

Data Portability Policy

For



ÚDARÁS UCHTÁLA na hÉIREANN
THE ADOPTION AUTHORITY of IRELAND

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Introduction

The purpose of this policy is to set out the procedure which is followed by the Adoption Authority of Ireland (“the Adoption Authority”) when a Data Subject exercises their Right of Data Portability under Article 20 of the GDPR.

The right to data portability allows individuals to obtain and reuse their personal data for their own purposes across different services.

It allows them to move, copy or transfer personal data easily from one IT environment to another in a safe and secure way, without hindrance to usability.

A number of terms used in this policy are outlined in greater detail in the ***Glossary of Data Protection Terms***

Policy Scope

This policy sets out the procedures to be followed by The Adoption Authority to ensure it complies with its obligations under Article 20 of the GDPR “Right to Data Portability” (the ‘Right to Data Portability’). Our goal is to observe at all times, the protection of the rights and freedoms of data subjects.

This policy outlines the Adoption Authority’s obligations with respect to the transfer of data in certain situations.

This policy should be read and used in conjunction with the Adoption Authority’s full suite of data protection policies, including the Data Subject Access Request Policy.

Right to Data Portability under the GDPR

Data Subjects have the right under Article 20 of the GDPR to have their personal data ported to them or a new version provided in a readable format if the data in question was:

- 1) provided by the data subject to the controller (interpreted broadly);
- 2) is processed automatically; and
- 3) is processed based on consent or fulfilment of a contract

The Adoption Authority will respond to such a request without undue delay and in any event within one month, although this can be extended by up to another two months at the Adoption Authority’s discretion. In the event that the extension of the timeframe to reply to the request is necessary, we will inform the data subject within a month of receiving the request.

The subject access right provided under the GDPR already gives individuals the right to require their data to be provided in a commonly used electronic form but the Right to Data Portability goes beyond this and requires the controller to provide information in a structured, commonly used and machine-readable form so that it may be transferred by the data subject to another data controller where it is technically feasible to do so.

When does the Right of Data Portability apply and to what data?

The Right to Data Portability only applies:

- to personal data an individual has provided to the Adoption Authority as a Controller;
- where the processing is based on the individual's consent or for the performance of a contract; and
- when processing is carried out by automated means.

According to the European Data Protection Board ("EDPB") guidelines on Data Portability "*the GDPR does not establish a general right of data portability*". The Right to Data Portability only applies to information being processed with the data subject's consent or pursuant to a Data Portability Policy contract being in place, in the Adoption Authority this is a seldom used right and Employee details on transfer to the Authority is possibly the only instance where this is used e.g. via Peoplepoint, this, however, would only occur with the person's consent.

Data Portability only involves personal data which concerns the data subject; this would include pseudo anonymous data that can be clearly linked to a data subject. The EDPB recognises that information could also include personal data relating to several other data subjects and warns against taking an overly restrictive interpretation which excludes the provision of any information containing third party data whatsoever. The Adoption Authority is guided by the terms of the Adoption Act 2010 in this regard.

The EDPB makes a distinction between personal data generated by and collected from the activities of users, which would be covered by the data portability right, versus data which is inferred or derived by the data controller, which would not be in scope.

The rights of data controllers and other parties in trade secrets and other intellectual property in the information covered by the right to data portability must also be considered but according to the EDPB "*cannot, however, in and of itself serve as the basis for a refusal to answer the portability request*".

The EDPB notes that, under Article 20(1)(a) of the GDPR, processing operations fall under the scope of the right when based on either the data subject's consent or for the performance of a contract to which the data subject is a party. Additionally, the data processing must be "carried out by automated means" in order for the right to data portability to apply. The Adoption Authority does not engage in automated processing.

The EDPB also provides guidance on what types of personal data are subject to the new right. Under Article 20(1), only data which is personal to the data subject and which he or she has provided to a data controller falls under the scope of the right. Additionally, Article 20(4) notes that compliance with a data subject's right to data portability shall not adversely affect the right and freedoms of a third-party data subject. The EDPB further clarifies each of these three requirements:

“Personal data concerning the data subject:” The EDPB clarifies that anonymous data would not fall under the scope of the right, but that pseudonymous data that can be clearly linked to a data subject, is within the scope.

The EDPB also cautions that data controllers i.e. the Adoption Authority must not be “overly restrictive” in interpreting **“personal data concerning the data subject”**.

“Data must be provided by the data subject:” Again, the EDPB cautions data controllers against being overly restrictive in interpreting this language, noting that data “provided by” a data subject includes both data “actively and knowingly provided” (such as data submitted through an online form” and “observed” data (such as search history and location data). Data which is derived or inferred from provided data, in contrast, is not within the scope of the right and need not be provided in response to a data portability request. Examples of derived or inferred data may include copies of invoices, analytics profiles generated from personal data, and evaluation reports.

How other general rules for data subjects apply

The EDPB notes that data controllers must inform data subjects of the availability of the new right to portability in privacy notices and must distinguish this right from other rights. The EDPB recommends clearly explaining the differences between the types of data a data subject can receive using different rights. The EDPB also suggests that data controllers should include data portability information during account closures. For data controllers who receive data portability transfers, the EDPB suggests a best practice of explaining what data is relevant to the controller's services, so that users can minimize the data they provide.

The EDPB also expands on Article 12(3)'s requirement that data controllers provide data in response to a portability request “without undue delay” and in any case “within one month of receipt of the request” or within three months for complex cases, as long as the controller informs the data subject of the reasons for the delay within one month of the request. The EDPB emphasizes that a data controller may not remain silent in response to a request, and any refusal of a request must be communicated along with the reasons for the decision within one month of receipt of the original request.

Lastly, the EDPB points out that data controllers may not charge fees for providing personal data unless the controller can demonstrate the requests are “manifestly unfounded or excessive, in particular because of their repetitive character.” The EDPB also states that calculating the cost of creating an overall process to respond to such requests should not be used in determining the excessiveness of a data request, and such costs cannot be passed along to the data subject nor used to justify a refusal of

such a request, through physical media or through direct transmission to another data controller where technically feasible.

Data Portability and Data Processors

Whilst data portability applies only to data controllers, data processors will be under contractual obligations to assist controllers “by appropriate technical and organisational measures” with responding to portability requests. Data controllers should therefore implement specific procedures with their processors on handling such requests.

Practical measures to comply with the right to data portability

The guidelines envisage that data controllers will need to implement different technical tools to facilitate this right. The Adoption Authority commits to acknowledging receipt of such requests, ascertaining the identity of the data subject and responding to the requests without undue delay.

Data Portability Request Procedure

Important Compliance Notes: The Adoption Authority will act on a request from a data subject for the data to be ported in a machine-readable format or electronically unless we are unable to establish their identity or the material does not easily lend itself to electronic transmission e.g. large hand-written Adoption ledgers.

We will provide the personal data in a structured, commonly used and machine-readable form where it exists and is legible. Open formats include CSV files. Machine readable means that the information is structured so that software can extract specific elements of the data. This enables other organisations to use the data.

The information will be provided free of charge.

If an individual makes a request, we undertake to transmit the data directly to another organisation if this is technically feasible. However, we will not necessarily adopt or maintain processing systems that are technically compatible with other organisations.

If the personal data concerns more than one individual, we will consider whether providing the information would prejudice the rights of any other individual.

The procedure for responding to requests for data portability is set out in Figure 1 and expanded on in Table 1.

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The specifics of each step will vary depending on the request and the systems where the data is held.

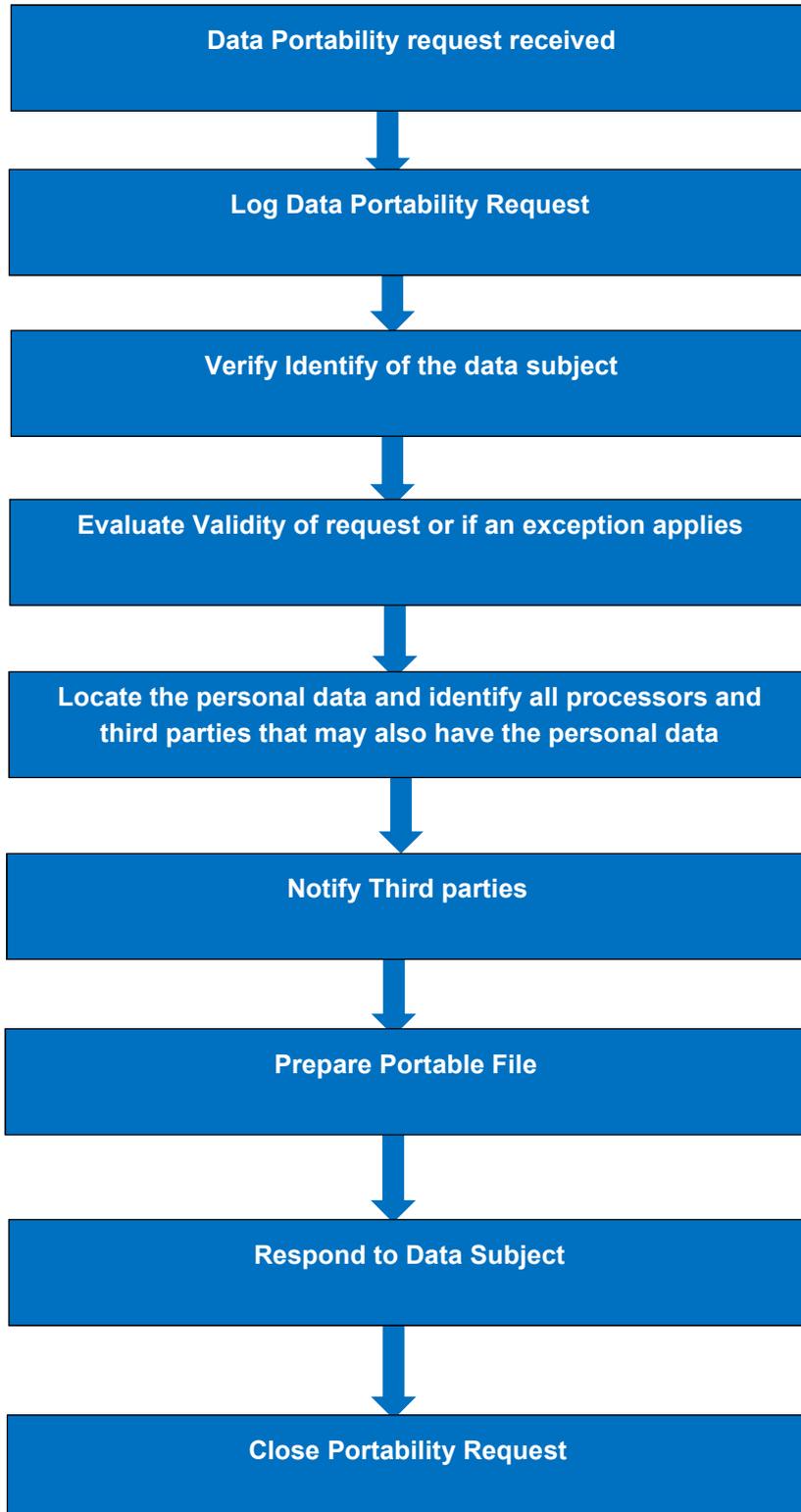


Table 1 – DATA PORTABILITY PROCEDURE

Step	Description
Data Portability request received	The Data Subject asks for their data in a portable format, including electronically (via email or website), by letter or by telephone. This may be received through any part of the organisation and should be channelled through to the DPO.
Log Data Portability Request	The fact the request was received will be logged in the Data Subject Access Request Register and the date of the request is recorded.
Verify Identify of the data subject	The identity of the data subject is confirmed via an approved method. Additional information may be requested to confirm identity. If the identity of the data subject cannot be confirmed the request is rejected and the reason for this is communicated to the data subject.
Evaluate Validity of request or if an exception applies	Is the request reasonable and lawful? If we determine that it is appropriate to apply any of the exemptions set out Article 20 of the GDPR and deny the request of an individual to transfer their data, a proper notice explaining the exception will be communicated to the data subject within 30 days, informing them they have the right to file a complaint to the supervisory authority in their member state if they feel the request has been processed unlawfully or unfairly.
Locate the personal data	We will pinpoint the units/systems/area that store the requested personal data.
Prepare File	Export Data to Portable file format.
Respond to Data Subject	Respond to the data subject with a copy of their data in a portable format. We have 30 days to respond to data subject portability requests, and this could be extended depending on the excessiveness, repetitiveness, and complexity of the request.
Close Data Portability Request	The fact that the request has been responded to is logged in the Data Request Register together with the date of closure.