

# Oakham School Archives' Copyright, GDPR, Takedown and Reclosure Policy

## Policy Statement

1.1 This policy has been written specifically for the archives held by Oakham School. It covers material posted on the Archives' website and social media page, as well as metadata and digitised documents that are hoped to be put online through a catalogue in the future.

1.2 This policy explains why and how material which form the Oakham School Archive collection, may need to be closed from public access and/or removed from online visibility.

1.3 Most of the items donated to the Archives are viewed as being 'open' unless it is specifically stated otherwise by a donor in their acquisition agreement form. Any items that enter the collection as a 'closed' item will be clearly labelled as such within the Archives' catalogue. It is rare that a previously 'open' record is 'closed' from public access after acquisition however circumstance may force this to be the case.

## Scope

2.1 This policy will apply to all items of any format found within the Archives. It will also cover online posts or content including digital images of items and item metadata. It does not cover information or items found on websites or in mediums which the Archives has no control over. Neither does this policy apply to records already closed from public access under Data Protection or Freedom of Information legislation or indeed personal restrictions imposed by the Donor/ Owner upon acquisition.

2.2 The Archives will always act in good faith when considering material for online displays and social media content. It endeavours to minimise any potential risk to third parties by checking for copyright or data protection (henceforth known as GDPR) concerns before publication. Where necessary, the archives will seek to gain permission from the donor or copyright holder for the use of an item.

## Terminology

3.1 Archives relates to the organisation of Oakham School Archives. This body collects material of many different formats relating to the history of Oakham School including but not limited to:

- Handwritten/typed documents

- Photographs
- Prints
- audio-visual material
- Costume and physical objects
- Digitally born or held material

These items have been chosen for preservation due to their intrinsic historical value and future potential use.

3.2 Items or material refers to any single item or group of material within the Oakham School Archives collection.

3.3. The Donor is defined as the legal owner of an item and the person/body who has deposited the item(s) within the archives. The Donor would be the individual who has signed the archival acquisition agreement.

3.4 'Open' items are items within the archives' collection that are accessible to the general public with no restrictions.

3.5 'Closed' items are items within the archives' collection that are not accessible to the general public due to legislative or statutory reasons, or wishes made specifically by the donor in the archives acquisitions agreement.

3.6 Acquisition is defined as an item entering the archives' collection, having an acquisition agreement signed and agreed by both parties (the Archives and the Donor) and the legal ownership of the item, including the data control and copyright, being given to the archives.

3.7 Metadata refers to the information about the item collated during the cataloguing process. Basic information consists of title, date, reference number, scope and content, creator, quantity, and language. This information will accompany digitised content online as well as be held on the archive's catalogue.

## **Background**

4.1 The Oakham School Archives, also Archives, is located in The Barber Rooms, College House. It derives its authority to collect, preserve and make available archives from this policy statement, adopted formally by the Trustees of Oakham School. The Archives were officially set up in 2010. Beforehand, there was no official service and archiving and staff volunteers on an ad hoc basis undertook collecting. An official archive was set up to ensure proper security of the material as well as enabling collecting of material from Old Oakhamians and other sources. Peter Lawson, OO and Chairman of Trustees, provided considerable support.

## Copyright

5.1 Some of the items within the Archives' collection are subject to and protected by copyright. UK copyright legislation protects a wide range of published works including written, artistic, and audio-visual material. The copyright restriction for such material usually lasts for 70 years after the year in which the creator died. For unpublished material, it is often the case that copyright will remain in place until the end of 2039.

5.2 Copyright protects works in a number of ways. It restricts the:

- Copying of work, including but not limited to recreations such as photocopying, scanning, photographing and transcribing.
- Disseminating copies of the work to the general public including on a temporary rental or lending agreement.
- Performing, showing, communicating or playing the work in public.
- Making any recreations or adaptations to the work.

5.3 This policy should not be considered a substitute for legal or official advice on copyright law.

5.4 Some exemptions from copyright can be covered under the term 'fair dealing' This does not have a statutory definition but it is generally agreed that the term means that to benefit from the exemption, a researcher or user must be acting fairly with the copyrighted material. The user must consider if their actions with the material will affect the market for the original and whether they are using a reasonable, appropriate and/ or limited amount of the work for their purpose.

5.5 It should be generally treated that a published, commercially available work will be harder to treat fairly than an unpublished or old source.

5.6. Clearly attributing credit to the author or creator of an item can help for the use to be considered fair. This is accompanied by uses that do not compete with the copyright owner's use of the work.

## General Data Protection Regulation

Archives and Business Data

6.1.1 The archives deals daily with personal data throughout its work and processes. Common forms that this personal data takes are name, email, date of birth, address, and phone number.

6.1.2 When items are acquired by the Archives, the data controller rights are transferred over to the archives. This is specified in 7.1.4 of the Archives Acquisition Agreement.

6.1.3 The Data Protection Act 1998 (DPA) imposes a duty on those holding data protection to register their data with the Information Commissioner, to comply with data protection principles, and to allow individuals to access, and in certain circumstances, to correct and remove data that relates to them. The Freedom of Information Act 2005 (FOI) extended the DPA by confirming that this protection applied to all living individuals held by public authorities, whatever format the information was held in. This continues in the General Data Protection Regulation Act 2018 (GDPR).

6.1.4 For everyday, business data created by the Archives' for its own use and processes, the Archives follows the school's GDPR policy (<https://fluencycontent2-schoolwebsite.netdna-ssl.com/FileCluster/OakhamSchool/MainFolder/documents/about-us/Policies-Jan-2018/DATA-PROTECTION-POLICY-MAY-2018.pdf>).

### Archives and historical Data

6.2.1 Presently, the Archives' catalogue is stored on Excel and on a private, school developed software called Filemaker. In the future, this metadata will be transferred over to a new, ISAD standard catalogue: ATOM.

6.2.2 Regarding the GDPR act 2018, Archives have had their status and purpose acknowledged, as well as having certain exemptions confirmed. These exemptions are reliant upon certain safeguards being in place. This can be found in Article 89 in the GDPR act 2018 which states 'processing is necessary for archiving purpose in the public interest, scientific or historical research purposes or statistical purposes in accordance with Article 89 (1)'. The distinction made is for the collection, preservation and management of data for future research use.

6.2.3 The Archives do not control the data collected within their historical collections because the Archives were not involved in the original creation, collection or processing of the data for business purposes.

6.2.4 The interest that the Archives has in personal data lies in its value as a historical piece of evidence; for the future use to researchers. Current accuracy is therefore not a concern. There is no interest in the future of the data subject, only their past.

6.2.5 Personal data can be selected and stored for permanent preservation if the following two criteria are met:

- No data is to be processed to support individual decisions about an individual.
- That the keeping of the personal data is not endangering or risking substantial damage or distress to the data subject.

6.2.6 The Archives does not have to ensure that data contained within archived items are up to date or accurate. Neither does it necessarily have to erase the data of any individual upon request. This is covered by the reasons laid out in 6.2.2/3/4/5.

#### Identifying Living Data Subjects And Closure Periods

6.3.1 It is difficult to establish in practice whether a data subject is still living. It is therefore to be assumed that every data subject has the lifespan of 100 years. If it is known that in 1950 an individual was 30 years old, a birth date of 1920 must be assumed. Therefore, any closure period on an item will be removed at the end of 2020, 100 years later.

6.3.2 If a person's age is unknown, then an estimate closure period will be enforced. If it is certain that at the time of the items making, the individual was an adult, a minimum age of 16 will be worked with. Later contextual evidence may help to prove the data subject's age. If there is no evidence of age or time of life, then a full 100 year closure should be used.

6.3.3 The most common reason for a 'closed' item within the Archives is that a living person is identifiable through the information held. A name of an individual may not be, in itself, enough to identify an individual and so the context of how the data is presented or supplementary information should be considered.

### Requests for Takedown and Reclosure

#### Making a request for Takedown and Reclosure

7.1.1 While it is unusual for 'open' material to be changed to a 'closed' status or taken down, the Archives recognises that circumstances may change and reconsideration may be necessary.

7.1.2 The Archives is passionate about providing online access relating to its collection wherever possible. All reasonable care and precaution is taken before any online publication. We always strive to act in good faith and in accordance with legislation.

7.1.3 Requests for reclosure or takedown of archival items must be made in writing to the school archivist at the following address:

Oakham School Archives

Chapel Close

Oakham

Rutland

LE15 6DT

Or via email at [ArchivesUser@oakham.rutland.sch.uk](mailto:ArchivesUser@oakham.rutland.sch.uk).

7.1.4 In your request, please provide the following details:

- Full name and contact details (including address, email address and phone number).
- The details of the material concerned including specific URLs, titles, or posts.
- The reason for your objection to the material.
- A statement confirming that your objection is accurate and made in good faith.
- Should your objection be concerned with copyright, you should also provide proof of your rights as the copyright holder or that you are their representative.
- If your objection is concerned with GDPR, you should provide proof that you are the data subject (subject of the material).

7.1.5 Reasons for objection to material can include but is not limited to:

- Copyright and material being made available without the permission of the rights holder.
- Personal data of a living individual is contained within the material and is in contravention of the GDPR Act 2018.
- Contains content which may be confidential.
- The items are defamatory, libellous, or obscene.
- The items violate rights afforded under the Human Rights Act 1998.

## The Takedown and Reclosure Process

7.2.1 On receipt of a takedown/reclosure request, the archives will send a confirmatory email or letter for the receiving of the objection.

7.2.2 Every effort will be made in order to temporarily withdraw the material in question from public access; both digitally and physically. This may not be possible immediately, especially for online material.

7.2.3 An initial assessment of the material will be made by the staff at the archives to determine whether the items do contravene criteria laid out in 7.3. The archives will consider the age of the item, how long it has been in the public domain, whether the information is likely to be available elsewhere, and the public interest in withholding the item from public access. Should a decision not be conclusive, then the case will be discussed with the head of the school's library and information services.

7.2.4 The Archives reserves the right to ask for the person who submitted the objection to provide more information or evidence to support their claim.

7.2.5 The Archives, where appropriate, may contact the original donor of the material to highlight the objection raised.

7.2.6 The Archives hopes to respond to all objections as soon as possible however no time frame can be guaranteed. The result of the decision, plus its reasoning, will be communicated to the person who submitted the objection in writing either via email or letter. Upon this decision, the material will either be reopened/ made available on all platforms or will be made 'closed' for access in all forms. If it is decided to close an item, then a date for its reopening will also be discussed and communicated in the decision to the person who submitted the original takedown/reclosure request and the Donor. Items removed for GDPR concerns, will have a reopening date negotiated, when the content's sensitivity will be diminished. Items removed for copyright reasons will have a reopening date confirmed based upon the copyright expiration date of the item.

7.2.7 If a solution is unable to be reached, material will be retained but temporarily restricted access until a resolution can be reached.

7.2.8 Takedowns and reclosures will be recorded and may be communicated publicly.

7.2.9 The archives only has the power to remove and restrict access to material online when the material is featured on websites under the school's control. The Archives will not be able to remove items found on external party websites.

7.2.10 This policy does not affect the statutory rights of members of the public to request information in closed records under the Freedom of Information legislation or the Environmental Information Regulations.

### **Takedown and Reclosure Criteria**

Takedown or reclosure will only be considered and implemented if one of the following criteria is demonstrated to have been met:

- Material opened/published in good faith is now considered to be subject to an exemption in the Freedom of Information (FOI) Act 2000 or the Environmental Information Regulations (EIR) 2004 owing to changed circumstances, and the public interest lies in withholding it from public access
- The material has been found to contain personal or sensitive information and continued access would be unlawful or unfair under the GDPR Act 2018, DPA 1998, or the Human Rights Act 1998.
- Material once 'open' or published online in good faith, but converting it into a 'closed' item or taking down the material is now considered appropriate due to a change of circumstances.

- The material was released in error and making the item 'closed' or taking down the item will rectify this mistake.
- The showing of the material online is an infringement of copyright.
- The material posted online is defamatory or obscene.
- The material has subsequently acquired sensitivity by the virtue of being made available online.
- Continued access online would cause the owner serious and real administrative difficulties and the owner has requested a takedown or closure for a specified and/ or limited time period.

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