



CITY OF
Lincoln
COUNCIL

**Special Category, Criminal Offence
and
Law Enforcement data processing**

Appropriate policy document

Document Control

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1 Overview and purpose

This policy has been developed by City of Lincoln Council ('the council') to meet the requirement in the Data Protection Act 2018 (DPA) for an Appropriate policy document. The Policy must detail the lawful basis and conditions for processing along with safeguards the council have put in place when processing special category data, criminal offence data and sensitive processing for law enforcement purposes.

2 Scope

This policy covers:

- processing of special categories of personal data
- processing for employment, social security, and social protection purposes
- substantial public interest condition processing
- processing for archiving, research, and statistical purposes
- criminal offence data and
- sensitive processing for law enforcement purposes.

2.1 Governance, roles, and responsibilities

This policy applies to all such processing undertaken by full time and part time employees of the council, elected members, partner agencies, contracted employees, third party contracts (including agency employees), volunteers and students or trainees on placement with the council.

2.2 Lawful basis for processing

The council is a government body with functions in accordance with statutory duties and powers. The council processes personal data under the following lawful bases provided in Article 6 of the General Data Protection Regulation (UK GDPR):

- (a) the data subject has given consent to the processing of his or her personal data for one or more specific purposes
- (b) processing is necessary for the performance of a contract to which the data subject is party or in order to take steps at the request of the data subject prior to entering into a contract
- (c) processing is necessary for compliance with a legal obligation to which the council is subject
- (e) processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the council
- (f) processing is necessary for the purposes of the legitimate interests of the council or by a third party, except where such interests are overridden by the interests and rights and freedoms of the data subject (the council must not rely on this condition in the performance of its public tasks but may for example in its role as an employer)

The council's privacy notice 'Your data privacy' available on the council's website contains further information about its processing of personal data, including what kind of information the council holds and what it is used for. The privacy notice also sets out what legal rights individuals have in relation to their personal data and how they enforce these rights.

The council's Data protection policy sets out the council's legal obligations in respect of processing personal data and this is available on the council's website.

2.3 Definition of special category and criminal offence data

Article 9(1) of the UK GDPR defines special category data as personal data which reveals:

- 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
- data concerning a natural person's sex life or sexual orientation

Section 11(2) of the DPA provides that 'criminal offence data' includes personal data which relates to the alleged commission of offences, related proceedings for an offence committed or alleged and the outcome of the proceedings including sentencing.

2.4 Conditions for processing special category and criminal offence data

The council processes special category data under the following paragraphs of Article 9(2) of the UK GDPR:

- 2(a) the data subject has given explicit consent to the processing of those personal data for one or more specified purposes
- 2(b) processing is necessary for the purposes of carrying out the obligations and exercising specific rights of the Council or the data subject in the field of employment, social security, and social protection
- 2(c) processing is necessary to protect the vital interests of the data subject or of another person where the data subject is physically or legally incapable of giving consent
- 2(e) processing relates to personal data which are manifestly made public by the data subject
- 2(f) processing is necessary for the establishment, exercise, or defence of legal claims
- 2(g) processing is necessary for reasons of substantial public interest
- 2(h) processing is necessary for the purposes of preventative or occupational medicine, for the assessment of the working capacity of an employee, medical diagnosis, the provision of health care or treatment or the management of health or social care systems and services

- 2(i) processing is necessary for reasons of substantial public interest in the area of public health
- 2(j) processing is necessary for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes in accordance with Article 89(1) of UK GDPR

To process criminal offence data the council must have both a lawful basis under Article 6 (see above) and either legal authority or official authority for the processing under Article 10 of the UK GDPR.

2.5 Description of data

The council processes special category data about its staff that is necessary to fulfil its obligations as an employer. This may include information about occupational health, wellbeing, ethnicity, photographs, and membership of trade unions. This may also include criminal offence data in relation to pre-employment checks.

Special category and criminal offence data is processed by the council relating to its customers and service users where there is a legal basis to do so. This may include information such as ethnicity, health, and criminal convictions. For example, in relation to housing needs, grants and revenue and benefits.

Sensitive law enforcement data is processed by the council in relation to criminal investigations and prosecutions where there is a legal basis to do so. This includes for example enforcement of housing standards, food health and safety, fly-tipping, licensing, and public protection anti-social behaviour.

2.6 Employment, social security, and social protection purposes

Section 10 (2) of the DPA sets out that in order for processing of special category and criminal offence data to be necessary for the purposes in Article 9(2)(b) of the UK GDPR for employment, social security, and social protection it must meet one of the conditions in Part 1 of Schedule 1 of the DPA. The council process this data under the following condition.

- paragraph 1, (employment, social security, and social protection purposes)

This condition must be necessary for carrying out obligations and exercising specific rights of the council or data subject in the field of employment, social security and social protection law.

Examples of processing by the council based on this condition include revenue and benefits, housing functions and processing for HR purposes.

2.7 Archiving purposes in the public interest

Section 10 (2) of the DPA sets out that in order for processing of special category and criminal offence data to be necessary for the purposes in Article 9(2)(j) of the UK GDPR for archiving purposes in the public interest it must meet one of the conditions in Part 1 of Schedule 1 of the DPA. The council process this data under the following condition.

- paragraph 4, (archiving purposes, scientific or historical research or statistical purposes in the public interest).

This condition must be based on law and shall be proportionate to the aim pursued, respect the essence of data protection, and provide for suitable and specific measures to safeguard the fundamental rights and the interests of the data subject in accordance with Article 89(1) of the UK GDPR.

Examples of processing by the council based on this condition include the sharing of historical housing records with Lincolnshire Archives.

2.8 Substantial public interest purposes.

Section 10 (2) of the DPA sets out that in order for processing of special category and criminal offence data to be necessary for the purposes in Article 9(2)(g) of the UK GDPR for archiving purposes in the public interest it must meet one of the conditions in Part 2 of Schedule 1 of the DPA. The council process this data under the following conditions:

- paragraph 6 (statutory etc and government purposes)
- paragraph 7 (administration of justice and parliamentary purpose)
- paragraph 8 (equality of opportunity or treatment)
- paragraph 10, (preventing or detecting unlawful acts)
- paragraph 12, (regulatory requirements relating to unlawful acts and dishonesty etc)
- paragraph 18, (safeguarding of children and individuals at risk)
- paragraph 14, (preventing fraud)
- paragraph 24, (disclosure to elected representatives)

These conditions must have a basis in law which shall be proportionate to the aim pursued, respect the essence of the right to data protection and provide suitable and specific measures to safeguard the fundamental rights and the interests of the data subject.

Processing under these conditions relates to the council's functions, statutory duties, and powers.

2.9 Law enforcement processing

Law enforcement purposes are the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, including the safeguarding against and the prevention of threats to public security (section 31 of the DPA).

The council processes sensitive data for law enforcement purposes under Part 3, Chapter 2, paragraph 35 of the DPA.

Not all the council's processing of personal data relates to law enforcement and will be carried out for investigation or prosecution functions. The council process such data for other

purposes, for example in employment recruitment where a new employee has an existing criminal record. This general processing which is not for the primary purpose of law enforcement will be covered by the UK GDPR (see criminal offence data above).

The council is as competent authority as required for law enforcement purposes under the section 30 of the DPA.

Sensitive processing for law enforcement purposes is defined at section 35(8) as:

- processing of personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs or trade union membership,
- processing of genetic data, or of biometric data, for the purpose of uniquely identifying an individual,
- processing of data concerning health,
- processing of data concerning an individual's sex life or sexual orientation

The council carry out sensitive processing only on reliance of the consent of the data subject or where it is strictly necessary for law enforcement purposes, and it meets a condition in Schedule 8 of the DPA.

Strictly necessary means that the processing has to relate to a pressing social need and cannot be achieved through less intrusive means.

The relevant conditions to the council in Schedule 8 of the DPA are the following:

- paragraph 1 (statutory etc purposes)
- paragraph 3 (protecting individual's vital interests)
- paragraph 4 (safeguarding of children and individuals at risk)
- paragraph 5 (personal data already in the public domain)
- paragraph 6 (legal claims)
- paragraph 8 (preventing fraud)
- paragraph 9 (archiving etc)

The council carry out sensitive processing for the purposes of law enforcement in the following main areas:

- criminal investigations and prosecutions
- enforcement
- Intelligence
- financial recovery
- civil investigations which conclude in criminal prosecutions

2.10 Compliance with the data protection principles

In accordance with the Accountability principle the council maintain records of processing activities as required under Article 30 of the UK GDPR and s61 of the DPA.

The council carry out data protection impact assessments (DPIA's) where appropriate in accordance with Articles 35 and 36 of the UK GDPR and section 64 of the DPA for law enforcement processing. This is to ensure data protection compliance by design and default.

The council has Data Protection Policy available to all staff and elected members.

The council maintains documentation relating to its processing activities in accordance with Article 30 of the UK GDPR in an Information Asset Register (IAR) reviewed and updated by appointed Information Asset Owners (IAO's) in each service area.

In relation to law enforcement processing the council follows the data protection principles set out in Article 5 of the UK GDPR, and Part 3, Chapter 2 of the DPA as detailed below.

2.10.1 Lawfulness, fairness, and transparency

The council provides clear, transparent information to those whose personal data it processes including information regarding their data rights. This is contained in the council's privacy notice 'Your data privacy' on the council's website.

The council provide its staff with a Privacy Notice which is provided to all employees by the HR department.

The council provide service specific privacy notices on its website.

The council process data under a number of legal bases as set out above but will generally process personal data which is necessary for the performance of its public tasks with a basis in law in accordance with its statutory duties and powers (Article 6.1(e) of the UK GDPR).

Processing for any law enforcement processing will be necessary for the exercise of a function conferred upon the council for example enforcing housing standards and will be necessary for reasons of substantial public interest.

In the rare circumstances where the council seek consent as the only legal basis for processing it will make sure the consent is:

- unambiguous
- freely given
- given by an affirmative action
- the data subject shall have a right to withdraw consent and anytime and
- consent is recorded as the condition for processing

2.10.2 Purpose limitation

The council does not process personal data for purposes that are incompatible with the purposes for which it is collected. Purposes are set out in privacy notices where required.

When the council shares special category data or criminal offence data or law enforcement data with another controller or processor or partner the council ensures that the data transfers are compliant with relevant laws and regulations and uses appropriate data sharing agreements and contracts.

If the council plan to use personal data for a new purpose (other than a legal obligation or function set out in law) it checks that this is compatible with the original purpose or obtains specific consent and undertakes a Data Protection Impact Assessment where required.

Data collected for law enforcement purpose will only be used for purposes other than law enforcement, where the council are authorised by law to process the data for the purpose.

2.10.3 Data minimisation

The council collects personal data that is adequate, relevant, and limited to the relevant purposes for which it is processed. The council ensures that the information it processes is necessary and proportionate to its purpose. The council periodically reviews this and deletes any unnecessary data.

2.10.4 Accuracy

Personal data shall be accurate and, where necessary, kept up to date. If the council becomes aware that personal data is inaccurate or out of date, having regard to the purpose for which it is being processed, the council will take every reasonable step to ensure that data is erased or rectified without delay.

The council detail in its main privacy notice on the council's website how individuals exercise their right of erasure and rectification. If the council decide not to either erase or rectify, the council will document their reason for the decision.

The council offers self-service online systems which enables individuals to assist in checking the accuracy of their personal data.

The council, as far as possible, distinguish between personal data based on facts and personal data based on personal assessments or opinions and mark the file to reflect the distinction. There are circumstances where this is not possible.

In relation to data collected for law enforcement purposes to the council, where relevant, and as far as possible, distinguish between personal data relating to different categories of data subject, such as:

- people suspected of committing an offence or being about to commit an offence
- people convicted of a criminal offence
- known or suspected victims of a criminal offence
- witnesses or other people with information about offences

The council only do this where the personal data is relevant to the purpose being pursued. The council do this by marking the file.

The council take reasonable steps to ensure that personal data, which is inaccurate, incomplete or out of date is not transmitted or made available for any of the law enforcement

purposes. The council do this by verifying any data before sending it externally. The council also provide the recipient with the necessary information we hold to assess the accuracy, completeness, and reliability of the data.

If the council discovers, after transmission that the data was incorrect or should not have been transmitted, the council will tell the recipient as soon as possible.

The council documents the decision to make personal data available for any of the law enforcement purposes.

2.10.5 Storage limitation

The council retains special category data, criminal offence data and sensitive data for law enforcement processing in accordance with the council's retention and disposal schedules. These schedules are available on the council's website.

Information Asset Owners (IAO's) are responsible for ensuring the data in their service area is deleted or disposed in accordance with the retention and disposal schedules. This is reviewed as and when required and on an annual basis by IAO's.

2.10.6 Integrity and confidentiality

The council have put in place appropriate technical and organisational measures to safeguard and secure the information the council collects about individuals. The council have strict security standards, and all our staff and others who process personal data on our behalf receive training on induction and annual training about how to keep information safe. The council limits access to your personal data to those employees, or third parties who have a business or legal need to access it.

Third parties or contractors that the council engages will only process personal data on the council's instructions or agreement, and where they do so they have agreed to handle the information confidentially and to keep it secure.

The council has IT Security and Information Governance policies available to all staff and elected members on NET-consent and training is undertaken on induction and annually for data protection.

Electronic and hard copy information processed for the law enforcement purposes is only available to staff who carry out the processing for these purposes. Our electronic systems and physical storage have appropriate access controls applied.

3. Compliance measurement

The council will ensure that it has effective validation processes in place to ensure that special category, criminal offence, and law enforcement data is processed in accordance with the law.

These include:

- An ongoing programme of audits undertaken by the internal Audit service. The outcomes of these audits are reported to Audit Committee and Information Governance Board (Corporate Leadership Team).

- Sensitive processing is covered in staff and IAO training on induction and annually with completion being monitored and followed up.
- Annual checklists on compliance with data protection laws are completed by Information Asset Owners (IAO's) and reported to the Senior Information Risk Officer (SIRO).
- Reviews of systems and process are undertaken by internal Audit and Business Development and IT where required.
- The development and implementation of service policies, procedures, and frameworks.
- Any shortcomings identified during audits are corrected within agreed timescales and completion of actions overseen by Audit Committee and IG Board.
- Audit recommendations arising from internal and external audits are acted on so that there is continuous improvement to the council's approach to processing special category, criminal offence, and law enforcement data.

2.11 Non-compliance

Non-compliance with this policy could have a significant effect on the efficient operation of the council and may result in enforcement action, legal claims, financial loss, reputational damage, and an inability to provide necessary services to our customers.

2.12 Policy review

This policy satisfies the requirements of the DPA as an appropriate policy document for special category data, criminal offence data and law enforcement purposes in accordance with Part 3, Chapter 2, section 42 of the DPA, Schedule 1, Part 1 paragraphs 1 (1) (b) and 5 and Schedule 1, Part 4, section 38-41 of the DPA.

This policy will be retained for the duration of the processing and for a minimum of 6 months after processing ceases. This policy will be reviewed every two years and updated in the interim as required.

3 Related standards, policies, and processes

The legislation governing the council's information governance activities is described in the Legal Responsibilities Policy. The council's related Information Governance Policies and guidance include:

- Data Protection Breach Management Policy
- Data Protection Policy
- Data Quality Policy
- Information Governance Policy
- Information Sharing Policy
- Legal Responsibilities Policy
- Records Management Policy and Redaction Procedures

Guidance

- Data Protection Summary Sheet
- Retention and Disposal Guidelines
- REMOVAL Guidance