

Data Protection Briefing



Local Council Public Advisory Service

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Executive Summary

The way Councils handle and secure data is being updated through two pieces of legislation. General Data Protection Regulations and a new Data Protection Act. We expect the Act to come into force at the same time as the new European Union Regulations May 2018.

The changes will reinforce the safety of personal information held electronically and also relate to hard copy files.

The legislation will affect all Parish and Town Councils

Alongside our pack of documents, policies, privacy notices and consent forms we have introduced this guide including check lists and risk assessments.

We are aware that Councils have been given conflicting advice from several sources. We wish to address this by providing a pragmatic and commonsense approach to compliance.

Councils will have to consider setting aside resources initially to fund extra hours for employees in getting the Council ready for compliance. It will also have to consider the provision of lockable draws or cabinets and software to keep IT records secure.

We have made recommendations on the types of products and software that will help evidence the Councils compliance with the new regime. Where possible we have located free software or low-cost solutions that are capable of protecting PCs data. These have been tested and like all internet downloads you should scan them with our antivirus program before installing it. You should also back up your data prior to installation.

This guide, steps to compliance and risk assessments are written in plain English

Jayne Cole

Chief Executive Officer

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LCPAS Guide

LCPAS want to make it as easy as possible for your Council to comply with the new legislation before it comes into force.

This need not be onerous or scary.

The first step is to identify personal information.

Personal Information is:

Name

Address

Phone Number

Email Address

IP Address

Cookie Records

It can also be information that someone could identify a person from within correspondence.

Personal information for the purpose the data protection is that of a living individual.

Personnel Information and records

It does not include:

Councillors contact details as they are public officers

Business contact details and correspondence

Charity or Community Group officer/secretary contact details and correspondence

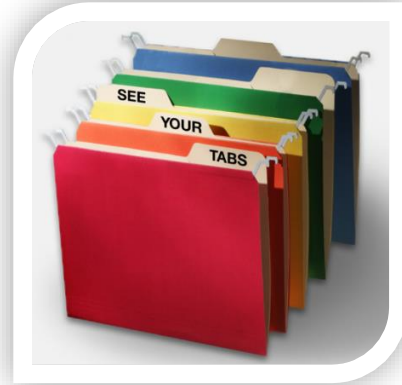
The deceased

It does include – hardcopy and electronic files

Parishioners and members of the public:

Contact details

Hard copy correspondence



Email correspondence

Complaints

Consultation forms

Exclusive Rights of Burial

Memorial requests

Allotment Plot Holders

Hirers of Halls and facilities

Booking diaries

Ticket sales

HR Records

Payroll

Pensions

Invoices that are raised for individuals

Use the LCPAS personal information audit and risk assessment in Pack 2 to identify the documents and files you hold containing personal information.

The Council will need to secure this data

The Principles of Data Processing

- **Processed lawfully, fairly and in a transparent manner**
- **Collected for specified, explicit and legitimate purposes and not further processed in a manner that is incompatible with those purposes**
- **Adequate, relevant and limited to what is necessary in relation to the purpose for which they are processed**
- **Accurate and where necessary kept up to date**
- **Kept in a form which permits identification of data subjects for no longer than is necessary**

Securing Data

The Council will need to risk assess where it keeps its hard copy data and in particular those files that contain personal information.

Is the office secure

Does it have a locking door or number lock access?

Does it have lockable filing cabinets and drawers?

Are any relevant keys missing?

Is it open to the public or to third parties like Cleaners?

Do you leave out unstructured data such as sticky notes, note books with personal information in on your desk when you leave?

Do you have any personal information such as contact details on your office wall or notice boards?

We advise that

- Offices should have a lock
- Filing Cabinets and desk draws should be lockable
- Replace any missing keys or locks
- Operate a clear desk policy and put away working papers at night
- Put notes and working papers into a folder and lock in a drawer at night
- Ensure that the walls and noticeboards do not have personal information displayed and instead place it in a folder that can be locked away

Hardcopy Personal Data

Using the Personal Information Audit template in LCPAS Document Pack 2, go through the folders and identify where Personal Information is being stored.

We advise using the LCPAS Retention of Documents Policy and find:

- Any files that can be shredded or disposed of through a relevant company
- Any files that can be archived with County Archives
- Any files that have to be kept or the Council wish to keep secure in lockable cabinets

Electronic Data

Using the Personal Information Audit IT Template, go through and identify where personal and sensitive data is held and appraise IT security.

- Any files that can be deleted, should be deleted

- Any files that are required to be kept, keep secure

Security:

- Ensure all electronic devices are password protected
- Ensure the Computers Operating System is up to date and updates enabled
- Ensure the Anti-Virus/Malware is installed, updated and updates enabled ([AVG](#))
- Ensure the Firewall is enabled
- Ensure sensitive files or folders are secured with a password ([Folderlock](#))
- Ensure the network is not visible on nearby public wireless networks
- Do not enable remote access unless necessary
- Consider file encryption
- Consider email encryption for those emails containing personal data ([Virtru](#))

Adopt Privacy Notices and Apply Consent Forms where required

Privacy Notices and Consent Forms are ready to tailor for your Council in LCPAS Document Pack 1

- All Councils are required to adopt a compliant Privacy Notice and make it freely available
- Consents should be applied (for example) to email lists, invitations, hire agreements, job applications, memberships to Council run leisure facilities, Cinema, Events and Heritage Centre's ticket sales, consultations and activities related to processing and retaining personal data
- Consent forms can be cut and pasted from LCPAS templates into any relevant document
- Consent forms should not be edited to remove any statutory required information on rights, etc.
- Consents can state the length of time the information is required for
- Consents can request permission to use the data for other agreed purposes
- Consents must be agreed in a positive action, signature, tick box with a capture
- Consents must be retained as evidence of compliance

Sensitive Data

The Council cannot collect or process sensitive information without the express consent of the individual.

This includes:

- Racial or ethnic origin
- Political opinions
- Religious or philosophical beliefs
- Trade Union membership
- Genetic or biometric data
- Health
- Persons sex life or sexual orientation.

If the Council wish to obtain this type of information through consultations, we recommend just asking for views without any personal identifying data being collected. Alternatively, there are a number of excellent County and National statistical websites that can provide some of the demographic and social data required for grants or Neighbourhood Plans. Contact your County Council for details.

Parental Consent

Parental consent is required in order to collect and process information for individuals aged 17 and below. We recommend working through schools or anonymised consultations which only collect views and not names and other Personal Information. Any parental consents obtained must be kept. Parental consent form can be found in LCPAS Document Pack 2.

Identify Councils Lawful Processing Basis

Using the Lawful Basis Checklist in LCPAS Document Pack 2, identify and document the legal basis for each activity.

We have identified the most relevant lawful basis for processing for Councils below in bold:

The lawful basis to processing data can be found General Data Protection Regulations Articles 6 (1)

Processing shall be lawful only if and to the extent that at least one of the following applies:

1. **the data subject has given consent to the processing of his or her personal data for one or more specific purposes;**
2. **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;**

3. **processing is necessary for compliance with a legal obligation to which the controller is subject;**
4. processing is necessary in order to protect the vital interests of the data subject or of another natural person;
5. **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;**
6. 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,

This should be stated in any Privacy Notices and Consent forms

Individual Rights

Ensure you are aware of [individual rights](#) with regard to Data Protection:

The Right:

- To be informed
- Right of access
- Right of rectification
- Right of erasure
- Right to restrict processing
- Right of data portability
- Right to object
- Rights related to automated decision making and profiling

Access Requests

- Individuals are entitled to know if you hold and process their information
- Individuals are entitled to access the personal information you hold on them*

*Individuals are only entitled to the information held on themselves and no other individual including spouse, partner, family member or neighbour

In order to meet a request to access information the Council will have to satisfy itself that the person making the request is the person concerned:

- Evidence can be by producing a driving license or passport
- Evidence can be by a statement of truth

LCPAS Document Pack 2 has an access request policy, access request compliance form and a statement of truth

Rectification Requests

- Individuals are entitled to ask that their details are corrected if incorrect or incomplete
- The Council has 4 weeks to comply

Right or Erasure (to be forgotten)

Individuals have the right to be forgotten if:

- The data is no longer necessary in relation to the purpose it was collected
- If the individual withdraws consent
- When there is no overriding legitimate interest for continuing the processing
- The data was unlawfully processed
- The data has to be erased in order to comply with a legal obligation

Individuals cannot be forgotten if:

- They have a contractual agreement with the Council
- A license to occupy land (burial plots, land)
- A tenancy agreement (allotments, land or property)
- Is in legal dispute with the Council
- If they are invoiced for Council functions or services

Right to restriction (to stop processing data)

As above but the information can be kept on file rather than erased. The conditions above also apply.

Right to object

Individuals have the right to object to the Council holding and using their personal information under the following circumstances:

- Processing on based on legitimate interests or performance of a task in the public interest
- Exercise of an official duty
- Processing for statistical or historical purposes
- Individuals must have an objection that directly relates to their individual situation

This right is included within the privacy notices and at the first point of communication in a separate paragraph as required by the regulations.

You must stop using the data unless you have legitimate grounds for not doing so.

- The have a contractual agreement with the Council
- A license to occupy land (burial plots, land)
- A tenancy agreement (allotments, land or property)
- Is in legal dispute with the Council
- If they are invoiced for Council functions or services

Rights related to automated decision making and profiling

Individuals have the right to not be subject to automated decision making and obtain human intervention, express their point of view and obtain an explanation of the decision to be able to challenge it if it has produced a legal or significant effect on the individual.

We have included the right for the purposes of completeness. Council decisions are made at meetings and agreed by a show of hands. Although, automation may sound appealing it is not something we envisage presenting an issue. We will advise on individual circumstances.

LCPAS Document Pack 2 contains the forms to record and monitor requests under the new powers.

Appoint a Data Protection Officer by May 25th 2018

- This cannot be a member of the Council
- This can be an employee/ Clerk (please see ICO advice in LCPAS Document Pack 2)
- This can be an independent company

LCPAS has obtained advice directly from the Information Commissioners Officer regarding the Data Protection Officer issues. We are therefore happy to support those Councils and Clerks who are happy to undertake this role, unless the ICO change their advice.

For those Councils and Clerks who are concerned by the confusion regarding whether the DPO can be an employee or not, LCPAS has developed a professional Data Protection Officer Service at an affordable rate.

We are operating the service independently of our subscription services and therefore there will be no conflict of interest.

As a Councils Data Protection Officer, we have years of experience in working with Local Councils and understand exactly how the new regime will affect you. Details of our service can be found: <http://www.lcpas.co.uk/data-protection-officer-service.php>

Please call or email for details: 01284 766885. ceo@lcpas.co.uk

Councillors

We value the contribution and importance of the role of a Councillor and in order to protect their interests and that of the Council we recommend taking the following steps:

- Adopt an Electronic Communications Policy (LCPAS Document Pack 2)
- Introducing a separate Council email address for each Councillor

This can be on a Council domain or a free account like Gmail or Yahoo. It is recommended to separate Councillor's personal and work lives from that of the Council. This reduces the risk of accidentally passing personal information, confidential or sensitive matters onto a third party.

- If forwarding information on to Councillors or vice versa, consider whether to just include the issue and not the name, copy into a fresh email to remove the IP address or use email encryption.

- Work where possible through the Councils office and Clerk to avoid holding personal information
- Password protect PCs and other electronic devices like phones and tablets if they hold Council information and emails
- Keep anti-viruses up to date
- Keep Firewalls activated
- Keep Operating Systems up to date and automatic updates enabled
- Consider encryption for emails and files where relevant. A list of suitable programs are listed earlier in this document.

Steps to Compliance

General Data Protection Regulation Checklist.	
Action	
	✓
Carry out an assessment of the personal data held by the council, where it comes from, who it is shared with, what it is used for, how you store it and how it is protected. Identify a 'lawful basis' for using the data, for example to deliver a contract with an individual. Does the council collect any sensitive personal data and why? Safeguarding, equal opportunities.	✗
Prepare a risk assessment	✗
Carry out a security of hard copy data audit	✗
Carry out a IT security assessment. Are cookies used on the website and if so why?	✓
Appoint a Data Protection Officer by the 25 th May 2018	<p>Recommend that this is an appointment independent of the Town Council.</p> <p>SALC have a partner DPO centre. For ETC the cost would be for Year 1 £1650 Year 2 £1050 this service is for 3 monthly visits and 6 advice calls per month.</p> <p>LCPAS provide a service which costs £500 and includes :-</p> <p>Provide privacy notices and consents and policies</p> <p>Provide up to date guidance</p> <p>Help manage access requests or requests under the other powers for individuals</p> <p>Manage breaches</p>

	<p>Visit once a year to check compliance and IT security</p> <p>Provide a report with compliance recommendations</p>
<p>Adopt the following policies: Information Security Incident Policy Information Protection Policy</p>	<p style="text-align: center;">✗</p> <p>Added to agenda for April Council meeting.</p>
<p>Update your council's data protection policy</p>	<p>We do have this in place but we would need to update to include requirements of GDPR.</p> <p>Added to agenda for April Council meeting.</p>
<p>Make sure the council is registered with ICO to pay the annual Data Protection Fee</p>	<p>✓</p>
<p>Prepare a Privacy Statements to give to individual's whose data the council will hold (allotments, hirers, burials, job applicants)</p>	<p>✗</p>
<p>Decide how you will gain consent and prepare Consent Forms. You will need to get parental consent for children under 17</p>	<p>✗</p>
<p>Prepare a log for recording emails and phone calls from members of the public as evidence that consent to hold data has been obtained and start to use it.</p>	<p>✗</p>
<p>Check that the Council will have liability insurance to cover data breaches</p>	<p>✗</p>
<p>Review or put procedures in place for dealing with a security breach.</p>	<p>✗</p>
<p>Review or put in place procedures for dealing with subject access requests</p>	<p>✗</p>
<p>Set up separate PC email addresses for councillors (recommended)</p>	<p style="text-align: center;">✓</p> <p>Separate in place for receiving not sending</p>
<p>Check that laptops and computers have up-to-date anti-virus software and firewalls, encryption software for sensitive emails and documents (all staff and councillors)</p>	<p>✓</p>