



Kilkenny County Council

Comhairle Chontae Chill Chainnigh

## **COMHAIRLE CHONTAE CHILL CHAINNIGH**

### **KILKENNY COUNTY COUNCIL**

#### **Data Subject Rights**

#### **Policy and Procedures**

**(approved by Management Team 22/11/2022)**

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## 1.0 Purpose

The GENERAL DATA PROTECTION REGULATION (GDPR), which came into effect on 25th May 2018, and the DATA PROTECTION ACT 2018 which gives further effect to this Regulation provide data subjects with a range of rights in relation to their personal data. The purpose of this document is twofold as follows:

- To clearly identify the rights of data subjects;
- To outline Kilkenny County Council's policy and procedures for facilitating data subjects to exercise these rights.

## 2.0 Definitions

For the purposes of this policy and procedures document the following definitions apply:

- **Controller:** means the natural or legal person, public authority, agency or other body which, alone or jointly with others, determines the purposes and means of the processing of personal data; where the purposes and means of such processing are determined by Union or Member State law, the controller or the specific criteria for its nomination may be provided for by Union or Member State law.
- **Data Subject:** is an individual who is the subject of personal data.
- **Data Subject Access Request:** is a request received from a data subject for access to personal data.
- **Personal Data:** any information relating to an identified or identifiable natural person ('data subject'); an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person.
- **Profiling:** is any kind of automated processing of personal data that involves analysing or predicting behaviour, habits or interests.
- **Processing:** means any operation or set of operations which is performed on personal data or on sets of personal data, whether or not by automated means such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction.

### **3.0 Scope**

The scope of this document applies to the following:

- All data subject rights;
- All personal data held by Kilkenny County Council in physical or electronic format relating to members of the public, service users, suppliers and employees.

### **4.0 Policy**

It is the policy of Kilkenny County Council to ensure that the following data subject rights are fully respected and that data subjects wishing to avail of these rights are facilitated in a timely and comprehensive manner:

- The right to be informed;
- The right of access;
- The right to rectification;
- The right to erasure;
- The right to portability;
- The right to object to the processing of personal data;
- The right of restriction;
- Rights in relation to automated decision making, including profiling.

### **5.0 Data Subject Rights**

#### **5.1 The Right to be Informed**

Data subjects have the following rights to be informed:

##### **5.1.1 Rights where Personal Data is Collected from Data Subjects**

- Where personal data is collected from data subjects Kilkenny County Council must, at the time that the personal data is collected, provide the following information to the data subject:
  - 1) The identity and contact details of the data controller i.e. Kilkenny County Council (and where applicable, the controller's representative);
  - 2) Contact details of the Data Protection Officer (person with responsibility for data protection matters within Kilkenny County Council);



3) Purpose(s) of the processing and the lawful basis for processing the personal data;

4) Where processing is based on the legitimate interests of Kilkenny County Council or a third party, the legitimate interests involved;

5) Any other recipient(s) of the personal data;

6) Where applicable, details of any intended transfers to a third country (non-EU member state) or international organisation and details of adequacy decisions and safeguards;

7) The retention period (how long Kilkenny County Council will hold the personal data) or, if that is not possible, the criteria used to determine the retention period;

8) The existence of the following rights:

- The right of access
- The right to rectification
- The right to erasure
- The right to portability;
- The right to object to the processing of personal data
- The right to restrict the processing of personal data

9) Where processing is based on consent, the right to withdraw consent at any time, without affecting the lawfulness of processing based on consent before its withdrawal;

10) The right to lodge a complaint with the Data Protection Commission;

11) Whether the provision of personal data is a statutory or contractual requirement, necessary to enter into a contract, an obligation, and the possible consequences of failing to provide the personal data;

12) The existence of any automated decision-making processes that will be applied to the data, including profiling, and meaningful information about how decisions are made, the significance and the consequences of processing.

The right to be informed, in circumstance where personal data is collected from data subjects, will typically be fulfilled through a '*Privacy Notice*' that is prepared by Kilkenny County Council.

If in the event that Kilkenny County Council intends to process a data subject's personal data for another purpose (other than the purpose for which the data was originally collected), it must, subject to the provisions of data protection legislation, provide the data subject, prior to that other processing, with any further relevant information as per 1 – 12 above.

#### **5.1.2 Rights where Personal Data is Not Collected from Data Subjects**

Where personal data has not been obtained from the data subject, Kilkenny County Council must provide the data subject with:

- The information at 1 to 10 and 12 in paragraph 5.1.1 above;
- Information on the types of personal data they hold about the data subject;
- Information on how it obtained the personal data and whether it came from publicly accessible sources.

Kilkenny County Council should, in circumstances where personal data has not been obtained from the data subject, provide the information:

- Within a reasonable period of having obtained the personal data and, at the latest, within one month;
- If the data is used to communicate with the data subject, at the latest, when the first communication takes place;
- If it is expected that the personal data will be disclosed to another party, when the data subject's personal data is first disclosed.

The above requirements will not apply:

- Where the data subject already has the above information;
- Where the provision of such information is impossible or would involve a disproportionate effort;
- Where obtaining the information or disclosure is a legal obligation;
- Where the personal data must remain confidential due to an obligation of professional secrecy regulated by law.

### **5.2 The Right of Access**

**5.2.1** Data subjects have the right to obtain the following from Kilkenny County Council:

- 1) Confirmation of whether or not personal data concerning the data subject is being processed;
- 2) Where personal data concerning the data subject is being processed, a copy of his or her personal information;
- 3) Where personal data concerning the data subject is being processed, other additional information as follows:

- a) Purpose(s) of the processing;

- b) Categories of personal data;

- c) Any recipient(s) of the personal data to whom the personal data has or will be disclosed, in particular recipients in third countries or international organisations and information about appropriate safeguards;

- d) The retention period for the personal data or, if that is not possible, the criteria used to determine the retention period;

- e) The existence of the following rights:

- Right to rectification
- Right to erasure
- Right to restrict processing
- Right to object;

- f) The right to lodge a complaint with the Data Protection Commission;

- g) Where personal data is not collected from the data subject, any available information as to its source;

- h) The existence of automated decision making, including profiling and meaningful information about how decisions are made, the significance and the consequences of processing.

**5.2.2** The right to the information above must not adversely affect the rights and freedoms of others.

**5.2.3** A separate Data Subject Access Policy and Procedures has been developed by Kilkenny County Council to assist data subjects with their requests for information.

### **5.3 The Right to Rectification**

**5.3.1** Data subjects have the right to have inaccurate personal data rectified, by Kilkenny County Council without undue delay.



**5.3.2** Data subjects have the right to have incomplete personal data completed including by means of providing supplementary information.

#### **5.4 The Right to Erasure (also known as the right to be forgotten)**

**5.4.1** Data subjects have the right to have their personal data erased, without undue delay, by Kilkenny County Council, if one of the following grounds applies:

- Where the data subject's personal data is no longer necessary in relation to the purpose for which it was collected or processed;
- Where the data subject withdraws his or her consent to the processing of the personal data and there is no other lawful basis for processing the data;
- Where the data subject objects to the processing of the personal data and there is no overriding legitimate grounds for continuing the processing;
- Where the data subject objects to the processing of personal data for direct marketing purposes;
- Where the data subject's personal data has been unlawfully processed;
- Where the data subject's personal data has to be erased in order to comply with a legal obligation;
- Where the data subject's personal data has been collected in relation to the offer of information society services to a child. (Online Services offered to Children)

**5.4.2** Where Kilkenny County Council has made personal data public and, on the basis of one of the above grounds, is obliged to erase the data:

- Kilkenny County Council must communicate any rectification or erasure of personal data to each recipient to whom the personal data has been disclosed, unless this is impossible or involves disproportionate effort;
- If the data subject requests information on recipients of his or her personal data, Kilkenny County Council must inform the data subject about the recipients;
- Kilkenny County Council will take reasonable steps to inform other controllers, who are processing the personal data, that the data subject has requested the erasure by it of any links to or copies of the data. Reasonable steps means taking account of available technology and the cost of implementation including technical measures.

**5.4.3** The right of erasure will not apply where processing is necessary for:



- Exercising the right of freedom of expression and information;
- Compliance with a legal obligation, the performance of a task carried out in the public interest or in the exercise of official authority;
- Reasons of public interest in the area of public health;
- Archiving purposes in the public interest, scientific or historical research purposes or statistical purposes;
- Establishment, exercise or defence of legal claims.

## **5.5 The Right of Data Portability**

- 5.5.1** In some circumstances, the data subject may be entitled to obtain personal data from a data controller in a format that makes it easier to reuse the data subject's information in another context, and to transmit this data to another data controller of the data subject's choosing without hindrance. This is referred to as the right to data portability.
- 5.5.2** This right only applies where processing of personal data (supplied by the data subject) is carried out by automated means, and where the data subject has either consented to processing, or where processing is conducted on the basis of a contract between the data subject and the data controller.
- 5.5.3** This right only applies to the extent that it does not affect the rights and freedoms of others.
- 5.5.4** Where this right applies, data controllers must provide and transmit personal data in structured, commonly used and machine-readable form. Data is structured and machine readable if it can be easily be processed by a computer.
- 5.5.5** Under this right, the data subject can ask a data controller to transmit his or her data to another data controller, if such transmission is technically feasible.

## **5.6 The Right to Object to Processing of Personal Data**

- 5.6.1** Data subjects have the right to object to certain types of processing of their personal data where this processing is carried out in connection with tasks in the public interest, or under official authority, or in the legitimate interests of others.
- 5.6.2** Data subjects have a stronger right to object to processing of their personal data where the processing relates to direct marketing. Where a data controller is using a data subject's personal data for the purpose of marketing something directly to the data subject, or profiling the data subject for direct marketing purposes, the data

subject can object at any time, and Kilkenny County Council must stop processing as soon as it receives the data subject's objection.

- 5.6.3** The data subject may also object to processing of his or her personal data for research purposes, unless the processing is necessary for the performance of a task carried out in the public interest.
- 5.6.4** In order to object to processing, the data subject must contact Kilkenny County Council and state the grounds for his or her objection. These grounds must relate to the data subject's particular situation. Where the data subject has made a valid objection, Kilkenny County Council must cease processing the data subject's personal data, unless the County Council can provide compelling legitimate reasons to continue processing the data subject's data. Kilkenny County Council can also lawfully continue to process the data subject's personal data if it is necessary for certain types of legal claims.
- 5.6.5** Where the right to object applies, Kilkenny County Council is obliged to notify the data subject of this at the time of its first communication with the data subject.
- 5.6.6** Where processing is carried out online, Kilkenny County Council must offer an online method to object.

## **5.7 The Right of Restriction**

- 5.7.1** Data subjects have a limited right of restriction to the processing of their personal data by Kilkenny County Council. Where processing of personal data is restricted, it can be stored by Kilkenny County Council, but most other processing actions, such as deletion, will require the data subject's permission.
- 5.7.2** This right to restriction applies in four ways. The first two types of restriction of processing apply where the data subject has exercised his or her right to object to the processing of personal data or where the data subject has contested the accuracy of his or her personal data. In these cases, the restriction applies until Kilkenny County Council has determined the accuracy of the data, or the outcome of the data subject's objection.
- 5.7.3** The third situation in which the data subject can request restriction relates to processing which is unlawful. In these cases, if the data subject does not want Kilkenny County Council to delete the data, he or she can request restriction of the personal data instead.
- 5.7.4** The fourth type of restriction of processing applies where the data subject requires data for the purpose of a legal claim. In this case, the data subject can request restriction even where Kilkenny County Council no longer needs the data.
- 5.7.5** Where the data subject has obtained restriction of processing of his or her data, Kilkenny County Council must inform the data subject before lifting the restriction.



## **5.8 Rights in Relation to Automated Decision Making, Including Profiling**

- 5.8.1** Data subjects have the right not to be subjected to a decision based solely on automated processing. Processing is “automated” where it is carried out without human intervention and where it produces legal effects or significantly affects the data subject. Automated processing includes profiling.
- 5.8.2** Automated processing is permitted only with the data subject’s express consent, when necessary for the performance of a contract or when authorised by Union or Member State law. Where one of these exceptions applies, suitable measures must be in place to safeguard the data subject’s rights, freedoms and legitimate interests.

## **6.0 Procedures**

There is no set way to make an access request but the following general advice can help you to avoid delays or confusion. The following procedures apply for ensuring that the rights of data subjects are facilitated in a timely and comprehensive manner:

### **6.1 Making a Data Subject Right Request**

Data subjects who wish to make a data subject right request are required to submit the request in writing in physical or electronic format e.g. by letter or e-mail. In order to assist with your request Kilkenny County Council have developed a Data Subject Access Application Form available [here](#).

### **6.2 Confirming the Identity of a Data Subject**

Where it is deemed necessary or appropriate Kilkenny County Council may request the provision of additional information to confirm the identity of the person submitting the request. This is applicable to the rights of access, rectification, erasure, restriction of processing, objection to processing and data portability and rights in relation to automated decision making and profiling.

### **6.3 Acknowledging a Data Subject Right Request**

Kilkenny County Council shall acknowledge the request without undue delay and in any event within 2 weeks of receiving the request. The acknowledgement shall specify the expected timeframe for issuing a decision on the request and the procedure for making a complaint to the Data Protection Commission in the event that a decision is not made.

### **6.4 Decision on a Data Subject Right Request**

Kilkenny County Council may grant or refuse a request.



## **6.5 Granting a Data Subject Right Request**

In instances where a request is being granted, the following applies:

- 6.5.1** Kilkenny County Council shall provide information/details of action taken to the data subject without undue delay and in any event within one month of receipt of the request.
- 6.5.2** Kilkenny County Council may however extend the period for providing data subjects with information/details of action taken by two further months in cases where the requests are complex or numerous. In such circumstances the data subject shall be informed of the extension within one month of receipt of the request and provided with a reason for the extension.
- 6.5.3** Kilkenny County Council will normally provide information/details of action taken to a data subject free of charge.
- 6.5.4** However if a request is excessive or repetitive, in particular because of its repetitive character, Kilkenny County Council may charge a reasonable fee taking into account the administrative costs of providing information/taking the action requested.
- 6.5.5** The information/details of action taken provided to a data subject on foot of a decision to grant a request must be:
  - Provided in a concise, transparent, intelligible and easily accessible form, using clear and plain language, particularly for any information/details of action addressed to a child;
  - Provided in writing, or by other means, including, where appropriate, by electronic means;
  - Where the data subject makes the request in electronic form, where possible, the information/details of action must be provided by electronic means, unless otherwise requested by the data subject;
  - When requested by the data subject, the information/details of action may be provided orally, provided that the identity of the data subject is proven.
- 6.5.6** The notification of a decision to grant a request must inform the data subject of his or her right to make a complaint to the Data Protection Commission if he or she is dissatisfied with the decision and outline the process for making such a complaint to the Data Protection Commission.

## **6.6 Refusing a Data Subject Right Request**

### **6.6.1 A data subject right request may be refused in the following instances:**

- Where it is considered to be manifestly unfounded or excessive, in particular because of its repetitive character;
- Where the scope of access is restricted under provisions contained in data protection legislation enacted by the State.

### **6.6.2 Kilkenny County Council shall notify the requester of its refusal of a request within one month of receiving the request.**

### **6.6.3 The reason(s) for refusing a data subject right request shall be outlined in the notification.**

### **6.6.4 The notification of a decision to refuse a request must inform the data subject of his or her right to make a complaint to the Data Protection Commission if he or she is dissatisfied with the decision and provide details of the process for making a complaint to the Data Protection Commission.**

## **7.0: Complaints to the Data Protection Commission**

### **7.1 Data subjects may make a complaint in the following circumstances:**

- If they experience a delay outside of the prescribed timeframe for making a decision on a data subject right request.
- If they are dissatisfied with a decision by Kilkenny County Council on their data subject right request.
- If they consider that Kilkenny County Council's processing of their personal data is contrary to data protection legislation.

### **7.2 Contact details for the Data Protection Commission are as follows:**

Phone Number: 0761 104 800 or Local 1890 252 231

E-mail: [info@dataprotection.ie](mailto:info@dataprotection.ie)

Website: [www.dataprotection.ie](http://www.dataprotection.ie)

Postal Address: Data Protection Commission

Canal House

Station Road

Portarlinton

Co. Laois

R32 AP23.

## **8.0: Recording Requests and Outcomes**

**8.1** The Data Protection Officer shall maintain a summary record of each data subject right request received by Kilkenny County Council and the outcome in terms of the decision made on the request.

**8.2** Details of any subsequent complaints to the Data Protection Commission and their outcomes shall also be maintained on the summary record.

## **9.0: Awareness**

Kilkenny County Council shall implement appropriate measures to make its employees aware of the contents of this policy and procedures document.

## **10.0: Monitoring and Review**

Provisions contained in this policy and procedures document shall be subject to on-going monitoring and review.

## **11.0: Further Information**

**11.1** Further information and advice on the operation of this policy and procedures document is available from the Data Protection Officer, Kilkenny County Council.

**11.2** Contact details for the County Council's Data Protection Officer are as follows:

Name: Eamonn Tyrrell

Phone: +353 56 7794277

E-mail: [dataprotection@kilkennycoco.ie](mailto:dataprotection@kilkennycoco.ie)

Website: [www.kilkennycoco.ie](http://www.kilkennycoco.ie)

Postal Address: Kilkenny County Council, County Hall, John Street, Kilkenny  
R95 A39T