3

A farm is jointly owned by two brothers and both had taken part in a research project run by us on farm management practices and the associated disease status of their animals. Both had participated in a survey and our researchers had written reports on the farm which included references to individual farm management practices carried out by each brother.

Following the dissolution of the business relationship, one brother requests access to all copies of the information that we hold about him but we note that the reports also contain references to the requestor's brother and therefore the release of this information would infringe on his rights and freedoms. The requestor's brother refuses to give his consent for the release of his information. We consider whether it would be reasonable to release the data even though consent has been withheld and decide that the information disclosed by the requestor's brother was done so under an expectation of confidentiality which we decide to uphold in reference to Article 8 of the Human Rights Act 1998 "*Right to Privacy*". We do release some information which directly relates to the requestor and provide copies of the researchers' reports where information relating to the requestor's brother is redacted.

4. Right to rectification

If you realise that there is a mistake or inaccuracy in your personal data that we hold, or that it is incomplete, you have the right to have this rectified by asking us to correct this for you. We will usually amend any incorrect personal data without delay after verifying the accuracy of the data; however, in certain circumstances, we may not be required to make the changes provided we meet the provisions under Schedule 2, Part 6 "*Derogations etc based on Article 89 for research, statistics and archiving*" of the DPA 2018.

5. Right to erasure ("*Right to be forgotten*")

You have the right to request that we delete all of your personal data held by us and we must act on this without delay, if one of the following applies:

- (i) It is no longer necessary for us to use or hold your personal data in relation to the reason why we gathered the data in the first place;
- (ii) If we originally gathered your personal data based on you giving your consent, but you now withdraw this and we cannot give a legal reason for keeping the data;
- (iii) You have objected (see 8 below) to us using your personal data and we cannot provide a legitimate reason for continuing to hold it;
- (iv) We have processed your data unlawfully;
- (v) There is a legal obligation for us to delete your personal data;

However, there are some instances whereby we are allowed to keep your personal data and do not have to delete it, such as:

- a) If we are using your personal data to comply with a legal obligation, for example, statutory testing as part of local disease control programmes under national or European legislation;
- b) If we are using your personal data for reasons of public interest in the area of public health, for example, in the case of zoonotic² disease testing;

²zoonotic refers to diseases that can transfer from animals to humans such as avian and swine influenza viruses and bovine tuberculosis

- c) If the personal data is necessary for scientific research or statistical purposes and the removal of it would either prevent or seriously impair the achievement of the research objectives;
- d) If the personal data is necessary for the establishment, exercise or defence of legal claims.

We shall keep you informed without delay of whether we can delete your data and in the cases where we can, we will make sure that all copies are deleted by us and request the same from anyone we may have shared your information with.

6. Right to restrict processing

You have the right to ask us to restrict the processing your personal data and we are obliged to comply where one of the following applies and providing that the right is not waived under Schedule 2, Part 6 of the DPA 2018:

- (i) You inform us that you wish for an inaccuracy in your personal data held by us to be rectified (as per 4 above) - we will stop processing your data for the period of time required to verify the request;
- (ii) The use of your personal data is unlawful and you request that the data not be deleted, but the processing of it to be restricted instead;
- (iii) We no longer need to process the personal data, but you require it for the establishment, exercise or defence of legal claims;
- (iv) You have objected to the processing of your personal data (see 8 below) and are awaiting verification of whether this will be upheld.

What does 'restriction' mean?

Restriction means that we will mark your stored personal data in such a way as to limit the processing of this data in the future. This applies to both physical and electronic copies of your data. During restriction, we may move your data for the purposes of storage, but will not use, access or share it without your consent, unless for the establishment, exercise of legal claims, the protection of the rights of another individual or reasons of important public interest. If your personal data is published on our website, we will remove it temporarily during the restricted period.

We will inform you if the circumstances allow for us to restrict the processing of your data and if we can comply, we will also request the same from anyone we may have shared your information with.

We will inform you before we lift the restriction on processing your personal data.

7. Right to data portability

If you have provided us with your personal data based on either consent or a contract and we process it using automated means, you have the right to request a copy of this information in a commonly used, machine-readable format such as a "comma separated variable" (.csv) file in order to transfer this to another organisation or request that we do so on your behalf.

This right allows you to have more control over your data and promotes the easier sharing of it with other organisations if this is required by you, but once the data is transported, it is not automatically deleted from our records unless you request that separately (see section 5 above). You can continue to be our customer and make use of this entitlement. Your data will be held by us for as long as necessary to fulfil any ongoing contract between us.

When would this right not apply?

This right only applies to personal data provided by you (or gathered from the use of a service or device) as part of a contract or with your consent. Therefore, if we have gathered your personal data under any other conditions, this right does not apply.

Example

A cattle farmer has provided his personal data to us as part of a national disease eradication programme and requests that we provide this back to him under his right to data portability. However, the testing for this national eradication programme is legislated by local government and participation in this is compulsory for all cattle farmers; therefore, as we have gathered this information under a legal obligation we are not required to provide this to the farmer under this right.

8. Right to object or withdraw consent

You have the right to object where we are using your personal data to carry out a task which is in the public interest, except for the purposes of scientific research (see “*Use of personal data for scientific research*” section below), and we will have to demonstrate that we have a compelling reason to continue to process them which overrides your rights and freedoms. If we cannot, we will stop.

You have the right to object to us using your personal data for direct marketing purposes, including any profiling of you in relation to direct marketing, and we shall be obliged to stop this. AFBI does not currently perform profiling using your personal data.

What is profiling?

Profiling means any form of automated processing or use of your personal data to determine certain aspects of you or your lifestyle, in particular those as could be used to analyse or predict matters such as your interests, behaviour, personal preferences, economic situation or health status.

Use of personal data for scientific research

Where we are processing your personal data for scientific research or statistical purposes, you will have the right to object to this, unless the processing is necessary for the performance of a task carried out for reasons of public interest or your right is waived under Schedule 2, Part 6 “*Derogations etc based on Article 89 for research, statistics and archiving*” of the DPA 2018.

AFBI carries out some scientific research and analysis on behalf of the Department of Agriculture, Environment and Rural Affairs (DAERA) in the public interest, such as notifiable disease³ surveillance, and therefore there may be occasions when your right to object will not apply. We will include information on the availability of this right in the relevant privacy notice for each project or area of work. Please refer to our website for further information (www.afbini.gov.uk).

Consent

In some instances, we may gather your personal data based on your consent, rather than under a legal obligation or contract, or while protecting your vital interests or acting in the public interest. In these circumstances, you should have freely given your consent with full knowledge of the information listed in Section 2 above which will have been provided in the relevant privacy notice.

If processing is based on your consent, you have the right to change your mind and withdraw that consent at any time. We will make the withdrawal process as easy as giving the consent and we will have informed you of this right and how to exercise it at the time of obtaining your consent. If you do withdraw consent, we will stop processing your personal data immediately unless we also have another lawful reason for continuing.

9. Rights regarding automated decision-making

You have the right to not be subject to a decision solely based on automated processing, including profiling, which has legal significance or similar to you, UNLESS:

- (i) The decision is necessary for a contract between us; or
- (ii) The decision is authorised by UK law; or
- (iii) The decision is based on your explicit consent.

Where an automated decision is used by us and (i) or (iii) apply, we will ensure that you at least have the right to the following on request:

- (a) be given the option to have a human make the decision that is applicable to you, rather than an automated process;
- (b) be able to obtain an explanation for the decision and contest the decision;
- (c) be able to express your point of view.

10. Right to be informed of a personal data breach

What is a personal data breach?

A “*personal data breach*” is a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, personal data transmitted, stored or otherwise processed.

We will always take steps to maximise the security of your personal information and minimise the risk of a breach (see Annex 1). However, if a breach occurs and is likely to result in a high risk of impact to your rights and freedoms, you have the right to be informed without undue delay either directly or via a widely-used public communications method such as our website (www.afbini.gov.uk) or a press release. In such cases, we will inform you of the following:

³Notifiable disease is any disease that is required by law to be reported to government authorities. A full list can be found at <https://www.daera-ni.gov.uk/articles/notifiable-diseases-northern-ireland>

- (i) The details of the breach and the personal data affected;
- (ii) The name and contact details of our Data Protection Officer;
- (iii) The likely consequences of the breach and measures you can take to reduce the potential adverse effects;
- (iv) The measures we are taking to reduce the impact of the breach.

You should be aware that we do not need to tell you of a breach if the risk to your rights and freedoms is not likely to be high or we have taken subsequent steps to ensure this, although we will inform our supervisory authority and DAERA, our Sponsor Government Department.

11. Right to lodge a complaint

You have the right to lodge a complaint if you believe that any of our actions in relation to how we have processed your personal data violates the GDPR or DPA 2018. In the first instance, you can complain to us and if you are not happy with our response, you can contact the Information Commissioner’s Office (ICO) who is the supervisory authority in the UK. They will assess your case and inform you of progress and the outcome of the complaint.

The ICO can be contacted using the details below:

Information Commissioner, Wycliffe House Water Lane Wilmslow CHESHIRE SK9 5AF	Web: https://ico.org.uk Reporting a concern: https://ico.org.uk/concerns Tel: 0303 123 1113
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If you are not happy with the outcome of the ICO’s investigation, you have the choice to bring action before a UK court.

12. Right to compensation

If you have suffered damages (material or non-material) as a result of our infringement of the GDPR, you have the right to receive compensation from us as directed by a UK court of law.

13. Right to representation

You have the right to engage a not-for-profit body, organisation or association (such as a trade union or other privacy-mandated organisation) to act on your behalf to (i) lodge a complaint with the ICO, and/or (ii) complain about the ICO, and/or (iii) claim compensation.

Annex 1. Keeping your personal data secure

We will always take steps to keep your personal data secure. We fully incorporate a “**Data Protection by Design**” approach to our work by ensuring that safeguards are built into our systems, services and projects from the earliest stages of development.

Examples of the safeguards are set out in the figure below. In addition, we will not transfer your data to a country outside of the European Union without your explicit consent and/or without ensuring that the recipient country has appropriate safeguards in place to protect your data to the same level.



⁴Data Protection Impact Assessments are carried out with reference to the ICO's DPIA Guidance (<https://ico.org.uk/for-organisations/guide-to-the-general-data-protection-regulation-gdpr/accountability-and-governance/data-protection-impact-assessments>)

⁵Pseudonymisation is where a process is put in place so that personal data can no longer be directly attributed to an individual living person without additional separately-held information being made available