

Creative Commons Licences: A Guide to Data Protection & Copyright

Written by

naomi korn
ASSOCIATES



Heritage
Fund



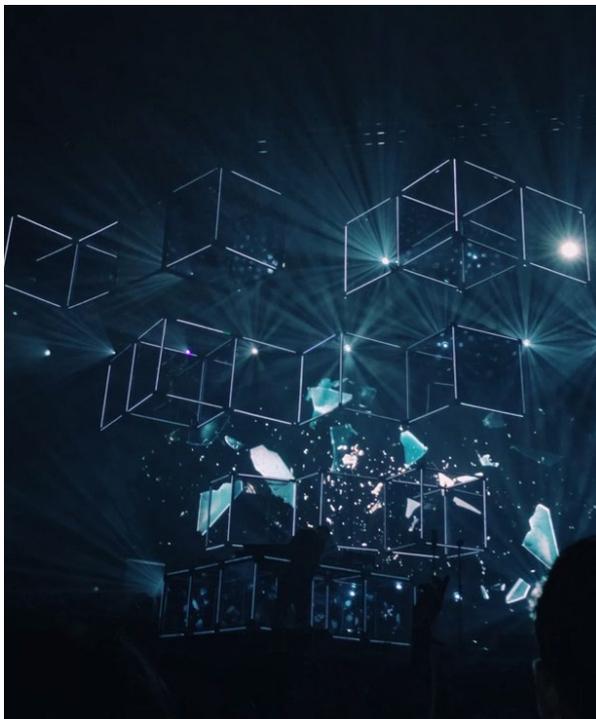
Digital
Skills for
Heritage

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1. About Project Outputs

Digital heritage outputs created with grants from The National Lottery Heritage Fund (Heritage Fund) need to be available online and openly licensed under the terms of a Creative Commons Attribution 4.0 International (CC BY 4.0) licence. Data protection rules mean that digital outputs that include information about living people require specific permissions or approaches before these materials can be shared online or an open licence applied. Copyright necessitates that all rights need to be cleared before content is published online. This guide provides a summary of the data protection and copyright requirements associated with different types of digital outputs and how these relate to the default CC BY 4.0 licence, to help you better plan your project.



Cubes with lights – photo by Fabio on Unsplash



If you have been awarded a Heritage Fund grant, or you are thinking about applying for one, this award comes with some grant conditions related to your project's digital outputs. This is likely to mean that you need to make sure you understand Creative Commons licensing, and what that means for you in terms of data protection and copyright.

2. Heritage Fund: Data Protection Considerations

If you are planning an application to the Heritage Fund to carry out a project, the planned outputs of your project may include images, audio or other information relating to living individuals. Where this material could identify a living individual, then this is 'personal data' and you have several obligations you must fulfil around data protection law.

If you are going to be using personal information in your digital outputs, for example, images, film, audio or written text, you will have to comply with data protection laws. This guide provides a range of tools, templates and guidance to consider the issues and help you take the right steps. In line with data protection rules, you will need to document your approach and any permissions you collect.

About Data Protection

Data Protection is an important legal requirement. Getting it wrong could lead to risks to individuals' privacy or safety, your organisation's reputation and can lead to financial penalties (including fines). We live in a data-driven world. Sharing data can make life easier, more convenient and connected for us all. Data protection law sets out what should be done to make sure everyone's data is used properly and fairly.

Generally speaking, data protection law applies to all workplaces, business ventures, societies, groups, clubs and enterprises of any type. That includes you if you're a sole trader or self-employed, if you work for yourself or if you're an owner or director. It also applies if you only employ a handful of staff or even if you don't employ any staff at all.

Definitions

- Data Protection Law: Data Protection law covers the General Data Protection Regulations (UK GDPR) and Data Protection Act 2018.
- Data Controller: An organisation that collects and makes decisions about how personal data will be processed.
- Data Subject: The subject of the personal data/the individual which the personal data relates to.
- Digital Outputs: Content created during the course of the project and arising as a result of funding from the Heritage Fund.
- Information Commissioners Office (ICO): The UK's regulator on data protection law www.ico.org.uk.
- Explicit Consent: Explicit consent requires a very clear and specific statement of consent. Explicit consent must be expressly confirmed in words, rather than by any other positive action.

All digital outputs created with grant funding to help people access, engage with and learn about heritage need to be available online for at least five years after the end of the project. This includes images, films, audio, documents and data.

Conditions of Heritage Fund grants are given on the basis that digital outputs created with grant funding are made available online, and shared under an open licence, unless specific exceptions apply.

These digital outputs also need to be shared openly with a CC BY 4.0 licence. This means the outputs will be available for others to re-use, re-publish and adapt, as long as they give the correct acknowledgement of the source. The CC BY 4.0 licence does not apply to any personal data included in the output.



If your outputs include ‘special category’ personal data, the Heritage Fund will provide an exception, which means that you do not have to share these outputs under CC BY 4.0 licence. In the first instance, you should contact your Engagement Manager at the Heritage Fund to discuss this. Typically, this is the case where there is personal information about health, belief, ethnicity. Personal data classed in the GDPR as ‘special category’ or relating to criminal convictions will require an additional legal basis or condition for processing personal data.



Guide 2: Special Category and Criminal Convictions Data

Projects which involve this type of data are subject to a Heritage Lottery Fund exception to the requirement to apply a CC BY 4.0 licence for re-use.

If your outputs depict under 18-year-olds, or relate to vulnerable adults, you should also seek an exception from the open licence requirement. If you believe there are good ethical reasons for not sharing your funded outputs online or under an open licence, you should contact the Heritage Fund.

You will need to ensure that you get data protection ‘right’ in your project by:

- Making sure the use of personal information in outputs is fair and lawful.
- Making sure the people whose personal information is included in the outputs fully understand how their contribution will be used.
- Present the outputs, if possible, in ways that do not identify individuals.
- Allowing participants to request a takedown of the information.

Data Protection Definition: Personal Data

Personal data is information that relates to an identified or identifiable individual. What identifies an individual could be as simple as a name or a number or could include an IP address or other factors.

Data Protection Definition: Special Category Data

‘Special category data’ covers data relating to:

- racial or ethnic origin
- political opinions
- religious or philosophical beliefs
- trade union membership
- data concerning health
- data concerning a person’s sex life or sexual orientation
- genetic data or biometric data

In all cases, extra consideration is required for this type of information in data protection law. As greater risk to individuals is involved, so must the technical measures to protect the data against unauthorised access or loss be more robust.

Data Protection Definition: Criminal convictions data

Data about an individual’s criminal convictions also requires an additional legal condition to use and these are set out in the Data Protection Act 2018.



Checklist - Does data protection law apply to my project's digital outputs?

Is it personal data?

Can a living individual be identified from the digital outputs, directly or indirectly? If so, how?

<input type="checkbox"/>	Names
<input type="checkbox"/>	Images
<input type="checkbox"/>	Footage
<input type="checkbox"/>	Audio
<input type="checkbox"/>	Transcripts
<input type="checkbox"/>	Location (home or activity)
<input type="checkbox"/>	Other

Is it special category or criminal convictions data?

Do the digital outputs indicate any of the following about living individuals?

<input type="checkbox"/>	Their racial or ethnic origin
<input type="checkbox"/>	Their political opinions
<input type="checkbox"/>	Their religious or philosophical beliefs
<input type="checkbox"/>	Their membership of a trade union
<input type="checkbox"/>	Data concerning their physical or mental health
<input type="checkbox"/>	Data concerning their sex life or sexual orientation
<input type="checkbox"/>	Any genetic data or biometric data which could identify them
<input type="checkbox"/>	Any data related to criminal convictions, activity, allegations, investigations or proceedings

3. Heritage Fund: Copyright Considerations



Light exposure – photo by Johannes Groll on Unsplash



If you are creating content for a Heritage Fund project, one of the conditions is that the outputs will be given a 'Creative Commons CC BY 4.0 licence. This means that they will be available for others to re-use, re-publish and adapt as long as they give the correct acknowledgement of the source. At the planning stage of your project, you should assess whether the content you are creating may not be suitable for the licence or other types of sharing. You will need to inform and agree this assessment with the Heritage Fund at the earliest opportunity.

At the beginning of a project, it is crucial that any copyright is identified as early as possible to reduce the risks of infringing any third-party copyright and to ensure that the work can be reused under the terms of a CC BY 4.0 licence. The steps that you take will depend on:

- **Who is contributing or creating the content**
- This might include employees, volunteers, contractors, and members of the public. If content is created by anyone other than employees, then the appropriate steps will be required to ensure that you have the necessary copyright permissions from them.
- **Whether there is any other content which might be in copyright and require the necessary permissions to use**
- There may be possible fees associated with reuse, and these fees should also be identified as early as possible. There may also be copyright exceptions which might apply depending upon your use.

CC BY 4.0 Definition

This licence enables the reuse, adaptation and sharing of content for all purposes as long as attribution is provided.



CC BY 4.0 Licence

When your project formally begins, you need to ensure that you consider how your copyright obligations will be met and what products or tools you will need to ensure this. Your copyright obligations will depend on who is contributing to your project. It will be crucial to ensure that you secure copyright permissions that enable you to make content available online and to apply a CC BY 4.0 licence from anyone contributing to the project who is not one of your employees.

We have created a range of model templates for collecting the permission you will need from members of the public or other third parties.



[Template 4: Permissions Form](#)

For volunteers contributing to your project:



[Template 5: Deed of copyright assignment/licence](#)

When working with contractors:



[Separate Supplier Guide](#)

What do I need to do?

- Understand your role in the project (see Roles and Responsibilities).
- Use the decision matrix to help you understand which of the templates you will need.
- Read the relevant Guides to Data Protection and Copyright.
- Identify which templates your project requires and customise them to your project.
- Read the FAQ section or seek additional support.

4. Table 1: Does CC BY 4.0 apply to my outputs?

This table summarises what you need to know regarding the sharing of digital outputs.

	Your outputs do not contain any personal data or fully anonymise the data	Your outputs contain data relating to living individuals	Your outputs contain sensitive personal data relating to matters such ethnicity, health, sexuality or relate to children or vulnerable individuals	Your outputs contain data concerning the criminal convictions, allegations or proceedings relating to living individuals
Will be able to give the outputs a CC BY 4.0 copyright licence or apply an exception?	Yes, the CC BY 4.0 licence can be added to these outputs	Yes, the CC BY 4.0 licence can be added to these outputs	No. The Heritage Fund allows an exception from the requirement for outputs with this type of data	No. The Heritage Fund allows an exception from the requirement for outputs with this type of data

**Heritage Fund:
Data Protection and Copyright
Roles and Responsibilities**

5. Roles and Responsibilities

A Heritage Fund project may engage a range of participants throughout its lifecycle. This document sets out the data protection responsibilities of each participant and the Fundholder/ creator's obligations to them. It also covers any organisation re-using material available under a CC BY 4.0 licence. There may be some overlap in participants, and they may have a number of data protection responsibilities.



Project role:

Grantee/project lead, or the projects nominated Data controller.

Data Protection responsibilities:

- 'Data controller' for any personal data collected
- Ensures all relevant data protection issues have been covered and documentation generated

Fundholder/fund grantee's obligations:

Adequate resources in project plan to protect and manage personal data (Privacy Notice, data minimisation, data security, contractual protections with third parties)

Obligations of organisation re-using materials under a CC BY 4.0 licence:

- Correct referencing and attribution
- Contact for any data protection queries

Green and red light patterns – photo by Pietro Jeng on Unsplash



Project role:

Member of staff - Senior responsible officer (SRO)

Data Protection responsibilities:

- Undertakes available data protection training
- Handles personal data in accordance with the law and organisational policy

Fundholder/fund grantee's obligations:

- Managing staff data in accordance with the law and organisational policy
- Provide a privacy notice, explaining how their data is collected and managed

Template 1: Project Privacy Notice

Obligations of organisation re-using materials under a CC BY 4.0 licence:

N/A



Project role:

Data Protection responsibilities:

Accepts data protection obligations by signing agreed contractual terms

Fundholder/fund grantee's obligations:

Ensuring formal contracts with data protection clauses are in place

Obligations of organisation re-using materials under a CC BY 4.0 licence:

- Permission
- Correct referencing and attribution



Project role:

Volunteer

Data Protection responsibilities:

- Undertakes available data protection training appropriate to their access to data
- Handles personal data in accordance with the law and organisational policy

Fundholder/fund grantee's obligations:

- Provide a privacy notice, explaining how their data is collected and managed
- Ensures appropriate guidance is given
- Manages volunteer personal data in accordance with the law and organisational policy



Template 1: Project Privacy Notice

Obligations of organisation re-using materials under a CC BY 4.0 licence:

- Permission
- Correct referencing and attribution

**Project role:**

Participant (interviewee, subject of an image, appears in a video)

Data Protection responsibilities:

- Understands what data is being collected and for what purpose, including copyright and re-use
- Signs relevant documentation

Fundholder/fund grantee's obligations:

- Privacy Notice
- Takedown policy
- Manages data in the project in accordance with data protection principles and under a relevant legal basis

**Template 1: Project Privacy Notice****Obligations of organisation re-using materials under a CC BY 4.0 licence:**

- Permission
- Attribution/referencing
- Data controller responsibilities: specifically that they manage any personal data in the project in accordance with the data protection principles and under a relevant legal basis
- Organisation may need to provide privacy notice unless exemption applies

**Heritage Fund:
Guidance Data Protection
and Copyright Guidance**

6. Data Protection in Detail

Guide 1: Legal Basis

If you are processing any personal data, you need to have a good reason, referred to as lawful basis.

Data Protection Definition: Lawful Basis

In data protection law there are six legal bases for processing:

- The individual has consented to the processing
- The processing is necessary for a contract to which the individual is a party
- Your organisation has a legal obligation to process the data, perhaps under charity law or the National Heritage Act 1983
- Your organisation needs to process data to protect the vital interests of an individual
- If your organisation is a public authority, they need to process data as part of their powers established in law
- Your organisation has a legitimate interest in processing the data, balanced against the rights and freedoms of the individual



Key point: The legal basis under which you process personal data should be set out in your organisation's overarching privacy notice.

In the context of making content available online under a CC BY 4.0 licence, the following legal bases are the most suitable.

Consent

The ICO states that “genuine consent should put individuals in charge, build trust and engagement, and enhance your reputation.” To make sure that consent valid, it needs to be:

- **a clear affirmative action:** an “opt-in” rather than “opt-out”.
- **fully informed:** people need to know what they are opting into, who will be storing their data and how.
- **freely given:** there should be no power imbalance or implied pressure to provide the consent. The consent should be as easy to retract as it is to provide.
- **must be recorded:** the organisation should retain a record of the consent.



Legal basis for personal data subject to CC BY 4.0

UK GDPR Article 6 (1) (a) Consent is the most appropriate legal basis in our scenario but it will still be challenging to use. You can brief participants fully on the copyright arrangements and many will be ‘on board’ with the objectives of your project and the principles of open access to collections. However, you must ensure that individuals understand how their data might be re-used beyond the boundaries of the current project. Additionally, individuals might feel compelled or obliged to give their consent to the project, which would undermine the validity of consent.



[Template 2: Project Consent Form](#)



Close up of keyboard – photo by Philipp Katzenberger on Unsplash

Necessary for a task in the public interest

If the fundholder is a public authority under Schedule 1 of the [Freedom of Information Act](#), they can rely on UK GDPR Article 6 (1) (e), where ‘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’. For galleries, libraries and museums that are public authorities, creating, maintaining and providing access to the cultural resources in its collections will be fundamental to their public mission.



Legal basis for personal data subject to the terms of a CC BY 4.0 licence

Where the cultural objectives of your organisation and the Heritage Fund are met by making the material available, and obtaining valid consent is not possible, the legal basis of task in the public interest, could be used. As with legitimate interests – explained below, this is a flexible legal basis but still requires fair and lawful use of personal data. The public task need to be valid for the authority and the ‘necessity’ must be demonstrable.

Legitimate Interests

One of the available legal bases for processing personal data in this scenario, where obtaining valid consent is not possible, is UK GDPR Article 6 (1) (f). This is where ‘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’.

The legitimate interests of your organisation, such as promoting its collections or encouraging donations, always needs to be balanced against the rights and freedoms of the individuals. The less privacy intrusive the photo or video, the more the balance favours the legitimate interest.



Legitimate Interests as a legal basis for personal data subject to CC BY 4.0

This is a flexible legal basis but always relies on the balance between the interest and the rights and freedoms of the individuals whose data is at issue. As an organisation, you can work out and document the balance in a Legitimate Interests Assessment



ICO Guidance

Safeguards around the use and presentation of data, allied with proactive management of ‘takedown requests’ or GDPR rights requests are a key part of this legal basis.

Guide 2: Special Category and Criminal Convictions Data

Data Protection Definition: Special Category Data

'Special category data' covers data relating to:

- racial or ethnic origin
- political opinions
- religious or philosophical beliefs
- trade union membership
- data concerning health
- data concerning a person's sex life or sexual orientation
- genetic data or biometric data

In all cases, extra consideration is required for this type of information in data protection law. As greater risk to individuals is involved, so must the technical measures to protect the data against unauthorised access or loss be more robust.

Data Protection Definition: Criminal convictions data

Data about an individual's criminal convictions also requires an additional legal condition to use and these are set out in the Data Protection Act 2018.

Additional legal bases

As befits data with a higher risk, an additional legal basis needs to be relied upon to justify the processing of 'special category data' and data relating to criminal convictions.

- There are a range of options in the GDPR, but the following are most likely to arise for cultural and heritage organisations:
 - The individual has provided explicit consent for what you will do with the data.
 - The use of the data is necessary for carrying out your statutory obligations (such as those under health and safety, equality or employment law).
 - The data may have clearly already been made public by the individual (such as the political affiliation of an MP or the

criminal record of a former prisoner turned public activist).

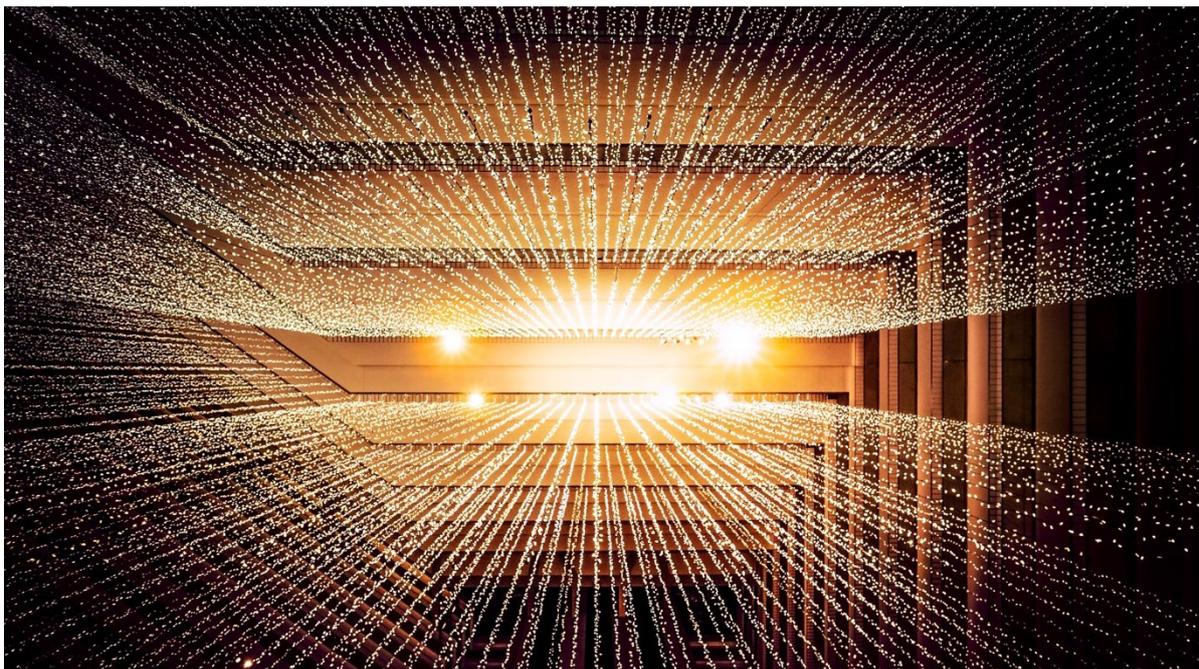
- The use of the data may have a statutory basis (for example, where a museum may be a public authority).
- The use of the data is necessary for archiving purposes, scientific or historical research purposes or statistical purposes, whilst safeguarding the rights of the individuals involved

Special category data, criminal convictions, and copyright

Special category data will not be suitable for re-use under the CC BY 4.0 licence. A fund recipient should apply for an exception from the CC BY 4.0 licence requirement.



[Guide 5: Securing an exception to the default licence requirement](#)



Beams of light – photo by Joshua Sortino on Unsplash

Guide 3: Keeping it Minimal and Relevant (Protecting Data for Public Access and Re-use)

This factsheet provides an overview of how to collect personal data which is minimal and relevant. The third data protection principle is that personal data should be 'adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed. This is usually called the 'data minimisation' principle. Adding personal data to project content needs careful consideration and organisations must avoid collecting or publishing more than is necessary, which could impact on the privacy of the individual.

Data Protection Example: Data Minimisation

The London Lute Museum is working on captions for its promotional photos for its latest HLF project. The photographer initially writes 'One of our donors John with Seema (his wife) and Rachel from the collections team at the reception' but redrafts as 'Attendees at our reception'.

Provision of the names would be excessive for the purpose of publishing the image.

The UK GDPR defines a number of specific approaches to protect privacy in the use of personal data. These can be adapted for project content in the following ways.

Pseudonymisation

'Pseudonymisation' in GDPR terms means presenting the personal data in such a manner that the personal data can no longer be linked to a specific person without the use of additional information. That additional information is kept separately and is subject to technical and organisational measures to ensure that the person is not identified. Pseudonymised data is still personal data and requires the data protection principles to be observed and a legal basis to process.

Anonymisation

'Anonymisation' in GDPR terms means managing the data in such a manner that it no longer becomes possible to link the data back to the individual and therefore ceases to be personal data and in the scope of GDPR.

Data Protection Example: Pseudonymisation

The London Lute Museum is publishing a range of written and audio feedback from its recent exhibition. The interviews are attributed to coded identities, presented as “B, London” and “J, Manchester”. In its secure repository, the Museum holds the raw data with the full identity of “B, London” and other contributors, including the records of their involvement in the project, such as a signed release form and outtakes.

Data Protection Example: Anonymisation

The London Lute Museum has reached a year since it published the written and audio feedback from its recent exhibition. As agreed with the participants, the Museum deletes from its secure repository the raw data with the full identity of “B, London” and the records of their involvement in the project, such as a signed release form and outtakes. Any audio or written content that might contain information that would identify an individual (“I came to the exhibition because I work as a luthier at Joe’s Guitars on Denmark Street”) are edited or removed from the available content. The Museum cannot now link the data back to any of the participants.

The benefits of anonymisation and pseudonymisation

The benefits of anonymisation and pseudonymisation for cultural content can be summarised as follows:

- reduces risk and impact in the event of a data breach or other unauthorised access.
- mitigates reputational risk for organisations publishing content.
- helps enable re-use of data for archiving and research.

Guide 4: Withdrawal of consent or participation

Engaging with project participants in a fair, transparent and lawful way is essential in complying with data protection law as well as ensuring an overall ethical approach. Dealing with the possibility of a participant wishing to remove data about them or retract their consent should be the part of any project from the planning stage onwards.

Data subject rights

Individuals have several rights under data protection law to address how their personal data is processed. These rights have specific relevance for personal information made available for public access and re-use and your organisation needs to be able to identify these rights requests and act on them, in most cases, within 30 days.

Data Protection: Data Subject Rights

- Right to be informed – An individual should be provided a Privacy Notice informing them how data will be used.
- Right of access (or “Subject Access Request”, “SAR” or “DSAR”) - An individual has the right to receive a copy of their personal information that your organisation holds about them and information about how you use it.
- Right to rectification - An individual has a right to ask your organisation to correct their personal information where it is incorrect or incomplete.
- Right to erasure (or “right to be forgotten”) - An individual has the right to ask that their personal information be deleted in certain circumstances, such as where consent has been withdrawn, where it is no longer necessary to keep it or where it legally needs to be deleted.
- A right to restrict processing – An individual can restrict their data being used in certain circumstances.
- Right to object - An individual has the right to object to your organisation’s processing of their personal data unless you can prove legitimate interests.
- Right to data portability – transfer data to another organisation.
- Rights in relation to automated decision making and profiling.

Whether these rights apply depends on the legal basis under which you are processing the data.

Lawful Basis: Legal or contractual obligation

In managing the project there will be a range of personal data where your organisation will have a legal or contractual obligation to retain data and any requests for withdrawal can be refused.

Lawful Basis: Consent

If you are relying on consent as your legal basis for using data in your project, there are a few elements needed to make that consent valid. The consent needs to be:

- a clear affirmative action: an “opt-in” rather than “opt-out”.
- fully informed: people need to know what they are opting into, who will be storing their data and how.
- freely given: there should be no power imbalance or implied pressure to provide the consent.
- must be recorded: the organisation should retain a record of the consent’.

A key element of valid consent is that the consent must be as easy to retract as it is to provide. The ICO states that “genuine consent should put individuals in charge, build trust and engagement, and enhance your reputation.”

Data Protection Example: Invalid Consent

A Cathedral project staff member is approaching visitors to the Cathedral on a Saturday to obtain their views on a religious figure. The member of staff conducting the survey says that everyone will be interviewed and that their name, where they travelled from and why they came will be added to the project content.

He states that if they don’t want to be included, they can opt-out at the front desk by asking to arrange a meeting for the manager who is only in on weekdays. Everyone who has been coming to the museum has been doing this, he says, as he completes the interviews and leaves, preparing to add them to the document repository.



Cathedral ceiling – photo by Nick Fewings on Unsplash

Data Protection Example: Valid Consent

The Cathedral promotes its project on its website and social media accounts asking prospective participants to attend on a particular Saturday, where it will conduct interviews. It includes the consent form and privacy notice, explaining the project and how the data will be used, on its website.

The interviewer gives each attendee who turns up on the Saturday a fact sheet explaining how the data will be used and a form to sign consenting for the information to be used. They are also available to answer any questions from participants about the project. The fact sheet includes information on how to ask for the details to be removed, which can be done with an email to the Project Team or direct message to the Cathedral’s Facebook page. The Project Staff Member keeps the signed forms, and the Museum stores them for the duration of the project, removing any entries from the page if the participants notify them in the interim.

Consent under Data Protection vs Consent for participation

Obtaining consent from the participants or subjects of research is a long-established benchmark of ethical research practice. This type of consent, whilst containing a few similar elements, does not necessarily translate into an equivalent for valid GDPR consent. A consent form may still be a vital part of your project documentation, but it may have to reference a different legal basis for processing personal data.

Requesting removal under other legal bases

If you are processing personal data under a different legal basis, the withdrawal of agreement to involvement must be considered differently.

If you are processing personal data under a different legal basis, the withdrawal of agreement to involvement must be considered differently.

Legitimate Interest

There are rights in data protection law for individuals to ask for an organisation to stop processing data or ask for it to be removed. If you are relying on legitimate interests as a legal basis, you will have to balance those legitimate interests against the rights and freedoms of the individual concerned. In a typical Heritage Fund project scenario, an opportunity to withdraw involvement whilst the project is in progress would be seen as a reasonable safeguard to balance the legal basis.



ICO Guidance

‘Public Task’

If your organisation is a heritage body which is also a public authority, and you are using ‘public task’ as your legal basis, then the individual’s right to erasure does not apply under data protection law. The right to object to the processing, however, does still apply. A heritage organisation would have difficulty demonstrating there were no other reasonable and less intrusive means to achieve their purpose if they could not facilitate a reasonable process to remove or withdraw content both during and after the duration of the project. The British Library’s ‘takedown policy’ is a useful example of this.

Dealing with requests for removal

Removal during the project

A participant should, at any stage during the project, be given an opportunity to withdraw their involvement in any of the outputs. This is covered in the template [Project Consent form](#) provided as part of this resource. At this stage, the organisation should, in most cases, fulfil the participant's request.

After the project is completed

When the project is completed and the outputs have been produced and published, in either digital or hard copy, the withdrawal of consent or agreement and removal of content is, in practical terms, more difficult. An organisation should consider implementing a 'takedown policy' which considers these types of requests. These can be made available to participants at the start of the project to give a fuller understanding of what control they have over their data. An example is available on the [British Library website](#).

Data Protection Example:

Take down during the project

After a painting workshop has been completed and interviews concluded, the project leader asks all the participants whether they are still happy to allow their contributions to be published as part of the project. One participant changes their mind, and their contribution is removed from the final collection.

Data Protection Example:

Take down after the project is completed

One of the participants of a project contacts the Museum and asks for their interview clip and information to be removed from any available outputs of the project. The Museum agrees to take down the clip and content from the website but cannot remove the information from the initial run of published booklets that have already been published.

Archiving in the public interest

There is an exemption from the right to erasure, to object and to restrict processing where you need to retain personal data for the purposes of 'archiving in the public interest'. This will be relevant to many Heritage Fund projects, where content may have been made permanently available. The exemption is qualified and only applies where:

- removing the information would 'seriously impair' the purposes, e.g., mean that the cultural resource was no longer accessible.
- there are appropriate safeguards in regard to the data being archived, e.g., you have carried out data minimisation, any sensitive information has been redacted or subject to a Heritage Fund exception and you have a reasonable takedown policy or approach.
- keeping the information available would cause damage and distress.
- the content is not used in relation to specific decisions or interventions about the individual concerned.

These safeguards should all be part of any plan to produce Heritage Fund project content.

Data Protection Example: Archiving in the public interest

A participant in a live event has asked that all images and footage in which she is included are removed from the project outputs under the 'right to erasure'. The Museum argues that the content was designed not to be privacy intrusive (it is a group event and names or close up images of faces were not used) and that removing these photos would be detrimental to the quality of the project outputs and, therefore, the public interest of the archiving. The Museum considers that it is exempt from carrying out the right to erasure request.

Withdrawal requests when content is re-used

Where there is a CC BY 4.0 licence in place, content containing personal data could be re-used by a person or organisation unrelated to the original fundholder or the objectives of their project. The re-use of content does not exist outside of data protection law and those re-using content will have

the obligations of other data controllers. They may have to comply with rights requests under data protection law and may have to rely on exemptions available to re-use in research or artistic context. The original fundholder's responsibility is to inform participants at the start of a project about the implications of re-use. At the stage of re-use, they may be subject to a takedown or rights request to prevent any subsequent re-use.

Guide 5: Securing an exception to the default licence requirement



If you are creating content for a Heritage Fund project, one of the conditions is that the outputs will be given a 'Creative Commons CC BY 4.0 licence, where they will be available for others to re-use, re-publish and adapt as long as they give the correct acknowledgement of the source. At the planning stage of your project, you should assess whether the content you are creating may not be suitable for the licence or other types of sharing. You will need to inform and agree this assessment with the Heritage Fund at the earliest opportunity.

What material should be subject to an exception?

Examples of materials that may not be appropriate for open licensing for ethical reasons include:

- material depicting children and young people under 18
- material depicting or created by vulnerable adults
- artefacts, knowledge or memories of cultural significance to the communities of origin
- ancestral remains, spiritual works or funerary objects.

In some cases, research, data or other media produced around the above examples may also not be appropriate for open licensing.

Data Protection Example

The Town Museum is creating a project where elderly residents who moved to the town from Ireland in the 1950s and 1960s talk about their experiences of work, leisure and prejudice. Because the personal data revealed in the content will reference the ethnicity of the participants, this output will be subject to a Heritage Fund exception from the CC BY 4.0 licence requirement.

Special categories qualify for an exception to the CC BY 4.0 licence requirement:

Data Protection Definition: Special Category Data

- racial or ethnic origin
- political opinions
- religious or philosophical beliefs
- trade union membership
- data concerning health
- data concerning a person's sex life or sexual orientation
- genetic data or biometric data

Criminal Convictions

Where a project collects personal data relating to criminal convictions and offences or related security measures, then this data will also qualify for an exception to the copyright licence.

Example: Criminal convictions data in a project

The City Art Gallery is scoping a project where prisoners and ex-prisoners are holding art workshops on the theme of rehabilitation. One of the planned outputs is interviews with the participants, which will include a range of biographical information about their convictions and personal lives. This output will be subject to a Heritage Fund exception from the CC BY 4.0 licence requirement. Other outputs may still be suitable.

Data minimisation

Even where an exception is agreed, an organisation needs to carefully assess what data is being collected as part of a project and must avoid collecting or publishing more than is necessary, which could impact on the privacy of the individual.

Data management in the case of an exception

If content in a project is still subject to an exception from a CC BY 4.0 licence, the organisation still has legal responsibilities around the data it is processing.

Data security

The organisation is required to have 'appropriate technical measures' in place to protect the personal data it processes from unauthorised access or loss. Websites should have robust security protections such as firewalls, penetration testing and up- to-date software. Staff who are accessing personal data should be trained in data protection and IT security principles. Data collected should be stored and transferred securely.

Example: Secure transfer

The Forest Friends Association sends a transcript of its interviews to the participants for them to approve as an accurate record. The Association ensures that the transcripts are sent via email using password protection, with the password provided separately to the recipient.

Data Protection Impact Assessment (DPIA)

Where you are collecting high risk data, a 'Data Protection Impact Assessment (DPIA)' is a useful tool. A DPIA maps out the data processing in a project and identify risks that you can prepare for and manage. There is a range of guidance on the [Information Commissioner's website](#) on undertaking a DPIA.

Long term storage

After the project is completed, you may wish to add your data to your permanent collection or deposit it in a formal archive. Some of the data may be subject to an embargo before it is made available to researchers. Any third parties wishing to use the data for research purposes will be responsible for their processing of the data.



Checklist - My Heritage Fund Project Data Protection

When you have gone through the guidance, please use this checklist to assess the following:

<input type="checkbox"/>	We know whether we are collecting and presenting personal data about living individuals in our digital outputs
<input type="checkbox"/>	If the personal data is particularly sensitive, we have ensured we have informed the Heritage Fund that we require an exception to the copyright licence
<input type="checkbox"/>	We know which legal reason we will be using for presenting the personal data
<input type="checkbox"/>	We have told our participants what we are doing and can explain further if they ask
<input type="checkbox"/>	We have recorded their agreement to be identified in any digital outputs
<input type="checkbox"/>	We have considered our approach and aim to present the minimum amount of personal data necessary in the digital outputs
<input type="checkbox"/>	We have a plan if any of our participants wish to withdraw from the project

We have the following documents in place:

<input type="checkbox"/>	A list of the personal data to be presented in the digital outputs
<input type="checkbox"/>	A Privacy Notice for participants explaining how their personal data will be used
<input type="checkbox"/>	A Participant Consent or Agreement Form
<input type="checkbox"/>	A notice for re-users of any content under the licence
<input type="checkbox"/>	Legitimate Interests Assessment (if that is the chosen legal reason or 'lawful basis')

**Heritage Fund:
Data Protection and Copyright Templates**

Which Templates do I need for my Project?

Data Protection: Documents required based upon your 'Legal Basis'

Start here: You will be creating content for a Heritage Fund project, which will need to be made available under a CC BY 4.0 licence.		
Consent	Legitimate Interests	Public Task
Template 1: Project Privacy Notice	Template 1: Project Privacy Notice	Template 1: Project Privacy Notice
Template 2: Project Consent Form	ICO Guidance	ICO Guidance
Template 3: Notice for Re-use under a CC BY Licence	Template 3: Notice for Re-use under a CC BY Licence	Template 3: Notice for Re-use under a CC BY Licence

This table applies to personal data only. Where you are processing special category or criminal offense data see:



[Guide 5: Securing an exception to the default licence requirement](#)

Copyright: Documents required based on who is contributing to your project

Start here: You will be creating content for a Heritage Fund project, which will need to be made available under a CC BY 4.0 licence.			
Who is the content being created by?			
Employee's	Public/creators	Volunteers	Contractors
No templates required	Template 4: Copyright Permissions Form	Template 4: Copyright Permissions Form	Template 4: Copyright Permissions Form
		Template 5: Copyright Deed of Assignment/Licence (Volunteers)	See Guide to Copyright and Working with Suppliers

Template 1: Project Privacy Notice



This privacy notice should be developed in conjunction with your general privacy notice and should be amended according to the specific circumstances and context of your Heritage Fund project. Seek support from your Data Protection Officer if you have one.

Privacy Notice [Project Name]

What data will we be collecting?

[Describe the personal data collected in the outputs, which could include an image of a living identifiable person, your voice recording of a living person]

What will be doing with the data?

- Examples
- Publishing online
- Adding to our collections
- Making available for re-use

What is our legal basis for processing this data?

[If your legal basis is consent]

We will obtain your consent for

- Publishing online
- Adding to our collections
- Making available for re-use

We will provide you with a consent form which you will sign.

[If your legal basis is legitimate interests]

We are relying on legitimate interests to process this data and a Legitimate Interests Assessment is available on request. Our legitimate interests are [explain your legitimate interests]

[If your legal basis is public task]

We are relying on public task to process this data. Our public task is [explain how your public task applies to this processing]

How long do we keep the data for?

Data related to your involvement in the project, such as contracts, contact details etc., will be stored according to the [ORGANISATION] privacy notice.

The data in the project's content will be kept permanently as part of our collection.

Who do we share it with?

Data related to your involvement in the project will be shared, as required, with The National Lottery Heritage Fund, our funding partner.

Any personal data in the project's content will be published on our website and given a Creative Commons licence for re-use (CC BY 4.0).

Third party access

The project uses the following data processors for the provision of its services. These processors only manage the data according to our instructions and are bound by formal contracts.

[List processors e.g. 'MSOffice 365 for our emails and office documents, SquareSpace hosting our website']

Your rights under data protection law

You have a number of rights under data protection law to find out more about how your personal data is processed. The following rights have particular relevance for personal information published as part of this project. The [ORGANISATION] needs to respond to these requests within 30 days.

Right of access (or "Subject Access Request", "SAR" or "DSAR") – You have the right to receive a copy of your personal information and information about how the [ORGANISATION] uses it.

Right to rectification – You have the right to ask the [ORGANISATION] to correct your personal information where it is incorrect or incomplete.

Right to erasure (or "right to be forgotten") – You have the right to ask that your personal information be deleted in certain circumstances, such as where consent has been withdrawn, where it is no longer necessary to keep it or where it legally needs to be deleted.

Right to object - You have the right to object to the [ORGANISATION]'s processing of your personal data in certain circumstances.

There are some exemptions to these rights. For further information please contact [whoever is responsible for data protection in your project].

Template 2: Project Consent Form



Where you are using consent as a legal basis you should use this consent form. This is separate from a project participation consent form.

[Project Name] Consent Form

We're collecting and presenting data about you as part of this project. We need to record your agreement – or 'consent' - for using that data about you. You can change your mind at anytime and we will remove or take down the data.

The [ORGANISATION] has created content in its Heritage Fund project [project name] in which you are a participant. This form obtains and records your consent for us to use your image and other project contributions in the publishing and licensing of that content. It does not cover personal data collected in managing the project but not used in the outputs, such as an employment agreement or expenses claim.

Recording your consent

The [ORGANISATION] is recording your agreement to have your image, data or footage used as part of this project. Setting out what we are going to do, describing the lifecycle of your data in the project and recording your agreement is a vital part of our approach to this project and our data protection obligations.

The Heritage Fund, which wants to ensure its funding produces cultural and heritage content that has the widest possible access and availability to the public, to fulfil its mandatory outcome to ensure "a wider range of people will be involved in heritage".

If you are obtaining the consent of children/vulnerable adults from a parent or guardian, include this section here:

The [ORGANISATION] is recording your agreement as a parent or legal representative to have your child's image, data or footage used in the content of this project. Setting out what we are going to do, describing the

lifecycle of your data in the project and recording your agreement is a vital part of our approach to this project and our data protection obligations.

If you are processing special category data, include this section here:

Sensitive or special category data

Where we are collecting [describe any special category or criminal convictions data in your project] we need to give you an extra opportunity to opt-in, as data protection law gives a special status to this type of information. This material will not be shared under the open copyright licence.

Adding the content to the [ORGANISATION]'s website

The content will be made available for the public to access on the [ORGANISATION]'s website.

I consent to my contribution to the project being added to the [ORGANISATION]'s website: tick here

I understand that my contribution includes some sensitive data related to [describe special category data in your project] and this will be added to the [ORGANISATION]'s website: tick here

Storing the content in our collection

The content will be stored in the [ORGANISATION]'s permanent collection and accessible to researchers by appointment. All researchers will sign access forms when they use our archive and are legally responsible for managing your data according to data protection law.

I consent to my contribution to the project being added to the [ORGANISATION]'s permanent collection. I understand that researchers may access this content and use it for their own research and that the [ORGANISATION] is not responsible for that research: tick here

I understand that my contribution includes some sensitive data related to [describe special category data in your project] and this will be added to the [ORGANISATION]'s permanent collection. I understand that researchers may access this content and use it for their own research and that the [ORGANISATION] is not responsible for that research: tick here

Licensing the content for re-use

One of the conditions of our Heritage Fund funded project is that the [ORGANISATION] has to apply a 'Creative Commons' licence. This means that the content will be available for others to re-use, re-publish and adapt if they give the correct acknowledgement of the source. Individuals or organisations who re-use the content are still subject to data protection law in regard to your data as well as other laws such as defamation, libel and the Equality Act 2010.

Sensitive or special category cannot be given this licence for re-use, as The National Lottery Heritage Fund allows an exception to the condition of applying the licence.

I consent to my contribution to the project being given a CC BY 4.0 licence. I understand that my data in the content will be used in other contexts and forms of presentation. [ORGANISATION] is not responsible for that use, which will be the responsibility of any users of the content: tick here

Changing your mind

If, at any point during the project, you would like to alter the preferences documented in this form, you can contact [email address]. The [ORGANISATION] will take the relevant steps to remove your information.

If, at any point subsequent to the project [include an indicative data], you would like to alter the preferences documented in this form, you can contact [email address]. The [ORGANISATION] will take all possible steps to remove your information, within the constraints of withdrawing content already published and the framework of data protection law. This is set out in our Takedown Policy.

Template 3: Notice for Re-use under a CC BY 4.0 Licence



An open copyright licence does not grant permission for any users to process personal data that might be contained in your digital outputs. Any individual that re-uses outputs that includes personal data has responsibilities in regard to data protection. These are not your responsibilities as the organisation that posted the content, but you can give clear guidance around re-use in terms of data protection.

If you are sharing digital outputs that include personal data with an open licence, you can use the following statement to highlight the limitations of the licence.

Template Data Protection Statement

The copyright content in this project is available for re-use under the terms of a Creative Commons Attribution (CC BY 4.0) Licence. Creative Commons licences, including the CC BY 4.0 licence do not provide permission for any users to process any personal data that may be included in this project content. Under the Data Protection Act 2018 and UK GDPR and any data protection legislation in place in the country in which you are based, you will have a number of legal obligations and responsibilities relating to the use of any personal data in this content. This means that before you re-use any personal information in this content, you should ensure you have fulfilled any obligations to provide privacy information to the participants whose personal data may be included in this content. This is likely to include, requesting consent and/or establishing another lawful basis for processing or identifying any exemptions you are relying on for re-use of the personal data.

You may also have to comply with data subject rights requests under data protection law.

Further information can be found on the [UK Information Commissioner's Office website](#) and the equivalent regulatory body in the country in which you are based.

Template 4: Copyright Permissions Form



Template Copyright Permissions Form and guidance to help projects deal with the copyright issues associated with their project.

This Agreement dated [day] day of [month] [year] and made between;

1. [Name] (hereafter “the Licensor”) of [Address]; and
2. [ORGANISATION] of [insert organisation address]

The [ORGANISATION] would like permission to reproduce the following Items:

Reference	Title/ Description
Reference	Title/ Description
Reference	Title/ Description
Reference	Title/ Description
Reference	Title/ Description
Reference	Title/ Description

The Licensor (either as owner of the Rights or as an authorised agent for the owner of the Rights) grants the [ORGANISATION] an irrevocable worldwide, non- exclusive, royalty free, licence, from reproduce the Item(s) (listed above) and extracts thereof, with the attribution statement below for reproduction under the terms of CC BY 4.0 Licence.

Credit

How would the Licensor like to be credited?

.....

Warranties

By signing this agreement, I/we warrant and undertake to [ORGANISATION] that:

- a) the Licensor is the legal owner of the Rights contained within the Item(s) and/or is entitled to grant to [ORGANISATION] this licence free from any encumbrances, charges, options and licences;
- b) the Item(s) in themselves do not constitute an infringement of any third party's copyright or other intellectual property rights; and
- c) the exercise by [ORGANISATION] of the rights licensed in this Agreement will not infringe the rights of any third party.

Indemnity

The Licensor agrees to indemnify [ORGANISATION] against any losses, damages, costs and expenses that [ORGANISATION] may suffer as a result of any breach of warranty or the grant of the Licence under this Agreement.

Authorisation

This Copyright Agreement shall be governed by and is subject to English and Welsh law and the parties agree to accept the exclusive jurisdiction of the Courts of England and Wales.

Signed by: Name:

Date:

For and on behalf of the Licensor

Signed by: Name:

Date:

For and on behalf of [ORGANISATION]

Template 5: Copyright Deed of Assignment/Licence (Volunteers)



Template Copyright Deed of Assignment/Licence Form which can be used by heritage organisations to secure rights from volunteers.

Volunteers like you help [ORGANISATION] further our learning & access programmes and work towards creating new resources. In order for your Work to be used fully for [ORGANISATION] purposes, we ask you to sign this deed of assignment/licence which will enable [ORGANISATION] to use your work and benefit from the time and support you have given to us.

‘Work’ is defined as anything you create or invent during your time as a volunteer at [ORGANISATION], including any work you created or invented before signing this deed.

I hereby fully and permanently transfer to the Trustees of [ORGANISATION] all copyright and rights in the nature of copyright in my Work. I understand I may still make use of such Work for my own non-commercial research or private study. In addition, I consent for my Work to be edited, adapted or altered by [ORGANISATION] and I understand that [ORGANISATION] may not always be able to credit me in any reproductions or use of the Work.

OR

I grant [ORGANISATION] a non-exclusive, worldwide, royalty-free licence in perpetuity to reproduce any work I create during my time as a volunteer, for all [ORGANISATION] purposes. In addition, I consent for my Work to be edited, adapted or altered by [ORGANISATION] and I understand that [ORGANISATION] may not always be able to credit me in any reproductions or use of the Work.

This agreement shall be governed by and is subject to English and Welsh law and the parties agree to accept the exclusive jurisdiction of the Courts of England and Wales.

I have read and understood the terms of this Deed of Assignment.

Dated (volunteer signature)

Full Name (please print)

Address

.....
.....

Signed as a Deed in the presence of (witness)

.....

(witness signature)

Full Name (please print)

.....

The personal data on this form will be used by [ORGANISATION] for the sole purpose of managing copyright. It will not be passed to a third party without your permission. All data will be held in strict compliance under the UK General Data Protection Regulation and the Data Protection Act 2018.

**Heritage Fund:
Frequently Asked Questions**

7. Frequently Asked Questions

How will I make sure my project complies with data protection law?

To use personal data lawfully you need to have a good reason, or 'legal basis' to use any 'personal data' that you collect. You will need to decide this at the beginning of the project.



[Guide 1: Legal Basis](#)

In most cases, obtaining the consent of the individual involved is the best approach. You need to ensure that the individual fully understands how their data is being used and that the consent is a positive opt-in. You need to retain a record of this consent. A participant cannot feel pressured to agree.

If your project involves collecting personal data relating to people under 18 years old or a vulnerable adult, then valid consent may be difficult to obtain.

In order to ensure the consent is valid, parents should be involved in the provision of consent for any child under 18 participating in a Heritage Fund project. Obtaining consent from a vulnerable adult will require consent from an appropriate representative.



[Template 2: Project Consent Form](#)

You will also need to make sure that you let participants know what personal data you are collecting and how you are going to use it. They will have a number of rights in regard to their data, which you will have to be aware of, and have a lawful basis to use, both during and after your project.



[Template 1: Project Privacy Notice](#)

Some of the personal information we are dealing with is very sensitive. What does that mean for the copyright requirement?

Information that relates to racial or ethnic origin, political opinions, religious or philosophical beliefs, trade union membership, data concerning health, data concerning a person's sex life or sexual orientation is naturally considered higher risk. Information relating to criminal convictions is also given a special status in data protection law. This type of data will not be subject to the Creative Commons CC BY 4.0 licence requirement.

If your project involves children or vulnerable adults in any context where there may be safeguarding or privacy concerns, an exception to the Creative Commons Licence will also apply.

Find out more:



[Guide 2: Special Category and Criminal Convictions Data and](#)



[Guide 5: Securing an exception to the default licence requirement](#)

What if our participants are happy for this sensitive data to be published online in the context of the project?



[Guide 5: Securing an exception to the default licence requirement](#)

If, based on these circumstances, you are going to publish, you will need to ensure that you have obtained explicit consent around this sensitive data from them which is separate from any other consent you may have recorded throughout the project. In all cases, extra consideration is required for this type of information in data protection law. As greater risk to individuals is involved, so must the technical measures to protect the data against unauthorised access or loss be more robust.

What if someone decides to withdraw during the project?

If a participant decides to withdraw their involvement, you should arrange to remove any of their personal data before the content is made live. It may be useful to plan in a cut-off date for all parties to have in mind to make their final decision.



[Guide 4: Withdrawal of consent or participation](#)

How do we attach a Creative Commons licence to our project?

Creative Commons licences come in three different formats which you can choose from in order to best suit your project outputs. This includes machine readable code which can be embedded within your digital assets; a summary of the Creative Commons Licence you have selected, which can be linked to from your project outputs and/or reproduced on your website; as well as the licence itself which is provided online by [Creative Commons](#), which you can also link to from your digital assets and/or website.

Creative Commons also provide icons, like the CC BY 4.0 Licence icon below, and many projects find it easiest to replicate the icon on each of their project outputs and/or on the bottom of their website, together with a link to summary to the CC BY 4.0 licence itself, which is also provided below.



[CC BY 4.0 Licence](#)



We are making our outputs available under the Creative Commons licence. What are the data protection issues?

Licensing your digital asset under an open copyright licence like a CC BY 4.0 does not mean that you are granting permission to any users of your digital assets to process any personal data that might be contained in your digital asset. Any individual that re-uses the outputs will have legal responsibilities regarding the re- use of that personal data. These are not your responsibilities as the organisation that posted the content, but you can provide clear guidance around any re-use of the personal data in terms of data protection by posting a reuse notice.



[Template 3: Notice for Re-use under a CC BY Licence](#)

What happens if someone re-uses the personal information in any way in which our participants object?

Once information is put online, you will not necessarily have control over how another person re-uses your outputs, whether it is openly licensed or not. If a participant contacts you to highlight this, you can take steps to takedown the relevant content from YOUR OWN WEBSITE at that point. In addition, you can direct them to ask the person who is re-using the data to take it down. You can advise them to complain to the UK's Information Commissioner or do so on the participant's behalf.



[Template 3: Notice for Re-use under a CC BY Licence](#)

We are a small organisation does this really apply to us?

Data Protection law applies to any organisation processing personal data. Read the guides in the document, seek support from your organisations data protection officer or visit the Information Commissioner's Office website:



www.ico.org.uk

naomi korn
ASSOCIATES

This guide was produced by Naomi Korn Associates

www.naomikorn.com | info@naomikorn.com | +44 203 475 5122



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