

## **Ministry for Health**

### **OFFICE OF THE COMMISSIONER FOR MENTAL HEALTH**

#### **Data Protection and Retention Policy**

##### **SCOPE**

1. This Policy is aimed at regulating the retention, maintenance and disposal of documentation, both personal and other, within the Office of the Commissioner for Mental Health, as provided for in the terms of requirements emanating from legal provisions in such other acts as the Public Administration Act (Chap. 497) and directives emanating therefrom, and in accordance with the principles of data protection legislation, and the National Archives Act (Chap. 477).

##### **BACKGROUND**

2. The General Data Protection Regulation (GDPR) (EU) 2016/679 puts forward the principle that personal and sensitive personal data, should not be retained for periods that are longer than necessary. In this context, the Office of the Commissioner for Mental Health will be putting forward a retention policy for all records collected and processed, with the purpose of ensuring compliance to the Regulation and to ensure that no resources are utilised in the processing and archiving of data which is no longer of relevance.

##### **OBJECTIVES**

3. This policy aims to achieve the following objectives:

- Regulate the retention of and disposal of the various types of records within the Office of the Commissioner for Mental Health while adhering to the Data Protection principle that personal data should not be retained for a longer period than necessary; as per Article 5 (e) of the GDPR.
- Dispose of unnecessary documentation that are no longer relevant and is taking up useful storage space: as per Article 17 of the GDPR.
- Promote the digitisation of documentation as may be reasonably possible in order to minimize the use of storage space, as well as to promote a sustainable use of paper and printing consumables.

##### **THE DATA SUBJECT RIGHTS**

4. The data subject is entitled to know, free of charge, what type of information the Office of the Commissioner for Mental Health holds and processes about him and why, who has access to it, how it is held and kept up to date, for how long it is kept, and what the Office is doing to comply with data protection legislation.

The GDPR establishes a formal procedure for dealing with data subject access requests. All data subjects have the right to access any personal information kept about them by the Office of the Commissioner for Mental Health, either on computer or in manual files. Requests for access to personal information by data subjects are to be made in writing using the [Request for Access to Personal Data by Employees](#), and sent to the Data Protection Officer of the Office of the Commissioner for Mental Health. The data subject identification details such as ID number, name and surname have to be submitted with the request for access. In case we encounter identification difficulties, the data subject may be required to present an identification document.

## **ADMINISTRATION**

5. Documentation is held and recorded by the administration at the Office of the Commissioner for Mental Health. This policy is therefore applicable to all such documentation. It will be the responsibility of the Commissioner for Mental Health and any other deputy, supervisor or administrator who may be delegated to ensure that all provisions of this policy are adhered to.

6. All staff that create, maintain, process and store records mentioned hereunder are responsible to perceive and implement the instructions given in this policy.

7. The Commissioner for Mental Health, following appropriate consultation and direction, is authorized to modify this policy as deemed appropriate from time to time to ensure compliance with state laws.

## **DOCUMENTATION HELD WITHIN THE OFFICE OF THE COMMISSIONER FOR MENTAL HEALTH**

8. As part of its operating requirements the Office of the Commissioner for Mental Health requests, keeps and maintains a wide range of documentation including personal data. The type of data that is being utilised by the Office of the Commissioner for Mental Health may be listed as follows:

- Requests for information
- *Rikorsi*, Sworn applications and other legal documents
- Publicity material, media articles and other correspondence
- SOPs and Internal Policies
- Internal Board Meetings Minutes and relevant documentation
- Documentation re annual report, visitations and other reports
- Copies of agreements, contracts and contracts for services
- Financial statements, budget estimates management accounts
- Invoices, receipts for payments, LPO's copies
- Employees attendance sheets
- Vacation Leave, Requests and Records
- Sick leave certificates
- Continuous Professional Development and professional Membership files
- Performance appraisals file
- Data and documents regarding engagement of external independent specialists

- Personal file of employees
- Patient's personal file
- Patient's under the curatorship files
- Correspondence and relevant files regarding customer care issues and other complaints with the office
- Mental Health Review Tribunal Files

## **SECURITY OF DOCUMENTATION**

9. Documentation is maintained in an accessible but secure location with adequate access provided to officials who have the clearance level to access the relevant documentation. In the case of documents with sensitive personal data with higher clearance levels, access control protocols are fully adhered to, to ensure that only those that have the required security clearance have access to such documentation.

10. In the case of personal data, the GDPR also stipulates that only those required to process personal data should have access to personal records.

11. Personnel who are found to be in breach of these security protocols, and thus in breach of the GDPR, will be subject to disciplinary action as per Article 33 Clause (5) of the GDPR.

## **MANUAL VS ELECTRONIC RECORDS**

12. The same retention period will apply for both electronic (if applicable) and manual data.

## **EXEMPTIONS**

13. In cases where the retention of particular documents is essential such as where court cases are instituted, requests are still pending or in other serious cases of importance such as audits on the Office of the Commissioner for Mental Health, the retention period shall be suspended as deemed appropriate by the management team at the Office of the Commissioner for Mental Health.

## **RETENTION PERIOD**

14. The Retention schedule hereunder outlines the retention requirements for the various categories of documentation within the Office of the Commissioner for Mental Health

| Key | Unit / Department                            | Category       | Record Type  | Description  | Retention Period   | Remarks   | Action – To be determined by National Archivist (when retention period expires) |
|-----|--|----------------|--|--|--------------------|---|---|
| 1   | Office of the Commissioner for Mental Health | Administration | Rikorsi, Sworn applications and other legal documents.       | Records of all documents presented in, or coming from, the Law Courts.   | Fifteen (15) years | Kept in case the matter is, or becomes the subject of a court case. Commissioner's policy supports the retention period's decision  | Not Required for permanent preservation by the National Archives                |
| 2   | Office of the Commissioner for Mental Health | Administration | Publicity material, media articles, and other correspondence | Articles and other documents published by the Office in relation to Conferences and other initiatives and activities organised by this Office or other entities. | Five (5) years     | For information purpose and for future reference. The respective department is aware of the Legal obligation to deposit two copies to the National Library. This procedure will be accomplished whenever any material is published. | Published material not under the remit of the National Archives                 |
| 3   | Office of the Commissioner for Mental Health | Administration | SOPs and Internal Policies.                                  | All policies, procedures and practices established by, or applicable to this office.   | Thirty (30) years  | Needed for the monitoring of office business.   | Transfer to the National Archives for permanent preservation                    |

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| 4 | Office of the Commissioner for Mental Health | Administration | Internal Board Meetings Minutes and relevant documentation    | Board Minutes, Resolutions and any correspondence/documents related to Board Meetings   | Thirty (30) years  | For information purpose and for future reference.  | Transfer to the National Archives for permanent preservation     |
| 5 | Office of the Commissioner for Mental Health | Administration | Documentation re annual report, visitations and other reports | All correspondence, preliminary reports, ancillary documentation, questionnaires, and supporting evidence used for the compilation of the Office Annual Report. | Thirty (30) years  | For information purpose and for future reference.  | Transfer to the National Archives for permanent preservation     |
| 6 | Office of the Commissioner for Mental Health | Finance        | Copies of Agreements, contracts for services                  | Various agreements both with suppliers and consultants / independent specialists.   | Fifteen (15) years | For information purpose and for future reference. For Inland Revenue purpose. Commissioner's policy supports the retention period's decision | Not Required for permanent preservation by the National Archives |

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| 7 | Office of the<br>Commissioner<br>for Mental<br>Health | Finance            | Financial<br>statements, budget<br>estimates,<br>management<br>accounts | All the relevant<br>documents relating to<br>financial statements,<br>workings on the<br>budget estimates for<br>the office, and other<br>accounts held within<br>the Office. | Ten (10) years  | For information<br>purpose and for future<br>reference. For Inland<br>Revenue purpose.<br>Companies Act<br>Chapter 386 | Not Required for<br>permanent<br>preservation by the<br>National Archives      |
| 8 | Office of the<br>Commissioner<br>for Mental<br>Health | Finance            | Invoices, receipts<br>for payments,<br>LPO's copies                     | Relevant Documents<br>needed to procure and<br>purchase<br>goods/services by the<br>OCMH.   | Ten (10) years  | For information<br>purpose and for future<br>reference. For Inland<br>Revenue purpose.                                 | Not Required for<br>permanent<br>preservation by the<br>National Archives      |
| 9 | Office of the<br>Commissioner<br>for Mental<br>Health | Human<br>Resources | Employees<br>Attendance Sheets  | Official Attendance<br>Sheets (GP41) and<br>other attendance<br>documents with<br>working days / hours.   | According to<br>existing Retention<br>Policy for HR<br>Documents issued<br>by OPM | For any queries that<br>might be asked related<br>to Attendance and<br>salaries  | According to existing<br>Retention Policy for<br>HR Documents issued<br>by OPM |

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| 10 | Office of the Commissioner for Mental Health | Human Resources | Vacation Leave Requests and Records                                   | All documentation regarding requests for vacation leave and relevant decisions.   | According to existing Retention Policy for HR Documents issued by OPM | For any queries that might be asked related to Attendance and salaries        | According to existing Retention Policy for HR Documents issued by OPM |
| 11 | Office of the Commissioner for Mental Health | Human Resources | Sick Leave Certificates   | Copies of sick leave certificates and documents keeping records of such sick leave.   | According to existing Retention Policy for HR Documents issued by OPM | For any queries that might be asked related to Attendance and salaries        | According to existing Retention Policy for HR Documents issued by OPM |
| 12 | Office of the Commissioner for Mental Health | Human Resources | Continuous Professional Development and Professional Membership files | All documents related to CPD of OCMH employees, including transactions / fees of paid courses / conferences that the Office has to reimburse. | To be established by OPM  | For information purpose and for future reference. For Inland Revenue purpose. | Decision pending, to be established by OPM                            |

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| 13 | Office of the Commissioner for Mental Health | Human Resources | Performance appraisals files  | All files containing appraisal forms and other ancillary documentation, including any bonuses, etc., recommended to the employee and other relevant comments.                                 | According to existing Retention Policy for HR Documents issued by OPM | For information purpose and for future reference. For Inland Revenue purpose. | According to existing Retention Policy for HR Documents issued by OPM |
| 14 | Office of the Commissioner for Mental Health | Human Resources | Data and documents regarding engagement of external independent specialists | All files and relevant documents containing data and other information related to the engagement of independent specialists.  | To be established by OPM  | For information purpose and for future reference. For Inland Revenue purpose. | Decision pending, to be established by OPM                            |
| 15 | Office of the Commissioner for Mental Health | Human Resources | Personal files of employees   | Files containing contracts of employment, engagement and termination, CPD applications, performance appraisals, disciplinary records, training attended and various letters / communications. | According to existing Retention Policy for HR Documents issued by OPM | For information purpose and for future reference. For Inland Revenue purpose. | According to existing Retention Policy for HR Documents issued by OPM |



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| 16 | Office of the Commissioner for Mental Health | Medical file    | Patients' personal files  | All files relating to patients including the respective Schedules submitted to this Office by Licensed Facilities.        | Ten (10) years after death of patient     | For information purpose and for future reference. Issue may also end up before the Courts since involuntary care involves restriction of personal liberty. Chap. 525 Laws of Malta              | Records of patients whose date of birth are on the 9th, 19th & 29th are to be transferred to the National Archives for permanent preservation. The rest will not be required by the National Archives. |
| 17 | Office of the Commissioner for Mental Health | Medical / Legal | Patients under Curatorship files  | All files relating to patients, or persons, who have been placed under a curator and thus being monitored by this Office. | Fifteen (15) years after death of patient | For information purpose and for future reference. Code of Organisation and Civil Procedure Chapter 12 of the Laws of Malta art. 520 to 527 of the Code of organization and Civil Prodecure COCP | Records of patients whose date of birth are on the 9th, 19th & 29th are to be transferred to the National Archives for permanent preservation. The rest will not be required by the National Archives. |
| 18 | Office of the Commissioner for Mental Health | Customer Care   | Correspondence and relevant files regarding customer care issues and other complaints with the Office | All files containing documents, complaints etc. which were addressed to this Office.                                      | Thirty (30) years                         | For information purpose and for future reference. Issue may also end up before the Courts. Chap. 525 Laws of Malta  | Transfer to the National Archives for permanent preservation   |

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| 19 | Office of the<br>Commissioner<br>for Mental<br>Health | Medical / Legal | Mental Health<br>Review Committee<br>Files | All files related to<br>cases decided by the<br>Mental Health Review<br>Committee. Five files<br>are produced each year. | Fifteen (15) years<br>after death of<br>patient | For information<br>purpose and for future<br>reference. Issue may<br>also end up before the<br>Courts since<br>involuntary care<br>involves restriction of<br>personal liberty. Chap.<br>525 Laws of Malta.<br>Five files are created<br>each year. | Records of patients<br>whose date of birth<br>are on the 9th, 19th &<br>29th are to be<br>transferred to the<br>National Archives for<br>permanent<br>preservation. The rest<br>will not be required by<br>the National Archives. |
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## IMPLEMENTATION OF THE RETENTION PERIOD

15. The implementation of the said retention periods shall come into force as from 28<sup>th</sup> February 2020 cover all data held at the Office of the Commissioner for Mental Health. The first step will be to dispose of old documents dating back decades held within the premises according to procedure and timeframes listed in this policy. Every file destroyed shall be documented by the staff to keep a track record. Eventually officers responsible for data listed in the retention schedule will, following approval by the management team, dispose of such data according to the given timeframes.

## CONCLUSION

16. This retention policy is intended towards achieving a good working balance between the retention of useful information and the disposal of data which is no longer required and is being unnecessarily archived. Data that needs to be destroyed will be disposed of in an efficient manner to ensure that such information will no longer be available within the Non-Emergency Ambulance Garage. Data Protection Controllers, Heads, and DPOs will be made aware of the noted retention periods and will instruct all relevant personnel to follow the indicated procedures accordingly.

It is to be noted that anonymised data do not fall within the parameters of this Retention Policy, since they do not constitute identifying personal data

**The Data Protection Officer of the Office of the Commissioner for Mental Health** may be contacted at:

Address:  
Office of the Commissioner for Mental Health  
St' Luqa' square Gwardamnagia  
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Telephone: 25924310

### **The Information and Data Protection Commissioner**

The Information and Data Protection Commissioner may be contacted at:  
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