Data Controllers and Processors – Understanding the Difference (GUIDANCE FOR ALL STAFF)

What the different roles can be:

- **Data controllers** are organisations/contractors that make decisions regarding data processing/use – they decide the purposes of data collection/use and the means by which it is processed. *Example: The University will be a data controller for data collected on our students.*
- If two or more controllers both jointly decide the purpose and means of data processing then they are **Joint Controllers.** *Example: Partners in collaborative research projects may be joint controllers.*
- However, two controllers can collect the same data and each process it for a different purpose. In this case they will be **Controllers in Common.** *Example: The University and HMRC may each hold employee data relating to tax but will each process it for different purposes.*
- **Processors** will act on behalf of, and under the instruction of, a data controller. *Example: Many third party service providers (i.e. IT systems) are data processors on behalf of the University.*

**Checklist to help tell the difference:**

<table>
<thead>
<tr>
<th>Data Controllers</th>
<th>Data Processors</th>
</tr>
</thead>
<tbody>
<tr>
<td>✓ You decide to collect and use the data</td>
<td>✓ You are following instructions from someone else regarding the data processing</td>
</tr>
<tr>
<td>✓ You decide why the data is being collected</td>
<td>✓ ✓ You are given the data by a third party, or told what data should be collected</td>
</tr>
<tr>
<td>✓ You decide what data is collected</td>
<td>✓ ✓ You decide to collect personal data from individuals</td>
</tr>
<tr>
<td>✓ You may be processing the data because of a contract between you and the individuals</td>
<td>✓ ✓ You decide what purpose the data will be used for</td>
</tr>
<tr>
<td>✓ The data subjects are your employees</td>
<td>✓ ✓ You decide whether data is disclosed or to whom</td>
</tr>
<tr>
<td>✓ You make decisions about the individuals during, or as a result of, the processing</td>
<td>✓ ✓ You decide how long to retain the data for</td>
</tr>
<tr>
<td>✓ You have a direct relationship with the data subjects</td>
<td>✓ ✓ Decisions you make regarding the data are determined under a binding contract</td>
</tr>
<tr>
<td>✓ You have autonomy is deciding how the data is processed</td>
<td>✓ ✓ You are not interested in the end result of processing</td>
</tr>
<tr>
<td>✓ You may have engaged a third party to process data on your behalf</td>
<td></td>
</tr>
</tbody>
</table>

**What do you need to know if you’re a Data Controller?**

- As a controller you are ultimately responsible for the data and have the highest level of compliance responsibilities. These include:

  - Compliance with the data protection principles
  - Allowing individuals to exercise their rights
  - Implementing technical and organisational security controls
  - Obtaining adequate reassurance that your processors are complying with regulations
  - Having binding contracts with any data processors
  - Notifying the ICO of any data breaches
  - Complying with accountability obligations
As a controller you must comply with all the data protection principles and you also need to demonstrate compliance.

If you are a data controller you also need to be responsible for the compliance for any data processors you might use.

The regulator (the Information Commissioner’s Office) can take action against data controllers.

What do you need to know if you’re a Data Processor?

As a processor you don’t have the same level of obligations under data protection legislation as controllers. However you do have some direct obligations these include:

- Only processing data in accordance with the instructions of the data controller
- Entering into a binding contract with the controller putting direct responsibilities on the processor
- Not engaging and sub-processors without the permission of the controller
- Applying appropriate technical and organisation security measures to protect the data
- In the event of a breach notifying the controller without undue delay and assisting the controller in complying with its responsibilities regarding breaches.

Action can be taken directly against a processor if you breach any of your obligations.

What do you need to know if you’re a Joint Data Controller?

Agreement should be reached between the two controllers on who will take on which responsibilities for complying with data protection regulations.

All joint controllers remain responsible for compliance.

The ICO and individuals may take action against either controller (and both) in the event of a data breach.

Further information:

- If you need further information or have questions about data protection related issues please email gdpr@le.ac.uk
- Further guidance on complying with data protection legislation is available at: https://www.le.ac.uk/gdpr

This work is licensed under a Creative Commons Attribution-NonCommercial license. Subject to annual review: Do not use after June 2020

This guidance is the University of Leicester’s interpretation of data protection legislation and should not be viewed as legal advice.