

Heptonstall J, I & N School



Data Protection Issues

April 2009

Data Protection Issues.....	3
1. Status.....	3
2. Introduction.....	3
3. Notification.....	3
4. Definitions.....	4
5. The principles of data protection.....	5
6. Definitions of personal data.....	5
7. Sensitive personal data.....	5
8. Access to information.....	6
9. Access to references.....	6
10. Further information.....	7

Data Protection Issues

1. Status

- 1.1 This Guidance Document is based on the Data Protection Act 1998 and subsequent information and codes of practice published by the Office of the Information Commissioner. In order to prevent an overly lengthy and detailed guidance this documentation summarises the contents of the Act as it relates to personnel records, kept either by schools or their personnel provider that may hold sensitive information. Such references may be hard copy or electronic information.
- 1.2 This Guidance Document, therefore, has equal application to Community, Voluntary Controlled, Community Special, Foundation and Voluntary Aided schools.
- 1.3 This Guidance Document covers all staff employed to work at these schools.

2. Introduction

- 2.1 The law of data protection seeks to balance the rights of individuals to privacy with the school's need to process personal information for legitimate purposes. Legislation applies only to information about living individuals who can be identified from that information.
- 2.2 The Data Protection Registrar referred to in the Data Protection Act 1984 became the Information Commissioner (the Commissioner) under the Freedom of Information Act 2000. The Commissioner enforces and oversees the Data Protection Act 1998 and the Freedom of Information Act 2000. The Commissioner is an independent, supervisory authority appointed by the Queen.
- 2.3 Schools should be aware that breaches of data protection legislation can lead to both criminal and civil liability.

3. Notification

- 3.1 The Information Commissioner maintains a public register of data controllers. Each register entry includes the name and address of the data controller and a general description of the processing of personal data carried out. The full register can be accessed on the Information Commissioner's website www.dataprotection.gov.uk. Notification is the process by which details of data controllers are added to the register. The Data Protection Act 1998 requires every data controller who is processing personal data to notify unless they are exempt. All schools must notify.

- 3.2 Under the Data Protection Act 1984, notification was known as registration. Under the 1984 Act, the head teacher and the governing body were required to register separately. The 1998 Act has done away with this system of dual registration and a single notification should be made in the school's name. If a school currently has two registrations, a single notification should be made when the first register entry expires. The second register entry should then be removed at the point of notification. Registrations under the 1984 Act will last the full three years until the expiry date shown on the registration.
- 3.3 There is an annual fee for notification (the Information Commissioner has warned against the use of businesses which charge excessive fees for undertaking notification). Schools can notify on-line.

4. Definitions

- 4.1 All of the following definitions relate to the Data Protection Act 1998.
- 4.2 Data means information that is:
- i. held on computer, or recorded with the intention that it will be put on computer at a later date;
 - ii. contained in a paper-based filing system, or kept with the intention that it will be added to such a system at a later date;
 - iii. part of an 'accessible record' – this includes education records.
- 4.3 This is a fairly broad definition. The Act will apply to most of the personal information that schools hold, whether on computer or in paper files.
- 4.4 Personal data is data which relates to a living individual who can either be identified from the data or from any other information which the data controller has or is likely to have. If the subject of the data is dead, then the information held cannot be personal data.
- 4.5 A data subject is a living individual who is the subject of personal data.
- 4.6 Processing means obtaining, recording or holding information or data, or carrying out any operation on the information to organise, adapt, alter, retrieve, consult, use or disclose, ie all activities, including storage.
- 4.7 The data controller is the person, who, either alone or jointly with others, decides upon the purposes for which and the manner in which any data are, or shall be, processed. In the case of a school the data controller is the organisation itself. Data protection responsibility can be allocated to an individual within the school, but this does not make them the data controller, or transfer legal liability.

5. The principles of data protection

- 5.1 There are eight Data Protection Principles. In brief, these principles mean that personal data must be:
- i. processed fairly and lawfully;
 - ii. processed for limited purposes and not in any manner incompatible with those purposes;
 - iii. adequate, relevant and not excessive;
 - iv. accurate and up-to-date;
 - v. not kept for longer than is necessary;
 - vi. processed in line with the data subject's rights;
 - vii. secure;
 - viii. not transferred to countries which do not protect personal data adequately.

6. Definitions of personal data

- 6.1 In practice, nearly all useable information about named or identifiable individuals will be covered by the Act. Specific examples of personal data include:
- i. salary and bank account details held either on computer or in a manual filing system;
 - ii. an email about an incident which names a member of staff or a pupil;
 - iii. a line manager's records which contain sections on named members of staff;
 - iv. a line manager's notebook containing information on only one individual, but where there is an intention to put that information on file;
 - v. a set of completed application forms.
- 6.2 A report on the results of exit interviews where the results are anonymous is unlikely to be covered by the Act.

7. Sensitive personal data

- 7.1 Sensitive personal data is information relating to an individual's:
- i. racial or ethnic origin;
 - ii. political opinions;
 - iii. religious beliefs or other beliefs of a similar nature;
 - iv. trade union membership;

- v. physical or mental health or condition;
 - vi. sexual life;
 - vii. commission, or alleged commission, of any offence;
 - viii. proceedings for any offence committed, or alleged to have been committed, the disposal of such proceedings or the sentence of any court in such proceedings.
- 7.2 Information about physical or mental health, disabilities, racial origin and trade union membership could all be found in a personnel record. The information given in the Guidance Document: Recruitment and Selection Procedures incorporates the provisions of the Data Protection Act 1998 and the associated Employment Practices Data Protection Code produced by the Information Commissioner.
- 7.3 Conditions apply before sensitive personal data can be collected, stored, used, disclosed or otherwise processed. Where a school processes sensitive personal data, the informed consent of the individual must be obtained. Processing is considered fair if the individual has given such consent.
- 7.4 In order for this processing to be fair, and seen to be fair, the school must make information about the data to be collected and its purpose available to staff. The staff handbook is a useful vehicle for this information.

8. Access to information

- 8.1 The Act gives people a right to see the personal information relating to them that is processed by an organisation. An individual can make a 'subject access request' to any organisation that he or she believes is processing his or her personal data. The request must be made in writing, and this does include a request sent by email. When a school receives such a request, it must respond within a maximum of 40 calendar days, producing copies of the information it holds in an intelligible form. The school may charge a fee, up to a maximum of £10, for complying with the request. The 40 day period starts either when the fee is received, or from the date the request arrived in written form, if no fee was asked for.

9. Access to references

- 9.1 There is no general exemption in the Data Protection Act 1998 for references. However, there is a special exemption from an individual's right of access to information if the reference is in the hands of the organisation which produced it. Once the reference is in the hands of the organisation or the person to whom the reference was given, this exemption no longer applies. In other words, a member of staff or a pupil would not have automatic access to a reference written by the

school in which they work or are taught. Once the reference had been sent to the person who had requested it, the individual can then request access. In all instances, the person who requested the reference is entitled to withhold any information given within the reference that would identify a third party. This definition of third party includes the person who wrote the reference.

10. Further information

More detailed information about specific aspects of data protection can be found in the following publications:

Notification Exemptions – A Self Assessment Guide;

Notification Handbook – A Complete Guide to Notification;

Form to Alter or Remove a Register Entry;

Purpose Form – To Add a Purpose to a Register Entry;

Employment Practices Data Protection Code.

All of this information, and further guidance on data protection, can be downloaded from the Information Commissioner's website at www.dataprotection.gov.uk.

Alternatively you can contact the Information Commissioner's Office at:

Information Commissioner
Wycliffe House

Water Lane
Wilmslow
Cheshire
SK9 5AF

Enquiry/Information Line: 01625 545 745

Fax: 01625 524 510