



Bishop Bridgeman Church of England Primary School

Fair Processing Guidance

FAIR PROCESSING GUIDANCE TO SCHOOLS

REQUIREMENTS WITH RESPECT TO “FAIR PROCESSING” UNDER THE DATA PROTECTION ACT AND THE PASSING OF INFORMATION TO CONNEXIONS

“Fair processing” under the Data Protection Act

Schools, Local Authorities, the Department for Education and Skills (DfES), the Qualifications and Curriculum Authority (QCA), Ofsted and the Learning and Skills Council (LSC) are all “data controllers” under the Data Protection Act 1998 in that they determine the purpose(s) for which “personal data” (i.e. data about living individuals from which they can be identified) is processed and the way in which that processing is done. This guidance deals specifically with personal data about pupils, although personal data may also be held on other groups such as teaching and non-teaching staff, and similar considerations with regard to “fair processing” will apply to them.

Data controllers have to provide “data subjects” (individuals who are the subject of personal data) with details of who they are, the purposes for which they process the personal data, and any other information that is necessary to make the processing of the personal data fair, including any third parties to whom it may be passed on. This is referred to as a “fair processing notice”.

In respect of the Data Protection Act there is a presumption that a child of twelve years of age and over has sufficient maturity to exercise their rights under the Act, though in practice there will be exceptions to this. This is endorsed by guidance issued by the Information Commissioner.

The fair processing obligations on the data controller may appropriately be met by providing a “fair processing notice” to the parent (or the person with parental responsibility) where a child is younger than twelve, though the parent should be encouraged to share it with the child if the child has the maturity to understand it. However, where the child is aged twelve or more, the fair processing notice should be provided both to the child *and to* the parent.

Further information about fair processing requirements, and guidance on the Data Protection Act generally, can be obtained from the Information Commissioner’s website (<http://www.informationcommissioner.gov.uk/eventual.aspx?id=34>).

Local Authorities should work with schools to ensure that:

- schools issue a fair processing notice to all current pupils of the age of 12 and over and to their parents and to the parents of all current pupils under the age of 12 as soon as possible;
- this notice covers processing carried out by Local Authorities, DfES, QCA, Ofsted and the LSC as well as by the school (rather than these organisations sending separate notices, which would be logistically very difficult and confusing for parents);
- schools issue the same notice to new pupils and/or their parents as part of the enrolment process;
- schools reissue the notice to pupils at age 16 (because the right under the Learning and Skills Act to opt out from the passing on of information over and above name and address of pupil and parent to those providing Connexions services passes from the parent to the pupil at that age).

The suggested text of the fair processing notice is set out below. The first ten paragraphs relate to all schools, with two versions of the remainder – the first for schools which do not have pupils of secondary age, and the second for schools which do.

As well as issuing the notice directly to parents or pupils, schools may also include this notice in other communications with parents (e.g. the school prospectus, the governors' annual report, the individual pupil report, or the annual data checking sheet), and/or display the text on a school website or in a prominent location in the school. These are not however requirements, nor are they a substitute for the arrangements indicated above.

Passing information to Connexions

In addition to the obligation on schools to provide certain information to other schools, to Local Authorities, to the Department, to QCA, to Ofsted and to the LSC, there is a legal requirement under the Learning and Skills Act 2000 to pass information on request to those involved in the provision of Connexions services (the Connexions Service, Connexions Partnerships and the Connexions Card). Connexions services are for pupils in, or approaching, the Connexions age range (essentially secondary age pupils). The Connexions Card is available to pupils aged 16 or over.

For the **Connexions Card**, DfES and Capita, which jointly manage the Card, will deal separately with fair processing issues for pupils approaching or above age 16 as they become eligible for a Card, and so this does not need to be covered in the fair processing notice set out below.

The information which schools are required to provide consists of:

- a. the names and addresses of pupils and their parents – which must be supplied to those providing Connexions services in any event;
- b. other information relevant to the provision of Connexions services– in this case parents (or pupils themselves if aged 16 or over) have the right to

instruct the school not to supply this information to those providing Connexions services.

Note that the provision in b. is an **opt out**, not an opt in. Until and unless the parent or pupil gives an instruction, the school remains under a statutory duty to provide information to those providing Connexions services on request.

For the **Connexions Service**, the fair processing notice given to the parent and the child needs to advise them of the passing on of information to Connexions, and, as a matter of good practice, should also advise them of the right to instruct the school not to provide information beyond name and address.

Note that the right to opt out from the passing on of information over and above name and address of pupil and parent to those providing Connexions services passes from the parent to the pupil at age 16.

To give parents or pupils who wish to opt out an adequate opportunity to do so, information should not be passed to Connexions until **four weeks** after the notice is **received by** them. Parents or pupils are entitled to register an opt out subsequently even if they do not do so within the initial four week period. In that event no further **additional** information should be passed to Connexions after the opt out has been received.

The Connexions Service supports young people, helping them to achieve their potential and to realise benefits from education and training. It is very important that Connexions partnerships receive the information about their clients which they need to do this job effectively – subject only to the opt out provision described above. The information required will include contact details of pupils and their parents or carers, gender, date of birth, ethnicity, special educational needs, school attended, and Key Stage or examination results.

Provision of information by Local Authorities or DfES

In some areas Connexions partnerships are arranging to obtain information from Local Authorities rather than schools, and this helps both to minimise burdens on schools and maximise the flow of information to Connexions. For the same reasons the Department is considering the transfer of some information to Connexions at national level. However transfers of information at Local Authority or national level should not take place in cases where parents or pupils have exercised their opt out right, or not yet been given the opportunity to do so. A Connexions flag has been added to PLASC so that these cases are readily known to the Local Authority and the Department.

Regulation 24 (1) (j) of the Education (Special Educational Needs) (England) (Consolidation) Regulations 2001 (SI 2001 No 3455) allows a Local Authority to pass a statement of special educational needs in respect of a child to the Connexions Service without that child's consent but only for the purposes of writing or amending a transition plan.

Information provided to Connexions before parents or pupils have been notified

If a school or Local Authority has provided pupil information beyond name and address to the Connexions Service without notifying parents or pupils that this is happening, and then receives a parental or pupil opt out when the fair processing notice is issued, the school or Local Authority should, as a matter of good practice, advise the parent or pupil of the situation, and also inform the Connexions partnership that the opt out has been claimed and that information already passed should be processed with that in mind.



Bishop Bridgeman C.E. Primary School

Fair Processing Notice

DATA PROTECTION ACT

Schools, Local Authorities, the Department for Education and Skills (DfES), the government department which deals with education, the Qualifications and Curriculum Authority (QCA), Ofsted and the Learning and Skills Council (LSC) all process information on pupils in order to run the education system, and in doing so have to comply with the Data Protection Act 1998. This means, among other things, that the data held about pupils must only be used for specific purposes allowed by law. We are therefore writing to tell you about the types of data held, why that data is held, and to whom it may be passed on.

Bishop Bridgeman C.E. Primary School holds information on pupils in order to support their teaching and learning, to monitor and report on their progress, to provide appropriate pastoral care, and to assess how well the school as a whole is doing. This information includes contact details, National Curriculum assessment results, attendance information, characteristics such as ethnic group, special educational needs and any relevant medical information. From time to time schools are required to pass on some of this data to Local Authority, the DfES and to agencies, such as QCA, Ofsted and LSC that are prescribed by law.

The **Local Authority** uses information about pupils to carry out specific functions for which it is responsible, such as the assessment of any special educational needs the pupil may have. It also uses the information to derive statistics to inform decisions on (for example) the funding of schools, and to assess the performance of schools and set targets for them. The statistics are used in such a way that individual pupils cannot be identified from them.

The **Qualifications and Curriculum Authority** uses information about pupils to administer the National Curriculum tests and assessments for Key Stages 1 to 3. The results of these are passed on to DfES in order for it to compile statistics on trends and patterns in levels of achievement. The QCA uses the information to evaluate the effectiveness of the National Curriculum and the associated assessment arrangements, and to ensure that these are continually improved.

Ofsted uses information about the progress and performance of pupils to help inspectors evaluate the work of schools, to assist schools in their self-evaluation, and as part of Ofsted's assessment of the effectiveness of education initiatives and policy. Inspection reports do not identify individual pupils.

The **Learning and Skills Council** uses information about pupils for statistical purposes, to evaluate and develop education policy and to monitor the performance of the education service as a whole. The statistics (including those based on information provided by the QCA) are used in such a way that individual pupils cannot be identified from them. On occasion information may be shared with other Government departments or agencies strictly for statistical or research purposes only.

The **Department for Children, Families and Schools, (DCFS)** uses information about pupils for research and statistical purposes, to inform, influence and improve education policy and to monitor the performance of the education service as a whole. The DCFS will feed back to Local Authorities and schools information about their pupils for a variety of purposes that will include data checking exercises, use in self-evaluation analyses and where information is missing because it was not passed on by a former school. The DCFS will also provide Ofsted with pupil level data for use in school inspection. Where relevant, pupil information may also be shared with post 16 learning institutions to minimise the administrative burden on application for a course and to aid the preparation of learning plans.

Pupil information may be matched with other data sources that the Department holds in order to model and monitor pupils' educational progression; and to provide comprehensive information back to Local Authorities and learning institutions to support their day to day business. The DfES may also use contact details from these sources to obtain samples for statistical surveys: these surveys may be carried out by research agencies working under contract to the Department and participation in such surveys is usually voluntary. The Department may also match data from these sources to data obtained from statistical surveys.

Pupil data may also be shared with other Government Departments and Agencies (including the Office for National Statistics) for statistical or research purposes only. In all these cases the matching will require that individualised data is used in the processing operation, but that data will not be processed in such a way that it supports measures or decisions relating to particular individuals or identifies individuals in any results. This data sharing will be approved and controlled by the Department's Chief Statistician.

The DCFS may also disclose individual pupil information to independent researchers into the educational achievements of pupils who have a legitimate need for it for their research, but each case will be determined on its merits and subject to the approval of the Department's Chief Statistician.

Pupils, as data subjects, have certain rights under the Data Protection Act, including a general right of access to personal data held on them, with parents exercising this right on their behalf if they are too young to do so themselves. If you wish to access the personal data held about your child then please contact the relevant organisation in writing:

- the school at XXXXXXXXXXXX;

- the Local Authority Information Manager, Paderborn House, PO Box 53, Civic Centre, Bolton, BL1 1JW;
- the QCA's Data Protection Officer at QCA, 83 Piccadilly, LONDON, W1J 8QA;
- Ofsted's Data Protection Officer at Alexandra House, 33 Kingsway, London WC2B 6SE;
- LSC's Data Protection Officer at Cheylesmore House, Quinton Road, Coventry, Warwickshire CV1 2WT;
- the DCFS's Data Protection Officer at DCFS, Caxton House, Tothill Street, LONDON, SW1H 9NA.

In order to fulfil their responsibilities under the Act the organisation may, before responding to this request, seek proof of the requestor's identity and any further information required to locate the information requested.

Separately from the Data Protection Act, regulations provide a pupil's parent (regardless of the age of the pupil) with the right to view, or to have a copy of, their child's educational record at the school. If you wish to exercise this right you should write to the school.

Following a number of questions raised by Local Authorities recently regarding the new version of the Fair Processing Notice (FPN), the Department's responses to the main issues raised are detailed below in the form of a set of Q&As.

We hope that this helps with your understanding of the new FPN.

Q: What changes have been made to the FPN since April 2003?

The following key changes have been made:

- the inclusion of Ofsted and the Learning and Skills Council, as well as QCA, as “prescribed persons” under The Education (Individual Pupil Information) (Prescribed Persons) Regulations to receive and process pupil information
- the provision of the notice to children of secondary school age as well as their parents, in accordance with recent legal guidance about the rights of children in this area
- that schools will now re-issue the notice to pupils at age 16 in acknowledgement of the pupil’s rights under the Learning and Skills Act
- the changed emphasis on the right of children of secondary school age to have access to information about themselves unless they wish their parents to request access on their behalf
- some textual amendments and additions arising from comments on the previous notice/guidance, legal advice and developments since 2003.

Q: Do schools need to send out the new version of the FPN to all pupils again, or just to new pupils?

Schools must send the revised version of the FPN out to all pupils, even if they have previously been sent an FPN. This is because new information and data items are being collected and the uses to which the information is put have been modified. The 2003 notice was not intended to cover all future collections or uses of the data collected.

Q: Do schools need to send out the FPN to all Year 12 pupils at the beginning of the term or at the point when they turn 16?

In order to reduce the burden on schools it is suggested that the notice is re-issued to pupils at the beginning of the term in which they reach the age of 16 and not on each individual pupil's birthday.

Q: Does an FPN need to be sent to each individual, or is it acceptable for the school to publish it as part of their prospectus/circular?

Children of secondary school age need to be informed individually since they are the data subjects and the parents of children of a younger age on their behalf). The guidance states that any form of notification other than the fair processing notice is *not* a substitute for it.

It is also worth noting that when the previous FPN was developed, the Information Commissioner was insistent that there should be a notice provided rather than the information made “readily available” by some other means.

Q: Are Local Authorities legally obliged to share information about individual children with Social Services?

In certain circumstances, yes (for example, s.83 of the Children Act 1989), but there is no general obligation to share pupil level data.

Q: Is it sufficient to send schools the new wording, or is there any guidance specifically for schools?

There is no central guidance specifically for schools. Local Authorities should therefore provide the revised notice to schools promptly to ensure that they substitute this for the previous notice.

Q: Is it necessary to send out two letters for pupils over the age of 12 (i.e. one for parents and one for the pupil)?

Yes, this takes account of recent legal guidance about the rights of children in this area, but recognises the parent's need to be aware as well.

Q: If the notice went to the appropriate person at the time of sharing information, why is it necessary to issue the notice again when the pupil turns 16 if the original data sharing was legitimate?

Re-issuing the FPN is not intended to question the legitimacy of the original information sharing. It is intended to acknowledge that under the Learning and Skills Act, the right to opt out from having information (over and above name and address of pupil and parent) shared with Connexions providers passes from the parent to the pupil at age 16, and to draw this to the pupil's attention.

Q: How do Local Authorities handle cases where there was no objection from the parent at the time of sharing the data, but when the new FPN is issued there is an objection from the pupil?

Under the Learning and Skills Act, pupils may at age 16 opt out of the provision of information to Connexions providers (over and above name and address of pupil and parent), even when their parents (who have the right to do so on their behalf until they are 16) have not opted out. Should this be the case, the advice (as per the guidance) is that the Local Authority should "inform the Connexions partnership that the opt out has been claimed and that information already passed should be processed with that in mind". From the date of receiving the pupil's opt-out decision, no new data should be passed to the Connexions Service