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WIGHT
C O U N C I L

SOCIAL SERVICES AND HOUSING

DIRECTORATE

DATA PROTECTION STAFF POLICY

STATEMENT

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March 2003

DATA PROTECTION ACT – STAFF POLICY STATEMENT

Service users and their carers have a particular right to privacy with respect to the processing of personal data under the Data Protection Act 1998. The Act achieves this by making new provision for the regulation of the processing of information relating to individuals including the obtaining, holding, use or disclosure of such information.

Aims of the policy statement:

- To ensure that the confidentiality of those who give information and those who are the subject of the information are respected and that their rights in relation to personal information are protected;
- To provide instruction on the data protection principals for staff, clients, resource persons and others involved in the collection, recording, use, disclosure and destruction of personal information.
- To ensure that all parties are made fully aware of the purposes for which personal information is retained in the directorate. This includes the purposes for which it is used, who can use it, to whom the information can be disclosed, whether and for how long it will be held in a form in which it could identify individuals and the arrangements for the destruction or archiving of the information.
- To ensure that adequate arrangements are made for subject access, the security of information and for checking systems to promote accuracy and relevance and for retention and destruction.

Applicability

This policy statement applies to all employees, voluntary workers, students, research workers and others who from time to time may act on behalf of the Social Services and Housing Directorate.

Purposes for Collecting and Holding Personal Information

Personal information is to be collected and held only for the following purposes:

- To maintain a record of information about Social Services and Housing clients in order to identifying and provide the services which are appropriate to their needs.
- To maintain a record of information about third parties who are not clients or service users but whose details are held on file. Examples include child abusers and sexual offenders.
- To provide and receive information for the management of resources within the Directorate, including the identification of issues affecting

budget making especially those arising from the commissioning or joint commissioning of services.

- To assist in the forward planning, monitoring and evaluation of the effectiveness of services.
- To maintain records of resources to assist in the provision of services to people.
- To maintain a record of the carrying out of statutory and other legal requirements.
- To assist other agencies in carrying out of Social Services and Housing purposes on behalf of the Directorate.
- To perform administrative and financial functions relating to the services provided.
- To advise on the eligibility of individuals and where appropriate to assess benefits and services.
- To assist research and training.
- To provide government and other statistical returns and to fulfil the requirements for the maintenance of statutory registers.
- To identify needs and resources in the community.
- To assist staff supervision and work management.

Users of personal information

The Social Services and Housing Directorate exercises control of the use of personal information for the reasons and purposes above. The Local Authority is, however, the corporate body with overall responsibility for ensuring the service is provided and, as the legal entity, is recognised as the data controller as defined by the act. All members of staff are responsible for ensuring that personal data disclosed to them are used only for the purposes for which they were provided. Not only the authority but also individual employees can commit the offence of unauthorised disclosure. Because of the intimate nature of much of this personal information, other departments of the local authority will be treated, not as users of personal information, held by the Social Services and Housing Directorate, but as bodies to whom disclosure may, in certain circumstances, be made (e.g. Education and Housing when involved in community care provision).

Information handling

Information to be recorded must be that which is relevant to the main purposes for which it is to be held. Records maintained in respect of service users or

carers or other individuals may contain the following types of personal information about the service user, carer or other relevant person.

Identification Details	Names, addresses, national insurance numbers, NHS No, disabled person's numbers etc.
Personal Characteristics	Age, sex, date of birth, nationality, physical description, racial and ethnic origin.
Family Characteristics	Marital details, details of family or household members, name of carer, social contacts.
Social Circumstances	Accommodation details, leisure activities, lifestyle, possessions owned, sociological circumstances, details of complaints, accidents or incidents, court, tribunal or inquiry details
Financial Details	Income, outgoings, allowances and pensions
Health Details	Mental, physical, disabilities
Employment Details	Current employment, and employment history
Criminal Information	Details of relevant convictions
Other Information	Qualifications, skills and professional expertise, details of contacts with the Directorate

The above information is necessary for the provision of the various services provided by the Directorate and for the planning and administration of the services.

The collection of personal information

The Data Protection Act requires that personal data should be obtained fairly and lawfully, ensuring that individuals are not deceived or misled and that one or more of the conditions established by the act and covering the collection and use of personal data have been met.

Staff shall always explain to service users, their carers and other individuals why they are asking for the personal information being requested.

Staff must not mislead clients and others as to the purposes for which the personal information are required nor exaggerate the extent of their authority to request it. Service Users and others must always be provided with an explanation of their rights as data subjects.

Staff must also ensure that service users and their carers not only understand the reasons why the personal data is necessary for the purposes for which it is required but that they are provided with sufficient information in order to enable them to give their consent to the use of the data. Consent may be needed even where one of the other conditions has been met e.g. the use of personal data for Crime and Disorder purposes; data sharing and joint working.

Recording of personal information

Where it has become apparent that it will be necessary to create a record about a data subject either as a service user, a member of the service user's family, point of contacts (e.g. GP, Priest, teacher etc) who is in touch with the department, the member of staff will provide the individual concerned with:

- Information regarding the fact that a record will be created and maintained
- A description of the purposes for which the personal data are to be kept and processed and whether or not the information is required in the exercise of the Directorate's statutory powers
- Information regarding others, within the authority or external to it, to whom and it can be reasonably anticipated data would, be disclosed without the consent of the data subject.

An explanation of the data subject's rights of access to the personal data held.
An explanation that:

- Information to be sought from third parties will normally only be done so with the consent of the individual.
- The security of the personal data is safeguarded.
- The relevant staff member and the data subject will in so far as is possible, construct the record jointly.

In recording, staff will follow the general principle that a record should be made jointly by the social worker concerned and the client/or data subject. This will mean that the social worker will normally summarise what will go on record at the end of each contact and encourage the subjects to contribute to the summary. To encourage the accuracy of facts, service users and other people providing information will be encouraged to:

- Fill in the forms such as care plans themselves; and
- Check and verify what staff members have written.

Where the subject can/has produced clear proof that information held is incorrect as to any matter of fact, the record is to be corrected or information deleted from it and a note to the effect that a deletion has been made will be placed on file.

Where information held is proved to be incorrect staff will check whether it has been disclosed to any other body or person. Where this is so they will inform that body or person that the information previously disclosed was incorrect and note this action in the record. Staff will also endeavour to discover whether the inaccurate information had any other consequences in the period prior to its correction and if possible attempt to redress any adverse consequences, avoid suffering and so on.

Sensitive personal information

Sensitive personal information means personal data consisting of information as to:

- The racial or ethnic origin of the data subject;
- His/her religious beliefs or other beliefs of a similar nature;
- His/her physical or mental health or condition;
- His/her sexual life;
- The commission or alleged commission by him/her of any offence;
- Any proceedings for any offence committed or alleged to have been committed by him/her, the disposal of such proceedings or the sentence of any court in such proceedings.

The Director will ensure that particular care is taking in the processing of sensitive personal information. Staff are reminded that, unless one or more of the conditions which appear below, is satisfied processing of sensitive personal data is expressly prohibited by the Data Protection Act.

Before the recording and use of any items of sensitive personal data is made staff must be satisfied the following have been observed:

- The service user or other data subject has received as much information about the purpose for which the sensitive data is required in order for him/her to provide explicit consent to its use;
- The sensitive personal data requested is essential to the provision of the service required by the service user or other data subject and is necessary in the interests of the subject;
- The processing is necessary in order to protect the vital interests of the service user, other data subject or a third party;
- The processing is necessary as part of the Directorate's statutory obligations;
- The sensitive personal data requested is necessary for the purpose of providing essential after care services.

Before processing of sensitive personal data, for any of the Directorate's purposes, staff must consider whether or not there is a likelihood of harm to the subject or any third party. Where there is doubt any decision should be referred to a Head of Service. It is the Head of Service who is responsible for determining the legitimacy or otherwise of the processing.

Disclosure

The issue of Disclosure will be discussed more fully as part of the staff-training programme.

The circumstances under which there may be disclosure are:

- Where the permission of the data subject has been given;
- In the interests of compliance with the Directorate's statutory and legal obligations and in accord with any enactment requiring such a disclosure to be made;
- For the purposes of the legitimate interests of the Social Services and Housing and Housing Directorate;
- For the purposes of the legitimate interests of a third party to whom the data may be disclosed and who has the legal right to request such data;
- Where the courts have ordered such a disclosure.

A request for disclosure of information will not be complied with unless, in the exercise of discretionary powers, staff carrying out Social Services and Housing functions is satisfied that:

- Disclosure of the information is necessary for the purpose for which the disclosure is sought;
- The recipient can ensure that the information is securely retained and not used, copied or disclosed for any purposes incompatible with the Social Service's purpose, for which it was originally obtained, including any duty of confidentiality owing to the client or any third party source and that it would be returned or destroyed when no longer needed;

When considering disclosure it is necessary to distinguish between:

- Those to whom disclosure may be made for Social Services and Housing purposes, and
- Those to whom disclosure is allowed for their own legitimate purpose.

Disclosure may be made where it is necessary in order to carry out a specific Social Services and Housing purpose. Except where the service or resource necessarily and clearly involves disclosure, it is normal to obtain the consent of the service user or other data owner to the disclosure.

The Directorate maintains a list of those third party recipients to whom disclosure is specifically allowed for their own purposes. See list below. Personal information will be given to them only through a person nominated to do so by the Director of Social Services and Housing and Housing or a person nominated

to do so. Unless there is a likelihood of harm to a third party source of the data or a breach of confidentiality could occur, the subject is to be informed that the disclosure is/has been made.

Third party recipients:

- The court
- The police
- The probation service
- Council approved authorised organisations that have a contract or service level agreement.
- Guardians ad Litem
- Reporting Officers
- Medical, nursing and paramedical staff for health and welfare purposes
- National and local organisations carrying out social work and/or acting as agents of the authority for Social Services and Housing functions
- The Benefits Agency
- DSS
- Central government department for statutory and statistical purposes
- External organisations where authorised by the local authority for research purposes, with proper safeguards for the protection of personal data
- Other departments and Employees of the local authority
- Other employees of the Social Services and Housing and housing directorate
- Other local authority Social Services and Housing and social work departments
- The Health and Safety Commission
- The Secretary of State for Social Services and Housing
- Inquiries appointed by the Secretary of State
- Computer maintenance organisations

The above list includes those who have a legal right to personal information. Personal information about the child will only be disclosed to parents, foster parents and guardians when staff are satisfied that the child's informed consent has been freely given. In circumstances where the child has insufficient intellectual capacity to give informed consent, staff will provide to parents, guardians and foster parents, as much information as they judge to be consistent with the welfare of the child and will not result in severe harm to the child or any third party.

Parents, guardians and foster parents who are refused personal information about their child or about the child in their care shall have the same right of appeal as that provided to Data Subjects.

The Data Protection Act provides that disclosure of personal data for national security, the prevention or detection of crime, the apprehension or prosecution of offenders and the assessment or collection of any taxable duty or of any imposition of a similar nature, can be made. However, it does not make such disclosure obligatory. The director will review carefully the precise circumstances before authorising such disclosures. The disclosure of personal information for research purposes will be the exception rather than routine.

Disclosure to Councillors

Personal information about clients is exempt information under the Local Government (Access to Information) Act 1985 and is not automatically available for inspection by any councillor just because it relates to business to be transacted in the meeting of the council or a subcommittee.

However, this exemption does not remove the common-law right of a councillor to inspect information in the possession of the authority if it is reasonably necessary for the proper performance of his/her duties.

The director will make arrangements for authorising the disclosure of personal information in the possession of the directorate if a member of the Social Services and Housing Select Committee, the Executive Committee or its subcommittees, requires it in accordance with council policy.

The authority has adopted a provision that personal information received by the department from third parties in confidence or information, which would reveal the identity of an informant given in confidence, shall not normally be disclosed to a councillor without the consent of the third party. The relevant officer will make every effort to obtain such consent in the event of a conflict the right of the councillor would normally be expected to prevail.

If the information in question relates to the health of the client the relevant officer will make every effort to obtain the consent of the client and the appropriate health professional in accordance with the health services code on confidentiality of personal health information but in the event of a conflict the right of the councillor will normally be expected to prevail.

The director will make arrangements for disclosure of personal information in the possession of the Directorate if the authority decides that a councillor who is not a member of the Social Services and Housing Select Committee needs such disclosure to enable him/her to carry out his/her duties.

Elected members who, in the performance of their constituency duties, request information on behalf of a particular constituent who is a client of the Directorate; whether this is information about the service being provided or a subject access request; are to be asked to provide proof that they are authorised to act on behalf of the client.

Disclosure Of Personal Information And Access To Subjects By Research Workers

This section covers the use of personal information about data subjects, and how it is used by research workers and, including those employed by this Social Services and Housing Directorate. For this policy statement research purposes include statistical or historical purposes.

In the provision and use of personal information concerning any service user or other individual the following principles must apply:

- Only personal data that has been made anonymous would be disclosed for research purposes;
- Information will only be used in a manner that is consistent with benefit to subjects and will not be used in the manner that may cause damage or distress to the subject;
- The personal data used in the statistical research will not be processed to support measures or decisions with respect to particular individuals;
- Wherever possible the consent of the subject will be obtained to the use of the personal data concerning the subject, for research purposes. Only where consent cannot be given dispensation may, exceptionally, be granted by the director following consideration of the particular circumstances;
- Any objection that a data subject may have made known, in advance of disclosure for research, will be respected;
- Adoption information will not be disclosed to researchers unless the foregoing principles are applied and the researchers have been authorised in writing by the Secretary of State.

Researchers seeking access to personal information by which individuals can be identified will be required to state in writing:

- The purpose of the research and whether personal information is to be or may be disclosed to other persons outside the research team;

- The arrangements made for the secure storage and use of personal data;
- That research reports and all/any statistics resulting from the research will not identify any subject unless the subject has specifically agreed to being identified and approval is given by the directorate;
- The precise nature of personal information required;
- The arrangements made as to the time and method of destruction of all materials by which individuals may be identified.

Where researchers wish to pursue their study by means of personal interview with the data subject or subjects, following a study of the recorded information, this will, wherever possible be arranged through the Social Services and Housing and Housing staff member most closely involved with the data subject.

Disclosure of personal information to and access to the data subjects by the media

The principles and procedures detailed above shall also form the basis for any disclosure of information to, or exposure of clients in the media as set out in the directorates media policy. In any event request from the media must be referred to the directorates press officer the director or nominated Head of Service.

Subject Access

The Directorate's policies on openness and service users' access to records and openness in recording require that information held and processed by both automatic and manual means will, to the greatest possible extent, be openly shared with service users and where appropriate (within the meaning of the Data Protection Act) their carers, during the period of contact with the department. PLEASE REFER TO YOUR COPY OF THE DEPARTMENTAL POLICY STATEMENT "[SERVICE USERS RIGHTS TO ACCESS THEIR PERSONAL RECORDS](#)".

This Directorate has adopted the policy on openness in recording. This policy has been communicated to all the major agencies that work in association with this directorate. All reports emanating from the directorate will have the following message incorporated into the correspondence:

In accordance with the information policy adopted by the directorate, and as required by the Data Protection Act 1998, the directorate will give, anyone where a record is held, access to personal information about them held on both computer and manual records. If you do not wish access to be given without your consent please indicate accordingly.

Retention and Destruction of Records

The instructions and advice contained in this section are based on the absolute requirements of **the 5th Data Protection Principle**. The requirements of this principle are mandatory for all records relating to service users and their carers.

FIFTH PRINCIPLE

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

This principle applies to all the Directorate's structured files including for example: personal files, index cards, case registers, and financial assessment records and referral notes wherever held.

It is the responsibility of all levels of management to ensure compliance with this principle. Exceptions can only be made following consultation with the Directorate's Liaison Officer.

It is the Directorate's policy that personal information will normally be destroyed in accordance with the directorate's records management procedures.

The only exception to this are those records which:

- Are required to be kept for longer by statute;
- Are held in order to provide, for the subject, aspects of their personal history in accordance with the European Convention on Human Rights.

Service user records for which there are special statutory requirements are:

Case records relating to children who have been placed, to be retained until the 75th anniversary of the child's birth or for 15 years after death, if the child dies before age 18. - Arrangements for placement of Children (General) Regs.1991
Records relating to a foster parent and any entry relating to him/her in the register to be retained for at least ten years from the date and which his/her approval is terminated or until his/her death if earlier. – Foster Placement (Children) Regs.1991.

Video recordings of child witnesses made under the Criminal Justice Act 1991 shall be retained for so long as it may be needed for the purposes of a trial or appeal. Decisions to destroy such videos are taken jointly by the director and the senior police officer concerned. (Policy statement for Video Recorded Interviews with Child Witnesses for Criminal Proceedings 1991 para 4.17)

Retained records may only be used for the purposes for which they have been retained

Security Measures

The Data Protection Act imposes an obligation on the Directorate to ensure that “appropriate technical and organisational measures are taken against unlawful or unauthorised processing of personal data and against accidental loss or destruction of, or damage to, personal data”.

The directorate has established procedures to ensure the security of all personal information held for its purposes. Failure on the part of any member of staff to adhere to the procedures will result in disciplinary action. It is the responsibility of the Directorate managers to ensure that staff under their control are made aware of the existence of these procedures and of the needs to observe them at all times. This needs to read in conjunction with the Directorates policies on confidentiality and Code of Conduct.

Security measures for manual records

The following are covered by the Directorate’s security procedures:

The only members of staff allowed access to the manual records, files or indexes of past and potential service users are those employed by the directorate for the specific purpose of providing a service to that individual and for extracting information from the files and legitimate statistical reasons.

Case records should be kept secure at all times. Security of such records is the responsibility of the individual caseworker.

Adoption records will be kept in secure filing cabinets, separate from other service users individual records. Adoption officers are responsible where ensuring security of such records.

During out of office hours all offices must be locked and the keys made available only to designate staff.

Security measures relating to automatically processed records

All staff will receive induction training in the following areas:

- Control of equipment and its use;
- Control and use of data media;
- Physical access and security;
- Passwords and files security;
- Use of e-mail and Internet;
- Secure disposal of waste;

- Discipline and confidentiality.