

West Sussex County Council

Guidance on Information Law for Schools

This guidance recognises that schools already deal with a great variety and number of requests for information and provides a straightforward approach to compliance with the following legislation:

Education (Pupil Information) (England) Regulations 2005 (The Regulations)

Parents have the right to see their child's education record.

Data Protection Act 1998 (DPA)

Pupils and students, parents and staff and other individuals have rights to see their personal information.

You handle and store information about identifiable, living people and you are legally obliged to protect that information. When responding to requests it is important to prevent unauthorised disclosure to a third party of someone else's personal data.

Freedom of Information Act 2000 (FOI)

Schools are required to register with the ICO, have a publication scheme and to disclose data in response to requests by individuals or groups for official information unless an exemption applies.

The DfE has produced guidance designed to help schools understand the requirements of the DPA and FOI and to handle requests for information.

Advice and guidance can be obtained from the [Information Commissioner's Office's \(ICO\) website](#).

For further information, please contact the Legal Services Unit via the Contact Centre

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Guidance

1. **Educational Record**

Under The Regulations the governing body of a maintained school must make a pupil's educational record available for inspection for the parent, free of charge, within 15 school days of a written request or provide copies for a fee to cover disbursements (see schedule of fees under 2.4 below)

1.1 **Who can apply?**

The meaning of parent is wider than the definition of who has parental responsibility. Parent means the biological parent, a person with parental responsibility or someone who has care of the child. Therefore, where a child is living with grandparents, the grandparents have a right to see the child's educational record even though they may not have parental responsibility.

1.2 **What is the Educational Record?**

This covers information that comes from a teacher or other employee of a local authority or school, the pupil or you as a parent, and is processed by or for the school's governing body or teacher, except for information the teacher has solely for their own use. So it will cover information such as the records of the pupil's academic achievements as well as correspondence from teachers, local education authority employees and educational psychologists engaged by the school's governing body. It may also include information from the child and from you, as a parent. Information provided by the parent of another child would not form part of a child's educational record.

1.3 **What are the time limits?**

Requests for information in the educational record must be responded to within 15 school days (not including weekends or holidays).

1.4 **Can a child veto the parent's right to access the education record?**

No however in exceptional cases a pupil may assert his Right to Privacy in Article 8 European Convention on Human Rights, in which case the school must balance these rights when deciding whether or not to disclose.

1.5 **What information can I withhold?**

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Information about another person should not be disclosed unless the other person gives their permission, or it is reasonable in the circumstances to provide the information without permission. This includes information about the other parent.

A school must not communicate anything to the parent which it could not communicate to the pupil himself under the DPA.

There are certain circumstances where the school can withhold an educational record; for example, where the information might cause serious harm to the physical or mental health of the pupil or another individual.

The request for access would also be denied if it would mean releasing examination marks before they are officially announced.

Requests for and legal advice received is exempt from disclosure.

1.6 What about school reports?

Every parent is entitled to receive an annual report in respect of his or her child. Parents also have the right to make arrangements to discuss the content of the report with the child's teacher.

This right remains even if a child no longer lives with the parent. In exceptional cases a pupil may assert his Right to Privacy in Article 8 European Convention on Human Rights, in which case the school must balance these rights when deciding whether or not to disclose the annual report to the parent.

When a child reaches 18 and is not proposing to leave school by the end of the school year to which the report relates, the head teacher should give the report to the pupil himself and to the parent if the head teacher considers there to be special circumstances which make it appropriate.

In respect of any pupil who has ceased to be of compulsory school age and is proposing to leave or has left the school, the head teacher should give the school leaver's report to the pupil concerned.

2. Data Protection

The Data Protection Act 1998 (DPA) regulates the holding and processing of personal data, that is information relating to living individuals, which is held either on computer or in manual form. Personal data can consist of paper files, CCTV images and photographs.

The school/college is a Data controller and must:

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- (a) Notify/Register with the Information Commissioners Office (ICO) (see paragraph 2 below)
- (b) Comply with the eight data protection principles which together form a framework for the proper handling of personal data.

2.1 Registration with the ICO

The school should make one notification to the ICO on behalf of the governing body and head teacher in the school's name. The fee for notification is currently £35 for one year.

An application can be made via the Commissioner's website (www.ico.org.uk). There is a standard notification template, which has been designed to cover schools activities (templates are available for private schools, and for community, foundation, voluntary-controlled and voluntary-aided schools).

The ICO sends renewal notices annually at which stage it is appropriate to review the notification to ensure it includes any new category of processing being undertaken.

Failure to notify is a criminal offence.

2.2 The eight principles of data protection are:

1. Personal data shall be processed fairly and lawfully.
2. Personal data shall be obtained only for one or more specified and lawful purposes, and shall not be further processed in any manner incompatible with that purpose or purposes.
3. Personal data shall be adequate, relevant and not excessive in relation to the purpose or purposes for which they are processed.
4. Personal data shall be accurate and where necessary, kept up to date.
5. Personal data processed for any purpose or purposes shall not be kept for longer than is 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 or damage to personal data.
8. Personal data shall not be transferred to a country or territory outside the European Economic Area, unless that country or territory ensures an adequate level of protection for the rights and freedoms of data subjects in relation to the processing of personal data.

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2.3 Right to know, delete, correct record

Right to know/Privacy Notice

Data subjects have the right to know what data is held about them, who is collecting it, for what purpose it is collected and who will see it. Schools should provide this information when collecting personal data.

Schools may wish to use the "privacy notice" template on forms asking for personal data to ensure this requirement is satisfied. This can be found on the WS grid for learning.

Right to prevent processing causing damage or distress

Subject to certain exemptions, data subjects have the right to serve a notice on data controllers requiring them to stop processing personal data in a way which is likely to cause substantial unwarranted damage or distress to that data subject or another.

Right to correct inaccurate data

Data subjects may also apply for a court order to require the data controller to rectify, block, erase or destroy inaccurate data about the data subject. Schools should therefore ensure that they have procedures in place to respond to any requests to amend inaccurate data.

2.4 Requests for personal data made under DPA

Most requests for information are likely to be for information in the educational record (see section above 'Pupils Education Record'). Other requests for personal data by staff, parents or pupils will be covered by this section.

2.4.1 What are the timescales for dealing with requests?

A subject access request for personal information must be responded to promptly and within 40 calendar days from receipt of the fee and information about identity (see school policy for requirements)

2.4.2 Who has parental responsibility and therefore can request his/her child's personal data?

The mother.

The father if:

he was married to the mother when the child was born;

or married the mother after the child was born;

or appears as the father on the birth certificate and the birth was registered after 1 Dec 2003;

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or he has signed a PR agreement with the mother;
or has obtained a PR order;
or has obtained a residence order or child arrangement order.
A step-parent if he/she has signed a PR agreement or obtained a PR order.

2.4.3 At what age can a child make their own subject access request?

The Act does not specify an age at which a child can make their own request for access to their information. When a request is received from a child for access to their own information, those responsible for responding should take into account whether:

- the child wants their parent (or someone with parental responsibility for them) to be involved in the request; and
- the child properly understands what is involved in making the request and the type of information they will receive.

As a general guide, a child of 12 or older is expected to be mature enough to understand the request they are making.

2.4.4 When is a pupil's consent needed before disclosure to a parent?

When a child is able to make his her own subject access request (see above)

2.4.5 Can any other information be withheld?

- a. Information about another person (including a parent) should not be disclosed without consent of that person.
- b. Information about the data subject where:
 - information might cause serious harm to the physical or mental health of the pupil or another individual;
 - the disclosure would reveal a child is at risk of abuse;
 - information contained in adoption and parental order records
 - information given to a court in proceedings under the Magistrates' Courts (Children and Young persons) Rules 1992;
 - copies of examination scripts
 - providing examination marks before they are officially announced.

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- legal advice which is protected by legal professional privilege.

2.4.6 Can a fee be charged?

Schools can charge the following fees for subject access requests:

Number of pages	Maximum fee	Number of pages	Maximum fee
1-19	£1	100-149	£10
20-29	£2	150-199	£15
30-39	£3	200-249	£20
40-49	£4	250-299	£25
50-59	£5	300-349	£30
60-69	£6	350-399	£35
70-79	£7	400-449	£40
80-89	£8	500+	£50
90-99		£9	

2.5 Preparing files for disclosure

Always check each page of a file before disclosure to ensure that there is no information about another person in it.

Remove information about another person. If this is not possible because the information is inextricably linked then the Act in section 7(4) and 7(6) directs you to seek consents or disclose if it is reasonable in all the circumstances to do so.

Do not share personal data with anyone other than the data subject without consent of the data subject unless one of the conditions in schedule 2 DPA is satisfied. (see Annex 1).

Do not share sensitive personal data with anyone other than the data subject without consent of the data subject unless one condition in schedule 2 and one condition in schedule 3 is present. (see Annex 1).

Take greater care when processing sensitive personal data: race, political opinion, religious belief, TU membership, physical or mental health, sexual life, commission of offences, criminal proceedings or sentences.

Check identity of requestors not known to the school.

Disclose anonymised copies.

Keep a record of disclosures.

2.6 Disclosure to other agencies

2.6.1 Requests from police/fraud office

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Section 29(3) of the Act allows disclosure of personal data to the police where it is necessary for the prevention or detection of crime, the apprehension or prosecution of offenders or the assessment or collection of any tax or duty or similar. The police should be able to show that if the school does not disclose the information, the above purposes would be prejudiced. The police should make the request in writing on headed paper and the school should check that the individual making the request is indeed from the police/ fraud office. The sort of information the police usually require is the current address of a child's parents.

2.6.2 Court orders for disclosure

Schools should refer such requests, which may come from the police, the Crown Prosecution Service or the defence to a court case, to the Legal Services Unit at West Sussex County Council.

2.6.3 Education agencies

Disclosing data to education agencies should be covered in the school's 'privacy notice'.

2.6.4 Other third parties

The general rule is that personal data should not be disclosed to these third parties unless the school has the consent of the data subject or their parent.

3. Freedom of Information

3.1 How to deal with requests for information.

3.1.1 What is a valid request?

A valid request is from a named individual or group, made in writing, sufficiently clear and has an address or email for the response to be sent to.

3.1.2 What are the time limits

You must respond within 20 school days (not including weekends and holidays)

3.1.3 Can I charge a fee?

No, however if you offer to disclose even though the costs exemption is triggered (see below) you can make this disclosure conditional on a reasonable fee being paid up front.

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3.1.4 When can we refuse a request?

You can refuse an entire request if:

It would take one member of staff more than 2 ½ days to locate retrieve and extract the information (costs exemption section 12). The request is vexatious or repeats a previous request from the same person.

There are a number of exemptions the most important being you can refuse a request where the information sought is personal data if releasing it would be contrary to the Data Protection Act.

3.1.5 What are the exemptions?

There are a number of statutory exemptions and the ICO has produced a detailed guidance on the application of each. This is a sample of some frequently used exemptions:

- [Section 21: information reasonably accessible to the applicant by other means](#)
- [Section 30: Investigations and proceedings](#)
- [Section 40: personal information](#)
- [Section 41: information provided in confidence](#)
- [Section 42: legal professional privilege](#)
- [Section 43: commercial interest](#)

When considering applying some of these exemptions you have to also address the public interest test.

For advice contact Legal Services via the Contact Centre.

3.1.6 What is the public interest test?

This involves balancing the public interest in maintaining the exemption against the public interest in disclosure, taking into account relevant factors and weighting them appropriately, in order to decide whether to disclose information.

The ICO website contains a useful guidance about the application of the public interest test

3.1.7 What are the required elements of a response letter?

You should:

- acknowledge the request
- state whether you hold the data
- disclose the data (having removed personal data where appropriate) or decline to disclose.
- If declining to disclose-state the exemption applied
- If applicable explain how you balanced the public interest test

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- Advise of any right to a review of the response under school policy
- Advise of the right to make a complaint to the ICO.

3.2 Requests for Datasets

3.2.1 What is a dataset?

A collection of information held in electronic form where all or most of the information is factual information which has not been organised, adapted or otherwise materially altered.

3.2.2 How should I respond to a request for a dataset?

In the same way as any other FOI request except there are requirements about the format in which you disclose the data. You should provide the dataset in a re-usable form so far as reasonably practicable.

3.3 Publications scheme

You must produce a publication scheme, which outlines the information you will routinely make available to the public. The ICO website contains a definition document which sets out the sorts of information a school is expected to include in its publication scheme.

4. Serious data breaches

4.1 7th Principle-security of data.

Schools must comply with the seventh principle of the DPA and ensures that: '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.'

4.2 Reporting serious breaches

Although there is no legal obligation to report breaches of security which result in loss, release or corruption of personal data, the Information Commissioner believes serious breaches should be brought to the attention of his Office to enable appropriate advice and support to be given. The ICO has the power to impose a substantial fine where a serious breach results in significant harm to the individual.

4.3 Resources

The ICO website contains useful guidance on managing and reporting breaches:

Guidance on Data security breach management.

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Notification of data security breaches to the Information Commissioner's Office (ICO).

5 Publication of schools' exam results

5.1 Objections to publication

Publishing examination results is a common and accepted practice. However, schools do have to act fairly when publishing results. Schools should ensure that all pupils and parents know that results are intended to be published and how they will be published, and that the pupil has a right to object. Any objections must be taken seriously. Pupils have a right to assert their Human Right to Privacy. Schools do not have to gain the written consent of pupils and parents before publishing exam results.

5.2 Notification

Schools planning to publish exam results should ensure that disclosures to the media are included in their notifications when they register.

5.3 Privacy notices

Schools planning to publish exam results should ensure that disclosures to the media are included in their privacy notices.

For further information, please contact Legal Services via the Contact Centre

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Annex 1

Data Protection Act 1998 Schedules 2 and 3

SCHEDULE 2 CONDITIONS RELEVANT FOR PURPOSES OF THE FIRST PRINCIPLE: PROCESSING OF ANY PERSONAL DATA

- 1 The data subject has given his 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 in order 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
 - (d) for the exercise of any other functions of a public nature exercised in the public interest by any person.
- 6 (1) 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 by reason of prejudice to the rights and freedoms or legitimate interests of the data subject.
(2) The Secretary of State may by order specify particular circumstances in which this condition is, or is not, to be taken to be satisfied.

SCHEDULE 3 CONDITIONS RELEVANT FOR PURPOSES OF THE FIRST PRINCIPLE: PROCESSING OF SENSITIVE PERSONAL DATA

- 1 The data subject has given his explicit consent to the processing of the personal data.
- 2 (1) 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.
(2) The Secretary of State may by order—
 - (a) exclude the application of sub-paragraph (1) in such cases as may be specified, or
 - (b) provide that, in such cases as may be specified, the condition in sub-paragraph (1) is not to be regarded as satisfied unless such further conditions as may be specified in the order are also satisfied.
- 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, or
 - (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—

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(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 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 (1) 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.

(2) The Secretary of State may by order—

(a) exclude the application of sub-paragraph (1) in such cases as may be specified, or

(b) provide that, in such cases as may be specified, the condition in sub-paragraph (1) is not to be regarded as satisfied unless such further conditions as may be specified in the order are also satisfied.

8 (1) 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.

(2) In this paragraph “medical purposes” includes the purposes of preventative medicine, medical diagnosis, medical research, the provision of care and treatment and the management of healthcare services.