

GDPR¹ and implications for the HEAR: Key points for institutional consideration.²

1. The HEAR contains a range of information which with the exception of section 8, (information about the HE system) and other explanatory material, all falls under the heading of 'personal data'. The institution is therefore the data controller; if a third party organisation is used to provide access to the HEAR for students/graduates, then that organisation is likely to be the data processor.³
2. If an institution is the controller they are obliged to comply with, and demonstrate compliance with, the data protection principles in Article 5 of the GDPR. These include the 'data minimisation' principle (processing only that personal data that is adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed) and the 'storage limitation' principle (keeping personal data in an identifiable form for no longer than is necessary for the purposes for which they are processed.)
3. Institutions will need to be content that they have a lawful basis for holding and processing such data as is contained within the HEAR, and this must be included in their privacy notices. This would be likely to be most straightforward if this is explicitly related to the public task of the institution (recognising the University as a public body), i.e. to conduct teaching, support learning and carry out assessment. In this case the individual consent of students to collecting and holding data, and making it available to the Data Subject for the purposes they deemed appropriate, would not be required. However institutions would need to be clear that this related also to the content of section 6.1 of the HEAR, and therefore to a wider concern to support and assess/confirm student development (achievement) beyond the academic curriculum. In such a case, the right to data portability falls away. Conversely, should the institution rely on a different lawful basis for processing HEAR data (for example, the giving of explicit consent by the data subject) for section 6.1 entries, then different sections of the HEAR would be governed by different rules (e.g. in respect of data portability, the rights of other data subjects).
4. The lawful basis used is therefore likely to be crucial; institutions will therefore be best advised to consult their data protection officer and document discussions and decisions taken.
5. Third party providers of the HEAR would need to be explicit about the nature of their relationship with individual students/graduates, and ensure such students/graduates are able to make informed choices about the use of their HEAR data. Such arrangements may also need to be formally mapped out, confirming that the choices made by students/graduates require a positive response, and that no personally identifiable data can be shared with other parties without explicit consent.
6. The right of the Data Subject to be provided with access to their HEAR data in an understandable format⁴ might suggest the value of making use of the HEAR Technical Specification.
7. The significance of some data within the HEAR data set may decline over time. In such cases the data may still be held or could be erased after review on a case-by-case basis. While it may be anticipated that any such review may be prompted by a request from the Data Subject, the institution should in any event have a retention policy in place, and should not retain the whole dataset if it is no longer needed, whether a Data Subject has requested a review or not.

¹ General Data Protection Regulation. See <https://www.eugdpr.org/> .

² Representing the agreed note of conversations between Victoria Cetinkaya, Office of the Information Commissioner, and Rob Ward, the Centre for Recording Achievement, January-March 2018.

³ Though there may be circumstances where such third parties might have sufficient control over the access that they become a controller.

⁴ The Terms used in the GDPR are "concise, transparent, intelligible and easily accessible." (See Article 12(1))