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## **HERTSMERE BOROUGH COUNCIL**

### **Special Category, Sensitive and Criminal Offences Data Policy**

#### **1.1 ABOUT THIS POLICY:**

1.1 As part of our statutory and corporate functions, the Council process special category data in accordance with the requirements of Articles 6, 9 and 10 of the General Data Protection Regulation ('GDPR'), Schedule 1 of the Data Protection Act 2018 ('DPA') and Criminal Offence data in accordance with the requirements of Article 10 of the General Data Protection Regulation ('GDPR') Part 2 and Schedule 1 of the Data Protection Act 2018 ('DPA').

1.2 This Policy:

1.1.1 sets out how the Council will comply with the data protection principles to process Special Category, Sensitive and Criminal Offences data

1.1.2 explains how the Council will handles Special Category, Sensitive and Criminal Offences data that it processes,

1.1.3 illustrates the Council's lawful basis and purpose of processing and the relevant condition for processing under GDPR and Data Protection Law

#### **2 SCOPE OF POLICY:**

2.1 This policy covers all Special Category, Sensitive and Criminal Offences data that the Council holds or has control over. This includes physical data such as hard copy documents, contracts, notebooks, letters and invoices. It also includes electronic data such as emails, electronic documents, audio and video recordings and CCTV recordings. It applies to both personal data and non-personal data. In this policy we refer to this information and these records collectively as "Data".

2.2 This policy covers Data that is held by third parties on the Council's behalf, for example cloud storage providers or offsite records storage. It also covers Data that belongs to the Council but is held by employees on personal devices.

### **3 WHAT ARE SPECIAL CATEGORY DATA?**

3.1 Special category data is defined in Article 9 GDPR as personal data revealing:

- 3.1.1 Racial or ethnic origin
- 3.1.2 Political opinions
- 3.1.3 Religious or philosophical belief
- 3.1.4 Trade union membership
- 3.1.5 Genetic data
- 3.1.6 Biometric data for the purpose of uniquely identifying a natural person
- 3.1.7 Data concerning health
- 3.1.8 Data concerning a natural person's sex life or sexual orientation

### **4 CRIMINAL OFFENCE DATA:**

Article 10 of the GDPR covers processing in relation to criminal convictions and offences or related security measures. In addition, section 11(2) of the DPA 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'.

### **5 PRINCIPLES:**

5.1 The General data Protection Regulations (GDPR) has 6 rules that the Council adheres to when collecting and using Data:

- 5.1.1 processed lawfully, fairly and in a transparent manner, that is to say:
  - 5.1.1.1 the Council will ensure that personal data is only processed where a lawful basis applies and where processing is otherwise lawful;
  - 5.1.1.2 only process personal data fairly and will ensure that data subjects are not misled about the purposes of any processing; and
  - 5.1.1.3 ensure that data subjects receive full privacy information so that any processing of personal data is transparent
- 5.1.2 collected for specified, explicit and legitimate purposes;
- 5.1.3 adequate, relevant and limited to what is necessary;
- 5.1.4 accurate and up to date;
- 5.1.5 kept in a form which permits identification of data subjects for no longer than is necessary; and

5.1.6 processed securely

## **6 WHAT ARE THE LAWFUL BASES FOR PROCESSING SPECIAL CATEGORY DATA?**

6.1 The lawful bases for processing Special Category Data are set out in Articles 6 and 9 of the GDPR. At least one of these must apply whenever the Council process Special Category Data. The Council relies on the following as the basis for processing Special Category Data:

6.1.1 Consent: the Data Subject has given clear consent for the Council to process their personal data for a specific purpose.

6.1.2 Contract: the processing is necessary for a contract the Council has with the Data Subject, or because the Data Subject has asked the Council to take specific steps before entering into a contract.

6.1.3 Legal obligation: the processing is necessary for the Council to comply with the law (not including contractual obligations).

6.1.4 Vital interests: the processing is necessary to protect someone's life.

6.1.5 Public task: the processing is necessary for the Council to perform a task in the public interest or for the Council's official functions, which has a clear basis in law.

6.1.6 The Data Subject has given the Council explicit consent to process their Data.

6.1.7 For employment, social security and social protection purposes.

6.1.8 For vital interests.

6.1.9 For legitimate activities by a foundation, association or any other not for profit body with political, philosophical or religious or trade union aim.

6.1.10 For employment, social security and social protection purposes.

6.1.11 For defence of legal claims.

6.1.12 For substantial public interest purposes.

6.1.13 For health and social care purposes.

6.1.14 For public health purposes.

6.1.15 For archiving, research and statistics purposes.

## **7 WHAT ARE THE LAWFUL BASES FOR PROCESSING SPECIAL CATEGORY AND CRIMINAL OFFENCE DATA?**

7.1 Sensitive processing is defined in the law enforcement provisions as:

- (i) the processing of personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs or trade union membership;

- (ii) the processing of genetic data, or of biometric data, for the purpose of uniquely identifying an individual;
  - (iii) the processing of data concerning health;
  - (iv) the processing of data concerning an individual's sex life or sexual orientation
- 7.2 The processing of Special Category and Criminal Offence Data for law enforcement purposes is carried out by the Council in its capacity as a competent authority under Part 3 of the DPA.
- 7.3 The Council processes Data for the purposes of: prevention; investigation; detection or prosecution of criminal offences; or the execution of criminal penalties, including the safeguarding against and the prevention of threats to public security.
- 7.4 The conditions the Council relies upon to process this Data for law enforcement purposes falls under Schedule 8 of the DPA which the Council will mainly rely upon:
- 7.4.1 consent.
  - 7.4.2 the administration of justice
  - 7.4.3 legal claims; and
  - 7.4.4 preventing fraud

## **8 FURTHER INFORMATION**

For further information about our compliance with data protection law, please contact us by:

- e-mailing the Data Protection Officer at [foi@hertsmere.gov.uk](mailto:foi@hertsmere.gov.uk); and/or
- Writing to the Data Protection Officer Hertsmere Borough Council, Civic Offices, Elstree Way, Borehamwood WD6 1WA