

1. Data Protection

1.1 The Data Protection Act 1998 (the Act) came into force on 1 March 2000. It regulates the holding and processing of personal data, that is information relating to living individuals, which is held either on computer or in some cases in manual form.

1.2 The Act gives legally enforceable rights to individuals (data subjects) and places obligations on those who control the manner and the purpose of the processing of personal data (data controllers). Data controllers must notify the Commissioner of the details of their processing (details of which are published by the Commissioner in the register of notifications). Data controllers must also comply with eight data protection principles which together form a framework for the proper handling of personal data.

1.3 The eight principles of data protection are as follows:

- Personal data shall be processed fairly and lawfully.
- Personal data shall be obtained only for one or more specified and lawful purposes, and shall not be further processed in any manner incompatible with that purpose or purpose.
- Personal data shall be adequate, relevant and **not excessive** in relation to the purpose or purposes for which they are processed.
- Personal data shall be accurate and where necessary, kept up to date.
- Personal data processed for any purpose or purposes shall not be kept for longer than is necessary.
- Personal data shall be processed in accordance with the rights of data subjects under this Act.
- Security measures shall be taken against unauthorised or unlawful processing of personal data and against accidental loss or destruction or damage to personal data.
- Personal data shall not be transferred to a country or territory outside the European Economic Area, unless that country or territory ensures an adequate level of protection for the rights and freedoms of data subjects in relation to the processing of personal data.

2. Registering your school under the new Act.

2.1 Under the 1984 Data Protection Act, a school would be registered once for the head teacher and once for the governing body. Under the new Data Protection Act 1998, one notification may be given in respect of the governing body and head teacher in the name of the school.

2.2 If a school's governing body and head teacher have each registered under the 1984 Act, it is likely that the two register entries will expire at different times. Where this is the case the school will now be required to notify when the first of these registrations expire, although the Commissioner's Office should send the appropriate forms prior to the expiry of the first registration. The second register entry will be removed at the time of notification. The fee for notification is £35 for one year.

2.3 An application for notification can be made either via the Commissioner's website (www.dataprotection.gov.uk), or by telephoning the Notification Department (01625 545740). Either method will enable a school to ask for a standard notification template, which has been designed to cover their specific activities (templates are available for private schools, and for community, foundation, voluntary-controlled and voluntary-aided schools). Once the forms are complete they will need to be signed and returned to the Commissioner's Office with the £35 fee.

2.4 Any queries schools may have in relation to the forthcoming changes should be directed to the Notification Department in the first instance.

3. Publication of schools' exam results

3.1 Publication of schools' exam results to the Information Commissioner's Office The following points aim to give some guidance relating to this aspect of data protection.

3.2 **Notification** - Schools planning to publish exam results should ensure that disclosures to the media are included in their notifications when they register.

3.3 **Basis for Processing** - The Act requires that there should always be a legitimate basis for the processing of personal data. The Commissioner accepts that the publication of examination results is necessary for the purposes of legitimate interests except where the processing may prejudice the rights or freedoms or legitimate interests of the data subject.

3.4 **Information to be provided to the pupils and parents** - While it is likely that many pupils and parents will be aware that examination results may be published, this is not always the case. To satisfy this requirement, schools should ensure that pupils and their parents are aware that examination results

may be published. It may also be necessary to explain the form in which this will take place.

3.5 Some pupils, for instance, might object to their results being published if they know that they will be published in order of grades rather than, say, alphabetically.

3.6 Pupils or their parents do not need to give their consent to the publication of examination results. When informing pupils or parents of the publication of examination results, schools should also advise them of the right to object to publication.

4. Subject Access – Right of access to education records

4.1 The Data Protection Act 1998 gives all individuals who are the subject of personal data ("data subjects") a general right of access to the personal data which relates to them. These rights are known as "subject access rights". Requests for access to records and for other information about those records are known as "subject access requests." Personal data may take the form of computerised or, in some cases, paper records.

4.2 The Act also sets out specific rights for school students in relation to educational records held within the state education system whether these are held in computerised or paper form. Educational records are the official records for which head teachers are responsible. The rights of students lie alongside the rights of parents to obtain copies of the educational records relating to their children.

5. Pupils Rights

5.1 The Data Protection Act gives all school students, regardless of age, the right of access to their school pupil records. Requests to see or receive copies of records should be made in writing to head teachers.

5.2 In addition to the right to be given a copy of the educational record, students are entitled to be given a description of the personal data which makes up the record, together with details of the purposes for which the data are processed, the sources of the data (if known) and the individuals or organisations to which the data may have been disclosed.

5.3 A period of up to 15 school days are allowed in which to respond to a subject access request. (The equivalent period for other types of record is up to 40 days.) If asked to provide a hard copy of the record, a fee may be charged according to the number of pages. (See below for the scale of charges.) Students may be asked for information to verify their identity if is necessary, for instance in the case of former pupils who may not be currently known to the school. They may also be asked for information necessary to locate the data held about them. For instance a student may be asked to supply the dates between which he or she attended the school.

5.4 While in principle students have a right of access to the whole of their

educational records, in exceptional cases some information may be withheld. The main exemptions are for information which might cause harm to the physical or mental health of the student or a third party, information which may identify third parties (for example other pupils, although not teachers), and information which forms part of some court reports. Information may also be withheld if in that particular case it would hinder the prevention and detection of crime or the prosecution or apprehension of offenders to provide it.

5.5 If students are incapable of understanding or exercising their own rights under the Data Protection Act, (for instance because they are too young), parents can, of course, make subject access requests on their behalf.

5.6 If a request for information under the Act is refused or ignored, the matter can be referred to the Data Protection Commissioner or an application for disclosure can be made to a court.

6. Parents Rights

6.1 In addition to the subject access right which can be exercised by pupils or by parents acting on behalf of pupils, parents have their own independent right of access to the official educational records of their children. In essence the information to which parents are entitled and the exemptions are the same as for pupils although there is no parental right of access to information which does not form part of the official record. Requests to see or receive copies of the educational records of their children should be made in writing to head teachers. If asked to supply a hard copy of the record, a fee covering the cost of supplying the information, may be charged. This is set by the governing body. A parent seeking access to an education record does not, however, have a right of redress under the Data Protection Act unless he or she is acting on behalf of their child. If a parent is not given a copy of his or her child's records, in the first instance he or she should contact the governing body and, after that, the DfEE or, as a last resort, the courts. Because parents have an independent right of access to pupil records, the students

themselves have no right to prevent their parents from obtaining a copy of their school records.

7. Subject Access Fees

No. of Pages Maximum Fee

1-19 £1	100-149 £10
20-29 £2	150-199 £15
30-39 £3	200-249 £20
40-49 £4	250-299 £25

50-59 £5	300-349 £30
60-69 £6	350-399 £35
70-79 £7	400-449 £40
80-89 £8	500+ £50
90-99 £9	

8. Manual Data

8.1 Manual data refers to structured records about people that are stored on paper. Although many organisations store most of their data on computer, some traditionally has always been paper based. Churches keep records of baptisms, christenings, and marriages in special books for the purpose.

8.2 Medical records have generally been paper based although this is now gradually changing.

8.3 Manual filing systems were not originally covered under the Data Protection Act 1984 but are being brought into line with electronic records under the 1998 Act. The new law allows for a period of time before manual data is fully covered by the Act. This is to give organisations adequate time to change their systems.

8.4 Data that is partially exempt from the new Act until the 23rd of October 2001 includes:

- any manual data, data processed only for payroll and accounts, and mailing lists, already being processed before the 24th of October 1998. It will be exempt from the 8 principles, notification requirements and data subjects' rights.
- automated data already being processed before the 24th October 1998.

8.5 Manual data that was held in a filing system before the 24th October 1998 will be exempt in some ways until 2007.

9. Penalties for non compliance with the Data Protection Act

• Non Notification/Registration

It is a criminal offence for a Data Controller not to register with the Data Protection Commissioner. Fines may be imposed on offenders of up to £5,000 in the magistrates court and maybe unlimited if convicted in the crown court.

- **Procuring and selling offences**

It is a criminal offence to obtain, disclose, sell or advertise for sale, or bring about the disclosure of personal data or to disclose it without the permission of the Data Controller. It is also a criminal offence to access personal data or to disclose it without proper authorisation. This covers unauthorised access to and disclosure of personal data. There are some exceptions to this.

- **Personal Liability**

The Data Protection Act provides that where an offence has been committed by a company and has been committed with the consent or is attributable to any neglect on the part of an officer of the company, he, as well as the company may be prosecuted. A successful prosecution could result in a prison sentence of up to five years.