



DATA PROTECTION – GUIDANCE TO STAFF AND MEMBERS

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1. Introduction

Data Protection laws exist to strike a balance between the rights of individuals to privacy and the ability of organisations to use data for the purposes of their business.

2. What does this guidance cover?

It covers the main points in the Data Protection Act that need to be considered in the day-to-day work of the Council and whilst not designed to be a comprehensive guide to the Act, it does contain useful information.

3. Who needs to read it?

Anyone who processes personal data in the Council and that means almost everyone.

4. What counts as personal data?

The Act defines **personal data** as information which relates to a living individual (“**the data subject**”) who can be identified from the data; or from the data and other information which is in the possession of, or likely to come into the possession of the person processing the data. The information can be in either electronic or manual form e.g. paper.

Do not forget that email messages may also be caught by the Act if they identify living individuals and are held, in automated form, in live, archive or back up systems or have been deleted from the live system but are still capable of recovery.

5. Processing data – what does it mean and how do we ensure it is “fair”?

The Council (Officers and Members) process personal data and we have to notify the Information Commissioner (ICO) that we do this and the purposes we intend to use the data for. This is in the form of a public notice, that is on the ICO website. The definition of processing is very wide and

includes obtaining, recording and holding data and performing any operation on the data, including the erasure or destruction of the data.

Wherever possible, individuals whose data is collected by the Council must be made aware at the time of collection of all the processes that their data may be subject to (and in general terms this will be detailed on the notice that the Council provides to the ICO).

Therefore, when asking members of the public for personal information, please make sure that:

- They understand why we need this information and how we are going to use it;
- They know that they have a choice about giving you the information;
- They are told if we intend to share the information with someone else (such as a housing association) and whether they can say no.

When designing a form that asks for personal information, please make sure it includes those points.

6. The 8 Data Protection principles

The Data Protection principles form a central part of the Act and are the “golden rules” for processing personal data. They must be observed and all staff and members must be aware of them. The eight principles, together with the conditions for fair and lawful processing mentioned in the first principle below are set out in full on the Information Commissioner’s Office website <http://www.ico.gov.uk/>

In summary, they require that the data must be:

1. Fairly and lawfully processed and in particular, shall not be processed unless certain conditions are met and “shall not be further processed in any manner incompatible with that purpose or those purposes” – so for example, if we collect information for a consultation exercise, we cannot then go on to check whether the person involved has paid Council tax, unless we have indicated that we are likely to share and check such information. More stringent conditions apply if the data being processed is classified as “sensitive”.
2. Obtained only for one or more specified and lawful purpose
3. Adequate, relevant and not excessive to the purpose for which the data is required
4. Accurate and where necessary, kept up to date
5. Kept no longer than necessary
6. Processed in accordance with the rights of the data subject (which are specified in the Act)
7. Kept secure against unlawful or unauthorised processing, or accidental loss, damage or erasure
8. Not transferred to a country outside the European Economic Area (EEA) unless that country ensures an adequate level of protection for the rights and freedoms of data subjects in relation to the processing of personal data

7. How should Data Protection affect the way in which I organise my work/carry out my duties?

It is important that documents, including emails, which contain personal data, are kept in an orderly fashion, filed on registered electronic or paper files as soon as practicable if they are to be retained and erased or destroyed when they are no longer required.

8. Rights of an individual under the Data Protection Act

a) Rights - with certain exceptions, data subjects have the following rights:

- To be told whether the Council holds any personal data about them;
- To be told what that personal data is and how it is used;
- To have any inaccurate data corrected.

b) Data Subject requests

A “Data Subject” may request copies of any personal data being processed about them and these are known as “**data subject requests**”.

In response to a valid request, the individual is entitled to be told:

- Whether personal data about them has/is being processed and if so, for what purpose;
- To whom the data may have been/be disclosed
- The source of the data

Therefore if you receive a request: -

- If the request is verbal, ask them to put the **signed** request in writing (as required by the Data Protection Act), together with a fee of **£10**. This request needs to be directed to Dawn Cornell, Data Protection Officer who will record and deal with the request.
- Watch out for written requests under Freedom of Information/Environmental Information Regulation (FOI/EIR) as the request does not have to mention the Data Protection Act. There are exemptions for disclosing information (see below) and the Council can refuse to supply information under FOI/EIR even if the person requesting it is the data subject. These requests need to be redirected as a DPA data subject request (see above);
- Do not delay – the Council must respond within the statutory time limit, which is currently within 40 days of receipt of a signed request and fee.

Do you always need to disclose the information requested/or prevent disclosure to third parties?

The process of considering the request and deciding whether to disclose can be complex. Even where the Council is dealing with the data subject’s information, this does not necessarily mean that the Council can or should disclose. Listed below are the exemptions under the Act, with the relevant exemptions likely to be sections 29, 31, 33A, 34, 35 and 37:

- **Section 28 – National security**
- **Section 29 - Crime and taxation** – for example, if we are investigating a criminal offence, we are not obliged to disclose our findings to the possible defendant under DPA – although we have certain obligations under other legislation as and when the proceedings are commenced in court. In addition, sometimes you may receive a request from the police to release personal information under an exemption in DPA if they are investigating a crime, or you may for example from the Department of Work & Pensions. The exemption only allows you to release personal information for the stated purposes and only if not releasing it would be likely to prejudice (that is, significantly harm) any attempt by police to prevent crime or catch a suspect. Please see the attached Good Practice Note from the ICO for guidance

http://www.ico.gov.uk/upload/documents/library/data_protection/detailed_specialist_guides/section_29_gpn_v1.pdf or speak to Jeanette Thompson, Head of Legal & Democratic Services.

- **Section 30 – Health, education and social work**

- **Section 31 – Regulatory activity**, for example, any planning, licensing or standards investigations will not necessarily be disclosed (or part of that information may not be disclosed) until or unless the process is completed and even then it may mean that other restrictions apply on disclosure – for example relating to complainants who do not wish to be identified, or if there is a specific legal prohibition on disclosure, as there is in certain standards investigations cases.
- **Section 32 – Journalism, literature and art**
- **Section 33 – Research, history and statistics**
- **Section 33A – Manual data held by public authorities**
- **Section 34 – Information available to the public by or under enactment**
- **Section 35 – Disclosures required by law or made in connection with legal proceedings, etc** – this is more of the converse situation where personal data is disclosed to another body as part of their proceedings, without the consent of the data subject.
- **Section 36 – Domestic purposes**
- **Section 37 – Miscellaneous exemptions (under Schedule 7)**
- **Schedule 7 (relevant) – Miscellaneous Exemptions** – 1. Confidential refers given by the data controller, 5. Management forecasts, etc; 6. Corporate finance; 7. Negotiations and 10. Legal professional privilege – for example if we receive legal advice, which relates to a data subject, we would normally not have to disclose this information.

Further advice can be obtained from Legal Services

9. What is the difference between Data Protection and Freedom of Information?

Data Protection allows a living individual to access personal information we hold about them whereas Freedom of Information allows them to request access to all other information that is held by East Cambridgeshire District Council.

10. East Cambridgeshire District Council as an Employer

As a consequence of their employment contracts with the Council, staff also consent that, for any purpose which reasonably arises out of and/or in connection with their employment with the Council, the Council may hold, use or otherwise process “personal data” relating to them. All staff are required to inform the Council immediately of any changes to their personal data, including name, address and emergency contact telephone numbers. If you have any queries regarding this, please contact a member of Human Resources.

11. Taking information home

Information owned by the Council must not be used for non-Council purposes. This applies when Council data is being processed at employees’ or Members’ homes. You should therefore ensure that personal data is kept secure at all times and it is your responsibility to ensure this.

12. Release of Personal Information to Members

Please see the following guidance issued by the Information Commissioner's Office: -

http://www.ico.gov.uk/upload/documents/library/data_protection/practical_application/advice_local_authorities_disclosing_personal_information_elected_members.pdf.pdf

This sets out that Members are likely to have three different roles –

- They will represent residents of their ward, for example, in dealing with complaints.
- They will act as a member of the council, for example, as a member of a committee.
- They may represent a political party, particularly at election time.

Depending on the role the elected member has at any one time, the local authority may be able to disclose personal information to them. In doing so, it will often be necessary to explicitly restrict the use of any personal information provided for specific purposes. Please refer to the guidance, but if you have a specific query, please contact Jeanette Thompson, as the Council's Monitoring Officer.

13. Following the Rules/Non Compliance

- All staff must make sure that you know what your section's rules are in respect of collection and retention of data – and follow them;
- If you do not know what your section's rules on collection and retention of data, then please refer to your line manager in the first instance; and
- If you suspect or know that information has been inadvertently released, inform your line manager immediately.

But if you disregard the rules, or deliberately flout them: -

- The Council could be fined, currently up to **£500,000**;
- You will be liable to disciplinary action;
- In a bad case, you personally could be prosecuted.

14. Further information

Further advice on this guidance or the Act should be sought from the Head of Legal & Democratic Services, East Cambridgeshire District Council – email jeanette.thompson@eastcambs.gov.uk

Further guidance can be obtained from the Information Commissioner's website at www.ico.gov.uk