



Special Category Data & Criminal Offence Data (Appropriate Policy Document)



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1. Introduction

As part of Belfast Metropolitan College's ("the College") public function as a further education provider, we process Special Category and Criminal Offence data in accordance with Article 9 of the UK General Data Protection Regulation (UK GDPR) and Schedule 1 of the Data Protection Act (2018) (DPA).

Schedule 1, Part 4 of the DPA requires us to have in place this document, called an 'Appropriate Policy Document', when we rely on certain conditions for processing Special Category and Criminal Offence data. This document will tell you what Special Category and Criminal Offence data we process, our lawful bases (including our schedule 1 condition in the DPA) for processing that data, the purposes for which we process it, and how we ensure compliance with the principles of data protection law provided in Article 5 of the UK GDPR.

We will also tell you how long we will hold the Special Category and Criminal Offence data. Some of the information is already held in other documents on the College's website, and we have referred to the relevant documents when it is necessary to do so.

2. Description of the data processes

We process the following types of Special Category¹ and Criminal Offence data²:

- Racial/ethnic origin
- Political opinions
- Religious or philosophical beliefs
- Trade union membership
- Genetic and biometric data
- Data concerning health
- Data concerning sex life or sexual orientation
- Criminal offence data

3. Conditions for processing special category data and criminal offence data

Special Category Data

We process special categories of personal data under the following of the UK GDPR Articles:

1. Article 9(2)(b) – where processing is necessary for the purposes of performing or exercising obligations or rights which are imposed or conferred by law on the College or the data subject in connection with employment, social security or social protection.

Examples of our processing include staff sickness absences and providing human resources and occupational health facilities for employees. In addition to processing special category data concerning health etc. in connection with the College's rights under employment law.

2. Article 9(2)(g) - reasons of substantial public interest.

Processing is necessary for reasons of substantial public interest including processing to ensure the College's compliance with Disability Discrimination Act (1995) and other legislative requirements. In

¹ As defined in Article 9 of the UK GDPR

² As defined in Article 10 of the UK GDPR and section 11(2) of the DPA 2018

addition to processing to assist elected representatives such as local government, Councilors and Members of Parliament with requests for assistance on behalf of their constituents. As well as for the purposes of Insurance - processing of personal data which is necessary for an insurance purpose and for reasons of substantial public interest. Where the College cannot reasonably be expected to obtain consent from the Data Subject.

3. Article 9(2)(j) – for archiving purposes in the public interest.

The relevant purpose we rely on is Schedule 1 Part 1 paragraph 4 – archiving. An example of our processing is the transfers we make to PRONI as part of our obligations under the Public Records Act (NI) 1923.

4. Article 9(2)(f) – for the establishment, exercise or defence of legal claims.

Examples of our processing include processing relating to any employment tribunal, civil bill or other litigation.

5. Article 9(2)(a) – explicit consent

In circumstances where we seek consent, we make sure that the consent is unambiguous and for one or more specified purposes, is given by an affirmative action and is recorded as the condition for processing. Examples of our processing include health information we receive from applicants or students who require reasonable adjustments or learning support arrangements.

6. Article 9(2)(c) – where processing is necessary to protect the vital interests of the data subject or of another natural person.

An example of our processing would be using health information about a student or member of staff in a medical emergency.

Criminal Offence Data

The College processes criminal offence data under Article 10 of the UK GDPR and the DPA 2018.

Article 10 of the UK GDPR covers processing in relation to criminal convictions and offences or related security measures. In addition, section 11(2) of the DPA 2018 specifically confirms that this includes personal data relating to the alleged commission of offences or proceedings for an offence committed or alleged to have been committed, including sentencing. This is collectively referred to as 'criminal offence data'.

The College processes criminal convictions and offences data, as well as undertaking mandatory criminal record checks, to carry out our obligations in respect of its public task, and to comply with its legal obligations, including:

- for employment, social security and social protection purposes;
- for preventing or detecting unlawful acts purposes;
- for protecting the public against dishonesty purposes; and
- for safeguarding of children and individuals at risk purposes.

Examples of our processing of criminal offence data include pre-employment checks and declarations by an employee in line with contractual obligation or as part of the admissions process for applicants to certain courses, such as social work, education, health and social care or childcare. In addition to

processing data relating to criminal convictions in connection with the College's rights under employment law in connection with recruitment, discipline or dismissal.

4. Schedule 1 DPA 2018 conditions for processing

Below we have listed the Schedule 1 conditions upon which we are relying, and which need to be covered by this document.

- Schedule 1, Part 1, para 1 (employment and social protection),
 - where the College needs to process Special Category/Criminal Offence data for the purposes of performing its obligations or rights as an employer, providing human resources and occupational health facilities for employees or for guaranteeing the social protection of individuals. Processing data relating to criminal convictions in connection with the College's rights under employment law in connection with recruitment, discipline or dismissal. Processing personal data concerning health in connection with the College's rights under employment law. For Occupational Pensions purposes, fulfilling the College's obligation to provide an occupational pension scheme and determining benefits payable to dependents of pension scheme members.
- Schedule 1, Part 1, para 6 (statutory purposes),
 - where the College needs to process Special Category/Criminal Offence data to comply with our statutory obligations. Processing is necessary for reasons of substantial public interest including processing to ensure the College's compliance with Disability Discrimination Act (1995) and other legislative requirements.
 - Processing of personal data which is necessary for an insurance purpose and for reasons of substantial public interest. Where the College cannot reasonably be expected to obtain consent from the Data Subject.
- Schedule 1, Part 2, para 8 (equality of opportunity),
 - where the College needs to process Special Category/Criminal Offence data for the purposes of monitoring equality of opportunity or treatment between groups of people specified in relation to that category with a view to enabling such equality to be promoted or maintained.
- Schedule 1, Part 2, para 10 (preventing or detecting unlawful acts),
 - where the College needs to process Criminal Offence data for the purpose of preventing or detecting unlawful acts and obtaining consent would prejudice those purposes, and the processing is necessary for reasons of substantial public interest. Processing necessary to ensure the safeguarding and protection of the College's students: by virtue of Paragraph 36 of Schedule 1 of the DPA Act, it is not necessary to demonstrate a substantial public interest in the above processing.
- Schedule 1, Part 2, para 11 (protecting the public from dishonesty),
 - where the College needs to process Criminal Offence data to protect members of the public from malpractice, unfitness, incompetence or mismanagement in the administration of a body or organisation, and obtaining consent would prejudice the exercise of the protective function, and the processing is necessary for reasons of substantial public interest.
- Schedule 1, Part 2, para 12 (Regulatory requirements relating to unlawful acts and dishonesty),
 - where the College needs to process Criminal Offence data to comply with a requirement which involves taking steps to establish whether an individual has committed an unlawful act, or been involved in dishonesty, malpractice or other seriously improper conduct, and the processing is necessary for reasons of substantial public interest. The College will assist authorities in connection with their regulatory requirements.
- Schedule 1, Part 2, para 18 (safeguarding),

- where the College needs to process Special Category/Criminal Offence data in order to protect the physical, mental or emotional well-being of an individual under the age of 18, or over the age of 18 and at risk, only where, in the circumstances, consent cannot be given by the data subject, cannot be reasonably obtained from the data subject, or where the processing must be carried out without the consent of the data subject because obtaining the data subject's consent would prejudice the provision of the protection, and the processing is necessary for reasons of substantial public interest. The College carries out risk assessments and processing AccessNI checks for staff and students in addition to sharing information with relevant agencies if required.

The College relies on DPA Schedule 1 conditions to process criminal offence data, as below:

- Preventing or Detecting Unlawful Acts (Schedule 1, Part 2, Paragraph 10)
 - Where the College needs to process Criminal Offence data for the purpose of preventing or detecting unlawful acts and the processing is necessary for reasons of substantial public interest. The College processes Criminal Offence Data for example, as part of the recruitment of staff or the admissions process for applicants to certain courses, such as social work, education, health and social care or childcare to enable it to manage any potential risks to the College community and campus to prevent or detect unlawful acts.
- Protecting the Public (Schedule 1, Part 2, Paragraph 11)
 - Where processing is necessary for the protection of members of the public against dishonesty, malpractice, or other seriously improper conduct.
- Legal Claims (Schedule 1, Part 3, Paragraph 33)
 - Where processing is necessary for the establishment, exercise, or defense of legal claims.
- Safeguarding of Children and of Individuals at Risk (Schedule 1, Part 2)
 - It is necessary to process Criminal Offence Data to safeguard children and individuals at risk against neglect, physical, mental or emotional harm and protect them from such harm. Such processing enables the College to identify and manage any potential risks to the College community and campus.

5. How we comply with the data protection principles in Article 5 of the UK GDPR

Article 5(2) of the UK GDPR requires Data Controllers to demonstrate how they comply with the data protection principles provided in Article 5(1). This section illustrates the measures we have taken to demonstrate accountability for the personal data we process, and contains details about how we ensure compliance with the principles of the UK GDPR.

5.1 Accountability

The College demonstrates compliance with the data protection principles provided in Article 5 of the UK GDPR through the following measures and documents:

- We have appointed a Data Protection Officer whose role and responsibilities align with the provisions of Articles 37-39 of the UK GDPR.
- The College maintains a Record of Processing Activities (Art. 30, GDPR) which records all of our personal data activities and are provided to the Information Commissioner on request. Our Record of Processing Activities sets out the personal data categories we process, the purposes, the lawful bases under Article 6 and Article 9 UK GDPR including the Schedule 1 DPA 2018 condition, our retention periods for the data, recipients of personal data, any

international transfers of data and our means of keeping data secure.

- Our Privacy Notices explain to individuals how and why their data is processed by the College, what their rights are, and how they can get in touch with our DPO and the ICO.
- Carrying out Data Protection Impact Assessment for any high-risk personal data processing and consult the Information Commissioner if appropriate.
- When we routinely and/or regularly share data with third parties, we enter into written agreements with Data Controllers and Data Processors which meet the provisions of Articles 26 and 28 of the UK GDPR respectively.
- We implement appropriate security measures which are proportionate to the risks associated with the processing.

5.2 Lawful, fair and transparent processing

- We will ensure that personal data is only processed where a lawful basis applies, and where processing is otherwise lawful.
- We provide clear and transparent information to individuals about why we process their personal data, including our lawful basis, in our Privacy Notices. This includes information about why we process Special Category and Criminal Offence data.
- As a public body, we need to process Special Category Data for the substantial public interest conditions outlined in section 3 of this policy to meet the requirements of legislation such as the Equality Act 2010, the Health and Safety at Work Order 1978, and legislation relating to safeguarding.
- We process Special Category and Criminal Offence data of employees to meet our legal obligations as an employer.

5.3 Purpose limitation

We process Special Category and Criminal Offence data where it is necessary to do so for specified, explicit and legitimate purposes. We will inform data subjects what those purposes are in a privacy notice at the point of data collection and on the College website. We only process Special Category and Criminal Offence data where we have a lawful basis to do so under Articles 6, 9 and 10 UK GDPR and, where required, when we have identified a condition under Schedule 1 DPA 2018.

We will not process any Special Category and Criminal Offence for purposes which would be incompatible with the purpose for which the data was originally collected.

5.4 Data minimisation

We design our data collection forms and other data collection systems to ensure that we only collect the Special Category or Criminal Offence data necessary to achieve the relevant purpose. Our purposes are set out in our Privacy Notices.

We are satisfied that we collect and retain Special Category and Criminal Offence data to fulfil our purposes. We collect enough but no more than we need in accordance with the data minimisation principle, and we only hold Special Category and Criminal Offence data for the period set out in our retention policies.

Our retention schedule sets out the correct disposal action once records containing special category data are no longer required.

5.5 Accuracy

When we identify data which is inaccurate or out of date, having due regard for the purpose for which the data was processed, we will take necessary steps to rectify or erase it without delay. If we decide not to either erase or rectify it, for example because the lawful basis we rely on to process the data means these rights don't apply, we will document our decision. The College will ensure when updated information is received, we will confirm the identity of the individual and update the information where necessary.

5.6 Storage limitation

Special Category and Criminal Offence data processed by us for the purpose of employment or substantial public interest will be retained for the periods set out in our FE Sector Retention and Disposal schedule. The FE Sector Retention and Disposal schedule for record categories is determined by our legal and regulatory obligations, and our business requirements. The FE Sector Retention and Disposal schedule is available to view on our website. The College will only keep personal data in an identifiable form as long as necessary for the purpose for which it is collected. The College will delete or pseudonymise the data once the retention period has elapsed.

5.7 Security

Electronic data is hosted on a secure network, and on the secure servers of third party cloud storage providers with whom we have contractual agreements. Electronic and hard copy data is managed according to our internal records management policies and procedures. Staff will complete mandatory training in data protection. The College will ensure that there are appropriate organisational and technical measures in place to protect personal data.

6. Retention and erasure policies

Personal data, including special category data and criminal offence data, is held and disposed of in line with the FE Sector Retention and Disposal Schedule. When disposing of information, the College will ensure this is destroyed securely. The FE Sector Retention and Disposal Schedule available on our website.

7. Appropriate Policy Document review date

This document will be retained for the duration of the processing and disposed of in line with the FE Sector Retention and Disposal Schedule.

This document will be reviewed annually or revised more frequently if necessary.

8. Additional Special Category data and Criminal Offence data

We also process special category data and criminal offence data where an Appropriate Policy Document is not required e.g. for archival, research and statistical purposes. In these circumstances we will respect the rights and interests of our data subjects by informing them about the processing in our Privacy Notices

9. Data Protection Officer

The DPO is the point of contact for anyone who wishes to exercise any of their data protection rights or respond to general queries. You can either write to or email on:

Data Protection Officer
Corporate Development
Belfast Metropolitan College
Integrated Shared Services Centre
398 Springfield Road
Belfast BT12 7DU
dataprotection@belfastmet.ac.uk

If you still have concerns, you can contact the Information Commissioner's Office (ICO) on:

Informational Commissioners Office – Northern Ireland
3rd Floor
14 Cromac Place
Belfast
BT7 2JB

0303 123 113 / 028 9027 8757

10. Related Policies and Procedures

There are a number of documents and policies relevant to Data Protection in the College:

- Data Protection Policy
- Data Protection Handbook
- Data Subject Rights Procedure
- FE Sector Retention and Disposal Schedule
- Access to Information / Freedom of Information Policy