

Draft data protection and journalism code of practice

Reference notes



Contents

These reference notes support the Data protection and journalism code of practice but they are not part of the statutory code itself. They contain:

Case law examples - These examples will help you understand how the courts have considered and applied relevant aspects of privacy law.

Although you should consider each law and case on its own merits, there are some similarities and general points that you may find helpful when you think about how to apply data protection law.

Key legal provisions - This lists the relevant sections of the UK General Data Protection Regulation (UK GDPR) and Data Protection Act (DPA 2018) relating to each part of the code.

Further reading – This lists more detailed ICO guidance and some external links for wider context which you can refer to, if you need more information.

About this code.....	3
Complaints, enforcement and investigations.....	3
1. Apply the journalism exemption	4
2. Take steps to protect personal data.....	11
3. Keep personal data secure.....	12
4. Use personal data lawfully	12
5. Use personal data fairly	15
6. Use personal data transparently	17
7. Use accurate personal data.....	17
8. Use personal data for a specific purpose.....	18
9. Use no more data than you need.....	18
10. Keep personal data only for as long as you need it.....	19
11. Be clear about roles and responsibilities.....	19
12. Help people to use their rights.....	20

About this code

Key legal provisions

- DPA 2018 section 124 - duty to prepare a journalism code of practice
- DPA 2018 section 125 – approval of codes
- DPA 2018 section 126 – publication and review of codes
- DPA 2018 section 127 - legal effect of the code
- DPA 2018 section 178 - review of processing of personal data for the purposes of journalism

Further reading

[Guide to the UK GDPR: key definitions](#) provides more information about who the UK GDPR applies to, what personal data is and responsibilities.

[The Equality and Human Rights Commission](#) website has further information about human rights generally.

The European Court of Human Rights (EctHR) has also published detailed guidance on [Article 10](#) and [Article 8](#) of the European Convention of Human Rights.

Complaints, enforcement and investigations

Key legal provisions

- DPA 2018 section 167 – compliance orders
- DPA 2018 section 168 – compensation for contravention of the GDPR
- DPA 2018 section 143 – information notices: restrictions
- DPA 2018 section 152 – enforcement notices: restrictions
- DPA 2018 section 156 – penalty notices: restrictions
- DPA 2018 section 170 -173 – criminal offences
- DPA 2018 section 174 – the special purposes
- DPA 2018 section 175 – provision of assistance in special purposes proceedings
- DPA 2018 section 176 – staying special purposes proceedings
- DPA 2018 section 177 – guidance about how to seek redress against media organisations
- DPA 2018 section 178 – review of processing of personal data for the purposes of journalism

- DPA 2018 Schedule 15 – powers of entry and inspection DPA 2018 Schedule 17 – review of processing of personal data for the purposes of journalism

Further reading

[Data protection and journalism: how to complain about media organisations](#) has more information about how to make complaints about media organisations, including details about court action.

[ICO Regulatory action policy and statutory guidance on our regulatory action](#) (currently in draft form following a public consultation).

[ICO prosecution policy statement](#)

1. Apply the journalism exemption

Key legal provisions

- UK GDPR article 85 – duty to reconcile data protection with the right to freedom of expression, including processing for journalistic purposes
- DPA 2018 schedule 2, part 5, paragraph 26 – special purposes exemption for journalistic, academic, artistic or literary purposes
- DPA 2018 schedule 2, part 5, paragraph 26(5) – requirement for controller to take into account specific industry codes
- DPA 2018 schedule 2 Part 5 paragraph 26(9) – provisions of the UK GDPR that can be disapplied by the special purposes exemption.

The exemption for journalism can remove the usual requirements to comply with the following parts of the UK GDPR listed in Schedule 2 Part 5 paragraph 26(9) of the DPA 2018:

- Article 5(1)(a) to (e) – the UK GDPR’s principles, apart from the security and accountability principles
- Article 6 – requirement to satisfy a lawful basis for processing
- Article 7 – conditions for consent
- Article 8(1) and (2) – conditions for children’s consent
- Article 9 – rules relating to special category data
- Article 10 – rules relating to criminal offence data
- Article 11(2) – specific rules regarding informing people when their personal data has been anonymised
- Article 13(1) to (3) – requirement to provide privacy information to people when you have collected data directly from the data subject

- Article 14(1) to (4) – requirement to provide privacy information to people when you have not collected data directly from the data subject
- Article 15(1) to (3) – right of access
- Article 16 – right to have inaccurate or incomplete data rectified
- Article 17(1) and (2) – right to erasure (the right to be forgotten)
- Article 18(1)(a), (b) and (d) – right to restrict processing
- Article 19 – requirement to inform third parties to whom data has been disclosed of a rectification, erasure or restriction
- Article 20(1) and (2) – right to data portability
- Article 21(1) – right to object to processing (except for direct marketing)
- Article 34(1) and (4) – requirement to inform data subjects of a data security breach
- Article 36 – requirement to consult the ICO prior to any high-risk processing
- Article 44 – general principles for international transfers

Case law examples

Case example 1 – definition of journalism

UK Supreme Court

[Sugar \(Deceased\) v BBC and another \[2012\] UKSC 4](#)

The court considered the meaning of journalism to decide whether the BBC was required to respond to a request under the Freedom of Information Act 2000. The wording for the derogation derives from data protection law.

The judge considered that journalism, art and literature is likely to include all types of “output” by the BBC to inform, educate or entertain the public. He added that because of the overlap between journalism, art and literature, there was unlikely to be value in a debate about whether journalism encompassed more than news and current affairs. (38)

However, the judge cautioned against tangential links when defining information held for the purposes of journalism: “...I would not be sympathetic to the notion that information about, for instance, advertising revenue, property ownership or outgoings, financial debt, and the like would normally be ‘held for purposes...of journalism’”(84).

Another judge agreed that there should be a “sufficiently direct link” to journalism. (106)

Case example 2 – definition of journalism

High Court

[NT1 & NT2 v Google LLC and ICO \[2018\] EWHC 799 \(QB\)](#)

The judge in this case considered the meaning of journalism under the previous version of data protection law, which used similar wording.

He found that the operation of Google’s search engine was for purposes other than journalism. He said:

“The concept [of journalism] extends beyond the activities of media undertakings and encompasses other activities, the object of which is the disclosure to the public of information, opinions and ideas...”

However, he also explained that “the concept is not so elastic that it can be stretched to embrace every activity that has to do with conveying information or opinions. To label all such activity as ‘journalism’ would be to elide the concept of journalism with that of communication. The two are plainly not the same...”(98).

Case example 3 – definition of journalism

European Court of Justice

[Satamedia \(Case C-73/07\)](#)

The European Court of Justice (ECJ) said the following about journalism:

“In order to take account of the importance of the right to freedom of expression in every democratic society, it is necessary, first, to interpret notions relating to that freedom, such as journalism, broadly” (56).

The court described journalism as an activity involving “the disclosure to the public of information, opinions or ideas” (61).

It added that, “...account must be taken of the evolution and proliferation of methods of communication and dissemination of information” (60).

Case example 4 – definition of journalism

European Court of Justice

[Buivids \(C-345/17\)](#)

Mr Buivids published a video taken in a police station on You Tube. He said that he wanted to draw attention to unlawful conduct.

The ECJ said that:

- Mr Buivids could not rely on the exemption in data protection law for personal and household use because he had published a video on You Tube without any restrictions;
- Mr Buivids could still be engaged in journalism, even though he is not a professional;
- although journalism is a broad concept, it did not extend to all information published on the internet; and
- in determining whether Mr Buivids is using personal data for journalism, Mr Buivids' reasons for publication could be taken into account. However, it is not necessary to prove that there had been any unlawful conduct.

Case example 5 – meaning of “with a view to publication”

High Court

[Campbell v MGN Limited \[2002\] EWCA Civ 1373](#)

In this case, the court considered the meaning of “with a view to publication” in the older version of data protection law.

The court said:

“...it would seem totally illogical to exempt the data controller from the obligation, prior to publication, to comply with provisions which he reasonably believes are incompatible with journalism, but to leave him exposed to a claim for compensation...the moment that the data have been published.

For these reasons we have reached the conclusion that, giving the provisions of the sub-sections their natural meaning...they apply both before and after publication”. (120-121)

Case example 6 – meaning of “reasonable belief”

High Court

[NT1 & NT2 v Google LLC and ICO \[2018\] EWHC 799 \(QB\)](#)

The judge considered the meaning of “reasonable belief” under an older version of data protection law.

The judge said:

“Each of s.32(1)(b) and (c) has a subjective and an objective element: the data controller must establish that it held a belief that publication would be in the public interest, and that this belief was objectively reasonable; it must establish a subjective belief that compliance with the provision from which it seeks exemption would be incompatible with the special purpose in question, and that this was an objectively reasonable belief. That is the ordinary and natural meaning of the words used (and of the somewhat similar provisions of s.4 of the Defamation Act 2013...” (102)

Case example 7 – scope of editorial discretion

House of Lords

[Campbell v MGN \[2004\] UKHL 22](#)

In this case, the judge made the following comments about the scope of editorial discretion:

“There is no doubt that the presentation of material that it was legitimate to convey to the public in this case without breaching the duty of confidence was a matter for the journalists. The choice of language used to convey information and ideas, and decisions as to whether or not to accompany the printed word by the use of photographs, are pre-eminently editorial matters with which the court will not interfere. The respondents are also entitled to claim that they should be accorded a reasonable margin of appreciation in taking decisions as to what details needed to be included in the article to give it credibility. This is an essential part of the journalistic exercise.

But decisions about the publication of material that is private to the individual raise issues that are not simply about presentation and editing. Any interference with the public interest in disclosure has to be balanced against the interference with the right of the individual to respect for their

private life. The decisions that are then taken are open to review by the court". (112-113)

Case example 8 – evidence to demonstrate decision-making

High Court

[Sicri v Associated Newspapers Ltd \[2020\] EWHC 3541 \(QB\)](#)

Commenting on a lack of evidence to demonstrate editorial decision-making on the public interest in line with the Editor's Code (the requirements of which the ICO code echoes), the judge said:

"...the evidence falls well short of what the Code requires. It does not demonstrate that those responsible held a reasonable belief that identifying the claimant would serve and be proportionate to the public interest, or how such a belief was arrived at...There is no documentary evidence to support such a conclusion...There is no reliable evidence, either, that there was even a conversation on the matter".

The judge said that he accepted that such decisions do not need to be made formally or recorded but said, "...if there is no record, and nobody can recall when or how it happened, a defendant may find it hard to 'demonstrate' any of the things which the Code requires to be demonstrated". (131)

Case example 9 – Public interest and whether someone is a "public figure" or has a "role in public life"

European Court of Justice

[Google Spain C-131/12](#)

[Working party guidance published to support this judgement](#) may help you to decide whether someone is "a public figure" or has "a role in public life".

Role in public life

The guidance acknowledges that it is not possible to establish hard-fast rules about this, but it said:

"...by way of illustrating, politicians, senior public officials, business-people and members of the (regulated) professions can usually be considered to fulfil a role in public life...

A good rule of thumb is to [consider whether publication to the public]...would protect them against improper public or professional conduct”.

Public figures

The guidance again acknowledges the difficulties of a set description of this sub-group of people. However, it said:

“In general, it can be said that public figures are individuals who, due to their functions/commitments, have a degree of media exposure.

The Resolution 1165 (1198) of the Parliamentary Assembly of the Council of Europe on the right to privacy provides a possible definition of ‘public figures’. It states that, ‘public figures are persons holding public office and/or using public resources and, more broadly speaking, all those who play a role in public life, whether in politics, the economy, the arts, the social sphere, sport or in any other domain’.

Case example 10 – public interest and proportionality

House of Lords

[Campbell v MGN Ltd \[2004\] UKHL 22](#)

In this case, there was a public interest in setting the record straight by publishing the fact that Miss Campbell had used drugs because she had repeatedly denied doing so in the media.

However, the published information revealed significant additional information, including that Miss Campbell was receiving treatment at Narcotics Anonymous, the details of her treatment, and a photograph of her leaving a meeting with others. The court said anyone who knew the locality would know where it was.

The Supreme Court found that there was not a sufficient public interest to justify the publication of this additional information, particularly bearing in mind that it was sensitive health data which could put Miss Campbell’s recovery at risk.

Case example 11 – meaning of “incompatible with journalism”

First-Tier Tribunal

True Vision Productions (TVP) v ICO (EA 2019 0170)

This case before the First-Tier Tribunal concerned whether the ICO was correct to impose a monetary penalty. Although not a binding precedent, this case shows how the judge considered whether compliance with data protection was incompatible with journalism.

The case was about filming in a maternity ward for the purpose of making a documentary about still births using CCTV. The fact that filming was taking place was not adequately brought to the mothers' attention. The intention was to capture a woman's reaction on being told the news.

The judge decided that there was a reasonable way that TVP could have collected the data it required in accordance with the principle of fairness. This meant that TVP had not correctly relied on the special purposes exemption because compliance with the data protection principle was not incompatible with journalism.

The judge considered editorial judgement and "whether there was any possibility of different but reasonable views". He said, "...the use of hand held cameras would at least have made every mother aware that they were being filmed and their voices recorded" and "this was a modest, practical and reasonable alternative method..."

Further reading

[Guide to data protection: Children](#)

Industry codes contain guidance about the public interest including:

[Independent Press Standards Organisation \(IPSO\) Editors' Code of Practice](#);

[BBC Editorial Guidelines](#);

[Ofcom Broadcasting Code](#); and

[IMPRESS Standards Code](#).

2. Take steps to protect personal data

Key legal provisions

- UK GDPR article 5, paragraph 2 – the accountability principle
- UK GDPR article 24 – responsibility of the controller
- UK GDPR article 25 – data protection by design and by default
- UK GDPR article 28 – processor requirements
- UK GDPR article 30 – records of processing activities

- UK GDPR articles 35 and 36 – data protection impact assessment and prior consultation
- UK GDPR articles 37, 38, 39 – data protection officers

Further reading

[Guide to the UK GDPR: Accountability and governance](#)

[ICO Accountability framework](#)

[SME web hub – advice for all small organisations](#)

[DPIA template](#)

[DPIA screening checklist](#)

3. Keep personal data secure

Key legal provisions

- UK GDPR article 5, paragraph 1(f) – the security principle
- UK GDPR article 25 – data protection by design and by default
- UK GDPR article 28 – requirement for processors to provide “sufficient guarantees”
- UK GDPR article 32 – security of processing
- UK GDPR article 33 and 34 – notification of personal data breaches

Further reading

[Guide to the UK GDPR: Security](#)

[ICO Accountability framework](#)

[Working from home](#)

[Bring your own device – what should we consider?](#)

[SME web hub – advice for all small organisations](#)

4. Use personal data lawfully

Key legal provisions

- UK GDPR article 5(1)(a) – the lawfulness, fairness and transparency principle
- UK GDPR article 6 – lawfulness of processing

- UK GDPR article 9 – processing of special category data
- UK GDPR article 10 – processing of criminal offence data
- UK GDPR articles 13 and 14 – right to be informed
- UK GDPR article 17(1)(d) – right to erasure when personal data has been processed unlawfully
- DPA 2018 Schedule 1, paragraphs 1-37 – conditions for processing criminal offence data
- DPA 2018 part 2 of schedule 1 – substantial public interest conditions for special category data

Case law examples

Case example 12 – Criminal allegations under state investigation and reasonable expectation of privacy

UK Supreme Court

[Bloomberg LP v ZXC \[2022\] UKSC 5](#)

This case concerned information based on a confidential letter of request from a UK law enforcement body. The claimant said that Bloomberg had misused his private information.

Although this case was not considered under data protection law, it is nonetheless relevant to the following:

- considering the requirement to use personal data fairly;
- when the legitimate interests lawful reason is used; and
- where relevant, when considering the special purposes exemption.

The court considered whether, in general, a person under criminal investigation has, prior to being charged, a reasonable expectation of privacy about information relating to that investigation. It set out the following:

- The legitimate starting point is that there is a reasonable expectation of privacy in the above circumstances.
- The reason for this is that publication of such information ordinarily causes damage to a person’s reputation together with harm to multiple aspects of their private life. The harm and damage can on occasion be “irremediable and profound”.
- The legitimate starting point is not a legal rule or legal presumption. It all depends on the facts.
- The claimant still has to prove that the circumstances mean there was a reasonable expectation of privacy.

- From the starting point, the court will consider whether the expectation did not arise at all, or was significantly reduced. If it is significantly reduced, that is factored into the balance of the public interest.

For the public interest, a weighty factor in the balance was the generally strong public interest in observing duties of confidence and the specific public interest in not prejudicing an ongoing criminal investigation.

This outcome is limited to circumstances where there is a state investigation.

Case example 13 – reasonable expectation of privacy and spent convictions

High Court

[NT1 & NT2 and Google LLC and ICO \[2018\] EWHC 799 \(QB\)](#)

NT1 and NT2 asked Google to remove links of media reports about spent convictions about business activities.

The judge said: “The starting point, in respect of information disclosed in legal proceedings held in public, is that a person will not enjoy a reasonable expectation of privacy. But there may come a time when they do.... As a matter of general principle, the fact that a conviction is spent will normally be a weighty factor against the further use or disclosure of information about those matters, in ways other than those specifically envisaged by Parliament...

But the specific rights asserted by the individual concerned will still need to be evaluated, and weighed against any competing free speech or freedom of information considerations, or other relevant factors, that may arise in the particular case”.

Further reading

[Guide to the UK GDPR: Lawfulness, fairness and transparency](#)

[Guide to the UK GDPR: Lawful basis for processing](#)

[Lawful basis interactive tool](#)

[Appropriate policy document template](#)

[Guide to data protection: Children](#)

[Age appropriate design code: a code of practice for online services](#)

5. Use personal data fairly

Key legal provision

UK GDPR article 5(1)(a) – the lawfulness, fairness and transparency principle

Case law examples

Case example 14 – reasonable expectation of privacy

High Court

[Murray v Big Pictures \(UK\) \[2008\] EWCA Civ 446](#)

This case concerned a newspaper's publication of a photograph of Ms Murray's child taken as her family were walking in a public street (Ms Murray is better known as JK Rowling, author of the Harry Potter books).

The judge's comments in this case about misuse of private information have become part of general guidance to help assess whether a reasonable expectation of privacy exists. The judge said:

"...the question whether there is a reasonable expectation of privacy is a broad one, which takes account of all the circumstances of the case. They include the attributes of the claimant, the nature of the activity in which the claimant was engaged, the place at which it was happening, the nature and purpose of the intrusion, the absence of consent and whether it was known or could be inferred, the effect on the claimant and the circumstances in which and the purposes for which the information came into the hands of the publisher." (36)

Case example 15 – reasonable expectation of privacy and public figures

High Court

[Sir Cliff Richard OBE v the BBC \[2018\] EWHC 1837 \(Ch\)](#)

This case concerned the BBC's decision to broadcast the police search of Sir Cliff Richard's home and to name him specifically as the subject of a police investigation into an allegation of sexual abuse.

The judge said:

"...the very act of making certain aspects of oneself public means...that there is a corresponding loss of privacy in those areas which are made public. However, it does not follow that there is some sort of access the board diminution of the effect of privacy rights...It depends on the degree of 'surrender', the area of private life involved and the degree of intrusion into the private life."

Case example 16 – unwarranted intrusion

House of Lords

[Naomi Campbell v MGN Ltd. \[2004\] UKHL 22](#)

Miss Campbell brought an action under the tort of misuse of private information about a newspaper which used a photograph of her in the street outside the place where she was receiving therapy for drug addiction.

It was not in dispute in this case that because Miss Campbell had presented a false image of herself by claiming she did not take drugs, the media were entitled to "set the record straight".

However, although the newspaper could justify publishing the facts that Miss Campbell had taken drugs and that she was seeking treatment, it was not justified in publishing any further information, especially if this might jeopardise the continued success of the treatment.

Further reading

[Guide to the UK GDPR: Lawfulness, fairness and transparency](#)

[Guide to data protection: Children](#)

6. Use personal data transparently

Key legal provisions

- UK GDPR article 5(1)(a) – the lawfulness, fairness and transparency principle
- UK GDPR articles 13 and 14 – right to be informed

Further reading

[Guide to the UK GDPR: Lawfulness, fairness and transparency](#)

[Guide to the UK GDPR: Right to be informed](#)

[ICO Accountability framework](#)

[Guide to data protection: Children](#)

7. Use accurate personal data

Key legal provisions

- Article 5(1)(d) – the accuracy principle
- Article 16 – the right to rectification
- Article 17 – the right to erasure

Case law examples

Case example 17 – Fact and opinion and link with defamation

High Court

[**Aven and Others v Orbis Business Intelligence Limited \[2020\] EWHC 1812 \(QB\)**](#)

In this case, which concerned a claim brought under the DPA 2018, the judge used principles from defamation law to consider a dispute about accuracy.

Reflecting on whether a statement is a fact or an opinion, the judge said:

“The DPA contains no guidance on this topic. But this is an issue that arises frequently in defamation cases. The principles are very well established and familiar to this court”. He also said “I caution myself that this is not a libel action. But these principles are not technical matters, of relevance only to a

niche area of the law. They reflect the experience of generations in analysing speech and striking a fair balance between the right to remedies for false factual statements, and the need to safeguard freedom of opinion”.

He summarised the “core points” as follows:

- A key question is how the words would strike the ordinary reasonable reader.
- A comment is a deduction, inference, conclusion, criticism, remark, observation etc.
- Words must be looked at in their context along with the subject matter.

Other important factors may be whether the statement is capable of verification, and whether the words stand by themselves or accompany others.

Further reading

[Guide to the UK GDPR – Accuracy](#)

8. Use personal data for a specific purpose

Key legal provisions

- UK GDPR article 5(1)(b) – the purpose limitation principle
- UK GDPR article 6(4) – determining compatibility
- UK GDPR article 30 – requirement to record the purposes of the processing

Further reading

[Guide to the UK GDPR – Purpose limitation](#)

9. Use no more data than you need

Key legal provisions

- UK GDPR article 5(1)(c) – data minimisation principle
- UK GDPR article 16 – right to rectification
- UK GDPR article 17 – right to erasure

Further reading

[Guide to UK GDPR: Data minimisation](#)

[Guide to UK GDPR: Accuracy](#)

[Guide to UK GDPR: Fairness, lawfulness and transparency](#)

[Guide to UK GDPR: Storage limitation](#)

[Guide to UK GDPR: Right to rectification](#)

[Guide to UK GDPR: Right to erasure](#)

10. Keep personal data only for as long as you need it

Key legal provisions

- UK GDPR article 5(1)(e) – the storage limitation principle
- UK GDPR article 17(1)(a) – the right to erase personal data when it is no longer necessary to hold it
- UK GDPR article 30(1)(f) – requirement to record time limits for erasure of different categories of data where possible

Further reading

[Guide to UK GDPR: Storage limitation](#)

[Guide to UK GDPR: Right to erasure](#)

[Guide to UK GDPR: Documentation](#)

11. Be clear about roles and responsibilities

Key legal provisions

- UK GDPR article 28 and 29 – requirements regarding processors
- UK GDPR article 30 – requirements to record information about processors
- UK GDPR article 32 – requirements to make sure that personal data is processed securely by processors

Further reading

[Guide to UK GDPR: Key definitions – controllers and processors](#)

[Guide to UK GDPR: Accountability and governance](#)

[Data sharing information hub](#)

[Guide to UK GDPR: International transfers after the UK exit from the EU Implementation Period](#)

[International data transfer agreement and guidance](#)

12. Help people to use their rights

Key legal provisions

- UK GDPR article 12 – requirements about providing information to people
- UK GDPR article 15 – right of access
- UK GDPR article 16 – right to rectification
- UK GDPR article 17 – right to erasure (or right to be forgotten)
- UK GDPR article 18 – right to restrict processing
- UK GDPR article 19 – requirement for controllers to notify recipients of personal data when personal data is rectified, erased or restricted
- UK GDPR article 21 – right to object
- Contempt of Court Act 1981 Section 10 Sources of information

Case law examples

Case example 18 – Right of access and protection of journalistic sources

European Court of Human Rights

[Goodwin v United Kingdom \(1996\) 22 EHRR 123](#)

The European Court of Human Rights said in this case:

“Protection of journalistic sources is one of the basic conditions for press freedom...Without such protection, sources may be deterred from assisting the press in informing the public on matters of public interest. As a result the vital public watchdog role of the press may be undermined and the ability of the press to provide accurate and reliable information may be adversely affected.

Having regard to the importance of the protection of journalistic sources for press freedom in a democratic society and the potentially chilling effect of an order of source disclosure has on the exercise of that freedom, such a measure cannot be compatible with Article 10 of the Convention unless it is justified by an overriding requirement in the public interest". (39)

Case example 19 – right to erasure (or right to be forgotten) and distinction between search engines and third party publication of data

European Court of Justice

[Google Spain C-131/12](#)

This ECJ considered a person seeking to exercise their privacy rights about a search engine.

Although this case was about a search engine, it is important because it distinguished between use of personal data by the search engine and use of personal data carried out by publishers of third-party websites.

[Working party guidance](#) has further information about this judgment and the flexible criteria the court set out to help search engines decide whether "de-listing" of search results is appropriate.

Case example 20 – right to erasure (or right to be forgotten) and strong public interest in news archives

European Court of Human Rights

[ML and WW v Germany \[2018\] ECHR 554](#)

This case concerned someone who sought to exercise their "right to be forgotten" under human rights law about their murder conviction.

The ECtHR decided that it was not proportionate to require anonymisation of media reports.

The court recognised the strong public interest in the media and news archives. It also recognised the potential chilling effect of right to be forgotten requests.

Factors affecting this outcome included:

- There was considerable interest in the crime at the time. The applicants had also subsequently sought to reopen the case and had not even been granted parole when they commenced legal proceedings.
- The applicants had lodged every possible judicial appeal and had also directly contacted the press.
- The reports were fair and accurate.
- The dissemination of the reports was limited in scope because they were no longer available on the news pages of the websites and subject to restrictions such as paid access or subscription.
- The applicants had not attempted to contact search engine operators to further limit the availability of the information.

Case example 21 – Right to erasure (or right to be forgotten) and anonymisation of digital archive record

European Court of Human Rights

[Hurbain v Belgium \[2021\] ECHR 544](#)

A person was named as the cause of a fatal car accident. The person was convicted, served their sentence, and received a pardon. They subsequently sought to exercise their “right to be forgotten” under human rights law.

Given the facts of this specific case, the ECtHR decided that it was proportionate to ask the newspaper to anonymise only the digital archive record that was freely accessible through an online search, not the original article.

The court recognised the strong value of archives “...for teaching and historical research, as well as for contextualising current events”. It also recognised that anonymising archives undermines their integrity. It urged domestic courts to be “particularly vigilant” about people seeking to anonymise or modify electronic archives.

Factors affecting the outcome in this case included:

- The information was of no topical value 20 years after the event and the person concerned had no public profile.
- The public interest in the rehabilitation of offenders.
- The person had not sought media attention.
- Online publication is much more likely to undermine the right to privacy than paper publication.

Further reading

[Guide to UK GDPR: Individual rights](#)

[Guide to data protection: Children](#)