

Policy Statement for processing special category and criminal conviction personal data

This policy sets out how Maldon District Council (“Council”) will protect special category and criminal convictions personal data.

Special category data

Special category data is defined at Article 9 of the UK General Data Protection Regulation (GDPR) as personal data revealing:

- 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; or
- Data concerning a natural person’s sex life or sexual orientation.

Criminal offence data

Article 10 of the UK GDPR covers processing in relation to criminal convictions and offences or related security measures. In addition, section 11(2) of the DPA 2018 specifically confirms that this includes personal data relating to the alleged commission of offences or proceedings for an offence committed or alleged to have been committed, including sentencing. This is collectively referred to as ‘criminal offence data’.

This policy meets the requirement at paragraph 1 of Schedule 1 to the Data Protection Act 2018 that an appropriate policy document be in place where the processing of special category personal data is necessary for the purposes of performing or exercising obligations or rights which are imposed or conferred by law on the controller or the data subject in connection with employment, social security or social protection.

It also meets the requirement at paragraph 5 of Schedule 1 to the Data Protection Act 2018 that an appropriate policy document be in place where the processing of special category personal data is necessary for reasons of substantial public interest. The specific conditions under which data may be processed for reasons of substantial public interest are set out at paragraphs 6 to 28 of Schedule 1 to the Data Protection Act 2018.

Conditions for processing special category and criminal offence data

We process special categories of personal data under the following legal articles of the UK GDPR:

i. Article 9(2)(b) – where processing is necessary for the purposes of performing or exercising obligations or rights which are imposed or conferred by law on the Council or the data subject in connection with employment, social security or social protection.

Examples of our processing include staff sickness absences and political activity declarations.

ii. Article 9(2)(g) - reasons of substantial public interest.

The Council is the prosecuting authority for a large number of offences both criminal and civil in nature, these include Environmental (Environmental Protection Act) and Planning Offences (Town

and Country Planning Act) our processing of personal data in this context is for the purposes of substantial public interest and is necessary for the carrying out of our role.

Examples of our processing include the information we seek or receive as part of investigating a complaint.

iii. Article 9(2)(j) – for archiving purposes in the public interest.

The relevant purpose we rely on is Schedule 1 Part 1 paragraph 4 – archiving.

An example of our processing is the transfers we make to the Essex Records Office as part of our obligations under the Public Records Act 1958.

iv. Article 9(2)(f) – for the establishment, exercise or defence of legal claims.

Examples of our processing include processing relating to any employment tribunal or other litigation.

v. Article 9(2)(a) – explicit consent

In circumstances where we seek consent, we make sure that the consent is unambiguous and for one or more specified purposes, is given by an affirmative action and is recorded as the condition for processing.

Examples of our processing include staff dietary requirements and health information we receive from our customers who require a reasonable adjustment to access our services.

vi. Article 9(2)(c) – where processing is necessary to protect the vital interests of the data subject or of another natural person.

An example of our processing would be using health information about a member of staff in a medical emergency.

We process criminal offence data under Article 10 of the UK GDPR.

Examples of our processing of criminal offence data include pre-employment checks and declarations by an employee in line with contractual obligations.

Special Category of data processed

We process the special category data about our employees that is necessary to fulfil our obligations as an employer. This includes information about their health and wellbeing, ethnicity, photographs and their membership of any trade union. Further information about this processing can be found in our staff privacy notice.

Our processing for reasons of substantial public interest relates to the data we receive or obtain in order to fulfil our statutory function as a regulator. This may be evidence provided to us as part of a complaint or intelligence information we gather for our investigations. Further information about this processing can be found in our privacy notices.

Procedures for securing compliance with Schedule 1 when processing Special category data

Article 5 of the General Data Protection Regulation sets out the data protection principles with which we will comply.

We process SPECIAL CATEGORY data for the following purposes in Part 1 of Schedule 1 of the Data Protection Act 2018 :

Paragraph 1(1) employment, social security and social protection.

We process Special Category data for the following purposes in Part 2 of Schedule 1. All processing is for the first listed purpose and might also be for others dependent on the context:

Paragraph 6(1) and (2)(a) statutory, etc. purposes

Paragraph 8(1) equality of opportunity or treatment

Paragraph 10(1) preventing or detecting unlawful acts

Paragraph 11(1) and (2) protecting the public against dishonesty

Paragraph 12(1) and (2) regulatory requirements relating to unlawful acts and dishonesty

Paragraph 24(1) and (2) disclosure to elected representatives

Criminal offence data

We process criminal offence data for the following purposes in parts 1 and 2 of Schedule 1

Paragraph 1 – employment, social security and social protection

Paragraph 6(2)(a) – statutory, etc. purposes

Compliance with the Data Protection Principles

These are our procedures for ensuring that we comply with them.

Principle 1

Personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject.

The Council will:

ensure that personal data is only processed where a lawful basis applies, or where processing is otherwise lawful

only process personal data fairly, and will ensure that data subjects are not misled about the purposes of any processing

ensure that data subjects receive full privacy information so that any processing of personal data is transparent

Principle 2

Personal data shall be collected for specified, explicit and legitimate purposes and not further processed in a manner that is incompatible with those purposes.

The Council will:

only collect personal data for specified, explicit and legitimate purposes, and we will inform data subjects what those purposes are in a privacy notice

not use personal data for purposes that are incompatible with the purposes for which it was collected. If we do use personal data for a new purpose that is compatible, we will inform the data subject first

Principle 3

Personal data shall be adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed.

The Council will only collect the minimum personal data that we need for the purpose for which it is collected. We will ensure that the data we collect is adequate and relevant.

Principle 4

Personal data shall be accurate and, where necessary, kept up to date.

The Council will ensure that personal data is accurate, and kept up to date where necessary. We will take particular care to do this where our use of the personal data has a significant impact on individuals.

Principle 5

Personal data shall be kept in a form which permits identification of data subjects for no longer than is necessary for the purposes for which the personal data are processed.

The Council will only keep personal data in identifiable form as long as is necessary for the purposes for which it is collected, or where we have a legal obligation to do so. Once we no longer need personal data it shall be deleted or rendered permanently anonymous.

Principle 6

Personal data shall be processed in a manner that ensures appropriate security of the personal data, including protection against unauthorised or unlawful processing and against accidental loss, destruction or damage, using appropriate technical or organisational measures.

The Council will ensure that there appropriate organisational and technical measures in place to protect personal data.

Accountability principle

The data controller shall be responsible for, and be able to demonstrate compliance with these principles. Our Data Protection Officer is responsible for monitoring The Council's compliance with these principles.

We will:

- ensure that records are kept of all personal data processing activities, and that these are provided to the Information Commissioner on request
- carry out a Data Protection Impact Assessment for any high risk personal data processing, and consult the Information Commissioner if appropriate
- ensure that a Data Protection Officer is appointed to provide independent advice and monitoring of the departments' personal data handling, and that this person has access to report to the highest management level of the department
- have in place internal processes to ensure that personal data is only collected, used or handled in a way that is compliant with data protection law
- Data controller's policies as regards retention and erasure of personal data
- We will ensure, where special category or criminal convictions personal data is processed, that there is a record of that processing, and that record will set out, where possible, the envisaged time limits for erasure of the different categories of data
- where we no longer require special category or criminal convictions personal data for the purpose for which it was collected, we will delete it or render it anonymous data subjects receive full privacy information about how their data will be handled, and that this will include the period for which the personal data will be stored, or if that is not possible, the criteria used to determine that period