

## **Guidance to Schools**

### **REQUIREMENTS WITH RESPECT TO “FAIR PROCESSING” UNDER THE DATA PROTECTION ACT 1998 AND THE PASSING OF INFORMATION TO OTHER AGENCIES**

#### **“Fair processing” under the Data Protection Act 1998**

Schools, Local Authorities (LAs), the Department for Education (DfE) , Ofsted, the Learning Records Service, the Department of Health (DH), Primary Care Trusts (PCTs) and organisations that require access to data in the Learner Register Programme are all “data controllers” under the Data Protection Act 1998 in that they determine the purpose(s) for which “personal data” (ie data about living individuals from which they can be identified) is processed and the way in which that processing is done. This also applies to any successor bodies. This guidance focuses primarily on personal data about pupils, although personal data may also be held on other groups such as parents and carers, and similar considerations with regard to “fair processing” will apply to them.

Data controllers have to provide “data subjects” (individuals who are the subject of personal data) with details of who they (the data controllers) are, the purposes for which they process the personal data, and any other information that is necessary to make the processing of the personal data fair, including any third parties to whom the data may be passed on. This is normally done by what is referred to as a “privacy notice”.

Pupils and parents, as data subjects, have certain rights under the Data Protection Act 1988, including a general right to be given access to personal data held about them by any data controller. There is a presumption (endorsed by legal guidance issued by the Information Commissioner) that children of twelve years of age and over have sufficient maturity to exercise their rights themselves, though in practice there will be exceptions to this

The fair processing obligations on the data controller may appropriately be met by providing a privacy notice to the parent (or the person with parental responsibility) where a child is younger than thirteen, though the parent should be encouraged to share it with the child if the child has the maturity to understand it. However, where the child is aged thirteen or more, the privacy notice should be provided both to the child *and* to the parent. This acknowledges both the rights of the child and the parent’s need to be aware of how their child’s information is handled.

Further information about fair processing requirements, and guidance on the Data Protection Act 1998 generally, can be obtained from the Information Commissioner’s website (<http://www.ico.gov.uk>).

Schools should ensure that:

- they issue the privacy notice to all current pupils of the age of 13 and over and to the parents of all current pupils under the age of 13 as soon as possible, even if a privacy notice has been previously issued to them; this is to ensure that all are informed of any additional data collection and any changes in the use of the data
- this notice covers processing carried out by DfE, Ofsted, the Learning Records Service, DH , PCTs and organisations that require access to data in the Learning Register programme as well as by the school (rather than these organisations sending separate notices, which would be logistically very difficult and confusing for parents); This also covers successor bodies
- Schools should issue the privacy notice to new pupils and/or their parents as part of the enrolment process, together with a data sheet showing the data that will be held about the pupil and that will be shared with the LA or the DfE. Ideally the process should be repeated at the start of each academic year but as a minimum it must be reissued to pupils at the start of the academic year when they will be 13 and
- they should reissue to pupils at age 16, to draw to their attention that the right under the Education and Skills Act 2008 to opt out from the passing on of information over and above name, address and date of birth of pupil and name and address of parent to those providing Youth services, passes from the parent to the pupil at that age.

Most of the privacy notice relates to all schools, except for the Learning Records Service which is for schools with children aged 14 and over, or those under 14 registering for post-14 qualifications. There is an additional section at the end of the privacy notice about pupils' rights under the Data Protection Act and passing information to Youth Services.

To reduce the burden on schools of having to issue separate privacy notices to all parents and carers for each child, it is suggested that one letter is sent to the main parental/carers address and that parents are invited to check and update the information held about them by contacting the school direct.

Before issuing the privacy notice the school will need to consider the adequacy of the paragraph describing the uses of personal data by the school, and also insert contact details for the school's Data Protection Officer. If your school intends to share data with anyone else, you should ensure (through appropriate legal advice) that such sharing complies with the Data Protection Act 1998 and include details of the organisations with which you will be sharing the data in the privacy notice.

As well as issuing the notice directly to pupils and/or parents, schools may also include in other communications with parents (eg the school prospectus, the governors' annual report, the individual pupil report, or the annual data checking sheet), and/or display the text on a school website or in a prominent location in the school. These are not however requirements, nor are they a substitute for the arrangements indicated above.

## Passing information to Youth Services

In addition to the obligation on schools to provide certain information to other schools, DfE, Ofsted, the Learning Records Service, DH and PCTs and organisations that require access to data in the Learning Register programme, there is a legal requirement under Section 72 of the Education and Skills Act 2008 to pass information on request to those involved in the provision of Youth services. Youth services are for pupils between the ages of 13 and 19 years.

The information which schools are required to provide consists of:

- a. the names, addresses and date of birth of pupils and the name and address of parents – which must be supplied to those providing Youth services in any event;
- b. other information requested relevant to the provision of Youth Services – in this case parents (or pupils themselves if aged 16 or over) have the right to instruct the school not to supply this information to those providing Youth services.

Note that the provision in b. is an **opt-out**, not an opt-in. Until and unless the parent or pupil gives an instruction, the school remains under a statutory duty to provide information to those providing Youth services on request.

For Youth Services, the privacy notice given to the parent and the child needs to advise them of the passing on of information to Youth services, and must also advise them of the right to instruct the school not to provide information beyond name, address and date of birth of pupil and name and address of parent.

Note that the right to opt out from the passing on of information over and above name, address and date of birth of pupil and name and address of parent to those providing Youth services passes from the parent to the pupil at age 16.

Parents or pupils are entitled to register an opt-out at any time; in that event no further **additional** information should be passed to Youth service providers after the opt-out has been received.

Youth Services supports young people, helping them to achieve their potential and to realise benefits from education and training. It is very important that Youth Services receive the information about their clients which they need to do this job effectively – subject only to the opt-out provision described above. The information required will include contact details of pupils and their parents or carers, gender, date of birth, ethnicity, special educational needs, school attended, and Key Stage or examination results.

## **Information provided to Youth Service Providers before parents or pupils have been notified**

If a school has provided pupil information beyond name, address and date of birth to Youth Services inadvertently without notifying parents or pupils that this is happening, and then receives a parental or pupil opt-out when the fair processing notice is issued, the school must advise the parent or pupil of the situation, and also inform the Youth Service Provider that the opt-out has been claimed and of the need for them to take appropriate action. In the event of pupils, at age 16, opting out of the provision of information to Youth Service Providers when their parents have not previously done so, the Youth Service Provider should be informed in the same way.

## **Information provided to Children's Centres**

Sure Start Children's Centres operate within the local community and use relevant information to help them plan and deliver services to support the communities they are based in. In order for effective planning to take place, it has been requested that information is shared from schools to the centres in relation to Early Years Foundation Stages.

The information that will be passed will consist of:-

Name, Current School, Early Years Foundation Stage results and other information that may be relevant to the Sure Start Children's Centres role.

Note that the provision is an **opt-out**, not an opt-in. Until and unless the parent gives an instruction, the school will share information with Sure Start Children's Centres on request.

Parents or pupils are entitled to register an opt-out at any time; in that event no further **additional** information should be passed to Sure Start Children's Centres after the opt-out has been received.