



Lewes District Council



Working in partnership with **Eastbourne Homes**

# Data Protection Policy



April 2019  
V02

## Document information

Version Number	V02	
Document Status (Draft/Final)	Final	
Effective from date	April 2019	
Review date	April 2020	
Reason for document	Alignment of policies and compliance with updated Data Protection Act and General Data Protection Regulation	
Linked documentation	<ol style="list-style-type: none"> <li>1. Data Sharing Policy</li> <li>2. Data Protection Impact Assessment Policy</li> <li>3. Personal Data Breach Plan</li> <li>4. Access to Information Policy</li> </ol>	
Author	Name	Denise White
	Job Title	Information Governance Manager
	Team	Legal
	Contact	<a href="mailto:denise.white2@lewes-eastbourne.gov.uk">denise.white2@lewes-eastbourne.gov.uk</a>

# Contents

	<b>Page</b>
Introduction	<a href="#"><u>3</u></a>
Purpose	<a href="#"><u>3</u></a>
Aims	<a href="#"><u>4</u></a>
Council statement on data protection requirements	<a href="#"><u>4</u></a>
Roles and responsibilities	<a href="#"><u>6</u></a>
Information requests	<a href="#"><u>6</u></a>
Prompt replies to requests	<a href="#"><u>7</u></a>
Data subject rights	<a href="#"><u>7</u></a>
Exempting information from non-disclosure	<a href="#"><u>7</u></a>
Refusal of subject access requests	<a href="#"><u>8</u></a>
Appeals and complaints	<a href="#"><u>8</u></a>
Appendix 1	<a href="#"><u>9</u></a>

## **1. Introduction**

- 1.1 Lewes District Council and Eastbourne Borough Council support the objectives of the General Data Protection Regulation (GDPR) and Data Protection Act 2018 (DPA) and seek to ensure compliance with this data protection legislation.
- 1.2 The processing of data by the councils is essential to services and functions and will often involve the use of personal and/or 'special category' personal data. Compliance with data protection legislation will ensure that such processing is carried out fairly and lawfully.
- 1.3 The GDPR and the Human Rights Act (1998) (HRA) Article 8, make it clear that the processing of personal data must respect the rights and freedoms of the data subject (individual), but at the same time be adequate enough for the councils to function effectively.
- 1.4 This policy should not be read in isolation and regard should be given to councils' Access to Information Policy.

## **2. Purpose**

- 2.1 The purpose of this policy is to ensure that the provisions of the GDPR and DPA are adhered to whilst protecting the rights and privacy of living individuals; ensuring their personal data is not processed without their knowledge.
- 2.2 In particular this policy will:
  - Assist the councils to comply with all requirements of the GDPR and DPA.
  - Ensure that personal data is readily available on request and that requests from data subjects are dealt with in a timely manner.
  - Ensure adequate consideration is given to whether or not personal information should be disclosed.
  - Ensure increased awareness of data subjects to the amount of personal data processed and stored by the councils about them and advise them of their rights under data protection legislation.
- 2.3 The councils will endeavour to promote greater openness, provide increased transparency of data processing and build public trust and confidence in the way that the councils manage information about their customers.

### **3. Aims**

- 3.1 This policy sets out the councils' commitment to upholding the data protection principles set out in the GDPR and managing information held fairly and lawfully. It seeks to strike an appropriate balance between the councils need to make use of personal information in order to manage their services efficiently and effectively and respect for the privacy of individuals.
- 3.2 To assist staff meet their statutory obligations under the GDPR and DPA and provide a guide to the public on the councils' obligations with regard to the processing of their personal data.

### **4. Council statement on data protection requirements**

- 4.1 This policy applies to the acquisition and processing of all personal data within the councils and sets out how the councils will ensure that individual rights and freedoms are protected.
- The councils will comply with Article 8 of the HRA in respect of the processing of personal data.
  - The councils, as the Data Controllers, will make individuals aware of the purpose(s) it is processing their personal data for and will seek consent where appropriate.
  - The councils will provide general information to the public about their statutory rights under the GDPR and DPA on our website.
  - The councils will hold the minimum amount of personal data necessary to carry out their functions, and every effort will be made to ensure the accuracy and relevance of data processed.
  - The councils will keep all electronic and manual records in accordance with their Records Management and Retention Policy.
  - The personal data the councils hold will be kept in accordance with the six principles of the GDPR and in line with the councils' Retention and Disposal Schedule.
  - Periodically a risk assessment will be undertaken, via audit reviews, for all data processing, and when inadequate controls are identified, technical and organisational security measures will be taken, appropriate to the level of risk identified.

- Personal data will only be used for the direct promotion or marketing of goods or services with the explicit consent of an individual.
- Data sharing and data matching with external agencies will only be carried out under a written agreement or contract setting out the scope and limits of the data sharing/matching. This should be in line with the councils' Data Sharing Policy.
- Elected Members and staff will be trained to an appropriate level in the use and supervision of personal data.
- Breaches of this policy may be subject to action under the councils' disciplinary procedure.

4.2 The councils will abide by the six data protection principles as detailed below:

Personal data shall be:

- Processed lawfully, fairly and in a transparent manner in relation to the data subject ('lawfulness, fairness and transparency')
- Collected for specified, explicit and legitimate purposes and not further processed in a manner that is incompatible with those purposes; further processing for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes shall, in accordance with Article 89(1) not be considered incompatible with the initial purposes ('purposed limitation')
- Adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed ('data minimisation')
- Accurate and, where necessary, kept up to date; every reasonable step must be taken to ensure that personal data that are inaccurate, having regard to the purposes for which they are processed, are erased or rectified without delay ('accuracy')
- 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; personal data may be stored for longer periods insofar as the personal data will be processed solely for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes in accordance with Article 89(1) subject to implementation of the appropriate technical and organisational measures in order to safeguard the rights and freedoms of the data subject ('storage limitation')
- 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 ('integrity and confidentiality')

## **5. Roles and responsibilities**

- 5.1 The councils' Corporate Management Team is responsible for approving this policy for managing compliance with the GDPR and DPA.
- 5.2 Overall responsibility for the GDPR and DPA will rest with the Chief Executive in consultation with the Data Protection Officer and Information Governance Manager.
- 5.3 The councils' Data Protection Officer and Information Governance Manager are responsible for the provision of advice, guidance and training regarding data protection legislation and will be responsible for keeping this document up to date.
- 5.4 All employees of the councils will be responsible for ensuring that Subject Access Requests are dealt with in accordance with this policy and that personal data is processed appropriately. This includes ensuring that personal data supplied to the councils is accurate, up-to-date and held securely.
- 5.5 Heads of Service will be responsible for ensuring operational compliance with this policy within their own departments and for becoming involved in consultations with the Data Protection Officer or Information Governance Manager when applicable.
- 5.6 Internal Audit will undertake reviews to assess the procedures and policies in place that relate to data protection.

## **6. Information requests**

- 6.1 Requests from data subjects for copies of personal data the councils hold about them (Subject Access Requests) can be made in writing or verbally. This includes requests transmitted by electronic means, providing they are received in a legible form and are capable of being used for subsequent reference.
- 6.2 If a person is unable to articulate their request in writing we will provide advice to assist them in formulating their request.
- 6.3 If the information sought is not described in a way that would enable the councils to identify and locate the requested material, or the request is ambiguous, the councils will seek additional clarification.

- 6.4 The councils will not provide assistance to an applicant who is not the data subject, unless it is confirmed that the explicit consent of the data subject has been obtained for a third party to request the data subject's personal data.

## **7. Prompt replies to requests**

- 7.1 The councils are committed to dealing with requests for information promptly and no later than the statutory guideline of one calendar month.
- 7.2 The councils would not expect every application for information to take one calendar month and will endeavour, where possible, to provide the requested information at the earliest opportunity from the date of the request.
- 7.3 However, if the councils consider the request to be complex, they may extend the time by up to two extra calendar months.
- 7.4 In this instance the councils will notify the applicant in writing that the SAR requires further time and will provide an estimate of a 'reasonable time' by which they expect a response to be made.
- 7.5 These estimates shall be realistic and reasonable taking into account the circumstances of each particular case.

## **8. Data subject rights**

- 8.1 Subject to some legal exceptions, individuals will have the rights below.
- Right to request a copy of any information we hold about you
  - Right to rectification (if inaccurate data is held)
  - Right to erasure ('right to be forgotten') in certain circumstances
  - Right to restriction of processing in certain circumstances
  - Right to data portability (personal data transferred from one data controller to another)
  - Right to object (to profiling, direct marketing, automated decision-making)

## **9. Exempting information from non-disclosure**

- 9.1 The GDPR is designed to prevent access by third parties to a data subject's personal data. However, under the DPA there are circumstances which allow disclosure of a data subject's personal data to a third party, or for it to be used in a situation that would normally be considered in breach of the GDPR.
- 9.2 The most commonly used exemptions from the non-disclosure of personal data are given below. This list is not exhaustive.



- Crime and taxation: general
  - a) the prevention and detection of crime
  - b) the apprehension or prosecution of offenders, or
  - c) the assessment or collection of any tax or duty or of any imposition of a similar nature
- Information required to be disclosed by law etc. or in connection with legal proceedings

9.3 The councils will only use an exemption where it is in the public interest to do so, i.e. prevention of crime, or where the functioning of the councils require the processing of personal information to be exempt so that it can provide statutory services to members of the public.

## **10. Refusal of subject access requests**

10.1 The councils will not supply information to a data subject if:

- We are not satisfied with the identity of the data subject
- Compliance with the request will inadvertently disclose personal information relating to another individual without their consent
- The applicant has recently requested the same or similar information

10.2 The councils consider that when a valid reason, which is both robust and legally defensible, exists for refusing the disclosure of information to either the data subject or a third party, the information should be withheld.

10.3 When information is withheld, full explanations of the reasoning behind the refusal must be provided to the applicant. This explanation must also include the details of how the applicant can complain about the councils' decision.

10.4 All requests for personal data made by the data subject will be dealt with under Chapter 3 - Rights of the Data Subject section of the GDPR, not the Freedom of Information Act 2000.

## **11. Appeals and complaints**

11.1 Where an applicant is dissatisfied with the level of service they have received, they are entitled to complain about the actions of the council through the internal appeals procedure. All complaints should be forwarded to:

Information Governance Appeals Officer  
1 Grove Road  
Eastbourne  
BN21 4TW

E-mail : [foi.appeals@eastbourne.gov.uk](mailto:foi.appeals@eastbourne.gov.uk)

- 11.2 The applicant will receive a response to their correspondence within twenty working days. If the applicant remains dissatisfied with the councils reply, they have the option of taking their complaint to the Information Commissioner (at the address below) who will independently adjudicate each case and make a final decision.

Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF

E-mail: [casework@ico.org.uk](mailto:casework@ico.org.uk)  
Tel: 01625 545700

- 11.3 Any other complaints regarding the councils processing of personal data should be sent to the councils' Data Protection Officer at 1 Grove Road, Eastbourne BN21 4TW or by email to: [acesstoinformation@lewes-eastbourne.gov.uk](mailto:acesstoinformation@lewes-eastbourne.gov.uk).
- 

## Appendix 1

### Interpretation of Terms

1. 'Personal data' means any information relating to an identified or identifiable living individual ('data subject')

'Identifiable living individual' means a living individual who can identified, directly or indirectly, in particular by reference to:

- a) an identifier such as a name, an identification number, location data or an online identifier, or
- b) one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of the individual.

2. 'Special category (sensitive) personal data' means:
  - Racial or ethnic origin
  - Political opinions
  - Religious/philosophical beliefs
  - Trade union
  - Processing of biometric/genetic data to identify someone
  - Health
  - Sex life or sexual orientation
  
3. 'Processing', in relation to personal data, means an operation or set of operations which is performed on personal data or on sets of personal data, such as:
  - a) collection, recording, organisation, structuring, storage
  - b) adaptation or alteration
  - c) retrieval, consultation, use
  - d) disclosure by transmission, dissemination or otherwise making available
  - e) alignment or combination, or
  - f) restriction, erasure or destruction.
  
4. 'Data subject' means the identified or identifiable living individual to whom personal data relates.
  
5. 'Controller' means the natural or legal person, public authority, agency or other body which, alone or jointly with others, determines the purposes and means of the processing of personal data.
  
6. 'Processor' means a natural or legal person, public authority, agency or other body which processes personal data on behalf of the controller.
  
7. 'Filing system' means any structured set of personal data which is accessible according to specific criteria, whether held by automated means or manually and whether centralised, decentralised or dispersed on a functional or geographical basis.
  
8. 'Consent' of the data subject means any freely given, specific, informed and unambiguous indication of the data subject's wishes by which he or she, by a statement or by a clear affirmative action, signifies agreement to the processing of personal data relating to him or her.