



## Data Protection Law Guide for Students

### for production of bachelor's and graduate diploma, master's theses as well as doctoral dissertations

The production of academic writings is regularly associated with processing of personal data. Therefore, in this matter the provisions of the General Data Protection Regulation (GDPR) and those of the Data Protection Act (DSG) must be heeded. In addition, the University Act (UG) and eventually the Research Organisation Act (FOG) may also be applicable.

However, if anonymised data (that is, data without reference to an individual) are involved, then no further measures are required from a data protection law point of view.

#### Definitions

An exact definition of the concepts used in data protection are found in article 4 of GDPR. The most important ones can be pointed out here in summary:

- **Personal data:** All information that can refer back to specific individuals (such as name, date of birth, address, email address, pictorial image or finger prints). Identification must also be possible, for that reason pseudonymised data are still personal data because they can be always be traced back to a specific individual. Only when identification is no longer possible at all is there complete anonymisation and then GDPR is no longer applicable. So-called "sensitive data" enjoy special protection (such as health data, data on political opinions or religious convictions)
- **Data processing:** Any procedure that is connected to personal data. This includes recording, storing, reading, using, modifying, forwarding, retrieving, divulging, erasing, etc.
- **Data processor:** Anyone processing data
- **Subject:** An individual whose data are being processed
- **Controller:** The person who decides (alone or jointly with others) whether, how and for what purpose specific personal data are processed

#### Legal basis of processing

The legal purpose for processing personal data for the production of a bachelor's, graduate diploma or master's thesis or for doctoral dissertations is constituted by article 6, paragraph 1 (c) of GDPR in conjunction with sections 80ff of the University Act.

Article 6, paragraph 1 (c) of GDPR sets norms for the processing of personal data to meet the legal obligation to which the controller is subject.

Sections 80 ff of UG constitute the legal obligation. Distinctions are made depending on the type of the academic work:

- Section 80 of UG concerns the bachelor's thesis (article 6, paragraph 1 (c) of GDPR in conjunction with section 80 of UG);
- Section 81 of UG concerns the graduate diploma or master's thesis (article 6, paragraph 1 (c) of GDPR in conjunction with section 81 of UG);
- Section 83 of UG concerns doctoral dissertations (article 6, paragraph 1 (c) of GDPR in conjunction with section 83 of UG)

#### → Summary

The processing of personal data in connection with the production of academic writings is allowed (under data protection law). The processing is based on the statutory regulations which make the production of an academic writing as part of a course of study necessary. The data protection law justification for processing of the personal data is not the consent of the data subject.



## Controllers

Data protection law provides for role divisions. If data are only processed „on assignment“ and according to the instructions of others, this is then a question of „data processing by assignment“ according to article 28 of GDPR. If data are processed „jointly“ with one or more others, one then speaks of „joint controllers“ within the meaning of article 26 of GDPR. Both variants require corresponding agreements between the partners in which the principles of cooperation relating to data protection must be explicitly clarified. As a further option, data protection law provides for data processing by several independent cooperation partners, each for a particular purpose (neither in the interests of a third party nor in their common interests). There is neither one partner who precisely determines and restricts how the data must be processed nor is any joint decision made about data processing. The cooperation partners each decide independently on data processing. There are in each case „separate responsibilities“ (even when the same data are being processed, that is, used).

In the production of a bachelor's or graduate diploma or master's thesis as well as with doctoral dissertations, the student works on his or her own responsibility, in particular as far as the use of the required resources and data are concerned. The student decides how the data are used and is responsible for ensuring data security and the rights of the data subjects (an example is the information obligation, see below) and serves as an interlocutor for the subjects.

### → Summary

Students must be considered controllers when producing their academic work and are therefore themselves responsible for compliance with the overall conditions of (data protection) law.

## Information obligation

In any processing of personal data, the data subjects must be comprehensively informed about the intended use of the data. TU Wien for this purpose provides students with a sample letter, „Information on Collection and Processing of Personal Data.“ That sample does not make any claim to accuracy and completeness and TU Wien does not assume any liability for use of the sample, see on this „Responsibilities.“ The sample letter must be individually adapted and supplemented for each specific case (see the passages highlighted in yellow).

### → Summary

As controllers within the meaning of GDPR, students are obliged to ensure that the information obligation is met. It is therefore recommended to have receipt of the information letter confirmed by the subjects on your own documents in order to eventually also be able to prove that the information obligation was complied with.

## Other rights of subjects

As controllers, the student are also under an obligation in respect of other subject rights. These include the

- right to **information** about the relevant personal data (article 15 of GDPR)
- right to **correction** (article 16 of GDPR) or **erasure** (article 17 of GDPR) or to **restriction** of processing (article 18 of GDPR) under the conditions listed in the regulations
- right to **complain**, which must be filed with the Austrian Data Protection Authority, Barichgasse 40-42, 1030 Vienna, telephone: +43 1 52 152-0, email: dsb@dsb.gv.at as the regulatory authority with jurisdiction.



Additional rights of data subjects (not applicable here):

- The right to revoke any eventually granted consent
- The right to object against data processing
- The right to data portability (article 20 of GDPR) if the data processing in question is dependent on consent or the fulfilment of a contract and occurs with the aid of automatic procedures (if technically feasible).

Article 11 of GDPR additionally provides that separate traceability of data back to individuals need not be guaranteed merely to be able to protect the rights of subjects.

#### → Summary

As controllers within the meaning of GDPR, students are obliged to ensure that the rights of data subjects are met.

#### Data security

Data protection law provides in any case that, in processing personal data, suitable technical and organisational protective measures are heeded. Taking such measures is the task of the controller.

#### → Summary

As controllers within the meaning of GDPR, students are obliged to ensure the security of the data processed. Particularly worthy of mention is:

- **Confidential treatment** of processed personal data, to the extent possible (no exchanging of information via social media or otherwise in public, prudence when using public WLANs)
- **Safe storage** of processed personal data
- No storage of data **outside of the EU/EEA area**
- Protection of data against unauthorised trespassing, entry or access (password, careful handling of external storage media)
- **Data minimisation**, i.e. limiting the necessary volume of the required data
- **Erasure** of personal data after the agreed storage period. Erasure means physical destruction (such as by means of a shredder). Moving data to the waste basket or any removal of paper documents in the normal „trash“ does not in any case suffice. Deletion of the memory in any eventually used receiver hardware (this applies particularly to rented equipment before returning it to the place from which it was borrowed).
- The **storage period** for data and research material is up to 30 years (section 2f, paragraph 3 of FOG)

We wish you luck and hope everything turns out well!