

## Transcript: 'Know Your Data' - GDPR Myths

**Aoife Mullen:** Hello and welcome to 'Know Your Data' podcast by the Irish Data Protection Commission. My name is Aoife Mullen I am the Communications Manager here at the DPC.

Hairdressers won't tell you what color they're putting in your hair, the fire brigade won't tell you if your apartment complex has gone on fire and paramedics aren't being able to do their jobs, and this is all because of the General Data Protection Regulation or as most of us know it as the GDPR. We're all familiar with these stories of how the GDPR ban this and the GDPR bans that, and yes it makes for interesting conversations and headlines but it's important to know what it doesn't do. In this episode I'm joined by Graham Doyle who's the Head of Communications here in the Data Protection Commission. Graham you're gonna try and shed some light on these myths that are going around about the GDPR and data protection in general which we've come across.

**Graham Doyle:** Thank you for having me on. I suppose it's important to remember the starting point that the basic rules of the GDPR are by and large the same as the rules that have been in existence in data protection law for the last 30 years, especially the legal justification under the GDPR which allows for the processing of personal data.

**Aoife Mullen:** So Graham, just to start off, what does the GDPR actually say? Does it actually ban us from doing everyday things?

**Graham Doyle:** The GDPR is not intended to stop or prevent the legitimate legal use or sharing of personal data. What it actually does is, it underlines that processing personal data must be designed to serve mankind and it serves important purposes. This idea that the GDPR completely bans practices and business models, in most cases, is actually a huge exaggeration. The GDPR is what's known as principles based piece of legislation. So in essence this means that it doesn't really focus on specific uses of personal data. Instead it sets out certain high level rules such as limitations and obligations for those who process personal data in terms of individuals whose personal data is processed. It also gives a range of different rights and enhances these rights and outlines how to control the use of that personal data and to ensure that the uses are both lawful and transparent.

**Aoife Mullen:** So why then is it causing so much confusion?

**Graham Doyle:** Data Protection Legislation, in our view, is a sensible set of rules. However sometimes its credibility is undermined when it's misemployed. We're going to discuss some confusion that has arisen and as we've seen in many cases where data controllers don't understand the GDPR or they've been given bad advice. There's also cases where the GDPR has been used by some as a shield. It's an excuse to not figuring out how to comply with the legislation and to assist their customers or their clients or colleagues, whoever it may be. When I hear people saying the GDPR bans this or the GDPR bans that it's generally inaccurate to say that. In the majority of cases where that's said the analysis just simply hasn't been done to see whether in fact the GDPR does actually impact on how the processing is done.

**Aoife Mullen:** One of the most amusing stories that we're familiar with here in the DPC is of a story where a woman had tried to get an appointment with her hairdresser as she was going to a funeral the next day and she urgently needed her hair appointment. But they could not give her one and they couldn't fit her in as they were all booked up. So she then asked them what was the colour that they were using in their in her hair, so she could go to another hairdresser and get it done there and have the same colour put in. But the hairdresser refused and said it was because of the GDPR and she was even told she'd have to submit a formal request in writing to the headquarters for that information. This seems a bit extreme, so can hairdresser actually refused to give you the color that they're putting in your hair because of the GDPR?

**Graham Doyle:** This example in question got quite a lot of media attention in 2018, just shortly after the GDPR came in. To our minds this was just a simple request for information by a customer. It could have been dealt with by the hairdresser just checking the container of the hair dye and telling the customer the brand and colour. They may even have known off the top of their head, there's no pun intended there, what the answer to the customer's query actually was. It's important to remember not every request that an individual makes to a data controller or an organization is actually an access request for personal data. In this case, where the hairdresser actually asked the lady to make an access request, this lady even indicated to the hairdressers that this wasn't an access request she was trying to make. She didn't want it to be treated as such she was just looking to get the color of hair dye. Organizations really need to be sensible

to make sure they don't mistakenly attribute absolutely every request for information or assistance as an access request by a data subject. Particularly where there's no indication from the individual themselves that this is what they wanted.

**Aoife Mullen:** Another story that we have heard here is to do with a property management company who were sent a bill for a fire brigade call out to one of the apartment blocks that they managed. They called the fire station as they wanted to check if there had actually been a fire and they were told by the fire station that this is not information they could be given because of the GDPR. Now again this seems a bit farfetched, so does the GDPR actually ban a fire station from telling a company whether or not a fire had happened in their premises?

**Graham Doyle:** Again Aoife this goes back to what the GDPR does and doesn't ban. In this case this seemed, on the face of it, to be a very simple request from a company. They wanted to establish whether the bills that they were receiving for these fire brigade callouts were as a result of frequent fires in the apartments or instead, due to the false alarms. They weren't seeking personal data involving any of the tenants or occupants of the properties. It was general information that they were requesting and I don't see why this information shouldn't have been provided. The GDPR, as we said already, doesn't ban them providing this information so then to me this sounds like it has nothing actually to do with the GDPR. Personal data clearly wasn't being sought here and this is another example of where the GDPR is being mistakenly cited as a reason why information can't be provided. There may have been some other reason why the fire brigade had refused to provide or to confirm this information to the company but it certainly shouldn't be GDPR. In the absence of there being any request for the processing of personal data, there was no reason here under GDPR why this information would not have been provided to the company.

**Aoife Mullen:** One of the most worrying trends that we're seeing here in the DPC is one where paramedics and healthcare professionals are saying that the GDPR is making it more difficult for them to do their jobs. Can the GDPR actually take precedence over someone's life?

**Graham Doyle:** The goal of the GDPR, and data protection legislation in general, is to protect the individual's fundamental rights to protect their own personal data. However, the GDPR also makes it very clear, it's not an absolute right and

must be considered in relation to functions of society and balance with other rights, other societal rights, and other individual rights. The GDPR shouldn't interfere with legitimate use of personal data including; medical and health data in provision of healthcare or other forms of medical treatment. When you're talking about the justifications for processing personal data under the GDPR one of them is to protect the vital interests so, life, health, well-being of individuals for example. The GDPR does provide for the protection of such interests and it's also important to point out that, similar to the law that was there pre GDPR, special protections apply to the processing of what called sensitive special categories of personal data. These include data such as health data. Processing this data requires a further level of legal justification. One justification is where it's necessary to protect the individual's vital interests and in situations where you're capable of giving consent. We've seen this recently in a case where a paramedic had been called out to a nursing home to attend to a resident who had become unconscious they had asked the nursing home for the residents medical history and the nursing home didn't actually know if they could give it to them or not because of the GDPR. These cases are a real cause for concern over here at the DPC because in the circumstances that you just outlined a clear legal justification for disclosing the information was requested and they have to try and protect the unconscious individual's health and life. Data Protection law requirements and the GDPR itself should never ever be taken as an impediment to administering necessary and urgent medical treatment. It's really important to understand what the GDPR doesn't ban or impede in any way the sharing of medical or health data. It requires organizations to think about things in advance so they need to have policies in place and how do they carry out such practices, while still ensuring that the personal data has been adequately protected, but not risk the life or health of an individual. That's really really important. It means organizations need to do their homework in advance. Quite a lot of organizations out there need to work out what arrangements and systems or what policies that they need to put in place to comply with the GDPR while not compromising patient safety.

**Aoife Mullen:** Has the GDPR actually put a stop to community based CCTV schemes? I ask this because this is something that there seems to be a lot of attention on and a lot of concern around since the GDPR has come in.

**Graham Doyle:** I'm repeating myself I know, but as I've already said, the GDPR doesn't ban specific activities and certainly doesn't ban community based CCTV

schemes. We recently issued a guidance which is up on our website at [www.dataprotection.ie](http://www.dataprotection.ie) in relation to community based CCTV schemes. The purpose of the guidance is to explain that the GDPR didn't introduce new barriers. The installation of these schemes have always required a legal justification. They've been in place for 30 years now and under data protection legislation it doesn't stand in the way of the rollout of these schemes and these community based CCTV schemes. Especially the ones that have been authorized by the Garda Commissioner for example. Once a local authority is willing to take on and deliver its responsibilities as a data controller, there's no legal impediment under data protection legislation for the commencement of a community based CCTV scheme. CCTV schemes have many benefits, like all forms of surveillance. We have investigations open in this area but in terms of all forms of surveillance it's crucially important that it's done in a fair and lawful way, and in a way that protects the fundamental rights and freedoms of individuals.

**Aoife Mullen:** So Graham just to finish up, you might just run through again some of the myths and whether or not the GDPR actually bans things?

**Graham Doyle:** In terms of the examples that we were speaking about here today; your hairdresser can give you the details of the hair dye that they're using in your hair, the Fire Brigade can tell a management company if one of the apartments has gone on fire. The GDPR certainly does not ban the provision of such information. Equally it doesn't ban or prevent the sharing of medical or health data. Finally, in relation to CCTV schemes that we spoke about, the GDPR doesn't ban the installation or the use. There are other considerations that need to be taken into account but the GDPR itself doesn't just ban these.

**Aoife Mullen:** Graham thank you so much for joining us today. You can find more information on your data protection rights and obligations on our website [www.dataprotection.ie](http://www.dataprotection.ie). If you're not sure about any of the terms that we've used in this podcast you can find a list of the definitions of key data protection terms there as well. Don't forget you can find us on Twitter and Instagram