



**Corporate Policy and
Resources Committee**

**Thursday, 19 September
2019**

Subject: To introduce a Data Protection Appropriate Policy Document

Report by:

Executive Director of Resources

Contact Officer:

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Purpose / Summary:

This report focusses on new legal requirements governing how an organisation can process special category and criminal conviction data. It highlights the need for an Appropriate Policy Document to comply with the law and introduces a draft policy for consultation.

RECOMMENDATION(S):

CP&R Members are requested to:

1. Support the recommendations from JSCC and approve the Appropriate Policy Document at Appendix 1 for adoption and implementation across the authority.
2. Agree that delegated authority be granted to the Director of Resources to make minor housekeeping amendments to the policy in future, in consultation with the Chairman of the Corporate Policy and Resources committee and Chairman of the Joint Staff Consultative Committee.

IMPLICATIONS

Legal:

Financial: FIN/47/20/SL
There are no financial implications arising from this report.

Staffing:

Equality and Diversity including Human Rights:

Data Protection Implications:
This report introduces an Appropriate Policy Document to comply with the requirements of the Data Protection Act 2018, Schedule 1 Part 4.

Climate Related Risks and Opportunities:

Section 17 Crime and Disorder Considerations:

Health Implications:

Title and Location of any Background Papers used in the preparation of this report :

Risk Assessment :

Call in and Urgency:

Is the decision one which Rule 14.7 of the Scrutiny Procedure Rules apply?

i.e. is the report exempt from being called in due to urgency (in consultation with C&I chairman)

Yes

No

Key Decision:

A matter which affects two or more wards, or has significant financial implications

Yes

No

1 Background

- 1.1 On 25 May 2018 the General Data Protection Regulation (GDPR) became law across Europe. At the same time the UK enacted the Data Protection Act 2018 (DPA) which tailors the GDPR and sets out how specific elements apply in the UK.
- 1.2 This report focusses on new legal requirements governing how an organisation can process special category and criminal conviction data. It highlights the need for an Appropriate Policy Document to comply with the law and introduces a draft policy for consultation.

2 The legislative requirements in context

- 2.1 The GDPR states that personal data may also include special categories of personal data or criminal conviction and offences data. These are considered to be more sensitive and we may only process them in more limited circumstances. Special category data is data concerning:
 - race;
 - ethnic origin;
 - political opinions;
 - religious or philosophical beliefs;
 - trade union membership;
 - genetic data;
 - biometric data (where this is used for identification purposes);
 - health data;
 - sex life; or
 - sexual orientation.
- 2.2 Personal data can include information relating to criminal convictions and offences. This also requires a higher level of protection.
- 2.3 Schedule 1 of the Data Protection Act 2018 sets out in Parts 1, 2 and 3 the lawful conditions under which organisations can process special categories of personal data and criminal convictions data:
 - Part 1 – Employment, health and research
 - Part 2 – Substantial public interest
 - Part 3 – Criminal convictions etc
- 2.4 Part 4 of Schedule 1 makes provision about the processing of personal data carried out in reliance on a condition in Part 1, 2 or 3 that requires the controller to have an appropriate policy document in place.
- 2.5 Part 4, para 39 of Schedule 1 describes a compliant appropriate policy document as one that:

- a. explains the controller's procedures for securing compliance with the GDPR Principles (GDPR Article 5) when relying on the condition in question, and
 - b. explains the controller's policies as regards the retention and erasure of personal data processed in reliance on the condition, giving an indication on how long such personal data is likely to be retained.
- 2.6 Part 4, para 40 specifies that the appropriate policy document must be retained, reviewed and updated where required, and made available to the Information Commissioner on request.
- 2.7 Part 4, para 41 adds that a record must be maintained by the data controller under GDPR Article 30 in respect of processing which relies on a condition described above and this must include the following information:
 - a. Which condition is being relied on;
 - b. How the processing satisfies GDPR Article 6 (lawfulness of processing); and
 - c. Whether the data is retained and erased in accordance with the policies described in para 1.3 above and, if not, the reasons why not.

3 The Appropriate Policy Document

- 3.1 There are few examples of how a compliant appropriate policy document should look and no authorities in Lincolnshire have one in place yet. The Data Protection Officer at Lincolnshire County Council shared an example published by HMRC and the document at Appendix 1 is largely based on that.
- 3.2 The policy covers:
 - substantial public interest processing for WLDC's statutory and corporate functions;
 - employment, social security and social protection law for certain benefits and credits functions and processing for HR purposes;
 - processing for archiving, research and statistical purposes; and
 - law enforcement processing.
- 3.3 To meet the DPA requirements for an appropriate policy document, Appendix 1 sets out:
 - a. Definitions of special category and criminal conviction data;

- b. The conditions for processing special category and criminal convictions data;
- c. The substantial public interest conditions we use; and
- d. How we comply with the data protection principles.

4 Decisions

4.1 In order to process special category and criminal convictions data the DPA requires organisations to have an Appropriate Policy Document in place. Appendix 1 meets the requirements for such a document as set out in the DPA.

4.2 JSCC Members are requested to:

Support and endorse the Appropriate Policy Document at Appendix 1 and recommend to the Corporate Policy and Resources Committee that it is adopted and implemented across the authority.

Agree that delegated authority be granted to the Director of Resources to make minor housekeeping amendments to the policy in future, in consultation with the Chairman of the Corporate Policy and Resources committee and Chairman of the Joint Staff Consultative Committee.