



# **DATA PROTECTION ACT 1998**

## **GUIDANCE NOTE 10 - THE USE OF CHILDREN'S DATA**

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## 1. Version Control

Version	Date	Notes
1.0	28 <sup>th</sup> September 2009	Sent out to DP Contacts for comments following workshop on the use of Children's Data
1.1	22 <sup>nd</sup> October 2009	Updated with comments and resent to DP Contacts for circulation to relevant officers
1.2	1 <sup>st</sup> December 2009	Updated passed to BTAG for approval

## 2. Points of contact for this Guidance

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### 3. Introduction

This guidance note should be read in conjunction with Guidance Note 6: The Fair Processing of Personal data, which sets out the steps to consider in informing data subjects of how the Council will process personal data.

Data protection law (at European and domestic level) does not draw any explicit distinction between data subjects who are adults and those who are children. It rather works on the basis of whether the individual is able to give consent to the processing of their data, with the full understanding of the implications of providing such consent, especially in light of the data processed

Therefore, in using children's data, consideration should be given to ensuring that data protection principles are appropriately applied. These will include obtaining consent for the use, processing and sharing of the information.

The Information Commissioner's guidance suggests that children from the age of 12 will have the capacity to give valid informed consent for the processing of their personal data. This will include exercising Subject Access Rights under section 7 of the Data Protection Act.

### 4. Uses of children's data

The Council processes data about children across a wide range of service areas and this data can be collected from birth onwards. Examples will include:

**Leisure & Libraries** – for use of library facilities, swimming and other sports activities

**Play Service** – for provision of play services for 4-13 year olds.

**Arts and Museums** – for participation in events and activities

**Parks - Ranger Service** – for participation in events and activities

**Anti Social Behaviour Unit** – to combat anti social behaviour amongst children

**Adult Education** - 14-16 yr olds can enrol for a course if their parent(s) are registered attendees for the same course

**Creche facilities** - creche facilities are provided at some sites where personal data about children may be captured

**Blue Badge** - Children aged two years and over and adults of any age can get a Blue Badge. A parent of a child who is less than two years old may apply for a badge for their child if the child has a specific medical condition

A significant amount of personal data will also be used by the Children, Young People and Families Directorate in respect of delivering education and children's social care services. Information in the use of personal data is provided in detailed staff guidelines, which are available to any staff on request.

## 5. Data Controller responsible for the processing

A Data Controller is a natural person or legal body, such as a business or public authority. It decides the manner in which, and the purpose for which, personal data are processed.

Information provided to data subjects should indicate that Birmingham City Council (Data Controller responsible for the processing) is collecting and intends to process the information for the stated purpose. If there is a representative collecting or processing the data on behalf of Birmingham City Council, then this should also be mentioned in any information provided.

## 6. Privacy Notice

### CHILDREN'S DATA GENERALLY

The Council provides a number of services to children, from leisure and cultural services to education and child care services, which requires it to process children's data.

The Council will create and hold a Single Customer Record for children. For children under the age of 12 or where it is believed that the child does not understand what he/she is consenting to, this will normally require the consent of a child's parent or guardian to allow the Council to process this data.

For young people aged between 12 and 16, we will accept their consent, without requiring the consent of their parent or guardian, as being valid in respect of the use, processing and sharing of less sensitive information, e.g. registering for culture events and activities. Clearly, the decision as to whether a child has the capacity to give valid informed consent will require the consideration of additional factors and, in some cases, professional judgement. These considerations will include:

- Cases of anti social behaviour involving children
- Vulnerable or 'at risk' children
- Mental health or other incapacity issues
- Ability to pay for services, such as leisure activities
- Health and safety considerations, for example, agreement from parents to participate in activities that require the provision of further information, e.g. medical issues, disability, etc.,

For individuals over 16, we will accept their consent as being valid in respect of the use, processing and sharing of all their personal data.

For further information, please see the council's guidance note on the use of children's personal data.

## 7. Consent issues

As set out above, the Information Commissioner's guidance suggests that children from the age of 12 will have the capacity to give valid informed consent for the processing of their personal data.

### **General considerations**

Where information is processed about children under the age of 12, it will almost always be with the consent of the parent or guardian of the child.

From age 12 to 15, children's data may be processed without parental consent where the child is deemed to have the capacity to give valid informed consent to the processing of information and understands the implications of the processing. This could include, for example, registering to access leisure, sport and culture events and activities.

From age 16, no parental consent will be required to access services.

### **Exceptions**

Clearly, the decision as to whether a child has the capacity to give valid informed consent will require the consideration of additional factors and, in some cases, professional judgement. These considerations will include:

- Cases of anti social behaviour involving children
- Vulnerable or 'at risk' children
- Mental health or other incapacity issues

## **8. Subject access requests and other rights**

As with consent for processing, children from the age of 12 will be considered capable of exercising their rights to subject access, as well as other data subject rights contained within the Data Protection Act 1998.

Equally, as with consent, due consideration should be given to any factors which impact on a child's capability to exercise their rights.

These matters are likely to require consideration on a case by case basis.

## **9. Data for specified purposes**

It is very important when collecting children's personal data to ensure that the information being collected is relevant for the stated purpose. Therefore, information should only be requested where it is relevant in order to be able to carry out the specified service. A test of relevance is to consider what each piece of information is going to be needed/used for once it has been collected from the data subject.

### **For example**

If you are collecting personal data in order to process an individuals' library pass you will only need to ask for specific details in order to process the request. If you ask for further additional information that is not relevant and you do not require, you will then be collecting excessive information. Principle 3 states that information shall be adequate, relevant and not excessive therefore by collecting information that you do not require you will be in breach of the third data protection principle within the Act.

## **10. Sensitive personal data**

### **Categories of Sensitive Personal Data**

- The racial or ethnic origin of the data subject
- Their political opinions

- Their religious beliefs or other beliefs of a similar nature
- Whether they are a member of a trade union
- Their physical or mental health or condition
- Their sexual life
- The commission or alleged commission by them of any offence, or
- Any proceedings for any offence committed or alleged to have been committed by them, the disposal of such proceedings or sentence of any court in such proceedings

Particular care should be taken where sensitive personal data about children is processed and every effort should be made inform children, or the parents / guardians, about the circumstances when sensitive personal data is being processed.

See Guidance note 2 for further details in regards to processing sensitive personal data.

## **11. Advice and Assistance**

### **11.1 The Corporate Information Governance Team**

The Corporate Information Governance Team provides advice and assistance on the Data Protection Act 1998 and the Freedom of Information Act 2000 as well as other associated legislation. The Corporate Team can be contacted on 0121 303 4876 or in writing at the following address:

Corporate Information Governance Team  
Governance Department  
3<sup>rd</sup> Floor, Lancaster Circus  
1 Lancaster Circus  
Birmingham  
B4 7AB

### **11.2 Directorate Data Protection Contact Officers**

Birmingham City Council has a Data Protection Officer within each individual Directorate in order to provide assistance on data protection issues. If you have any concerns relating specifically to your Directorate please contact your contact officer in the first instance and they will be able to advise you accordingly.

*A full list of DP Contact officers is available on In-line.*

### **11.3 The Information Commissioner**

The Information Commissioner is the governing body for Data Protection and Freedom of Information and is an independent officer who is appointed by the Queen and reports directly to parliament.

The Information Commissioners duties include:

- Maintaining a register of data controllers
- Distribution of information on legislation

- Promoting compliance with the data protection principles
- Considers complaints about breaches of the principles within the Act
- Prosecutes offenders who contravene the Act

The Commissioner is there to help everyone comply with the Act. If you would like further advice on the Act you can contact the Information Commissioner's office at the address below or you can search their web-site to locate useful information on legislation matters.

**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**

**Tel: 01625 545 745**