



Code of conduct and professional practice Regarding the processing of personal data For historical purposes

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Preamble

This Code is adopted by the public and private bodies mentioned below based on the following premises:

1) Any person accessing information and documents for historical purposes frequently uses personal data, which are protected by law in order to safeguard data subjects. In the light of the public interest related to the performance of said processing operations, whoever uses personal data for the aforementioned purposes (with particular regard both to public archives and to private archives declared to be of substantial historical interest in pursuance of Section 36 of Presidential decree no. 1409 of 30.09.63) was exempted by law from the obligation to request data subjects' consent pursuant to Sections 12, 20 and 28 of the Data Protection Act (Act no. 675 of 31.12.96 – see, in particular, Section 27; legislative decree no. 135 of 11.05.99; legislative decree no. 281 of 30.08.99 – see, in particular, Section 7(4); presidential decree no. 1409 of 30.09.63 as subsequently amended and supplemented).

2) Use of said data by users and archivists must therefore conform to both the relevant laws and this Code of conduct and professional practice; compliance with this Code is a fundamental prerequisite for the processing of data to be lawful, in addition to its being part of the relevant professional ethics (Section 31(1), h), of Act no. 675 of 31.12.96; Section 6 of legislative decree no. 281 of 30.07.99).

3) Compliance with the abovementioned rules should not affect investigations, research, gathering of documents and studies with regard to persons, facts and circumstances of the past, irrespective of the places in which said activities are performed.

4) Processing of personal data in connection with the conservation, categorisation and communication of documents kept both in State Archives and in historical Archives of public bodies is considered to be in the substantial public interest (Section 23 of legislative decree no. 135 of 11.05.99).

5) Adoption of this Code is encouraged by the Garante under the law pursuant to the principle of adequate representation of the public and private bodies concerned. This Code is also the expression of the professional associations and categories concerned, including scientific societies, with a view to reconciling the requirements of investigation into and description of historical facts with the rights and fundamental freedoms of data subjects (Section 1, Act no. 675 of 31.12.96).

6) In this Code provisions are made under the law concerning, in particular, a) rules based on fairness and non-discrimination in respect of users, to be abided by also in communication and dissemination of data, in line with the provisions applying to freedom of the press and freedom of speech; b) the specific safeguards applying to collection, consultation and dissemination of documents concerning data disclosing health, sex life or private family relations; c) modalities for applying the provisions on processing of data for historical purposes to private archives (Section 7(5), legislative decree no. 281 of 30.07.99).

7) Adoption of this Code is based not only on Articles 21 and 33 of the Constitution of the Italian Republic, but also on the relevant international sources and instruments concerning historical research and archives such as, in particular,:

a) Articles 8 and 10 of the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms as ratified by Italy with Act no. 848 of 04.08.55;

b) Council of Europe Recommendation No. R (2000) 13 of 13 July 2000;

c) Articles 1, 7, 8, 11 and 13 of the Charter of Fundamental Rights of the European Union;

d) the Guidelines for a Law on Historical and Current Archives as laid down by the International Council on Archives at the Ottawa Conference in 1996, and the International Code of Ethics for Archivists as adopted during the 1996 Beijing International Conference on Archives.

Chapter I - GENERAL PRINCIPLES

Article 1. Purposes and Scope

1. These provisions are aimed at ensuring that the use of personal data acquired in carrying out free historical research activities and in exercising the right to education and information, as well as in the course of the access to instruments and documents, takes place by respecting data subjects' rights, fundamental freedoms and dignity with particular regard to the right to privacy and personal identity.

2. This Code includes provisions applying to the processing of personal data for historical purposes in connection with documents that are kept either in archives of public administrative bodies, public bodies or in private archives which have been declared to be of substantial historical interest. This Code applies to all the processing operations concerning personal data that are performed by users for historical purposes, without the need for said users to subscribe to this Code.

3. This Code further includes guidelines for the conduct of any person processing, for historical purposes, personal data that are kept either in public archives or in private archives which have been declared to be of substantial historical interest; in particular,

a) as regards archivists, fairness and non-discrimination rules are laid down concerning users irrespective of their nationality, position, and education;

b) as regards users, safeguards are laid down concerning collection, use and disclosure of the data included in documents.

4. Owners, holders or keepers of either private archives which have not been declared to be of substantial historical interest or individual documents with historical interest may notify the competent Superintendent's Office for archives of their intention to apply this Code to the appropriate extent.

Article 2. Definitions

1. In implementing this Code, account shall be taken of the definitions and indications included in the legislation on personal data processing, with particular regard to the provisions mentioned in the Preamble. For the selfsame purposes,

a) "archivist" shall mean any natural or legal person, body or association that is responsible for supervising, acquiring, processing, preserving, restoring and managing historical, current and deposited archives of the public administration, private archives which have been declared to be of substantial historical interest as well as the private archives referred to in Article 1(4) above;

b) "user" shall mean any person either requesting access to or accessing documents including personal data for historical purposes, also in connection with journalistic activities and/or the occasional publication of papers, essays and other intellectual works;

c) "document" shall mean any item of information including personal data, whether in written or oral form or else stored on other media.

Chapter II - RULES APPLYING TO ARCHIVISTS' CONDUCT AND LAWFULNESS OF THE RELEVANT PROCESSING OPERATIONS

Article 3. General Rules of Conduct

1. Archivists processing personal data and the documents including such data shall take suitable measures, in line with the relevant laws and regulations, in order to ensure the respect for rights, fundamental freedoms and dignity of the persons to whom the processed data relate.

2. Archivists from public bodies or organisations shall ensure full compliance with the relevant laws and regulations concerning archives as also related to third parties with whom they have contacts because of their official duties or service – with particular regard to Sections 21 and 21-bis of presidential decree no. 1409 of 30.09.63 as amended by legislative decree no. 281 of 30.07.99 and Section 7 of said legislative decree no. 281/1999 and subsequently supplemented.

3. Any person discharging tasks related to archives in a public body shall process personal data by complying with such fairness, accuracy, impartiality honesty and diligence requirements as are warranted by professional practice and his/her position. He/She shall perform the relevant activities in accordance with the transparency criteria applying to public administrative agencies.

4. Any personal data that is used for historical purposes may be used further for said purposes. Such data shall be governed in principle by the same provisions irrespective of the documents including the data and the place of storage, without prejudice to the safeguards and precautions applying to specific categories of data or processing operation.

Article 4. Conservation and Protection

1. Archivists shall undertake:

a) to promote retrieval, acquisition and protection of documents. To that end, they shall follow such principles, methodologies and practice as are generally accepted and agreed upon in the relevant professional sector; they shall also see to systematically and continuously updating their historical, administrative and technological skills;

b) to safeguard integrity of archives and authenticity of documents, including those in electronic and multimedia form, and to aim at their permanent conservation with particular regard to the documents endangered by cancellation, dispersion and alteration of the data;

c) to ensure that reproductions be true to original documents and abstain from any activity aimed at tampering with, dissembling or misrepresenting facts, information, documents and data;

d) to ensure compliance with the security measures referred to in Section 15 of Act no. 675 of 31.12.96 and presidential decree no. 318 of 28.07.99, as subsequently amended and supplemented, by developing suitable measures in order to prevent destruction, dispersion or unauthorised access to documents and by also taking specific precautions in the light of certain risks – such as by only making available the copies of certain documents for consultation and keeping the relevant originals in a safe or an armoured cupboard.

Article 5. Communication and Utilisation

1. Archives shall be organised so as to ensure unrestricted utilisation of information sources.

2. Archivists shall ensure the widest possible access to archives and facilitate research and information gathering as well as retrieval of information sources in accordance with the applicable legislation.

3. Archivists shall inform researchers of any documents that have been removed from a file for the time being because of their being withheld from consultation.

4. Where data are collected by an archive on a systematic basis in cooperation with other public or private bodies in order to set up data banks including whole archive series, the relevant organisation shall make an ad-hoc agreement stipulating the arrangements for utilisation and the safeguards applying to data subjects in accordance with the law - in particular as regards the relationship between data controller, processor and persons in charge of the processing as well as the relationships with third parties which may be interested in accessing the data.

Article 6 Commitment to Confidentiality

1. Archivists shall undertake:

a) to abstain from using, whether for their own research purposes or with a view to gain, information that is either unavailable to users or non-publicly available and has been obtained in the course of their activity even on a confidential basis. Archivists performing research activities for purposes of their own or else falling outside the scope of their professional activity shall be subjected to the same rules and limitations as apply to users;

b) to keep confidential any news and information concerning personal data they may come to know in the course of their activity.

2. Archivists shall further comply with the above confidentiality requirements after leaving their positions.

Article 7. Data Update

1. Archivists shall facilitate the exercise of a data subject's right to have the data updated, rectified or supplemented and ensure that the data are kept in a way allowing the original source to remain separate from any subsequent accessions.

2. With a view to the implementation of Section 13 in Act no. 675/1996, archivists shall make available the relevant search tools and sources in case a general request is made for access to a large series of data and/or documents; they shall further provide the person requesting it with appropriate directions to facilitate consultation.

3. In case a right is to be exercised pursuant to Section 13(3) of Act no. 675/1996 by an entity having an interest therein as regards personal data concerning either deceased persons or documents dating back to remote times, existence of the relevant interest shall be assessed by also taking account of the time already elapsed.

Article 8. Oral Sources

1. With regard to the processing of oral sources [of information], it shall be necessary for the interviewees to give their express consent, whether orally or not, even based on summary information including at least the interviewer's identity and activity and the purpose(s) of the data collection.

2. If an Archive acquires oral sources, it shall request the interviewer to produce a written statement to the effect that the purposes of the interview have been notified and the relevant consent has been obtained from the interviewees.

Chapter III - RULES OF CONDUCT FOR USERS AND LAWFULNESS OF THE RELEVANT PROCESSING OPERATIONS

Article 9. General Rules of Conduct

1. In accessing sources and exercising freedom of expression as well as in performing studies or research activities, users shall take such measures as are appropriate pursuant to laws and regulations in order to ensure respect for data subjects' rights, fundamental freedoms and dignity whenever they process personal data.

2. Pursuant to the provisions laid down in paragraph 1 above, users shall use documents under their own responsibility in compliance both with the purposes sought - which must be specified in the relevant research project - and with the principles laid down in Section 7 of legislative decree no. 281 of 30.07.99, stipulating that the data must be relevant and necessary.

Article 10. Access to Public Archives

1. Access to public archives shall be free. All users shall be entitled to accessing archives with the same rights and duties.

2. Pursuant to the laws in force, an exception shall be made for confidential documents concerning the State's home and foreign policy, which shall be made available after fifty years from the relevant date, as well as for documents including the data referred to in Sections 22 and 24 of Act no. 675/1996, which shall be made available after forty years from the relevant date. The term shall be seventy years in case of data disclosing health or sex life or private family relationships.

3. Consultation of the documents referred to in paragraph 2 may be authorised before expiry of the relevant term by the Ministry for Home Affairs, based on the opinion of either the competent State Archive Director or the competent Archives Superintendent and after hearing the Committee for Availability of Confidential Archive Documents at the Ministry for Home Affairs as provided for in Sections 8 and 9 of legislative decree no. 281/1999.

4. Where a permission for consultation of the documents referred to in paragraph 2 is requested by an user before expiry of the relevant term, a research project shall be submitted by that user to the body having the documents in its custody, in which the purposes of the research and the mechanisms for disclosure of the data shall be specified. The person making the request may provide such additional information as is deemed necessary.

5. The authorisation referred to in paragraph 3 shall be granted to all users who request it and fulfil the same conditions. The latter assessment shall be made on the basis of the research project referred to in paragraph 4.

6. In granting the authorisation referred to in paragraph 3 specific safeguards may be laid down in order to allow disclosure of the data without affecting data subjects' rights, freedoms and dignity.

7. In the light of the purposes of the research as specified in the relevant project, the above safeguards may also consist in the obligation not to disclose the persons' names, in only using the initials of data subjects' names, blanking the names in a data bank, temporarily withholding individual documents in a file or banning reproduction of documents. Special consideration shall be given to relevance of the data and to any reference to facts or circumstances allowing data subjects to be easily identified.

8. The authorisation referred to in paragraph 3 shall be granted to a specific person and the relevant holder may not delegate others to subsequently process the data. Documents shall retain their confidential nature and may not be used further by other entities without the relevant authorisation.

Article 11. Disclosure

1. The user's construction shall fall under the scope of the freedom of speech and expression as set out in the

Constitution, without prejudice to the data subjects' right to privacy, personal identity and dignity.

2. In referring to a person's health, users shall refrain from publicising analytical data of exclusively clinical interest and describing the sex conduct relating to an identified or identifiable person.

3. The private sphere of either public figures or persons who have discharged public functions shall have to be respected if the news or data are irrelevant with regard to their role or public life.

4. Pursuant to Section 7(2) of legislative decree no. 281/1999, users shall take account of the relevance of the data at the time of their disclosure with particular regard to the individual personal data included in documents rather than to the documents as a whole. Users may disclose personal data if the latter are relevant and necessary for the research and do not affect the individuals' dignity and privacy.

5. Users are not required to provide the information as per Section 10(3) of Act no. 675/1996 where this would involve a clearly disproportionate effort.

6. Users may only use the processed data or the copies of documents including personal data that are accessible by a specific authorisation for the purposes of their own research; they shall be responsible for keeping the information confidential as also related to third parties.

Article 12. Implementation

1. By subscribing to this Code, public and private bodies including scientific societies and professional associations shall undertake to promote its widest possible dissemination and publicity and to ensure compliance, in accordance with the mechanisms and procedures laid down in the relevant regulations.

2. With regard to archives held by public bodies and private archives that have been declared to be of substantial historical interest, dissemination and implementation of this Code shall be ensured by the Superintendent's Offices for Archives.

Article 13. Breach of the Rules of Conduct

1. The competent administrative agencies shall apply the penalties laid down in the relevant regulations as regards public archives.

2. Societies and associations subscribing to this Code shall take suitable measures in case of a breach of its rules, based on the relevant by-laws and regulations, without prejudice to such punishments as are provided for by law.

3. Any breach by an user of the provisions laid down herein shall be notified to the entities which are entitled to granting the authorisation for consultation of confidential documents before the expiry of the lawful terms and shall be taken into account with a view to the granting of said authorisation. The competent administrative agency may also temporarily ban a person who has infringed the rules set out herein from accessing consultation rooms, in accordance with the relevant regulations. Such a person may also be refused any subsequent authorisation for the consultation of confidential documents.

4. As well as reporting any offence in accordance with the laws applying to civil servants, the entities referred to in paragraphs (1) and (2) may also inform the Garante concerning breaches of the rules laid down herein for the Garante to take such measures and impose such penalties as may be required.

Article 14. Entry into Force

1. This Code shall apply as of the fifteenth day following its publication on the Official Journal of the Italian Republic.

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