

# KIRKLEES METROPOLITAN COUNCIL

## Data Protection

### General Policy Statement

1. This policy applies to
  - all substantive and temporary employees of Kirklees Metropolitan Council,
  - contractors working on KMC premises
  - all work experience and other students
  - elected members.
2. Kirklees Metropolitan Council intends to fulfill all its obligations under the Data Protection Act 1998 (the Act), and under any other legislation that may at any time complement or override the Act.
3. The Executive Board or its successor has overall responsibility for ensuring compliance with the Act and for the administration of associated procedures. It is the aim of the Council to ensure that all appropriate staff are properly trained and kept fully informed of their personal obligations under the Act.
4. Any member of staff knowingly breaching the Council's Data Protection Policy will be subject to established disciplinary procedure.
5. The purposes for which personal data is processed will be kept under review and notified as required by the Act and no processing will be carried out until the purpose has been notified.
6. All processing will be justified according to Schedules 2 and 3 of the Act, (as set out in full in the accompanying notes).
7. Kirklees Metropolitan Council will ensure that individuals whose data is processed will be informed as fully as possible about
  - the identity of the Council (or the Electoral Registration Officer or the Registrars of Births Deaths and Marriages for Huddersfield and Dewsbury) as the Data Controller
  - the identity of any contact appointed for Data Protection purposes
  - the purposes for which the information is processed
  - the identity of any intended recipients of the data
  - any other information necessary to assist the individual's understanding according to circumstances.

This information will be included as a "fair obtaining" statement on data collection forms or provided verbally. As far as practicable the positive consent of the data subject will be obtained (unless the processing is required by law) and consent will not be assumed. Any new purposes introduced will be notified to the individual and consent similarly obtained.

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8. Information obtained must be sufficient to ensure accurate processing, relevant and not excessive for the purpose. It will be accurate in matters of fact, and opinions will be carefully and professionally expressed. Information will be kept as accurate and as up to date as practicable, with errors corrected as soon as discovered and the corrections communicated to persons and partner organisations with whom information is shared.
9. Personal data will not be retained for longer than is necessary to comply with the relevant purposes or with any applicable legislation.
10. Disclosure of personal information will be made only to recipients, whether internal or external, whose identity is known and who, on a case-by-case basis, can demonstrate a legitimate reason to require it. Personal data shared with any partner, associate or other organisation will be the subject either of a protocol or of a security and confidentiality agreement appropriate to the particular relationship, which will define the context and limits of the data exchange.
11. The Council will respond to every request for access to personal data in accordance with the Data Subject Access Procedure, and will provide the requested information as early as possible before the expiry of the statutory period. Similarly the Council will respond without delay to Data Subject Notices either with agreement to comply or with an explanation of why it is not appropriate or possible for the Council to comply.
12. No charge will be made for Data Subject Access requests.
13. No information about any person (with the sole exception of a Kirklees Metropolitan Council employee's job title and internal phone number) will be published, electronically or otherwise, without the person's explicit consent.
14. All persons to whom this policy applies have a duty to maintain the integrity and security of personal data within their area of responsibility by adherence to the requirements of the Council's Information Security policy (as revised from time to time).

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## Management of Data Protection within Kirklees Metropolitan Council

The **Executive Board** or its successor has responsibility for

- ensuring the Authority's compliance with the Data Protection Act
- assigning responsibilities for adherence to the Authority's policies and procedures
- advising Elected Members on all matters relating to Data Protection within the Authority
- ensuring that complaints from the public or from the Data Protection Commissioner are dealt with promptly and appropriately.

**Heads of Service, Service Managers and supervisory staff** are responsible for ensuring that staff under their control who process personal data in any way

- are made aware of their personal obligations and responsibilities under the Data Protection Act
- receive appropriate training
- are made aware of the Authority's policies and procedures relating to personal information.

**Data Protection Liaison Officers** provide support to their Service management by

- providing advice as necessary on Data Protection matters
- drawing attention to situations that might constitute breaches of the Act
- distributing advice and information to staff within their Service areas
- collecting information from within their Services in support of Corporate exercises.

The **Data Protection Officer**

- ensures that the Authority's Data Protection notification is accurate and up to date
- provides information and advice to all Services on policy and procedure, referring to the office of the Data Protection Commissioner or other authorities as necessary
- maintains the level of awareness of Data Protection issues throughout the authority by all appropriate means
- coordinates responses to requests from the general public for access to personal information.

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### Notes to General Policy Statement

**Personal data** is information about identifiable living individuals.

The **Data Subject** is the person whose data is processed by the data Controller.

**Processing** includes anything done with data between (and including) collection to destruction.

The **Data Controller**(para 7): Kirklees Metropolitan Council, the Electoral Registration Officer and the Registrar are separate Data Controllers for the purposes of the Act.

**Data Subject Notice** (para 11): a written notice from a Data Subject requiring the Data Controller to cease (or not begin) processing data about that individual which is, or is likely to be, harmful or distressing. A written response must be given within 21 days stating the agreement to comply, the intention to comply or the reasons why it is not appropriate to comply.

**Conditions for processing** (para 6): Personal data may only be processed if at least one of the conditions in **Schedule 2** below applies. If **sensitive personal data** (i.e. anything in the list below) is to be processed, at least one of the conditions from **Schedule 3** must also apply.

### Schedule 2: processing of any personal data

1. The data subject has given his/her consent to the processing.
2. The processing is necessary:-
  - a) for the performance of a contract to which the data subject is a party, or
  - b) for the taking of steps at the request of the data subject with a view to entering into a contract.
3. The processing is necessary for compliance with any legal obligation to which the data controller is subject, other than an obligation imposed by contract.
4. The processing is necessary to protect the vital interests of the data subject.
5. The processing is necessary:-
  - a) for the administration of justice,
  - b) for the exercise of any functions conferred on any person by or under any enactment,
  - c) for the exercise of any functions of the Crown, a Minister of the Crown or a government department, or

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- d) for the exercise of any other functions of a public nature exercised in the public interest by any person.
6. The processing is necessary for the purposes of legitimate interests pursued by the data controller or by the third party or parties to whom the data are disclosed, except where the processing is unwarranted in any particular case because of prejudice to the rights and freedoms or legitimate interests of the data subject. The Secretary of State may by order specify particular circumstances in which this condition is, or is not, to be taken to be satisfied.

### Sensitive Personal Data

- a) the racial or ethnic origin of the data subject,
- b) their political opinions,
- c) their religious beliefs or other beliefs of a similar nature,
- d) whether they are a member of a trade union,
- e) their physical or mental health or condition,
- f) their sexual life,
- g) the commission or alleged commission by them of any offence, or
- h) any proceedings for any offence committed or alleged to have been committed by them, the disposal of such proceedings or the sentence of any court in such proceedings.

### **Schedule 3: processing of sensitive personal data**

1. The data subject has given his/her explicit consent to the processing of the personal data
2. The processing is necessary for the purposes of exercising or performing any right or obligation which is conferred or imposed by law on the data controller in connection with employment.
3. The processing is necessary:-
  - a) in order to protect the vital interests of the data subject or another person, in a case where -
    - (i) consent cannot be given by or on behalf of the data subject
    - (ii) the data controller cannot reasonably be expected to obtain the consent of the data subject, or
  - b) in order to protect the vital interests of another person, in a case where consent by or on behalf of the data subject has been unreasonably withheld.
4. The processing –
  - a) is carried out in the course of its legitimate activities by any body or association which
    - (i) is not established or conducted for profit, and
    - (ii) exists for political, philosophical, religious or trade union purposes,
  - b) is carried out with appropriate safeguards for the rights and freedoms of data

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subjects,

- c) relates only to individuals who either are members of the body or association or have regular contact with it in connection with its purposes, and
- d) does not involve disclosure of the personal data to a third party without the consent of the data subject.

5. The information contained in the personal data has been made public as a result of steps deliberately taken by the data subject.

6. The processing –

- a) is necessary for the purpose of, or in connection with, any legal proceedings (including prospective legal proceedings).
- b) is necessary for the purpose of obtaining legal advice, or
- c) is otherwise necessary for the purposes of establishing, exercising or defending legal rights.

7. The processing is necessary –

- a) for the administration of justice
- b) for the exercise of any functions conferred on any person by or under an enactment, or
- c) for the exercise of any functions of the Crown, a Minister of the Crown or a government department.

8. The processing is necessary for medical purposes and is undertaken by –

- a) a health professional, or
- b) a person who in the circumstances owes a duty of confidentiality which is equivalent to that which would arise if that person were a health professional.

9. The processing –

- a) is of sensitive personal data consisting of information as to racial or ethnic origin,
- b) is necessary for the purpose of identifying or keeping under review the existence or absence of equality of opportunity or treatment between persons of different racial or ethnic origins, with a view to enabling such equality to be promoted or maintained, and
- c) is carried out with appropriate safeguards for the rights and freedoms of data subjects.

10. The personal data are processed in circumstances specified in an order made by the Secretary of State for the purposes of this paragraph.