37. Data Protection Act - Registration by Schools

Preamble

The Data Protection Act 1998 has replaced the Data Protection Act 1984. Whereas the 1984 Act only related to personal data that could be automatically processed the current Act is wider in scope. The Act covers automated data, which includes data held on computer media, document image processing, audio/video and digitised images. It also covers 'relevant filing systems'. These can be non-automated systems and would be subject to the provisions of the Act if they are structured by reference to individuals and organised to allow ready access to specific information about individuals. Card index systems, microfiche records and personal files could thus be covered.

See also:

A27 Security

A34 Financial Control Procedures paragraph 9

The Data Protection Principles

The main points of the eight data protection principles are given below. Other than the words in italics this is not a direct quotation from the Act.

Principle 1

Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless:

A. *At least one of the conditions in Schedule 2 is met, and*

B. *In the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met.*

Schedule 2 Conditions

- Consent of the data subject
- Necessary for performance of a contract with the data subject
- Compliance with legal obligation
- To protect vital interests of the data subject
- Administration of justice and to carry out public functions in the public interest

- To pursue legitimate interests of the controller unless prejudicial to interests of the data subject.

Sensitive Data

- Racial or ethnic origin
- Political opinions or trade union membership
- Religious or similar beliefs
- Health or sexual life
- Criminal offences

Schedule 3 Conditions

- Explicit consent of the data subject
- To comply with employers legal duty
- To protect vital interests of data subject or another person
- Carried out by certain non-profit bodies
- The information has been made public by the data subject
- On legal proceedings
- Exercising legal rights
- For medical purposes
- For equal opportunities monitoring
- As specified by Order of the Secretary of State

Interpretation

Personal data are not to be treated as processed fairly unless the data controller ensures, so far as practicable, that the data subjects has, is provided with, or has made available to them at least;

- The identity of the data controller
- The purpose(s) for which data will be processed
- Any further information necessary (to make it fair i.e. third party disclosure)

Principle 2

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 those purposes.

- Each intended use or disclosure is lawful
- Any subsequent use or disclosure is lawful
- Notification is complete and accurate
- Notification is changed appropriately and in time

Principle 3

Personal data should be adequate, relevant and not excessive in relation to the purpose or purposes for which they are processed.

- The holding of every item of personal data can be justified
- “adequate, relevant, not excessive” have been defined
- Data items need to be notified
- Application forms differentiate between essential and voluntary personal data.

Principle 4

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

- Validate personal data for accuracy
- Keep personal data up to date
- Allow for erasure or correction
- Can sustain a defence
- Can cope with Data subjects objections
- Specify remedial actions if inaccurate personal data have been used

Principle 5

Personal data processed for any purpose or purposes shall not be kept for longer than is necessary for that purpose or those purposes.

- Review the length of time that personal data are kept
- Assess whether personal data are still required
- Fulfil any legal retention requirements

- Can delete personal data as necessary

Principle 6

Personal data shall be processed in accordance with the rights of data subjects.

Remember under this act, data subjects have more rights and can claim compensation for damages or distress. The Subject access rights of 1984 have been enhanced by the 1998 act and include:

- Automated processing
- Right to object to direct marketing
- Right to object to other processing
- Individual judicial remedies

For any subject access request received:

- The person must be informed about the data processing and disclosures
- Communicated in an intelligible form with sources
- Informed of logic behind automatic decision taking

Principle 7

Appropriate technical and organisational measures shall be taken against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data.

Security procedures should be in place and:

- Have a high priority and profile
- Identified as a staff and management responsibility
- Are supported by training
- Take note of relevant Codes of Practice/standards
- Are comprehensive
- Are monitored and reviewed
- Involve disaster recovery

Principle 8

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.

Data Controller

Each school should designate someone to be the Data Controller. It would be the responsibility of the Data Controller to ensure that the provisions of the Data Protection Act are fully complied with. The Data Controller should ensure that they are fully conversant with the content and interpretation of the Act.

It would be appropriate for the Data Controller to ensure that all members of the school staff are aware of those aspects of the Act that may relate to them. This could take the form of training sessions and written guidelines.

The Data Controller would wish to ensure that all systems that are introduced that may have Data Protection Act implications are introduced with their knowledge.