

West Sussex County Council

Data Protection Information for Schools

1. **Data Protection**

1.1 The Data Protection Act 1998 (the Act) came into force on 1 March 2000. It regulates the holding and processing of personal data, that is information relating to living individuals, which is held either on computer or in manual form. Personal data can consist of paper files, CCTV images and photographs.

1.2 The school/college is a Data controller and must:

- a) Notify the Information Commissioners Office (ICO) (see paragraph 2 below)
- b) Comply with the eight data protection principles which together form a framework for the proper handling of personal data.

2. **Registering your school/Notification under the Act.**

2.1 The school should make one notification to the ICO on behalf of the governing body and head teacher in the school's name. The fee for notification is currently £35 for one year.

2.2 An application can be made either via the Commissioner's website (www.ico.gov.uk), or by telephoning the Notification Department (01625 545740). There is a standard notification template, which has been designed to cover schools activities (templates are available for private schools, and for community, foundation, voluntary-controlled and voluntary-aided schools).

2.3 The ICO sends renewal notices annually at which stage it is appropriate to review the notification to ensure it includes any new category of processing being undertaken.

3. **The eight principles of data protection are:**

1. Personal data shall be processed fairly and lawfully.
2. Personal data shall be obtained only for one or more specified and lawful purposes, and shall not be further processed in any manner incompatible with that purpose or purposes.
3. Personal data shall be adequate, relevant and not excessive in relation to the purpose or purposes for which they are processed.
4. Personal data shall be accurate and where necessary, kept up to date.
5. Personal data processed for any purpose or purposes shall not be kept for longer than is necessary.

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6. Personal data shall be processed in accordance with the rights of data subjects under this Act.
7. Appropriate technical and organisational measures shall be taken against unauthorised or unlawful processing of personal data and against accidental loss or destruction or damage to personal data.
8. Personal data shall not be transferred to a country or territory outside the European Economic Area, unless that country or territory ensures an adequate level of protection for the rights and freedoms of data subjects in relation to the processing of personal data.

4. **Data Subjects' rights**

4.1 **Right to know**

Data subjects have the right to know what data is held about them, who is collecting it, for what purpose it is collected and who will see it. Schools should provide this information when collecting personal data. Schools may wish to use the "privacy notice" on forms asking for personal data to ensure this requirement is satisfied. The link below is to the West Sussex Grid for Learning where guidance on Privacy Notices can be found.

<http://wsgfl.westsussex.gov.uk/ccm/content/leadership/education-research--information-unit/fair-processing-notices.en>

4.2 **Right of access to personal data**

See paras 5 and 6 below.

4.3 **Right to prevent processing causing damage or distress**

Subject to certain exemptions, data subjects have the right to serve a notice on data controllers requiring them to stop processing personal data in a way which is likely to cause substantial unwarranted damage or distress to that data subject or another.

4.4 **Right to correct inaccurate data**

Data subjects may also apply for a court order to require the data controller to rectify, block, erase or destroy inaccurate data about the data subject. Schools should therefore ensure that they have procedures in place to respond to any requests to amend inaccurate data.

5. **Publication of schools' exam results**

- 5.1 **Objections to publication** - Publishing examination results is a common and accepted practice. However, schools do have to act fairly when publishing results. Schools should ensure that all pupils and parents know that results are intended to be published and

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how they will be published, and that the pupil has a right to object. Any objections must be taken seriously. Pupils have a right to assert their Human Right to Privacy. Schools do not have to gain the written consent of pupils and parents before publishing exam results.

- 5.2 **Notification** - Schools planning to publish exam results should ensure that disclosures to the media are included in their notifications when they register.
- 5.3 **Privacy notices** - Schools planning to publish exam results should ensure that disclosures to the media are included in their privacy notices.
6. **Disclosures (extracts from ICO technical guidance note 'Access to pupils' information held by schools in England)**

6.1 **Requests for personal data by Pupil/Parent**
What rights exist for access to a pupil's personal information?

There are two distinct rights to information held by schools about pupils.

1. The subject access right – under the Act a pupil has the right to a copy of their own information. In certain circumstances requests may be made by a parent on behalf of their child.

2. Rights to the educational record – under the Education (Pupil Information) (England) Regulations 2005, (the Regulations), a parent has the right to access their child's educational record. Under the subject access right parents will only be able to see all the information about their child when the child is unable to act on their own behalf or gives their written consent.

At what age can a child make their own subject access request?

The Act does not specify an age at which a child can make their own request for access to their information. When a request is received from a child for access to their own information, those responsible for responding should take into account whether:

- the child wants their parent (or someone with parental responsibility for them) to be involved in the request; and
- the child properly understands what is involved in making the request and the type of information they will receive.

As a general guide, a child of 12 or older is expected to be mature enough to understand the request they are making.

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Can any other information be withheld?

1. Information about another person (including a parent) should not be disclosed without consent of that person.
2. Information about the data subject where:
 - information might cause serious harm to the physical or mental health of the pupil or another individual;
 - the disclosure would reveal a child is at risk of abuse;
 - information contained in adoption and parental order records
 - information given to a court in proceedings under the Magistrates' Courts (Children and Young persons) Rules 1992;
 - copies of examination scripts
 - providing examination marks before they are officially announced
 - legal advice which is protected by legal professional privilege.

What are the timescales for dealing with requests?

Requests for information from pupils, or parents, for information that contains, wholly or partly, an educational record must receive a response within 15 school days.

Unless a parent simply asks to see the official educational record under the Regulations, schools and authorities are entitled to receive any fee first (see ICO technical guidance notes).

Most requests for information are likely to ask for at least some information in the educational record. However, should a subject access request be made just for personal information outside the educational record, a response must be made promptly and at most within 40 calendar days. However, the 40 days does not begin until after the fee and any further information about identity or the location of the information is received.

6.2 Requests from police/fraud office

Section 29(3) of the Act allows disclosure of personal data to the police where it is necessary for the prevention or detection of crime, the apprehension or prosecution of offenders or the assessment or collection of any tax or duty or similar. The police should be able to show that if the school does not disclose the information, the above purposes would be prejudiced. The police should make the request in writing on headed paper and the school should check that the individual making the request is indeed from the police/ fraud office. The sort of information the police usually require is the current address of a child's parents.

6.3 Court orders for disclosure

Schools should refer such requests, which may come from the police, the Crown Prosecution Service or the defence to a court case, to the Legal Services Unit at West Sussex County Council.

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6.4 Education agencies

Disclosing data to education agencies should be covered in the schools 'privacy notice'.

6.5 Other third parties

The general rule is that personal data should not be disclosed to these third parties unless the school has the consent of the data subject or their parent.

7. **Best Practice on disclosure**

Always check each page of a file before disclosure to ensure that there is no information about another person in it.

If there is information about another person in it redact that information. If this is not possible because the information is inextricably linked then the Act in section 7(4) and 7(6) directs you to seek consents or disclose if it is reasonable in all the circumstances to do so.

Do not share personal data with anyone other than the data subject without consent of the data subject unless one of the conditions in schedule 2 DPA is satisfied. (see schedule 2 annexed)

Do not share sensitive personal data with anyone other than the data subject without consent of the data subject unless one condition in schedule 2 and one condition in schedule 3 is present. (see schedule annexed).

Take greater care when processing sensitive personal data: race, political opinion, religious belief, TU membership, physical or mental health, sexual life, commission of offences, criminal proceedings or sentences.

Keep a record of disclosures.

8. **Penalties for non compliance with the Data Protection Act**

There are various criminal offences created by the Act, which can be committed by the school or by a member of staff, including:
Failure to register/notify
Procuring and selling offences

For further information, please contact the Legal Services Unit on 01243 777901.