A GUIDE TO COMPLETING YOUR FAIR PROCESSING NOTICE

Introduction

Thank you for choosing Michelmores to assist you with your compliance with the General Data Protection Regulation (GDPR). This guide is designed to assist you to complete the accompanying Fair Processing Notice.

Once you have completed the policy, we will be happy to review it with you to make sure you are compliant. For CAPH members, we are offering this additional service for a reduced fixed fee of £450 plus VAT.

This guide and policy should not be taken as legal advice but if you would like to talk to us at any time while completing the policy please don't hesitate to get in touch.

You can contact us by phone or e-mail on:

Telephone: 01392 688688

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WHAT IS GDPR?

The GDPR is European law which comes into force on 25 May 2018 and applies to all member states including the UK. There will also be a UK act of Parliament (a new Data Protection Act) which will come into force which enhances and changes some important aspects of data protection law.

What Policies will Schools Need in Place?

Schools will need to demonstrate that they collect, process and store personal data in a way that is transparent to data subjects. Complying with the law includes letting people know what you are doing with their data (and why) as well as informing them of the rights in connection with their data. Demonstrating that you comply with the law is called the accountability principle and forms part of the GDPR.

Also, you will need to make sure you have a register of any data protection breaches and refer certain breaches to the Information Commissioner's Office (ICO).

Finally, you will need to make sure that all staff are aware of their responsibilities.

What is the relevant law?

The relevant law on transparency to data subjects is contained in Articles 12-22 of the GDPR. We have included the key parts of the GDPR for information in an appendix to this guide.

How do I complete the policy?

The policy is divided into sections. This guide will now go through each section with tips on how to complete your policy.

# Contact Details

You will need to add your contact details including name of your school, address for correspondence, email address for correspondence and website. A copy of this policy should be on your school website.

You will also need to give the name and contact details of your Data Protection Officer (DPO).

If you have not yet designated your DPO and have any questions about this please contact us to discuss.

# the purposes for processing data and legal basis

We have included in the policy some suggested reasons why a school will process data. If you wish to add/adapt reasons for processing data you can do so. This may help the policy to be consistent with your other policies and/or to express the values of your school.

# Legal Basis for Processing

Under Article 6 of the GDPR processing personal data is only lawful for 6 specific reasons. These are:

*(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 controller is subject;*

*(d) processing is necessary in order to protect the vital interests of the data subject or of another natural person;*

*(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 controller;*

*(f) processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party, except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child. (Please note that as a school you will not be able to rely on this legitimate interest reason)*

In most instances, it will be appropriate to rely on reason (c) or (e). This is because as a school you have public functions under law and a legal duty to perform them. Sometimes it may be more appropriate to rely on consent under reason (a); for example, when using photographs of pupils for non-educational purposes such as marketing) However where possible it is better to rely on other reasons because consent can be withdrawn.

Under Article 9 of the GDPR processing special categories of personal data is prohibited unless one of ten specific grounds applies. These are:

*(a) the data subject has given explicit consent to the processing of those personal data for one or more specified purposes;*

*(b) processing is necessary for the purposes of carrying out the obligations and exercising specific rights of the controller or of the data subject in the field of employment and social security and social protection law;*

*(c) processing is necessary in order to protect the vital interests of the data subject or of another natural person;*

*(d) processing is carried out in the course of its legitimate activities with appropriate safeguards by a foundation, association or any other not-for-profit body with a political, philosophical, religious or trade union aim and on condition that the processing relates solely to the members or to former members of the body or to persons who have regular contact with it in connection with its purposes and that the personal data are not disclosed outside that body without the consent of the data subjects;*

*(e) processing relates to personal data which are manifestly made public by the data subject;*

*(f) processing is necessary for the establishment, exercise or defence of legal claims or whenever courts are acting in their judicial capacity;*

*(g) processing is necessary for reasons of substantial public interest, on the basis of Union or Member State law which shall be proportionate to the aim pursued, respect the essence of the right of data protection and provide for suitable and specific measures to safeguard the fundamental rights and interests of the data subject;*

*(h) processing is necessary for the purposes of preventive or occupational medicine, for the assessment of the working capacity of the employee, medical diagnosis, the provision of health or social care or treatment or the management of health or social care systems and services on the basis of Union or Member State law;*

*(i) processing is necessary for reasons of public interest in the area of public health, such as protecting against serious cross-border threats to health or ensuring high standards of quality and safety of health care and of medicinal products or medical devices;*

*(j) processing is necessary for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes.*

The model Fair Processing Notice explains that you will not process special categories of personal data except in the above circumstances. It references in particular grounds (a), (c) and (g).

In the model Fair Processing Notice we have set out some examples for the legal basis of processing.

You will need to think about:

* Are there any contracts you have where it is necessary to share data? For example, sharing with a third party the names of children who have private music lessons or participate in other activities, so that your contract with that third party can be fulfilled.
* When might you need the consent of a student? For example, use of school photographs.

# What Information you collect

You will need to set out what information you collect about students, your workforce, parents and others. This should match any information you collect at the time.

There is a wide range of categories of information you may collect. In the model Fair Processing Notice we have set out some examples which can be deleted or added to as required.

# Who Will Have Access to Data

Think about all people who may potentially have access to data. We have included examples here (staff, the Local Authority, the Police, the Department for Education) but if you have any other specific organisations then list these. For example:

* Academy chains, federations or Multi Academy Trusts;
* School nurses;
* The NHS;
* The Learning Records Service (for pupils enrolling for post 14 qualifications who will be given a unique learner number);
* Youth support service providers (for pupils aged 13-19);
* Software suppliers that you use (cashless catering, library systems, parental communications etc.);
* Payroll, healthcare and pensions service providers;

# How will information be processed

Think about all the different things you do with data. We have included a number of examples from our clients but think about anything else you do and include this.

# How will data be secured?

Think about the measures you take in your school to ensure that the information you hold is secure. We have included various examples from our clients but please include anything additional you do at your school.

# How long we will keep data for?

Unfortunately, there is no official guidance on this. There are different approaches taken by different Local Authorities in relation to this matter. We would recommend that consideration be given to the following:

* Information relating to safeguarding is advised to be retained until 25 years from the date of birth of the pupil;
* By law, financial records must be retained for 7 years;
* For the purposes of the Limitation Act 1980, legal claims based on contract can be brought until 6 years after the date of the contract;
* The Information and Records Management Society suggests retention of data for a maximum of 25 years from the date of birth of the pupil;
* By law, company board minutes must be retained for 10 years.

When you no longer require use of information for the relevant purpose, ensure that it is securely and safely destroyed/deleted.

Take into consideration any guidance provided by your Local Authority.

# Your data rights

Rights are granted to data subjects under articles 15-22 of the GDPR. We have summarised these rights in section 9. As these are statutory rights, they cannot be amended or deleted from the policy.

You will not need to add any further information to this section, as this is for the benefit of data subjects reading the policy so they understand their rights.

# Requesting Your Data

Article 15 provides the information that data subjects are entitled to receive when acting upon their right of access; for example, through a subject access request.

As this entitlement is based in the GDPR itself, this section cannot be amended or deleted from the policy.

You will not need to add any further information to this section, as this is for the benefit of data subjects reading the policy so they understand their rights.

# Making a Complaint

This section contains the details of Information Commissioner's Office (ICO), to whom data subjects can make complaints if they are unhappy with the way any concerns have been dealt with.

As stated in the policy, it is recommended that complaints first go through the school or Trust's own complaints procedure. It is for the school or Trust to set its own complaints procedure in this respect.

You will not need to add any further information to this section.

# Changes to this Notice

In the model Fair Processing Notice we have provided examples of how a school may communicate any changes to the policy to data subjects.

If it is likely that you will communicate any changes in a different manner, please amend this section.

Whenever the policy is amended, you will need to specify the date on which the changes were made.