



# What is “Personal Data”

Working Group Data protection and data linkage

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# Legal Base

**Directive 1995/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data**

**Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications)**

**Regulation (EC) no 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents**

**Article 29 Data Protection Working Party Opinion 4/2007 on the concept of personal data**

**... and 27 Member States' Laws ...**

# Data Protection Directive

## *Article 2 - Definitions*

*For the purposes of this Directive:*

**(a) 'personal data' shall mean any information relating to an identified or identifiable natural person ('data subject'); an identifiable person is one who can be identified, directly or indirectly, in particular by reference to an identification number or to one or more factors specific to his physical, physiological, mental, economic, cultural or social identity;**

Recital (10) Whereas the object of the national laws on the processing of personal data is to protect fundamental rights and freedoms, notably the right to privacy, which is recognized both in Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms and in the general principles of Community law; whereas, for that reason, the approximation of those laws must not result in any lessening of the protection they afford but must, on the contrary, seek to ensure a high level of protection in the Community;

# Opinion of Article 29 Working Party

- 1) Not legally binding, but extremely authoritative for EU institutions
- 2) Mentions uncertainty and diversity in practice among Member States
- 3) The stated objective is to reach a common understanding of the concept of Personal Data
- 4) Considers that the directive contains a broad notion of personal data
- 5) Maintains that the scope of data protection rules should not be overstretched
- 6) ...but at the same time that “...*unduly restricting the interpretation of the concept of personal data should be avoided...*”

# The four elements in “Personal Data”

- 1) Any information...
- 2) Relating to...
- 3) An identified or identifiable...
- 4) Natural person

# Any information...

- **Covers objective information (facts – test results) and subjective information (opinions – diagnosis, prognosis)**
- **Goes beyond “private” information to include anything regardless of the position or capacity of the individual**
- **The format is not important – can also include free text in electronic documents or emails**

# Relating to...

- ***Data relates to an individual if it refers to the identity, characteristics of behaviour of an individual or if such information is used to determine or influence the way that person is treated or evaluated – Certainly all health data***
- **But also ... machinery service records, minutes of a meeting with personal views, prescription patterns ...**
- **Always check: if it is not the patient's personal data it may be the health professional personal data**

# Identified or identifiable...

- **Identification can be direct or indirect**
- **A person may be “identified” even where there is some degree of ambiguity (two “John Smith)**
- **The purpose of the processing is relevant – so if the purpose of a strain database is to identify carriers, it is personal data that is processed**
- **But, in most opinions, where medical data is transferred to a research company, in circumstances where the company is given no means to identify the patients, the data will not be considered personal data in the company’s hands**



# Natural person

- **Only living individuals (some unclear MS exceptions)**
- **Note that information on a dead person may relate to a living one (e.g. genetic data)**
- **Unborn children included by some countries (*...he was sucking his thumb since his first ecography...*)**
- **Information about a legal person (e.g a company) may relate to a natural one (e.g. *John Smith plc*)**
- **Some MS extend data protection law to legal persons (e.g. companies, institutions) – Very difficult enforcement**

# Limitations

## Article 7 Directive 1995/46/EC

Member States shall provide that personal data may be processed only if:

- (a) the data subject has unambiguously given his consent; or
- (b) processing is necessary for the performance of a contract to which the data subject is party or in order to take steps at the request of the data subject prior to entering into a contract; or
- (c) processing is necessary for compliance with a legal obligation to which the controller is subject; or
- (d) processing is necessary in order to protect the vital interests of the data subject; or
- (e) processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller or in a third party to whom the data are disclosed; or
- (f) processing is necessary for the purposes of the legitimate interests pursued by the controller or by the third party or parties to whom the data are disclosed, except where such interests are overridden by the interests for fundamental rights and freedoms of the data subject which require protection under Article 1 (1).

# Data Protection Technical Guidance

## Determining what is personal data



**Information Commissioner's Office**

Promoting public access to official information  
and protecting your personal information

[http://www.ico.gov.uk/upload/documents/library/data\\_protection/detailed\\_specialist\\_guides/personal\\_data\\_flowchart\\_v1\\_with\\_preface001.pdf](http://www.ico.gov.uk/upload/documents/library/data_protection/detailed_specialist_guides/personal_data_flowchart_v1_with_preface001.pdf)