UNIVERSITY OF BIRMINGHAM

GUIDANCE ON E-MAIL IN RELATION TO DATA PROTECTION

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Guidance on E-mail in Relation to Data Protection

1. What this means for you

1.1 **All** staff and students must be cautious in their use of e-mails, remain professional in writing style, and regard all e-mail exchanges as "postcards", accessible to all. In particular, no derogatory, defamatory, or unjustified criticism should appear in e-mails sent using the University e-mail server.

1.2 On receipt of an appropriate request, **all** e-mails must be disclosed to the person about whom they are written. Derogatory, defamatory or unjustified criticism of another will lead to disciplinary action within the University against the writer; embarrassment for the University if disclosed more widely; and potential court action against the writer for defamation, or other offence.

1.3 Deletion of an e-mail is not sufficient. E-mails remain on the University server for 30 days post deletion. It is an offence to delete an e-mail after receipt of a request for disclosure.

2. Data Protection

2.1 The Data Protection Act 1998, as amended by the Freedom of Information Act has a far-reaching effect on all departments and schools within the University.

2.2 Any paper or electronic mention of a person's name, which is directly relevant to that person, may be disclosable to that person on request.

2.3 Extreme care therefore needs to be exercised, to avoid any derogatory mention of an individual, without sound justification, which could expose the University or the individual writer to embarrassment and/or legal action.

2.4 It is important that all staff and students are aware of the effect of the principles of the new Data Protection Act, which govern the collection, retention, and transmission of information about living individuals and the rights of those individuals to see this information, whether in electronic or paper format. The Act, and University Policy, are described at: https://intranet.birmingham.ac.uk/legal-services/Data-Protection/Data-Protection.aspx and https://intranet.birmingham.ac.uk/legal-services/index.aspx

3. Access to Personal Data

3.1 The Data Protection Act 1998 (DPA) applies to the processing of "personal data", and the disclosure requirements, defining processing as not only obtaining personal data, but also the treatment and eventual destruction of that data.

3.2 "Personal data", was re-defined by the case: "Durant v Financial Services Authority" (Court of Appeal, December 2003): the term encompasses any data which focuses on the living individual, and affects their private life, whether professional, academic, or personal: the data may be electronic or paper-based.

3.3 The Court of Appeal ruled: "The mere fact that a document is retrievable by reference to the [subject's] name does not entitle [the subject] to a copy of it

under the Act". Therefore, incidental mention of a person's name within information not otherwise directly related to that individual is not generally personal information.

3.4 Under the Data Protection Act, "personal data" should normally be disclosed to the data subject at his/her request, or to someone authorised by the data subject to receive that information and/or to act on his/her behalf. The data subject must, however, make formal application (a Subject Access Request) and pay the appropriate fee.

3.5 The Act does allow data to be withheld where it involves a record of any legal negotiations that involve the University and the data subject at the time when application for disclosure is made. For example, where at that time a member of staff is involved in a dispute with the University concerning a contractual matter, redundancy or staff discipline, which could result in determination at court or tribunal.

4. Access to E-mails

4.1 If a request for electronic information is received, deleting an e-mail is not a defence for non-compliance: the deletion comes within the DPA as data "processing" (as above), and pressing the delete button does not in itself remove the e-mail from the University server.

4.2 Users of the University's Microsoft Exchange email services can retrieve deleted e-mails from the back-up server for up to 30 days after they have deleted them. After 30 days, the e-mails become less retrievable, requiring significant manual intervention to restore an entire database in order to retrieve a single message.

4.3 There is currently no method of finding all the e-mails that make reference to individuals by name. The option to "retrieve" e-mails relates only to e-mails from a specific sender sent on a specific date, with a specific subject.

5. Manual Data

5.1 Under the DPA, there is a slight caveat re: manual data. Manual data is held not on computer, but manually filed; it can be either structured or unstructured data. As discussed in the Durant case (above), unstructured data is data which is not stored in such a way as to be reasonably accessible, for example, a random collection of documents, or documents filed other than under a person's name. Structured data are files listed by name or in alphabetical order where it is easy to find information relating to a particular individual or topic.

5.2 To gain access to unstructured manual data, the person requesting that data needs to provide a full description of what is being requested – for example, a memorandum/letter/scribbled note, date of writing, subject etc.

5.3 As the Data Protection Act has been amended by the Freedom of Information Act, the University, as a designated public body will have to search through unstructured files too, except in relation to personnel files.

5.4 If the University conducts a search under the terms of the Freedom of Information Act, and assesses that locating and providing the information will exceed a base cost of £450, then the search will be suspended until the

requester pays the specified fee to cover the costs of carrying out that search.

6. Key Contacts in the University

6.1 For data protection and freedom of information queries please contact Dawn Jeynes in Legal Services on 0121 415 8659 or by email at: d.jeynes@bham.ac.uk

6.2 Further information on the Data Protection and Freedom of Information Legislation is available at:

6.2 .1 Information Commissioner's website (www.informationcommissioner.gov.uk/)

6.2 .2 www.jisclegal.ac.uk

6.2 .3 https://intranet.birmingham.ac.uk/legal-services/index.aspx