

# Protecting Special Category Data Policy

To be ratified NOV 22

## Policy cover sheet

<b>Policy Title:</b>	Protecting Special Category Data Policy
<b>Related Policies:</b>	Data Protection Policy; Law Enforcement (Data Protection) Policy; Information Security Policy
<b>Contact:</b>	School Data Protection Officer: <a href="mailto:schooldataprotectionofficer@doncaster.gov.uk">schooldataprotectionofficer@doncaster.gov.uk</a>
<b>Freedom of Information:</b>	This Policy and all information within it are suitable for release under the Freedom of Information Act 2000
<b>Equality Impact Assessment:</b>	This Policy has been assessed as having a positive impact on protected groups, as it sets out how the school will safeguard data relating to protected characteristics.
<b>Version:</b>	2.0
<b>Status:</b>	Final

## Version control

Version	Changes
1.0	Draft Created for Schools
2.0	Updated for UK GDPR and DPA 2018

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## 1. Introduction

The school processes special category data and criminal offence data as part of its statutory and functions. It does so in line with the requirements of Articles 9 and 10 of the General Data Protection Regulation (GDPR) and Schedule 1 of The Data Protection Act 2018 (DPA 2018). When processing this type of data, under certain conditions for processing, the school must have an Appropriate Policy Document (APD) in place. This policy satisfies this requirement, by explaining our processing and demonstrates the school is compliant with the requirements of the GDPR Article 5 Principles.

## 2. Aims

The aims of this Policy are:

- To explain the school's procedures for securing compliance with the principles in Article 5 of the GDPR, and the conditions it is relying on when processing special category and criminal offence data, and
- To explain the school's policies with regard to the retention and erasure of personal data, and how it will protect the rights and freedoms of data subjects when processing special category personal data;

## 3. Definitions

General Data Protection Regulation (GDPR):

Means both the EU regulation and the UK GDPR, which came into effect on 1 January 2021

Special Category Data:

Special category data is defined at Article 9 GDPR as personal data revealing:

- Racial or ethnic origin;
- Political opinions;
- Religious or philosophical beliefs;
- Trade union membership;
- Genetic data;
- Biometric data for the purpose of uniquely identifying a natural person;
- Data concerning health; or
- Data concerning a natural person's sex life or sexual orientation.

Criminal conviction data:

Article of 10 GDPR covers processing in relation to criminal convictions and offences or related security measures. In addition, section 11(2) of the DPA 2018 specifically confirms that this includes personal data relating to the alleged commission of offences or proceedings for an offence committed or alleged to have been committed, including sentencing. This is collectively referred to as 'criminal offence data'.

#### **4. Conditions for processing special category and criminal offence data**

The school processes special category data under the following GDPR Articles:

i. Article 9(2)(b) – where processing is necessary for the purposes of performing or exercising obligations or rights which are imposed or conferred by law on the school or the data subject in connection with employment, social security or social protection.

- Examples of our processing include staff sickness absences and trade union membership

ii. Article 9(2)(f) – for the establishment, exercise or defence of legal claims.

- Examples of our processing includes processing relating to any insurance claims, employment tribunal or other litigation.

iii. Article 9(2)(a) – explicit consent

In circumstances where we seek consent, we make sure that the consent is unambiguous and for one or more specified purposes, is given by an affirmative action and is recorded as the condition for processing.

- Examples of our processing include dietary requirements and health information.

iv. Article 9(2)(c) – where processing is necessary to protect the vital interests of the data subject or of another natural person.

- An example of our processing would be using health information about a member of staff in a medical emergency.

We process criminal offence data under Article 10 of the GDPR

- Examples of our processing of criminal offence data include pre-employment checks and declarations by an employee in line with contractual obligations.

#### **5. Processing carried out by the school which requires an Appropriate Policy Document**

Description of data processed:

Employee special category data is processed by the school in order to fulfil its obligations as an employer. This includes such information as ethnicity, membership of any trade union, health and wellbeing and criminal offence data. Further detailed information about this processing can be found in our staff privacy notice.

The school also maintains an Information Asset Register which records its processing activities in accordance with Article 30 of the GDPR.

Schedule 1 conditions for processing:

##### **Special category data**

The school processes special category data for the following purposes in Part 1 of Schedule 1:

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**Paragraph 1 (1)** employment, social security and social protection.

The school processes special category data for the following purposes in Part 2 of Schedule 1:

**Paragraph 10(1)** preventing or detecting unlawful acts

**Paragraph (18)** safeguarding of children and of individuals at risk

### **Criminal offence data**

The school processes criminal offence data for the following purposes in parts 1 and 2 of Schedule 1:

**Paragraph 1** employment, social security and social protection

**Paragraph (18)** safeguarding of children and of individuals at risk

## **6. Procedures for ensuring compliance with the principles**

### **Accountability principle**

The school has put a number of measures in place to meet the requirements of accountability, these include:

- The maintenance of our Information Asset Register which documents our processing activities,
- Carrying out data protection impact assessments for new projects which involve the processing of personal data,
- Appointing a data protection officer, who reports directly to senior management,
- The adoption and implementation of data protection policies,
- Ensuring contracts are in place with our data processors and data processing agreements are issued to them, and
- Putting appropriate security measures in place to protect the personal data we process.

These measures are regularly reviewed, and where appropriate updated, as and when required.

### **Principle (a): lawfulness, fairness and transparency**

For processing to be lawful it has to be based on law and either the data subject will have given their consent, or the processing will meet at least one of the conditions in Schedule 1 of DPA 2018. The school ensures it provides clear and transparent information about why we are processing personal data, in the various privacy notices on our website.

When we process data for substantial public interest it is necessary to fulfil the various functions conferred on the school. This is because the school has a legal obligation to carry out these functions which are laid down in legislation.

We have to process data for the purposes of employment, this is in relation to our obligations as an employer.

The school will also process special category data to comply with other obligations it is responsible for in its role as educational organisation.

#### **Principle (b): purpose limitation**

As explained above the school processes personal data for purposes of substantial public interest where the processing is necessary to fulfil its statutory functions, for the prevention or detection of unlawful acts, to safeguard children and of individuals at risk. The law authorises the school to process personal data for these purposes.

The processing the school carries out will be for any one of the purposes above (whether it was collected by us or by another controller), only when the processing is necessary and proportionate to that purpose.

When we are asked to share data or we decide to share with another controller, this will be documented. We will only share with those organisations who are authorised by law to process data for their purpose.

The school will not process personal data for purposes incompatible with the original purpose it was collected for.

#### **Principle (c): data minimisation**

The school only collects personal data which is necessary and proportionate, and makes sure it is not excessive. If the school receives or obtains more data than is necessary for its purposes, it will ensure it is erased.

#### **Principle (d): accuracy**

The school will take all reasonable steps to ensure that the data it holds is accurate and up to date. Where it becomes aware that this is not the case it will take appropriate measures available to rectify or erase this data. Where the right to erasure or rectification does not apply, the school will record this decision.

#### **Principle (e): storage limitation**

The school has, and maintains, a records retention schedule, which sets out how long personal data is retained for. That is unless the data is required to be retained longer for archiving purposes. Retention periods are determined based on legislation, audit requirements, and our business needs. The retention schedule is reviewed on a regular basis and updated as and when required.

#### **Principle (f): integrity and confidentiality (security)**

The school has taken the necessary steps to ensure its data is processed on its secure network. All information stored in hard copy is processed in accordance with our access and security policies and procedures.

Electronic systems used by the school have appropriate access controls applied and access to hard copy data in physical storage is managed appropriately.

Personal data held in the school's electronic systems can be updated or erased when it is right and appropriate to do so.

## **Retention and erasure policies**

The school's retention and disposal policies are set out in its Information and Records Management Policy and Retention Schedule.

### **7. Appropriate Policy Document review date**

This policy will be retained for the duration of our processing and for a minimum of 6 months after processing ceases.

This policy will be reviewed annually or revised more frequently if necessary.

### **8. Additional special category processing**

The school may carry out processing of special category data where it is not required to have an appropriate policy document. This processing is lawful, fair and transparent, and is documented in the school's privacy notices on the privacy page of our website.

### **9. Further information**

The school's Data Protection Officer can be contacted for further information about this policy document at [schooldataprotectionofficer@doncaster.gov.uk](mailto:schooldataprotectionofficer@doncaster.gov.uk).