

DATA PROTECTION for STAFF

BACKGROUND

Data protection is an important legal compliance issue for the School. During the course of the School's activities it collects, stores and processes personal data (sometimes sensitive in nature) about staff, boys, their parents, its contractors and other third parties (in a manner more fully detailed in the School's General Privacy Notice). The School, as "data controller", is liable for the actions of its staff and governors in how they handle data. It is therefore an area where all staff have a part to play in ensuring we comply with and are mindful of our legal obligations, whether that personal data handling is sensitive or routine.

The law changed on 25 May 2018 with the implementation of the General Data Protection Regulation (GDPR) – an EU Regulation that is directly effective in the UK, regardless of Brexit status – and a new Data Protection Act 2018 (DPA 2018) was also passed to deal with certain issues left for national law. The DPA 2018 included specific provisions of relevance to independent schools: in particular, in the context of our safeguarding obligations, and regarding the right of access to personal data.

Without fundamentally changing the principles of data protection law, and while providing some helpful new grounds for processing certain types of personal data, in most ways this new law has strengthened the rights of individuals and placed tougher compliance obligations on organisations including schools that handle personal information. The Information Commissioner's Office (ICO) is responsible for enforcing data protection law, will typically look into individuals' complaints routinely and without cost, and has various powers to take action for breaches of the law.

DEFINITIONS

Key data protection terms used in this data protection policy are:

- **Data controller:** a person or body that determines the purpose and means of the processing of personal data, and who is legally responsible for how it is used. For example, the School (including by its governors) is a controller. An independent contractor who makes their own such decisions is also, separately, likely to be a data controller.
- **Data processor:** an organisation that processes personal data on behalf of a data controller, for example a payroll or IT provider or other supplier of services with whom personal data may be shared but who is not authorised to make any decisions about how it is used.
- **Personal data breach:** a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, personal data.
- **Personal information (or 'personal data'):** any information relating to a living individual (a data subject) by which that individual may be identified by the controller. That is not simply a name but any form of identifier, digital or contextual, including unique ID numbers, initials, job titles or nicknames. Note that personal information will be created almost constantly in the ordinary course of work duties (such as in emails, notes of calls, and minutes of meetings). the definition includes expressions of opinion about the individual or any indication of the school's, or any person's, intentions towards that individual.
- **Processing:** virtually anything done with personal information, including obtaining or collecting it, structuring it, analysing it, storing it, sharing it internally or with third parties (including making it available to be viewed electronically or otherwise), altering it or deleting it.

- **Special categories of personal data:** data relating to racial or ethnic origin, political opinions, religious or philosophical beliefs, trade union membership, health and medical conditions, sex life or sexual orientation, genetic or biometric data used to identify an individual. There are also separate rules for the processing of personal data relating to criminal convictions and offences.

APPLICATION OF THIS POLICY

This policy sets out the School's expectations and procedures with respect to processing any personal data we collect from data subjects (including parents, boys, employees, contractors and third parties). Those who handle personal data as employees or governors of the School are obliged to comply with this policy when doing so. For employees, breaches of this policy may result in disciplinary action. Accidental breaches of the law or this policy in handling personal data will happen from time to time, for example by human error, and will not always be treated a disciplinary issue. However, failure to report breaches that pose significant risks to the School or individuals will be considered a serious matter.

In addition, this policy represents the standard of compliance expected of those who handle the School's personal data as contractors, whether they are acting as "data processors" on the School's behalf (in which case they will be subject to binding contractual terms) or as data controllers responsible for handling such personal data in their own right. Where the School shares personal data with third party data controllers – which may range from other schools, to parents, to appropriate authorities, to casual workers and volunteers – each party will need a lawful basis to process that personal data, and will be expected to do so lawfully and with due regard to security and confidentiality, as set out in this policy. If you are a volunteer or contractor, you will be a data controller in your own right, but the same legal regime and best practice standards set out in this policy will apply to you by law.

PERSON RESPONSIBLE FOR DATA PROTECTION AT THE SCHOOL

The School has appointed the Second Master as the Privacy Officer who will endeavour to ensure that all personal data is processed in compliance with this Policy and the principles of the GDPR. Any questions about the operation of this policy or any concerns that the policy has not been followed should be referred in the first instance to the Privacy Officer.

THE PRINCIPLES

The GDPR sets out six principles relating to the processing of personal data which must be adhered to by data controllers (and data processors). These require that personal data must be:

1. Processed lawfully, fairly and in a transparent manner;
2. Collected for specific and explicit purposes and only for the purposes it was collected for;
3. Relevant and limited to what is necessary for the purposes it is processed;
4. Accurate and kept up to date;
5. Kept for no longer than is necessary for the purposes for which it is processed; and
6. Processed in a manner that ensures appropriate security of the personal data.

The GDPR's broader 'accountability' principle also requires that the School not only processes personal data in a fair and legal manner but that we are also able to demonstrate that our processing is lawful. This involves, among other things:

- keeping records of our data processing activities, including by way of logs and policies;
- documenting significant decisions and assessments about how we use personal data (including via formal risk assessment documents called Data Protection Impact Assessments); and
- generally having an 'audit trail' vis-à-vis data protection and privacy matters, including for example when and how our Privacy Notice(s) were updated; when staff training was undertaken; how and when any data protection consents were collected from individuals; how personal data breaches were dealt with, whether or not reported (and to whom), etc.

LAWFUL GROUNDS FOR DATA PROCESSING

Under the GDPR there are several different lawful grounds for processing personal data. One of these is consent. However, because the definition of what constitutes consent has been tightened under GDPR (and the fact that it can be withdrawn by the data subject) it is considered preferable for the School to rely on another lawful ground where possible.

One of these alternative grounds is 'legitimate interests', which is the most flexible basis for processing. However, it does require transparency and a balancing assessment between the rights of the individual and the interests of the School. It can be challenged by data subjects and also means the School is taking on extra responsibility for considering and protecting people's rights and interests. The School's legitimate interests are set out in its Privacy Notice, as GDPR requires. Other lawful grounds include:

- compliance with a legal obligation, including in connection with employment, engagement of services and diversity;
- contractual necessity, e.g. to perform a contract with staff or parents, or the engagement of contractors;
- a narrower set of grounds for processing special categories of personal data (such as health information), which includes explicit consent, emergencies, and specific public interest grounds.

HEADLINE RESPONSIBILITIES OF ALL STAFF

Record-keeping. It is important that personal data held by the School is accurate, fair and adequate. Staff are required to inform the School if they believe that any personal data is inaccurate or untrue or if you are dissatisfied with how it is recorded. This applies to how staff record their own data, and the personal data of others – in particular colleagues, boys and their parents – in a way that is professional and appropriate. Staff should be aware of the rights set out below, whereby any individuals about whom they record information on School business (notably in emails and notes) digitally or in hard copy files may have the right to see that information. This absolutely must not discourage staff from recording necessary and sometimes difficult records of incidents or conversations involving colleagues or boys, in accordance with the School's other policies, and grounds may sometimes exist to withhold these from such requests. **However, the starting position for staff is to record every document or email in a form they would be prepared to stand by should the person about whom it was recorded ask to see it.**

Data handling. All staff have a responsibility to handle the personal data which they come into contact with fairly, lawfully, responsibly and securely and in accordance with all relevant School policies and procedures (to the extent applicable to them). In particular, there are data protection implications across a number of areas of the School's wider responsibilities such as safeguarding and IT security, so all staff should read and comply with the following policies: Acceptable Use of Computers (Staff) Policy, Cyberbullying Policy, Emerging Technologies and Use of New Media Policy, Guidelines for the Use of E-mail, Taking Storing and Using Images of Pupils Policy, and Online Safety Policy. Responsible processing also extends to the creation and generation of new personal data / records, as above, which should always be done fairly, lawfully, responsibly and securely.

Identifying a personal data breach. A personal data breach may take many different forms, for example: the loss or theft of data or equipment on which personal information is stored; unauthorised access to or use of personal information either by a member of staff or third party; loss of data resulting from an equipment or systems (including hardware and software) failure; human error, such as accidental deletion or alteration of data; unforeseen circumstances, such as a fire or flood; deliberate attacks on IT systems, such as hacking, viruses or phishing scams; and 'blagging' offences, where information is obtained by deceiving the organisation which holds it.

Avoiding, mitigating and reporting data breaches. One of the key new obligations contained in the GDPR is on reporting personal data breaches. Data controllers must report certain types of personal data breach (those which risk an impact to individuals) to the ICO within 72 hours. In addition, data controllers must notify individuals affected if the breach is likely to result in a "high risk" to their rights and freedoms. In any event, the School must keep a record of any personal data breaches, regardless of whether we need to notify the ICO. If staff become aware of a personal data breach they must notify the Second Master. If staff are in any doubt as to whether to report something internally, it is always best to do so. A personal data breach may be serious, or it may be minor; and it may involve fault or not; but the School always needs to know about them to make a decision. As stated above, the School may not need to treat the incident itself as a disciplinary matter – but a failure to report could result in significant exposure for the School, and for those affected, and could be a serious disciplinary matter whether under this policy or the applicable staff member's contract.

Care and data security. More generally, we require all School staff (and expect all our contractors) to remain mindful of the data protection principles (see above), and to use their best efforts to comply with those principles whenever they process personal information. Data security is not simply an online or digital issue but one that effects daily processes: filing and sending correspondence, notably hard copy documents. Data handlers should always consider what the most assured and secure means of delivery is, and what the consequences would be of loss or unauthorised access. We expect all those with management / leadership responsibilities to be particular champions of these principles and to oversee the swift reporting of any concerns about how personal information is used by the School to the Second Master, and to identify the need for (and implement) regular staff training. Staff must attend any training we require them to.

Data Protection Impact Assessments. Where processing is likely to result in a high risk to an individual's data protection rights (e.g. where the School is planning to use a new form of technology), we will, before commencing the processing, carry out a Data Protection Impact Assessment (DPIA) to assess: whether the processing is necessary and proportionate in relation to its purpose; the risks to individuals;

and what measures can be put in place to address those risks and protect personal information. Before any new form of technology is introduced, or any significant new data processing activity is implemented, the manager responsible should contact the Privacy Officer in order that a DPIA can be carried out.

RIGHTS OF INDIVIDUALS

In addition to the School's responsibilities when processing personal data, individuals have certain specific rights, perhaps most significantly that of access to their personal data held by a data controller (i.e. the School). This is known as the 'subject access right' (or the right to make 'subject access requests'). Such a request must be dealt with promptly and does not need any formality, nor to refer to the correct legislation. If you become aware of a subject access request (or indeed any communication from an individual about their personal data), you must tell the Second Master as soon as possible. Individuals also have legal rights to:

- require us to correct the personal data we hold about them if it is inaccurate;
- request that we erase their personal data (in certain circumstances);
- request that we restrict our data processing activities (in certain circumstances);
- receive from us the personal data we hold about them for the purpose of transmitting it in a commonly used format to another data controller;
- object, on grounds relating to their particular situation, to any of our particular processing activities where the individual feels this has a disproportionate impact on them.

None of the above rights for individuals are unqualified and exceptions may well apply. However, certain rights are absolute and must be respected, specifically the right to:

- object to automated individual decision-making, including profiling (i.e. where a significant decision is made about the individual without human intervention);
- object to direct marketing; and
- withdraw one's consent where we are relying on it for processing their personal data (without affecting the lawfulness of processing carried out prior to that point in reliance on consent, or of any processing carried out on some other legal basis other than consent).

In any event, however, if you receive a request from an individual who is purporting to exercise one or more of their data protection rights, you must tell the Second Master as soon as possible.

DATA SECURITY: ONLINE AND DIGITAL

The School must ensure that appropriate security measures are taken against unlawful or unauthorised processing of personal data, and against the accidental loss of, or damage to, personal data. If you have access to personal data, you must:

- Only access the personal data that you have authority to access, and only for authorised purposes;
- Only allow other staff to access personal data if they have appropriate authorisation;
- Only allow individuals who are not School staff to access personal data if you have specific authority to do so from the Second Master (Privacy Officer) or Bursar;
- Keep personal data secure (e.g. by complying with rules on access to premises, computer access, password protection and use of Multi-Factor Authentication, secure file storage and destruction and other precautions set out in the School's Acceptable Use of Computers (Staff) Policy, Cyberbullying

Policy, Emerging Technologies and Use of New Media Policy, Guidelines for the Use of E-mail, Taking Storing and Using Images of Pupils Policy, and Online Safety Policy);

- Not remove personal data, or devices containing personal data (or which can be used to access it), from the School's premises unless appropriate security measures are in place (such as pseudonymisation, encryption or password protection) to secure the information and the device; and
- Not store personal data on unsecured local drives or on personal devices.

Processing of Financial / Credit Card Data. The School complies with the requirements of the PCI Data Security Standard (PCI DSS). Staff who are required to process credit card data must ensure that they are aware of and comply with the most up to date PCI DSS requirements. If you are unsure in this regard please seek further guidance from the Financial Controller. Other categories of financial information, including bank details and salary, or information commonly used in identity theft (such as national insurance numbers or passport details), may not be treated as legally sensitive but can have material impact on individuals and should be handled accordingly.

SUMMARY

It is in everyone's interests to get data protection right and to think carefully about data protection issues: this means handling all personal information with which you come into contact fairly, lawfully, securely and responsibly. A good rule of thumb here is to ask yourself questions such as:

- Would I be happy if my own personal information were being used (for example, shared with a third party) in the way I am proposing? Would I expect it?
- Would I wish to stand by how I have recorded this information in an email or official record if the person concerned was able to see it?
- What would be the consequences of my losing or misdirecting this personal data?

The "Top 10" things to remember detailed in ANNEX I below is another helpful reminder of what to do, and what not to do in respect of Data Protection.

Data protection law is therefore best seen not as oppressive red tape, or a reason not to do something necessary or important, but a code of useful and sensible checks and balances to improve how handle and record personal information and manage our relationships with people. This is an important part of the School's culture and all its staff and representatives need to be mindful of it.

ANNEX I: Data Protection “Top 10”

1. Ensure you keep any personal information about other people (boys, parents, staff, OTs etc.) you hold secure: ensure physical files are locked away at the end of the day, don't leave personal information lying around on your desk, and don't leave your computer on, unlocked and unattended.
2. Delete (from systems) or shred personal information you no longer need; this may include information on prospective pupils or job applicants (but please remember that you must not delete any boy or staff records).
3. Don't take personal information off School premises unless necessary (e.g. when taking a School trip), and keep it secure if you do (e.g. on an encrypted memory stick); do not send or transfer personal information to your home or personal computer or device, or send personal information by email to your personal email account.
4. Keep your School login information secure, and do not use your School e-mail address and School password combination for any other services (e.g. Linked-in or Facebook).
5. Send personal data to other organisations only if necessary, and, if so, securely (i.e. in a password protected file, with the password sent separately). If you are unsure whether it is appropriate to send personal data, please check with the Second Master or Bursar.
6. Take care when writing any document or e-mail about (or referencing) any individual: remember that they are very likely to have the right to see what you have written.
7. Do not access personal information about boys or staff (prospective, current or past) on one of the School's systems (e.g. PASS, 3Sys or Firefly) if you don't have a legitimate reason for doing so.
8. Report any “data breach” (i.e. the accidental destruction, loss, alteration, unauthorised disclosure of, or access to, personal information) immediately to the Privacy Officer (the Second Master).
9. Contact the Privacy Officer (the Second Master) or Bursar if you have any questions or concerns about any of the above.
10. If in doubt in any situation, ask yourself “**How would I want the School to use this personal information if it was about me?**” The answer is probably not: leave it lying around; keeping it for no reason; leaving it on a train; letting other people hack into it; sending it to someone else without appropriate security; sharing it inappropriately with others; letting other people see it “out of interest”; losing it, or sharing it with the wrong person, and not telling relevant staff about the mistake.