



Education & Cultural Services

# Policy: Data Protection including Pupil Records

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## 1. Introduction

- 1.1 The Data Protection Act 1998 gives effect in the UK to EC Directive 95/46/EC. The Act is based on eight principles for the protection of the rights of individuals to have information of a personal and, in particular, of a sensitive nature (see 7.) treated in an appropriate manner
- 1.2 The Act gives individuals rights to be told what information about them is on file and to request and receive, on payment of a fee, a copy of the data, unless the data is exempt (see 6.) ; to have erroneous data corrected or destroyed; and to have confidence that data will be secure and not used by unauthorised people
- 1.3 A data subject can claim compensation for damage and distress caused by any breach of the Act. Those breaching the Act are liable to prosecution
- 1.4 The Act is fully in force from 24 October 2001 and extends the protection previously given to computer files to cover all records required to run Education and Cultural Services, whether held on computer or in a manual filing system
- 1.5 This guidance explains the requirements of the Act as they relate to the work of Education and Cultural Services and the measures which should be implemented by staff to safeguard the authority and staff against the penalties which may be imposed by the courts for infringement of its terms
- 1.6 It is essential that Education and Cultural Services' procedures comply with data protection legislation. Procedures for processing personal data must include the requirements listed at 4

## 2 Pupil Records

- 2.1 "Pupil record" is defined as information, excluding the contents of a Record of Needs, which relates to the school education of any present or former pupil; and originated from or was supplied by:

- a teacher
  - other education authority employee
  - the pupil
  - the pupil's parent.
- 2.2 The Education (Pupil Records) (Scotland) Regulations 2003 in force from 5 January 2004 restore the right of parents to access their children's pupil records on submission of a written request. Parents can complete the request form appended to this guideline or a letter or email giving sufficient information to identify the pupil. It will be helpful for school staff to assist a parent to make a written request when necessary.
- 2.3 Sight of a pupil record, or a copy, depending on the wishes of the parent, must be provided by the school within 15 school days of receiving the written request. The Council has not set a fee for this.
- 2.4 When complying with a request for access to a pupil record, the school should not disclose information:
- likely to cause significant distress or harm to the pupil or any other person;
  - which is sensitive personal information (see 7);
  - as to whether a pupil is or has been the subject of or may be at risk of child abuse where it would not be in the best interests of the pupil;
  - provided by the principal reporter for the purposes of a children's hearing;
  - in a confidential reference given or to be given for the purpose of education, training or employment of the pupil.
- 2.5 Parents can request that factual errors in a record are rectified or erased. They should specify in writing:
- what detail is wrong
  - why it is incorrect
  - how it should be corrected or what should be erased.
- If the record is incorrect, the school should
- rectify or erase it
  - give the parent a copy of the amended version
- Otherwise the school should say why the record is believed to be correct.
- 2.6 Where a pupil transfers to a non-West Lothian Council school, the donor school should, on request, pass a copy of the pupil record (PPR) to the receiving school within 15 school days of the request. The donor school should retain the original.
- 2.7 For transfers within West Lothian, the PPR should be passed to the receiving school
- 2.8 A pupil record is to be preserved for five years following the pupil's last secondary school attendance. Records held in respect of pupils who have transferred outwith West Lothian (2.6) are to be preserved for five years beyond the date on which the pupil is due to reach school leaving age.

### 3. Data Protection Principles

- 3.1 The eight data protection principles forming the basis of the legislation are:
- 1 **Personal data** (data which relate to a living individual who can be identified from those data or those data together with other data held by the council, e.g., an SQA number) **shall be processed** (obtained, recorded, organised, retrieved, disclosed or destroyed) **fairly and lawfully and shall not be processed unless:**
- (a) **the data subject has given their consent** (a freely given specific and informed indication by the subject of their agreement to their personal data being processed) or

- (b) **the processing is necessary for the performance of a contract between the authority and the subject; or to perform the authority's legal duty; or in order to protect the vital interests** (literally, a matter of life or death) **of the subject**

In addition to the above, **where the personal data is sensitive data**, (see para 7.) **processing shall not take place unless:**

- (a) **the data subject has given their explicit consent** (absolutely clear and with reference to the specific detail of the data concerned, and how it is processed) or
  - (b) **the processing is necessary to perform a legal duty in connection with employment** (e.g., sick pay) **or legal proceedings or obtaining legal advice or, in respect of ethnic or racial origin, for equal opportunities monitoring**
- 2 **Personal data shall be obtained only for one or more lawful specified purposes and shall not be processed further in any manner incompatible with that purpose or purposes**
  - 3 **Personal data shall be adequate, relevant and not excessive in relation to the purpose(s) for which it is processed**
  - 4 **Personal data shall be accurate and, where necessary, kept up to date**
  - 5 **Personal data shall not be kept for longer than necessary**
  - 6 **Personal data shall be processed in accordance with the rights of data subjects under this Act**
  - 7 **Appropriate technical and organisational measures shall be taken against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage, to personal data**
  - 8 **Personal data shall not be transferred to a country or territory outside the European Economic Area** (unless certain safeguards apply)

## 4. Upholding The Data Principles

- 4.1 In most cases, the 1<sup>st</sup> and 2<sup>nd</sup> principles are met because the processing of data is necessary in the performance of one or more of the authority's statutory duties. For example, details are needed to place pupils in accordance with the Education (Scotland) Act 1980, to create and maintain Pupil Progress Records (The Schools General (Scotland) Regulations 1975); to open Records of Need under The Education (Records of Needs) (Scotland) Regulations 1982, etc. And usually the data will be sensitive data (see 7.)
- 4.2 Where the data is necessary in performing a statutory duty but is not sensitive data, the subject's consent to processing is not required. e.g., parents' data held on school record systems is used for school board electoral rolls, which are required to be compiled under the School Boards (Scotland) Act 1988. The data used is not sensitive (see 7.) and parents' consent is not required.
- 4.3 Where data is necessary in performing a duty and is sensitive data, the subject's consent to the processing is necessary and application forms and other requests for information must bear a statement, adapted to show the purpose(s) of processing, along the following lines:  
  
**"All personal information supplied will be processed by West Lothian Council in accordance with the Data Protection Act 1998 to determine the outcome of your placing request and will be retained and updated while your child is in attendance at any West Lothian Council school and may also be used for record purposes by the West Lothian Council school(s) attended"**.
- 4.4 The subject's consent is also necessary where sensitive data needs to be processed:

- 4.4.1 for legal proceedings or obtaining legal advice
- 4.4.2 by a health professional for medical purposes
- 4.4.3 for equal opportunities monitoring in respect of ethnic or racial origin
- 4.5 Any request for sensitive information which is not necessary to perform a statutory duty nor for any of the purposes at 4.4 above, but which is, however, necessary in the performance of the authority's other business or discretionary powers, must bear a statement, above the subject's signature and adapted to show the purpose(s) of processing, along the following lines:

**"I agree that the personal information I supply may be processed by West Lothian Council in accordance with the Data Protection Act 1998 to determine the outcome of my application for a free school meal and to protect the council against fraudulent claims. I understand that the information, excluding personal financial details, may be disclosed to the West Lothian Council school(s) listed in my application. The information may be retained for a period of up to seven years for audit purposes.**

signed.....date....."

- 4.6 Pro-forma letters and forms should be reviewed at least annually to confirm the relevance of the data requested. 3<sup>rd</sup> principle
- 4.7 Records should be reviewed at least annually to ensure currency. Data subjects can be invited to update personal information. Data, especially sensitive data must be updated immediately a change is intimated. 4<sup>th</sup> principle
- 4.8 The period for which records require to be retained should be established. This will vary from one category to another. A recommended review or disposal date should be annotated on files and adhered to unless subsequently revised. Confidential waste procedures must be applied. 5<sup>th</sup> principle
- 4.9 6<sup>th</sup> principle concerns the authority's response to requests from data subjects for access to the information concerning them which the authority holds on file (see 5.)
- 4.10 Manual records must be physically locked in a secure cabinet when unattended to prevent misuse. Electronic records must be held in computer systems provided by the authority and password protected. Discs and diskettes must be locked securely in a cabinet when unattended to prevent unauthorised access. Irreplaceable data, e.g., examination results, assessments, reviews, reports, etc., the loss of which would or potentially could damage a subject's situation, must be protected securely in a locked cabinet or computer, with equally secure back-up copies where appropriate. See Council IT Security Policy. 7<sup>th</sup> principle
- 4.11 8<sup>th</sup> principle Education and Cultural Services must not pass personal data outwith the ERA

## 5. Subject Access

- 5.1 All requests for subject access should be forwarded immediately to the Customer Care Manager (CSM), Education and Cultural Services, West Lothian Civic Centre, Howden South Road, Livingston EH54 6FF (01506 281951). An access request form (see page 7) should be completed by the data subject and arrangements for viewing or copying data will subsequently be co-ordinated by the SSM
- 5.2 The following sub-paragraphs describe the actions to be co-ordinated by the CSM
- 5.3 Upon receiving a written request (including email) from a data subject (and the authorised fee, if any), the authority must inform the subject in writing within 40 days (for exemptions, see 6.):
  - 5.3.1 whether any of their personal data is on file and, if so

- 5.3.2 what kind of data are held
- 5.3.3 the purpose(s) for which the data are held
- 5.3.4 other services or organisations to which the authority has passed or may pass the data
- 5.3.5 where the data came from (usually the subject or his/her parent)

and provide the data subject with either a copy of the data or, with his or her agreement, an opportunity to view original documents on file

- 5.4 The data to be copied or viewed should be the data on file at the time of the request, updated in accordance with normal procedures between that time and the time of copying or viewing
- 5.5 Sufficient information must be received to enable the authority to locate the relevant record, i.e., a past pupil is likely to have to specify the school attended and the period of attendance before a record could be traced
- 5.6 Extreme care must be taken to ensure that data is only divulged to the correct subject. Subjects may authorise in writing an agent to have access on their behalf. In any event, it is necessary to be completely sure that the subject is positively and correctly identified as the individual to whom the records in question relate.

## **6. Exemptions From Granting Subject Access**

- 6.1 Access will not be provided to information:
  - 6.1.1 where to do so would identify another individual unless:
    - 6.1.1.1 the other individual's written consent is on file
    - 6.1.1.2 it is reasonable in the circumstances to proceed without consent. e.g., it would not be reasonable if the information was received 'in confidence'
    - 6.1.1.3 the other individual is an employee of the authority and the information relates to the employee, or he/she supplied the information in his/her capacity as an employee and identification would not give rise to the likelihood of serious harm to him/her
  - 6.1.2 in relation to a pupil's or young person's School Medical Service health record without the written permission of the School Medical Service
  - 6.1.3 as to whether or not a person is or has been the subject of or may be at risk from child abuse
  - 6.1.4 consisting of a confidential reference prepared by the authority for the purposes of education, training, employment or appointment to a post
  - 6.1.5 processed by a teacher solely for the teacher's own use
  - 6.1.6 provided by the principal reporter for the purposes of a children's hearing

## **7. Sensitive Personal Data**

- 7.1 The following types of information are categorised as sensitive:
  - 7.1.1 the racial or ethnic origin of the data subject
  - 7.1.2 his political opinions

- 7.1.3 his religious beliefs or beliefs of a similar nature
- 7.1.4 whether he is a member of a Trade Union
- 7.1.5 his physical or mental health or condition
- 7.1.6 his sexual life
- 7.1.7 the commission or alleged commission by him of any offence
- 7.1.8 any proceedings for any offence committed or alleged to have been committed by him, the disposal of such proceedings or the sentence of any court in such proceedings

## **8. Fees**

- 8.1 The Council has yet to agree what the fee payable by a subject for access to data is to be.

## **Appendix 1 Data Subject Access Request Form**

See following page



West Lothian Council

Education & Cultural Services

**DATA SUBJECT ACCESS REQUEST FORM  
(DATA PROTECTION ACT 1998)**

To

**Customer Services Manager  
West Lothian Council Education & Cultural Services  
West Lothian Civic Centre  
Howden South Road  
West Lothian EH54 6FF**

Tel 01506 281951  
Fax 01506 281685  
email: [brian.innes@westlothian.gov.uk](mailto:brian.innes@westlothian.gov.uk)

This form should be completed to allow West Lothian Council Education and Cultural Services to supply you with a copy of personal data, which is held about you or your child. You are entitled to receive this information under the Data Protection Act 1998. I will respond as soon as possible and within 40 days of receipt of your request or of any additional information needed from you to enable me to comply with your request

Your full name	
Your address	
Post code	

If this request is in respect of your child, please give their full name and date of birth

Child's full name							
Child's date of birth	day	month	year				

A brief description of the data you are looking for (e.g. Pupil Record, Record of Need, etc)

Any other information which may be helpful to Education and Cultural Services in supplying the data you are looking for (e.g. the school you/ your child attend or, if over school age, the school last attended and your address at that time if different from above)