

To Ask or Not to Ask

CLARIN in Leipzig

October 2, 2019

Krister Lindén / FIN-CLARIN

Processing of Personal Data



“Data could lead to unequal or unwanted treatment of an individual”

Processing of Personal Data



“Data could lead to unequal or unwanted treatment of an individual”

- publicly available
- closed commercial databases
- governmental archives or dbs

Processing of Personal Data



“Data could lead to unequal or unwanted treatment of an individual”

- publicly available
- closed commercial databases
- governmental archives or dbs

GDPR Consent, etc.

Processing of Personal Data



“Data could lead to unequal or unwanted treatment of an individual”

- publicly available
- closed commercial databases
- governmental archives or dbs

GDPR Consent, etc.

- *stories in social media*
- *personal stories in newspapers*
- *public court decisions*
- *e.g. interviews for a book*

Processing of Personal Data



“Data could lead to unequal or unwanted treatment of an individual”

- publicly available
- closed commercial databases
- governmental archives or dbs

GDPR § 5 ... further processing for *archiving purposes in the public interest, scientific or historical research purposes or statistical purposes* shall not be considered to be incompatible with the initial purposes.

GDPR consent, etc.

Processing of Personal Data



“Data could lead to unequal or unwanted treatment of an individual”

- publicly available
- closed commercial databases
- governmental archives or dbs

GDPR § 5 ... further processing for *archiving research purposes or statistical purposes* shall purposes.

Protective measures § 89

GDPR Public Interest

GDPR § 5 ... further processing for *purposes in the public interest, scientific or historical* not be considered to be incompatible with the initial purposes.

Processing of Personal Data



“Data could lead to unequal or unwanted treatment of an individual”

- publicly available
- closed commercial databases
- governmental archives or dbs

GDPR § 5 ... further processing for *archiving research purposes or statistical purposes* shall purposes.

Protective measures

purposes in the public interest, scientific or historical not be considered to be incompatible with the initial

Anonymization or appropriate legal basis is needed (e.g. consent)

GDPR Public Interest

Processing of Personal Data



“Data could lead to unequal or unwanted treatment of an individual”

- publicly available
- closed commercial databases
- governmental archives or dbs

GDPR § 5 ... further processing for *archiving research purposes or statistical purposes* shall purposes.

Protective measures

Archiving in the public interest, scientific or historical research purposes or statistical purposes

- research database1

purposes in the public interest, scientific or historical not be considered to be incompatible with the initial

- research database2

Appropriate legal basis is needed



GDPR Consent, etc.

GDPR Public Interest

Processing of Personal Data



“Data could lead to unequal or unwanted treatment of an individual”

- publicly available
- closed commercial databases
- governmental archives or dbs

GDPR § 5 ... further processing for *archiving research purposes or statistical purposes* shall purposes.

Protective measures

Archiving in the public interest, scientific or historical research purposes or statistical purposes

- research database1

purposes in the public interest, scientific or historical not be considered to be incompatible with the initial

- research database2

Appropriate legal basis is needed

GDPR Consent, etc.

“CTR Informed Consent”



Processing of Personal Data



“Data could lead to unequal or unwanted treatment of an individual”

- publicly available
- closed commercial databases
- governmental archives or dbs

GDPR Consent, etc.

GDPR § 5 ... further processing for *archiving research purposes or statistical purposes* shall purposes.



Protective measures

*Archiving in the public interest, **scientific** or historical **research purposes** or statistical purposes*

- research database1

purposes in the public interest, scientific or historical not be considered to be incompatible with the initial

- research database2

“Ethical Consent”

Appropriate legal basis is needed

General Data Protection Regulation

- <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32016R0679>
- **Article 5 – Principles relating to processing of personal data**
- **Article 6 – Lawfulness of processing**
- **Article 9 – Processing of special categories of personal data**

- **Article 89 – Safeguards and derogations relating to processing for archiving purposes in the public interest, scientific or historical research purposes (These may be based on Member State law)**

GDPR Article 5 – Principles relating to processing of personal data

- a. ... ('lawfulness, fairness and transparency');
- b. ... further processing for
 - *archiving purposes in the public interest,*
 - *scientific or historical research purposes or*
 - *statistical purposes*shall ... not be considered to be incompatible with the initial purposes ('purpose limitation');
- c. ... ('data minimisation');
- d. ... ('accuracy');
- e. ... personal data may be stored for longer periods insofar as the personal data will be processed solely for *archiving purposes in the public interest, scientific or historical research purposes or statistical purposes* ... **subject to implementation of the appropriate technical and organisational measures** required ... to safeguard the rights and freedoms of the data subject ('storage limitation');
- f. ... ('integrity and confidentiality').

GDPR Article 6 – Lawfulness of processing

- a) *the data subject has given **consent to the processing** of his or her personal data for one or more specific purposes;*
- 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;
- c) processing is necessary for compliance with a **legal obligation** to which the controller is subject;
- d) processing is necessary in order to **protect the vital interests** of the data subject or of another natural person;
- 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;*
- f) *processing is necessary for the purposes of the **legitimate interests pursued by the controller or by a third party**, except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child.*

GDPR Article 9 – Processing of special categories of personal data

- 1. Processing of personal data revealing *racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership*, and the processing of *genetic data, biometric data for the purpose of uniquely identifying a natural person, data concerning health or data concerning a natural person's sex life or sexual orientation* **shall be prohibited**.
- 2. Paragraph 1 shall not apply if one of the following applies:
 - ...
 - (j) processing is necessary for **archiving purposes in the public interest, scientific or historical research purposes or statistical purposes** ... based on ***Union or Member State law*** which shall be proportionate to the aim pursued, respect the essence of the right to data protection and provide for ***suitable and specific measures to safeguard*** the fundamental rights and the interests of the data subject.

Finnish national law, January 2019

– wrt Article 9.1 GDPR

Article 9.1 in GDPR [prohibition to process special categories of data] shall not apply to ...

- processing of data for **scientific or historical research purposes or statistical purposes,**
- processing of **research material or cultural heritage material for archival purposes in the public interest,** with the exception of genetic material.

When processing personal data referred to in 9.1., the processor shall ensure ***suitable and specific measures to safeguard*** the fundamental rights and the interests of the data subject. Such safeguards are ... (list of 10 technical, procedural and organisational measures)

Finnish national law, November 2018

- Exemptions and protective measures

When processing personal data for scientific or historical research purposes exemptions can be made to the rights of the data subject according to articles 15, 16, 18 and 21 in the GDPR, provided that

- 1) the processing is based on an appropriate **research plan**,
- 2) there is a **principal investigator** or a group responsible for the research, and
- 3) the personal data are used and provided only for **historical or scientific research purposes** or some other compatible purpose and that the activity is pursued in such a manner that data about specific persons is not made available to third parties.

Derogated rights when personal data use is based on public interest

- Article 15 - Right of access by the data subject
- Article 16 - Right to rectification
- Article 18 - Right to restriction of processing
- Article 21 - Right to object

Processing of Personal Data



“Data could lead to unequal or unwanted treatment of an individual”

- publicly available
- closed commercial databases
- governmental archives or dbs

GDPR § 5 ... further processing for *archiving research purposes or statistical purposes* shall purposes.

Protective measures

Archiving in the public interest, scientific or historical research purposes or statistical purposes

- research database1

purposes in the public interest, scientific or historical not be considered to be incompatible with the initial

- research database2

Appropriate legal basis is needed



GDPR Consent, etc.

GDPR Public Interest

Personal Data for Scientific Research

- Can claim *research in the public interest* in all EU countries
 - Still need to inform data subject of the purpose and legal ground
 - Need protective measures to prevent use for other purposes
- Differences between EU countries are
 - how freely one can process data in the special categories
 - the exemptions to the rights of data subjects in:
 - Article 15 - Right of access by the data subject
 - Article 16 - Right to rectification
 - Article 18 - Right to restriction of processing
 - Article 21 - Right to object