

ERASURE OF APPLICANT DATA

Information on data protection | April 2025

Introduction

The principles of data minimization pursuant to Art. 5 (1) (c) GDPR and storage limitation pursuant to Art. 5 (1) (e) GDPR mean that any data processing must be limited to what is required and personal data may only be stored for as long as is necessary for the purposes pursued. As soon as the data is no longer required, it must be deleted. Additionally, Art. 17 (1) GDPR grants data subjects the right to request the erasure of their data from the controller.

With regard to the processing of applicant data, this means on the one hand that only data that is absolutely necessary for processing the application may be requested, and on the other hand that the data from the application process may not be stored indefinitely.

Storage of application documents

Applicant data generally must be deleted once it is no longer required for the purpose of establishing an employment relationship. In the case of a rejected applicant, their data may be stored for as long as the company can invoke a legitimate interest in the temporary storage of data. In particular, the length of time within legal disputes may arise due to the non-employment of the rejected applicant must be taken into account. In particular, the provision of Section 15 (4) AGG, which states that claims for violation of the prohibition of discrimination in the case of an application must be asserted in writing within a period of two months, beginning with receipt of the rejection, and the provision of Section 61b ArbGG, according to which an action for compensation under Section 15 AGG must be brought within three months after the claim has been asserted in writing, must be taken into account.

This means that data storage of up to 6 months is probably justified for applicants who have applied for an advertised position. The data must then be deleted, provided there are no other legitimate interests to the contrary. If there is actually a dispute with the rejected applicant about their non-employment, the data may be retained until the facts of the case have been finally clarified.

In the case of unsolicited applications, longer storage may also be justified under certain circumstances as long as there is a possibility that the application may still be of interest in the future. However, the applicant has the option of requesting the deletion of their application at any time before the planned retention period expires.

If an applicant is hired, the storage of their application data is also regularly required for the performance of the employment relationship. The further storage of the documents in the personnel file can then be based on Art. 6 (1) (1) (b) GDPR in conjunction with Section 26 (1) (1) BDSG.

Implementation within the company

In order to ensure compliance with the defined retention periods, it is necessary to consider how timely and, above all, complete data erasure can be technically implemented.

If a ticket system is used for the internal review and processing of application documents, this may be problematic from a data protection perspective if the system contains the requirement that once opened tickets and documents saved for the individual tickets cannot be deleted from the system. If such a system is to be used for application management nonetheless, it is therefore advisable to set up a separate area in the system and configure it technically in such a way that application data can be deleted. If this is not technically possible and data deletion cannot be guaranteed, an alternative implementation is recommended.

If application documents are forwarded within the company by e-mail or can be downloaded and saved from a central location, there is often a problem with regard to the completeness of data deletion, as the individual copies of the application documents cannot be deleted from a central location once the storage period has expired. In order to ensure compliance with data protection regulations, the individual employees must therefore be instructed to ensure that the documents in their access area are deleted in a timely manner.

In order to prevent a breach of the retention periods, it is advisable to only store application documents in a central location, such as a special drive or platform, in such a way that they can be viewed by the responsible employees and processed to the extent necessary, but cannot be copied or moved in any other way. In this way, simple and complete deletion can be ensured when the retention period expires.

Talent pool

Irrespective of the regularly applicable storage periods, it is possible to agree a different procedure with the respective applicant. If the applicant expressly agrees to their data being stored for a longer period of time in the event of a position becoming vacant at a later date, for example in a talent pool or an applicant database, further data processing is generally permitted on the basis of the applicant's consent in accordance with Art. 6 (1) (1) (a) GDPR. If the consent is limited to a specific period such as two or three years, the data must be deleted after the expiry of the time limit, unless the applicant has consented to further storage in advance. In addition, the specific retention period must be assessed according to the

extent to which further retention of the documents makes sense with regard to the chances of actual recruitment and the necessary balancing of interests in this respect is in favor of further retention.

Conclusion

Depending on the specific circumstances of an application, different retention periods may apply, which should be defined by the company within a deletion concept. In order to ensure that the data is actually and, above all, completely deleted after the respective retention period has expired, either the necessary technical measures must be implemented or the employees involved must be instructed accordingly. We would be happy to support you in designing a suitable erasure concept for you.

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