



Legislative Compliance

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This Legislative compliance is suitable for public disclosure under the Freedom of Information Act 2000

This document sets out principles to help guide decision making and in some parts may be quite prescriptive. However, it is vital that officers and staff have the freedom to innovate, exercise discretion and take risk based decisions centred on the needs of the victim and the merits of each case.

There may be occasions when a member of staff is considered to have acted outside of the content of this document but if they have done so with honesty, integrity and professionalism, to make the best decision for the community we serve, they will be trusted and supported. On the occasions when this is the case, the rationale for it must be properly recorded.

This document should be read in conjunction with the Force Policy Statement.

Introduction

This document is the 'Appropriate Policy Document' which sets out how Derbyshire Constabulary will protect special category personal data and personal data relating to criminal convictions and offences, in compliance with Schedule 1 Part 4 and Section 42 of the Data Protection Act 2018 (DPA 2018).

Section 10 of the DPA 2018 requires that where the processing of special category personal data is reliant on one of the following lawful bases as described in Article 9 of the General Data Protection Regulation 2016/679 (GDPR) the processing must also satisfy a condition in Schedule 1 of the DPA 2018.

- Article 9 (b) Employment, social security and social protection.
- Article 9 (g) Substantial public interest.
- Article 9 (h) Health and social care.
- Article 9 (i) Public health.
- Article 9 (j) Archiving, research and statistics.

Certain conditions within Schedule 1 DPA 2018 require that the Controller has an Appropriate Policy Document in place at the time the personal data is processed.

Section 35 (4) and (5) of the DPA 2018 require that where the processing of personal data for any of the law enforcement purposes is sensitive processing, based either on the consent of the individual or condition within Schedule 8, the Controller shall have an Appropriate Policy Document in place.

Purpose

Where Derbyshire Constabulary is carrying out the processing of special category and criminal offence data in its capacity as a Competent Authority and Controller, this document will explain: -

- the Constabulary's procedures which are in place to secure compliance with the data protection principles set out in Article 5 of the GDPR and Section 35 -40 of the DPA 2018
- when the processing is carried out by the Constabulary in reliance on one of the conditions set out in Schedule 1, Parts 1-3; and
- the Constabulary's policies about the retention and erasure of such personal data processed in reliance on a condition specified in Schedule 1 of the DPA 2018.

Compliance with data protection principles

a) 'Lawfulness, fairness and transparency'

Law Enforcement Processing

The lawfulness of sensitive processing carried out by the Constabulary is derived from its official functions as a public body and obligations or rights imposed or conferred by law as an employer.

The processing will be based either on the consent of the individual or where the processing is strictly necessary for the law enforcement purpose and meets at least one of the following conditions in Schedule 8 of the DPA 2018: -

- Statutory Purposes
- Administration of Justice
- Protecting individual's vital interests
- Safeguarding of children and of individuals at risk
- Personal data already in the public domain

- Judicial Acts
- Preventing Fraud

General Processing

Where sensitive processing is carried out by the Constabulary for operational policing purposes that are NOT prescribed for under Part 3 of the DPA 18 (section 31: Law Enforcement Purpose) the processing will rely on one of the following lawful bases from Article 9 of the GDPR and will meet a relevant condition from Schedule 1 of the DPA 2018: -

- Article 9 (a) Consent;
- Article 9 (c) Protecting vital interests;
- Article 9 (e) Manifestly made public by the data subject;
- Article 9 (f) Establishment, exercise or defence of legal claims;
- Article 9 (g) Substantial public interest.
Schedule 1, Part 2 (6): Statutory and government purposes;
Schedule 1, Part 2 (7): Administration of justice and parliamentary purposes;
Schedule 1, Part 2 (8): Equality of Opportunity or treatment
Schedule 1, Part 2 (9): Racial and Ethnic diversity at senior levels of organisation
Schedule 1, Part 2 (10): Preventing or detecting unlawful acts;
Schedule 1, Part 2 (11): Protecting the public against dishonesty;
Schedule 1, Part 2 (12): Regulatory requirements relating to unlawful acts and dishonesty;
Schedule 1, Part 2 (14): Preventing fraud;
Schedule 1, Part 2 (18): Safeguarding of children and of individuals at risk
Schedule 1, Part 2 (19): Safeguarding of economic well-being of certain individuals;
- Article 9 (j) Archiving, research and statistics.
Schedule 1, Part 1 (4): Research.

Where the processing of special category and criminal offence data is carried out by the Constabulary for non-operational policing purposes but predominantly as an employer, they will rely upon the following lawful bases from Article 9 of the GDPR and from Schedule 1 of the DPA 2018: -

- Article 9 (a) Consent;
- Article 9 (b) Employment, social security and social protection.
Schedule 1, Part 1 (1): employment, social security and social protection;
- Article 9 (h) Health and social care:
Schedule 1, Part 1 (2): Health or social care purposes;
- Article 9 (f) Establishment, exercise or defence of legal claims;
- Article 9 (j) Archiving, research and statistics.
Schedule 1, Part 1 (4): Research.

Further information is available to the public by accessing the Constabulary's Privacy Notice available on the website at <https://www.derbyshire.police.uk/hyg/fpnderbyshire/privacy-notice/>.

b) 'Purpose limitation'

Law Enforcement Processing

The Constabulary are authorised by law to process personal, special category and criminal offence data for any of the 'law enforcement' purposes. However, any further use of that data for a non 'law enforcement' purpose, under the GDPR, will only take place where it is authorised by law.

The Constabulary's purpose for law enforcement processing are specified, explicit and legitimate as well as necessary and proportionate. Where the Constabulary plans to use sensitive data for a new purpose other than that of law enforcement, the processing will comply with the requirements of DPA 2018 and GDPR.

General Processing

The Constabulary will only reuse personal, special category and criminal offence data collected under GDPR where that further use is compatible with the original purpose it was collected for.

c) 'Data minimisation'

The Constabulary only collects data that is necessary and proportionate to carry out its specified purpose. It is processed in the context of carrying out processes which enable the Constabulary to meet its stated policing or employment purposes for processing.

Additionally, the Constabulary's internal guidance, training and policies require staff to use only the minimum data required to achieve the specified purpose.

The Constabulary periodically reviews special category personal data and deletes data which is no longer required.

d) 'Accuracy'

It is the responsibility of the person who receives the original information to ensure, as far as it is possible, that it is accurate, valid and up to date.

Where processing personal data for law enforcement purposes a clear distinction must, where relevant and as far as possible be made between personal data relating to different categories of data subject such as suspects, convicted offenders, victims and witnesses or other persons with information about offences.

The development and procurement of Information Management systems in the Constabulary will require that Privacy by "Design and Default" is embedded in such processes.

The Constabulary takes reasonable steps to ensure that personal, special category and criminal offence data which is inaccurate, incomplete or out of date is not disclosed. If it is discovered, after disclosure, that the data was inaccurate, then the Constabulary will inform the recipient as soon as possible.

If an individual contacts the Constabulary to question the accuracy of their data it will respond to such requests in accordance with Article 16 of the GDPR/Section 46 DPA 2018. Where the Constabulary decides not to erase or rectify the data it will document this decision.

Requests for the disclosure of any personal information will only be considered once the Constabulary is fully satisfied that the enquirer or recipient is identified and authorised to receive the information.

e) 'Storage limitation'

The Constabulary has adopted the National Police Chief's Council Retention Schedule applicable to retention of personal, special category and criminal offence data processed for a general purpose and law enforcement purpose which can be accessed via the Constabulary's Privacy Notice.

<https://www.derbyshire.police.uk/hyg/fpnderbyshire/privacy-notice/>.

The Constabulary will carefully consider the retention periods for sensitive data and the purpose for which it is processed. A periodic review of retention periods will be undertaken by the Constabulary to justify the need for retention of such data.

f) 'Integrity and confidentiality'

Section 2 of the GDPR and Sections 66 - 68 of the DPA 2018 contain the requirements for the

security of personal data to include the implementation of appropriate technical and organisational measures to include a level of security appropriate to the risks arising from the processing of personal data.

Appropriate technical and organisational security measures will include: -

- Using and developing technological solutions to ensure compliance with the data protection legislation.
- Using and developing physical measures to protect force assets.
- Ensuring the reliability of any persons who have access to police information.
- Reporting and investigating security breaches.

These obligations include the need to consider the nature of the data to be protected and the harm that might arise from such unauthorised or unlawful processing, accidental loss, destruction or damage. The Government Security Classifications provide for such considerations and is adopted by the Constabulary as part of its compliance with the NPCC Community Security Policy.

Requirement to keep records of processing activity

Law Enforcement Processing

Where the processing is sensitive processing the following information is recorded in our Record of Processing Activity: -

- whether the sensitive processing is carried out in reliance on the consent of the data subject, or if not, which condition from the DPA 2018 Schedule 8 is relied on;
- how the processing satisfies Section 35 (lawfulness of processing); and
- whether the personal data is retained and erased in accordance with the policies described previously in this document, and, if it is not, the reasons for not following those policies.

General Processing

Where the processing of personal, special category and criminal offence data is carried out by the Constabulary (as Controller) the following information is recorded in our Record of Processing Activity: -

- whether the processing of personal, special category and criminal offence data is carried out in reliance on the consent of the data subject, or if not, which condition from the DPA 2018, Schedule 1 (Parts 1 & 2) is relied on;
- how the processing satisfies Article 6 and Article 9 of the GDPR (lawfulness of processing); and
- whether the personal, special category and criminal offence data is retained and erased in accordance with the policies described above in Section 3 of this document, and, if it is not, the reasons for not following those policies.

Further Information

Should you require any further information or if you wish to contact our Data Protection Officer, please contact us using the below contact details:

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