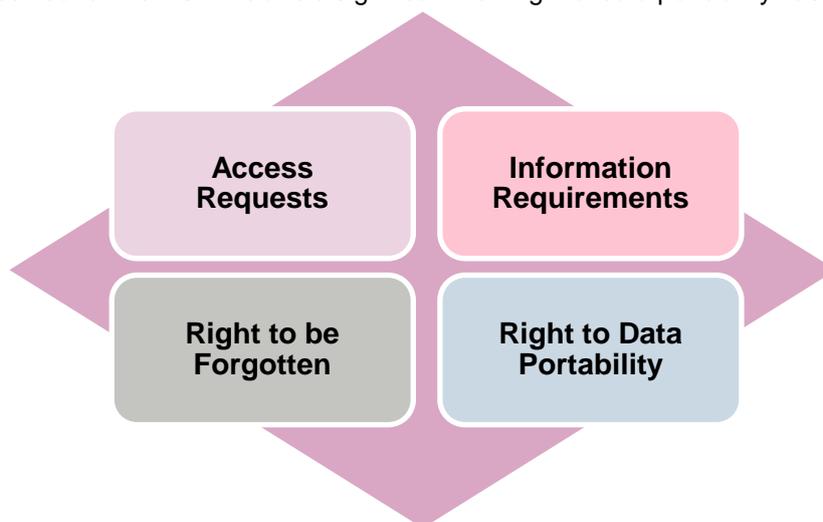




Rights of Data Subjects

The rights of data subjects have received significant focus from data protection authorities and the courts in recent years. The EU General Data Protection Regulation (the "GDPR") builds on this groundwork by both introducing new rights for data subjects and significantly strengthening existing rights.

The GDPR sets out some important changes to the manner in which data access requests operate and the information that must be provided to data subjects has also received specific attention. The right to be forgotten is codified for the first time and a significant new right of data portability has been introduced.



Access Requests

The GDPR has changed the manner in which data access requests operate and has had a significant impact on how data controllers need to handle these requests.

Under the GDPR, requests must be responded to by the data controller without undue delay and at the latest within one month of receipt of request. This period can potentially be extended for a further two-month period, if the complexity and number of requests justify such an extension, although in practice it is likely that this extension of time should be viewed as the exception rather than the rule. Where the extension of time is being utilised, the data controller must inform the data subject within the initial one-month period.



A common complaint from data controllers in recent times is that the data access request right has often become simply a fishing expedition in advance of litigation. This issue has been somewhat addressed in the GDPR, however whether this reduces the use of data access requests for such purposes in the future remains to be seen. Broadly, the GDPR allows for the data controller to either: (i) charge a reasonable administrative charge; or (ii) refuse to act on a request, where the request is manifestly unfounded or excessive, in particular in the case of repeated requests. Interestingly, the recitals to the GDPR (which offer an insight into how certain provisions may be interpreted), note that data controllers that process large quantities of information relating to a data subject may request that the data subject specify to which information or which processing the access request relates. This may help to alleviate the significant administrative burden related to responding to such requests which is often placed on data controllers.

Information Requirements

Another area which data controllers need to address under the GDPR is in relation to the information that must be provided to data subjects. While most of the information to be provided was already required under the old data protection regime, there are a number of notable additions, in particular the requirement to provide details concerning retention periods applied by the data controller and information in respect of profiling (where this is carried out by the data controller).

Right to be Forgotten

The GDPR also codifies the **right to be forgotten** (referred to as the Right to Erasure in the GDPR) which was first recognised, certainly in effect if not in name, in the Google Spain case. There are certain carve-outs contained in the GDPR which would justify a refusal to comply with a request for erasure by a data subject and it will be interesting to see how the regulators and courts interpret some of these broader exceptions. For example, **one of the potential grounds available for refusing a request is tied to the exercise of the right to freedom of expression and information** and the manner in which this will tie in with the expanding case law invoking data protection principles in the context of the EU Charter of Fundamental Rights remains to be seen. One interesting point to note from the recitals to the GDPR is that data related to children, irrespective of whether the person is still a child, is particularly highlighted and we are likely to see a high threshold placed on data controllers seeking to refuse an erasure request that relates to a child.

Right to Data Portability

One of the most significant rights contained in the GDPR is a right to data portability. This imposes an obligation on data controllers that have received data to provide it to a data subject in a **structured, commonly used and machine-readable format.** The issue of data portability has become increasingly important and controversial with a concern that certain industries were suffering as a result of service providers trying to 'lock-in' customers via technical means. The specific enumeration of this right is undoubtedly an attempt to discourage this practice; however, concerns have been raised that this may lead to increased costs for data controllers across all industries and that it is an issue better addressed through a combination of competition law and consumer law.

Conclusion

With the introduction of significant new rights and the strengthening of existing rights, we are likely to see increased enforcement in this area under the GDPR. In light of the significantly increased fines which can apply for breaches, combined with the changes to the manner in which damages may be calculated in civil actions, this is an area which data controllers will need to place greater emphasis on. In particular, companies such as cloud service providers, search engines, social media operators and companies which receive large numbers of access requests (such as insurance companies and financial institutions) will need

Contact Us

If you have any queries in relation to this, or would like to know more about our PrivacySource offering, please contact our Partner below, or your usual William Fry contact.



David Cullen

PARTNER

+353 1 639 5202

david.cullen@williamfry.com



Leo Moore

PARTNER

+353 1 639 5152

leo.moore@williamfry.com



John O'Connor

PARTNER

+353 1 639 51823

john.oconnor@williamfry.com

Contact our PrivacySource Team [here](#)

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WILLIAM FRY

DUBLIN | CORK | LONDON | NEW YORK | SAN FRANCISCO | SILICON VALLEY

T: +353 1 639 5000 | E: info@williamfry.com

williamfry.com

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