

Compliance with the General Data Protection Regulations (GDPR) for applicants to the Charters

Frequently Asked Questions (FAQ)

These FAQs have been prepared to provide general information to applicants to Advance HE's Equality Charters regarding the forthcoming GDPR that will come into force on 25 May 2018, and how this may affect an applicant's legal basis for sharing staff and students data for the purpose of their application. **It does not constitute legal advice and should not be relied upon. Applicants are advised to obtain their own independent legal advice in relation to their obligations under the GDPR.**

This FAQ information sheet will be updated as necessary in accordance with developments to the GDPR.

1 *GDPR only applies to personal data - what is personal data?*

- Personal data is: any information relating to an identified or identifiable natural person.
- An identifiable natural person is one who can be identified, directly or indirectly, by reference to an identifier e.g. name or ID number, or to factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person.
- Data that has been completely anonymised and is incapable of either directly or indirectly identifying an individual before being transferred to Advance HE will not be personal data for the purposes of GDPR.
- If the data you supply to Advance HE with your application does not include personal data, GDPR will not apply.

2 *Overview of responsibilities for data controllers under GDPR*

The following is an overview of your obligations under GDPR as to the information you must provide to data subjects when collecting their personal data to use in your application to the Charters:

- **Information about your organisation:** including name and contact details, details of your representative (if relevant) and contact details of your Data Protection Officer.
The type of data you will collect: for example, name, address, employer, job title, etc
- **The purpose of collecting the data:** including what you will use it for and whether it will be used to make an automated decision; the legal basis for using the data including any 'legitimate interest' relied upon; and what categories of people will receive or have access to the data (i.e. Advance HE as part of the application review). **Other information:** including whether the data will be transferred, stored, or processed outside the EU and on what basis; how long the data will be stored for; what security arrangements are in place to protect the data; whether provision of the data is required and the consequences of not doing so. **Data subjects' rights:** including the right to be informed, right of access, rectification, erasure, restricting processing, data portability, object and rights in relation to automated decision making and profile; and who they contact in relation to complaints.

The above information is usually conveyed in a privacy statement to the data subject, which they would be required to consent to before passing on their personal data to you for the purpose.

3 Can we still disclose data to Advance HE for the purposes of our Charters application?

GDPR does not prevent institutions from undertaking data collection and transfer of data for the purpose of participating in the Charter processes, provided that:

- the personal data is obtained in accordance with GDPR and specifically, data subjects are advised of those points referred to in paragraph number 1 above; and
- the appropriate consent of the Data Subject is obtained before using it for the purpose of the Charters application.

The GDPR enhances the rights of data subjects and provides clear conditions for collecting, storing, processing and transferring personal data (including 'special categories' data) by the data-controller i.e. the institution. Advance HE encourages Charter applicants to familiarise themselves with the principles outlined in [Article 5 of GDPR](#), which address the following:

- Accountability
- Lawfulness, fairness and transparency
- Purpose limitation
- Data minimisation
- Accuracy
- Storage limitation and integrity and confidentiality
- Integrity and confidentiality.

As the GDPR will have an impact on all data collection within an organisation, Advance HE recommends that institutional self-assessment teams ensure departments are aware of any changes. The Information Commissioners Office has released [12 Steps for Preparing for the GDPR](#) which may be useful preparation for institutions.

4 What is the impact on collecting Equality and Diversity data?

As equality monitoring data, including some of the data collected for Charters applications, will be considered 'special categories' data as outlined in Article 9(1) of the GDPR, it is important for applicants to be aware of what the 'special categories include', and the justifying processes that can be relied on to collect, process, store and transfer such data.

'Special categories' data include:

- Race or ethnic original
- Sex life/sexual orientation
- Political opinions
- Religious or philosophical beliefs
- Health
- Trade union membership
- Criminal record (under control of official authority/law)
- Genetic and biometric data.

As the institutions will be obtaining and may transfer 'special category' data to Advance HE, the data controller (the institution) must satisfy two requirements:

1. Firstly, the data controller must have a lawful basis for processing the data and satisfy one of the following:
 - a. The data subject has given explicit consent to the processing of their data for a specific purpose(s)
 - b. Necessity for the performance of a contract
 - c. Compliance with a legal obligation
 - d. Protecting the vital interests of the data subject/another
 - e. Performance of a task carried out in the public interest or in the exercise of official authority vested in the data controller
 - f. Necessary for the purpose of legitimate interests pursued by the data controller or a third party

2. If using 'special categories' data the data controller will, in addition to those bases referred to in above, be required to satisfy one of the following reasons:
 - a. Explicit consent
 - b. Processing is necessary for the purpose of carrying out the obligations and exercising specific rights of the data controller or of the data subject in the field of employment and social security
 - c. Vital interests
 - d. Legitimate association use (churches, political parties, etc.)
 - e. Made public by data subject
 - f. Legal proceedings
 - g. Substantial public interest/public function
 - h. Health
 - i. Public health
 - j. Archiving, scientific and historical research, statistical purposes

For non-'special category' data, the institution must only satisfy one of the grounds referred to in 1 above.

5 Can we still rely on consent?

Obtaining explicit consent is one of the reasons available to use 'special categories' data'. If you intend to rely on this, the definition of consent under the GDPR is outlined in Article 4(11), where consent is understood as: *"...any freely given, specific, informed and unambiguous indication of the data subject's wishes by which he or she, by statement or by a clear affirmative action, significant agreement to the processing of personal data relation to him or her..."*.

Under GDPR, data controllers can no longer rely on pre-ticked opt-in or opt-out boxes in their data collection – the data subject must be asked, for example, to explicitly tick a box to show their consent. Therefore, when collecting data, institutions need to consider how they obtain consent, and be clear on the outcomes of not giving consent.

Employment monitoring data may have previously been relied on by your institution when collecting data and while it remains a reason to obtain 'special categories' data, explicit consent of the data subject must be obtained for you to transfer such data to a third party i.e. Advance HE.

6 *How does Advance HE comply with its obligations under GDPR in respect of any personal data it receives from applicants to the Charters?*

Advance HE relies upon the applicants to only transfer personal data that it has obtained lawfully in accordance with GDPR.

Once personal data has been received from an institution as part of the application process, Advance HE ensures that:

- it only uses the personal data for the purpose for which it was received i.e. for the processing of the institution's application;
- the personal data is stored securely on our IT systems and in our hard copy storage;
- only those members of staff that require access to the personal data for the purpose have access to it; and
- any third party processors adhere to the lawful processing of the personal data.

7 *What process does Advance HE adopt in the application process?*

For information on the process of the submission, please read 'information sheet for institutions and departments applying for equality charter awards' (to be published).

8 *Where can you seek further advice about GDPR?*

Further information can be found on the Information Commissioners Office [website and if you have a Data Protection Officer or Legal Department, you are advised to seek further advice from them.](#)

If you wish to speak to us about this FAQ note, please contact athena.swan@advance-he.ac.uk.