



DATA PROTECTION ACT 1998

GUIDANCE NOTE 6 - THE FAIR PROCESSING OF PERSONAL DATA

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1. Version Control

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1.1	24 th July 2006	Updated following comments received
1.2	16 th October 2006	Updated with additional comments
1.3	20 th October 2006	Updated
2.0	1 st December 2008	Updated with Privacy Notice guidelines

2. Points of contact for this Guidance

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3. Introduction

3.1 Fairness of Processing

The Data Protection Act 1998 requires Data Controllers to process any personal data it obtains 'fairly and lawfully' and in line with the requirements set out within the eight data protection principles. The first data protection principle has the most impact on fair processing. Processing is defined in section 1(1) of the Act as meaning, "obtaining, recording or holding" the data and carrying out various operations with respect to the data. This includes: organising, adapting, altering, retrieving, consulting, using, disclosing, aligning, combining, erasing or blocking the data.

Specific information must be supplied to the data subject before their personal data is obtained.

Data subjects must be notified of:

The identity of the data controller or any appointed representative

The purpose or purposes for which the data are intended to be processed; and

Any further information which is necessary in order to make the processing fair

- Any foreseen disclosures of the information

In order to do this the information should be clearly stated on any forms, which are used to collect personal data. If it is impractical or not appropriate to attach the recommended standard then an abridged version including the main information areas should be attached instead.

If the data controller wishes to use or disclose the data for purposes, which are not related to the original purpose, then consent of the data subject **may** be required.

4. Privacy Policy

As part of the Data Sharing review carried out by Richard Thomas and Dr Mark Walport, published in July 2008, it was recommended that organisations took steps to increase transparency. Fair Processing Notices should be much more prominent in literature, both printed and on line, and written in plain English. It was also recommended that the term Fair Processing Notice should be changed to Privacy Policy, and that they should state what personal data they are holding, how they use it, who can access it, with whom they share it, and for how long they retain it. The Council has adopted this recommendation.

Here are sample statements that can be used to inform the public how the Council is processing their personal information.

Written

As a public authority, Birmingham City Council collects, holds and processes considerable amount of information, including personal information about the citizens it serves, to allow it to provide services effectively.

The Council recognises that this information is important to the citizens and that it is responsible to the citizens for the information about them it holds. As such, it takes seriously its responsibilities to ensure that any personal information it collects and uses is done so proportionately, correctly and safely.

For information about what is personal data please see:- www.ico.gov.uk

The Council collects, holds and uses personal data to allow it to provide services on behalf of the citizens of the City of Birmingham. These services include, amongst others, providing schools and educational facilities within the city, providing care and support for vulnerable individuals and their families, maintaining and improving the environment of the city and protecting the citizens generally.

In deciding what personal data to collect, hold and use, the Council is committed to ensuring that it

- only collects and uses personal data where it is necessary and proportionate;
- holds only as much information as is necessary to provide the services you require and only for as long as is necessary;
- keeps the information safe; and
- it does not unnecessarily and without good reason infringe the privacy of the citizens of Birmingham.

The Council may disclose personal data to third parties, but only where it is necessary, either to comply with a legal obligation, or where the third party is undertaking work for or on behalf of the Council.

The Council will strive to ensure that any personal data in its care will be kept safe and that where your information is disclosed to a third party, Birmingham City Council will seek to ensure that the third party has sufficient systems and procedures in place to prevent the loss of personal data.

Where the Council seeks to disclose sensitive personal data, such as medical details, to third parties, we will do so only with your prior express consent or where we are legally required to do.

Using your personal data.

The personal data collected will be used in full compliance with the Data Protection Act 1998 and in accordance with the Council's published Privacy Notice, a copy of which is available from the Council.

If you are unable to access the Council's website or council offices, please call to request a copy of the full privacy notice.

Oral/ Telephone

Any personal data given by you during this conversation will be used in full compliance with the Data Protection Act 1998 and in accordance with the Council's published Privacy Notice, a copy of which is available at any Council Neighbourhood office and Library and on the Birmingham City Council web site under Privacy.

If you are unable to access the Council's website or council offices, I can arrange for a copy of the privacy notice to be sent to you.

5. Data Controller responsible for the processing

5.1 Data Controller

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.

The heading at the top of the form 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 on the form.

6. Does the form require an Opt In/Opt out Box?

6.1 Consent of the Individual (Schedule 2)

To collect and process personal information a condition from Schedule 2 of the Act must be met.

One of the conditions within Schedule 2 of the Act requires the consent of the data subject before you can process their personal data. If this is the situation then consent must be gained before any processing takes place. This can be achieved in two ways;

1. The form should ask if the individual wants their information to be held and processed by Birmingham City Council for the purposes indicated, to “**opt-in**”, therefore a consent box must be ticked before processing can take place.
2. The form should make it clear exactly what the information is going to be used for, the individual should have the opportunity to “**opt-out**” by indicating that they do not wish their information to be used for these purposes.
3. All 'opt in and opt out' boxes including the statements will need to be the same font size as the rest of the form being used to collect the information.

6.2 Explicit Consent of the Individual (Schedule 3)

To collect and process sensitive personal data a condition from Schedule 3 of the Act must be met.

To meet a condition for processing (Schedule 3 of the Act) you may need the EXPLICIT consent of the data subject before you can process their personal data. In these circumstances the form must ask if the individual wants their information to be held and processed by Birmingham City Council for the purpose(s) specified, therefore the consent box must be ticked before any processing can take place (option 1 from above).

IF THE FORM IS NOT RETURNED YOU CANNOT ASSUME CONSENT HAS BEEN GIVEN AND THEREFORE MUST NOT PROCESS THE INFORMATION

7. Statutory Information

7.1 Information Required By Law

Certain information, for example; the collection and administration of Council Tax, will need to be processed under statute. A local authority will have a legal obligation to collect this information and therefore consent of the individual (taxpayer) will not be required because another condition from schedule 2 could be met.

If personal data is collected under statute the only statement to appear on the form should be one that advises the individual that this is the case. Supplementary information, which is collected on the same form as that collected by statute, should be treated in the same way as other forms.

8. Data for the Specified Purpose

8.1 Only collect relevant information

It is very important when looking at a data collection form used for the collection of personal data to ensure that the information being collected is relevant for the stated purpose. Therefore only request information that you know you require in order being able to carry out the specified purpose you are collecting the information for. A test of relevance might be to ask what each piece of information is going to be needed/used for once it is 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.

9. Internal forms

9.1 Internal Data Collection Forms

Internal forms used for the collection of employee's personal data do not always require a fair processing statement. If the personal data being collected consists of sensitive personal data about the employee the form may then need to have a statement in order to alert the employee of how their sensitive personal data (health condition, sickness, etc) will be processed.

The Act specifies that good practice is to ask for explicit consent before collecting sensitive personal data. However, there are various conditions within Schedule 3 that may apply to employers who are legally bound, under statute, to process this kind of sensitive information.

Key points are:

- The processing of information regarding an employees health condition will be against the law unless the employer can meet one of the sensitive data conditions within Schedule 3 of the Act
- Employers should only collect sensitive health information where it is necessary for health and safety reasons, to prevent discrimination on disability, in order to satisfy any other legal obligation or if the employee has given their explicit consent to the processing
- If consent is required then it must be freely given. An employee can say 'no' and can withdraw their consent once given.

10. Data Protection Statements

10.1 Example statements for use on data collection forms

10.1.1 Customer Guide

"In order to deal with your complaint we will need to hold information about you on our database. This will include information given to us directly from yourself or from a third party acting on your behalf. We will hold this information securely and only give access to members of staff or partner organisations, so that they can answer any enquiries relating to your complaint. You are entitled to see a copy of any personal data that we may hold about you (subject access) under the Data Protection Act 1998. Birmingham City Council is the Data Controller responsible for holding and processing this information and may charge a fee of up to £10.00 for dealing with a subject access request"

10.1.2 Request/Complaint Examples

(i) "In order to deal with your enquiry we will need to hold your personal information electronically. In some cases, it will be necessary for us to share your details with a range of people who may help to deal with the enquiry. However, in line with the Data Protection Act 1998, we will keep any details you provide confidential, and only share them when necessary"

(ii) "You have provided Birmingham City Council with your personal information in order to enable the complaint you have raised to be dealt with appropriately. We will process this information in line with the Data Protection Act 1998 and any details provided will be kept confidential"

10.1.3 Single Sentence Statement

(i) "Personal data is collected and processed in compliance with the principles of the Data Protection Act 1998 and you have certain rights in respect of this information"

(ii) "Your personal information/data will be held on our database for a period of 12 months and will be kept in line with the Data Protection Act 1998"

(iii) "Any personal data provided will be kept confidential and processed in accordance with the Data Protection Act 1998"

10.1.4 General statements

(i) "Any information you provide will be held and processed by Birmingham City Council to enable the assessment of needs and, in particular, to provide any services for which you (**your spouse/child etc.**) may be eligible"

(ii) "We will store personal information about you on computer systems and in manual records, which will be used only for the purposes registered under the Data Protection Act 1998. You may request a copy of your personal information by sending a written request to the Data Protection Officer for this Directorate"

(iii) "Personal information given to us will be used to assess your needs and provide services if you are eligible. Birmingham City Council reserves the right to share this information with external agencies who assist in the provision of services and any government departments who have a statutory right to such disclosure"

(iv) "The Data Protection Act 1998 provides data subjects with the right to copies of their personal information held on our computer systems and other written records. If you require a copy of such information you should apply in writing to the Data Protection Officer within Birmingham City Council"

(v) "The information you provide is confidential and is subject to the requirements of the Data Protection Act 1998. This personal data will be held and processed by Birmingham City Council to enable the provision of services for which you may be eligible"

(vi) "This personal information may be shared with certain external agencies that assist in the assessment and/or provision of services and also as part of any statutory duties requiring such a disclosure"

10.1.5 Employee General

(i) "To protect any personal information held on computer, Birmingham City Council is registered under the Data Protection Act 1998. This allows employees to check that their details are accurate. The authority may if it chooses pass certain details to third parties, if they are carrying out any administrative functions on behalf of the council, for example the Local Authority Pension Fund Scheme. The council is also under a statutory duty to share information with Government Agencies e.g. the Inland Revenue"

ii) *"Staff have a right to see a copy of the information held about them on application to the Department's Data Protection Officer who can be contacted on....."*

10.1.6 Is the information collected going to be used for data matching?

The Audit commission and internal audit for detecting fraud purposes may wish to data match certain data. The recommended statement to be included is:

"This authority is under a public duty to protect tax payers and rate payers money so the details you provide on this form/during this interview will be checked rigorously and we will compare the information you give us with other organisations who have your details to ensure you are not defrauding (or trying to defraud) the public"

10.1.7 Information that will be used in internal anti-fraud data matching exercises:

"The information you are about to give will be shown to relevant departments in order to prevent and detect fraud against this organisation. From time to time we may undertake a trawl and comparison of information for the purposes of detecting and preventing fraud"

10.1.8 Is the information collected going to be used by ticket booking offices?

Information collected by ticket/booking office to send tickets to home addresses then keep details to inform data subjects of forthcoming events, a recommended statement for this situation would be:

"Your details will be held so that we can send you your ticket and/or inform you of any cancellation or changes to the arrangements. If you would like to remain on our database to receive further information regarding future events please tick this box and return to this address"

11. Your Guide to Data Protection Statement

YOUR GUIDE TO DATA PROTECTION

The Data Protection Act 1998 gives rights to you our customers about how your personal information is obtained and used by Birmingham City Council. The Act also places obligations on Birmingham City Council. This guide informs you of your rights under the Data Protection Act and details how we handle your information.

WHAT INFORMATION DO WE HOLD AND HOW DO WE OBTAIN IT?

Generally, we receive information about you from one or more of the following sources:

- *You need to list in this section the possible sources of information*

FOR WHAT PURPOSES DO WE USE YOUR INFORMATION?

We use your information for one or a number of purposes, which are outlined below.

- *You need to list in this section all the purposes you will use the information for*
- *You also need to include in this section who you might disclose the information to and for what purpose*

CARING FOR YOUR DATA

Birmingham City Council

We undertake that we will have in place a level of security appropriate to the nature of the data and the harm that might result from a breach of security.

We further undertake that we will:

- Not hold excessive information about you relating to the purpose for which it is processed,
- Keep any information about you accurate and where necessary up-to-date. [To help us to do this, please keep us informed if any of your details change],
- Not keep data processed for any purpose or purposes longer than necessary.
- Process your information in accordance with your rights under the Data Protection Act.

YOUR RIGHTS

You have certain rights under the Data Protection Act in relation to the information that we hold about you. These rights are set out below:

- Sections 7 to 9 - Right of subject access
- Section 10 - Prevention of processing causing damage or distress
- Section 11 - Right to prevent processing for direct marketing
- Section 12 - Rights in relation to automated decision - taking
- Section 13 - Right to compensation
- Section 14 - Dealing with inaccuracy

Further guidance regarding your individual rights under the Act can be obtained from the Council's Data Protection Officer at the address below.

CONTACT DETAILS

- *You need to include in here the name or job title of an individual who has been trained in data protection issues and who will be able to deal with enquiries/subject access requests from members of the public. You should also include a contact address. This section must be reviewed and kept up-to-date.*

12. Advice and Assistance

12.1 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
1st Floor, Lancaster Circus
1 Lancaster Circus
Birmingham
B4 7AB

12.2 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 Contact officers is available on In-line.

12.3 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

www.ico@gov.uk

Tel: 01625 545 745