

Data Protection Policy



Date: March 2010
Product code: Ofqual/10/4741

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1. PURPOSE

The purpose of this policy is to set the framework by which Ofqual achieves compliance with the 1998 Data Protection Act (DPA).

2. SCOPE

The policy applies to personal data as defined by the Act i.e. data from which a living individual can be identified, either from those data alone, or from those data and other information in the possession of the data controller. This includes information held on computer, paper files, photographs, audio recordings and CCTV or webcam footage.

3. RESPONSIBILITIES

It is the responsibility of Ofqual's lawyer (as its Freedom of Information and Data Protection Officer) to provide advice on compliance and training in data protection. It is the responsibility of the Learning & Development Manager to ensure that training opportunities are provided. It is the responsibility of line managers to ensure that their managed staff have received appropriate training in data protection; this includes temporary and casual staff. It is the responsibility of every member of staff to act in compliance with the DPA and with Ofqual's policies and procedures.

4. SANCTIONS

Ofqual's disciplinary procedures apply to breaches of this policy. In addition, some breaches of the DPA are criminal offences, and in some cases may result in the prosecution of the individual responsible for the breach.

5. THE 1998 DATA PROTECTION ACT

The purpose of the DPA is to ensure that personal data is used in a way that is fair to the individual and protects their rights, whilst ensuring that organisations are able to process personal data in pursuit of their legitimate aims. In order to do this, the Act lays down principles of good information handling, with which data controllers must comply. The eight Data Protection Principles require that personal data shall:

- (a) be obtained and processed fairly and lawfully, and shall not be processed unless certain conditions, as defined in the Act, are met (see Annex 1 for further details);
- (b) be obtained for a specified and lawful purpose and not be further processed in a manner incompatible with that purpose;
- (c) be adequate, relevant and not excessive for the purpose for which they are being processed;
- (d) be accurate and, where necessary, kept up to date;
- (e) not be kept for longer than is necessary for the purpose for which they are being processed;
- (f) be processed in accordance with the data subject's rights under the Act, including the right of subject access (see Annex 2 for further details);
- (g) be kept secure from loss, damage and unauthorised disclosure;
- (h) not be transferred to a country outside the European Economic Area unless certain conditions are met.

6. SENSITIVE PERSONAL DATA

The DPA identifies certain types of personal data as sensitive personal data. Sensitive personal data comprise data about:

- (a) ethnic and racial origin;
- (b) political opinions;
- (c) religious belief;
- (d) trade union membership;
- (e) sexual life;
- (f) physical and mental health or condition;
- (g) criminal offences.

The DPA requires that particular care be taken when processing sensitive personal data. When it is planned to process sensitive personal data, advice must be sought from the Freedom of Information and Data Protection Officer to ensure that the requirements of the DPA are met.

7. NOTIFICATION

All organisations that process personal data are required to maintain a notification with the Information Commissioner outlining their use of personal data. Failure to keep the notification up to date is a criminal offence. It is therefore essential that when new sets of personal data are processed, or when existing personal data is used for a new purpose, the Freedom of Information and Data Protection Officer is informed, so that the notification can be updated to reflect any new processing.

8. FAIR PROCESSING

The DPA requires that when personal data is first obtained, the data subject is provided with a fair processing notice which explains the purposes for which their personal data will be processed and any other information the data subject might need to know, such as who their data will be disclosed to. The Freedom of Information and Data Protection Officer can advise on the drafting of fair processing notices.

9. THE RIGHT OF SUBJECT ACCESS

The DPA provides individuals with the right to see, and if they wish, to have a copy of, all the information held about them by an organisation. Any requests from individuals asking for information about themselves should be forwarded without delay to the Freedom of Information and Data Protection Officer.

10. OUTSOURCING PROCESSING OF PERSONAL DATA

When processing of personal data is outsourced to an external third party (a data processor in the terminology of the DPA), it is a legal requirement that there is a contract in place which requires the data processor to take appropriate security measures with regard to the processing of personal data, and to only process personal data in accordance with Ofqual's instructions. Advice on the wording of these contractual provisions can be obtained from the Freedom of Information and Data Protection Officer.

11. TRANSFERS OF PERSONAL DATA OUTSIDE THE EUROPEAN ECONOMIC AREA

The DPA provides that personal data can only be transferred outside the European Economic Area (the European Union countries plus Norway, Iceland and Liechtenstein) if an adequate level of protection for the data can be provided. Advice on determining adequacy must be sought from the Freedom of Information and Data Protection Officer if a transfer of personal data outside the EEA is envisaged.

12. SECURITY OF PERSONAL DATA

The DPA requires that appropriate organisational and technological measures be used to protect personal data from loss, damage and unauthorised disclosure. Further advice on the security of electronic systems can be obtained from Ofqual's Head of IT, and on manual filing systems from Ofqual's Business Support Officer, who is responsible for physical security.

Annex 1

Conditions under which personal data can be processed

Schedule 2 of the DPA lists six possible conditions under which personal data can be processed. Processing of personal data can only take place if one of these conditions can be satisfied. The Schedule 2 conditions are as follows:

- (a) consent to the processing has been received from the data subject. The consent must be fully informed and freely given;
- (b) the processing is necessary for the performance of a contract to which the data subject is a party (eg a contract of employment or a consumer contract)
- (c) the processing is necessary for compliance with a legal obligation to which the data controller is subject;
- (d) the processing is necessary to protect the vital interests of the data subject (this condition is narrowly interpreted by the Information Commissioner, and applies to emergency situations only)
- (e) the processing is necessary for the exercise of statutory powers
- (f) the processing is necessary for the pursuit of legitimate interests by the data controller or the third party to whom the personal data are disclosed, except where such processing is unwarranted because of prejudice to the data subject

Annex 2

The rights of individuals under the DPA

The sixth Data Protection Principle confers a number of rights upon individuals. These are as follows:

- (a) the right of subject access. Individuals have the right to see, and if they wish, have a copy of, all the information held about them by an organisation
- (b) the right to prevent direct marketing. Individuals have the right to opt out of having their personal data used for direct marketing purposes
- (c) rights in relation to automated decision-making. Individuals have the right not to have a decision that significantly affects them made solely by automated means
- (d) the right to seek compensation for any damage and distress caused by a breach of the DPA
- (e) the right to prevent processing likely to cause damage or distress
- (f) the right to have inaccurate information rectified, erased, blocked or destroyed

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First published by the Office of Qualifications and Examinations Regulation in 2010.

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