



THE OFFICE OF THE **DATA PROTECTION COMMISSIONER**

The Data Protection (Bailiwick of Guernsey) Law, 2017 ("the **Law**")

Duty to Keep Records

- Section 37 of the Law imposes a duty on controllers and processors to keep records, make returns and cooperate with the Office of the Data Protection Commissioner ("the ODPC").
 - A controller or processor must maintain any prescribed records for the prescribed periods of time, in the prescribed manner and form. These records must be made available to the ODPC upon request.
 - The Data Protection (General Provisions) (Bailiwick of Guernsey) Regulations, 2018 ("the Regulations") sets out the detailed requirements in respect of this duty.
-

At a glance

- The Law contains explicit provisions about documenting your processing activities.
- You must maintain records on several things such as processing purposes, data sharing and retention.
- You may be required to make the records available to the ODPC on request.
- Documentation can help you comply with other aspects of the Law and improve your data governance.
- Controllers and processors both have documentation obligations.

- For small and medium-sized organisations, documentation requirements are limited to certain types of processing activities.
- Information audits or data-mapping exercises can feed into the documentation of your processing activities.
- Records must be kept in writing.
- Most organisations will benefit from maintaining their records electronically.
- Records must be kept up to date and reflect your current processing activities.
- We have produced some basic templates to help you document your processing activities. There is a template for controllers to complete ([here](#)) and a different template for processors ([here](#)).

What's new under the Law?

The documentation of processing activities is a new requirement under the Law.

There are some similarities between documentation under the Law and the information you provided to the ODPC as part of notification under the Data Protection (Bailiwick of Guernsey) Law, 2001.

You need to make sure that you have in place a record of your processing activities by 25 May 2018.

What is documentation?

Most organisations are required to maintain a record of their processing activities, covering areas such as processing purposes, data sharing and retention; we call this documentation.

Documenting your processing activities is important, not only because it is a legal requirement, but also because it can support good data governance and help you demonstrate your compliance with other aspects of the GDPR.

Who needs to document their processing activities?

Controllers and processors each have their own documentation obligations.

If you have 250 or more employees, you must document all your processing activities.

There is a limited exemption for small and medium-sized organisations. If you have less than 250 employees, you only need to document processing activities that:

- are not occasional, i.e. they are routine,
- include [special category data](#), or
- is [high-risk processing](#)

What do we need to document as a controller?

You must document the following information:

- The name and contact details of your organisation, and where applicable, of other controllers, your representative and any data protection officer.
- The purposes of your processing.
- A description of the categories of data subjects and categories of personal data.
- The categories of recipients of the personal data.
- Details of your transfers to unauthorised jurisdictions including documenting the transfer mechanism safeguards in place.
- Retention schedules.
- A general description of security measures taken in relation to the processing.

What do we need to document as a processor?

- The name and contact details of your organisation, and where applicable, of other processors, your representative and any data protection officer.
- The name and contact details of the controllers you provide services for, and where applicable, of any joint controllers, controller's representative and any data protection officer designated by the controller.
- A description of the processing activities carried out on behalf of each controller.
- Details of your transfers to unauthorised jurisdictions including documenting the transfer mechanism safeguards in place.
- A general description of security measures taken in relation to the processing.

Should we document anything else?

As part of your record of processing activities, it can be useful to document (or link to documentation of) other aspects of your compliance with the Law.

Such documentation may include:

- information required for privacy notices, such as:
 - the lawful basis for the processing
 - the legitimate interests for the processing
 - individuals' rights
 - the existence of automated decision-making, including profiling
 - the source of the personal data;
- records of consent;
- controller-processor contracts;
- the location of personal data;
- Data Protection Impact Assessment reports;
- records of personal data breaches; and
- information required for processing special category data or criminal conviction and offence data under the Law, covering:
 - the condition for processing in the Law
 - the lawful basis for the processing in the Law
 - your retention and erasure policy document

How long should these records be kept?

Controllers and processors must keep their records of processing for six years from the date that kind of processing was last carried out in relation to the personal data involved.

How do we document our processing activities?

Undertaking an information audit or data-mapping exercise can help you find out what personal data your organisation holds and where it is.

You can find out why personal data is used, who it is shared with and how long it is kept by distributing questionnaires to relevant areas of your organisation, meeting directly with key business functions, and reviewing policies, procedures, contracts and agreements.

When documenting your findings, the records you keep must be in writing. The information must be documented in a granular and meaningful way.

We have developed basic templates to help you document your processing activities.

Documentation template for controllers ([link](#))

Documentation template for processors ([link](#))

Documentation is only a waste of time when it is not done properly

Checklists

Documentation of processing activities – requirements

- If we are a controller for the personal data we process, we document all the applicable information under Section 37(1) of the Law and Regulation 8 of the Regulations.
- If we are a processor for the personal data we process, we document all the applicable information under Section 37(1) of the Law and Regulation 9 of the Regulations.

If we process special category or criminal conviction and offence data, we document:

- the condition for processing we rely on under the Law (Schedule 2);
 - the lawful basis for our processing; and
 - details of the retention and erasure of the personal data in accordance with our policy document.
-
- We document our processing activities in writing.
 - We document our processing activities in a granular way with meaningful links between the different pieces of information.
 - We conduct regular reviews of the personal data we process and update our documentation accordingly.

Documentation of processing activities – requirements

When preparing to document our processing activities we:

- undertake information audits to find out what personal data our organisation holds;
- distribute questionnaires and talk to staff across the organisation to get a more complete picture of our processing activities; and
- review our policies, procedures, contracts and agreements to address areas such as retention, security and data sharing.

As part of our record of processing activities we document, or link to documentation, on:

- information required for privacy notices;
 - records of consent;
 - controller-processor contracts;
 - the location of personal data;
 - Data Protection Impact Assessment reports; and
 - records of personal data breaches.
-
- We document our processing activities in electronic form so we can add, remove and amend information easily.