

# FAIR PROCESSING GUIDANCE FOR SCHOOLS 2008/2009

## REQUIREMENTS WITH RESPECT TO FAIR PROCESSING UNDER THE DATA PROTECTION ACT 1998 AND THE PASSING OF INFORMATION TO CONNEXIONS AND CONTACTPOINT

### **Fair Processing and the Data Protection Act 1998 : What does it mean for Schools?**

Schools, Local Authorities (LAs), the Department for Children, Schools and Families (DCSF), the Qualifications and Curriculum Authority (QCA), Ofsted, the Learning and Skills Council (LSC), the Department of Health (DH), Primary Care Trusts (PCTs) and organisations which require access to data in the Learner Registration Scheme as part of the Managing Information Across Partners (MIAP) programme are all “data controllers” under the Data Protection Act 1998 in that they determine the purpose(s) for which “personal data” (ie data about living individuals from which they can be identified) is processed and the way in which that processing is done.

This guidance focuses primarily on personal data about pupils, although personal data may also be held on other groups such as parents and carers, 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 (the data controllers) are, the purposes for which they process the personal data, and any other information which is necessary to make the processing of the personal data fair, including any third parties to whom the data may be passed. This is normally done by what is referred to as a “fair processing notice”.

Pupils and parents, as data subjects, have certain rights under the Data Protection Act 1998, including a general right to be given access to personal data held about them by any data controller. There is a presumption (endorsed by legal guidance issued by the Information Commissioner) that children of twelve years of age and over has sufficient maturity to exercise their rights themselves, though in practice there will be exceptions to this.

**The fair processing obligations on the data controller (schools) 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. This acknowledges both the rights of the child and the parent’s need to be aware of how their child’s information is handled.

**Further information about fair processing requirements, and guidance on the Data Protection Act 1998 generally,** can be obtained from the Information Commissioner’s website [www.ico.gov.uk](http://www.ico.gov.uk)

In order to cut down the burden on schools, and after consultation with the Information Commissioner, the DCSF suggested fair processing notice (FPN) has been broken down into two layers :

### **Layer One**

This is a brief one/two page notice, outlining simply the core fair processing information. **This layer is to be issued for all pupils on roll and is included as an appendix to this guidance :**

**Appendix A** provides the Layer One notice which needs to be issued by schools **without** secondary age pupils.

**Appendix B** provides the Layer One notice which needs to be issued by schools **with** secondary age pupils.

**Please note that the details in red need to be completed on the notice before it is issued.**

### **Layer Two**

This is the full FPN.

Layers One and Two are available on the LA's webpages at [www.dorsetforyou.com/fairprocessing](http://www.dorsetforyou.com/fairprocessing) Schools may also wish to make them available on their own websites. Hard copies **must be available from schools on demand** for those parents requesting one. **The details in red need to be completed on the notice before either layer is issued.**

The notice covers processing carried out by the school as well as that carried out by LAs, the DCSF, QCA, Ofsted, the LSC, the DH, PCTs and organisations which require access to data in the Learner Registration Scheme as part of the Managing Information Across Partners (MIAP) programme. This is rather than all these organisations sending out separate notices, which would be logistically very difficult and confusing for parents.

**Even if a fair processing notice has been previously issued to pupils, this new version of the notice must be issued during the Autumn Term 2008, prior to the January 2009 School Census** which will provide the first collection of pupil and parent/carer data for ContactPoint. ContactPoint is a directory which will help people who work with children to quickly find out who else is working with the same child, making it easier to deliver more coordinated support.

**Schools need to ensure that :**

- Layer One is issued to all current pupils of the age of 12 and over **and** to their parents as soon as possible;
- Layer One is issued to the parents of all current pupils under the age of 12 as soon as possible;
- Layer One is issued to new pupils and/or their parents as part of the

enrolment process, together with a data sheet showing the data which will be held about the pupil and which will be shared with the LA or the DCSF;

- Layer One is reissued to pupils at the age of 16, to draw to their attention that 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. It is suggested that the notice should be reissued to pupils at the beginning of the term in which they reach 16, and not on each individual pupil's birthday.

To reduce the burden on schools of having to issue separate FPNs to all parents and carers for each child, it is suggested that one letter is sent to the main parental/carer address and that parents are invited to check and update the information held about them by contacting the school direct.

Before issuing any of the FPN layers, the school needs to consider the adequacy of the paragraph describing the uses of personal data by the school, and also insert contact details for the school's Data Protection Officer. If a school intends to share data with anyone else, the school should ensure (through appropriate legal advice) that sharing complies with the Data Protection Act 1998 and include details of the organisations with which the school will be sharing the data in the FPN.

As well as issuing the notice directly to pupils and/or parents, schools may also include Layer One in other communications with parents (eg the school prospectus, the governors' annual report, the individual pupil report, or the annual data checking sheet), and/or display the text on the 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, LAs, the DCSF, QCA, Ofsted, the LSC, the DH, PCTs and organisations which require access to data in the Learner Registration Scheme as part of the Managing Information Across Partners (MIAP) programme, there is a legal requirement under Section 117 of the Learning and Skills Act 2000 to pass information on request to those involved in the provision of Connexions services. Connexions services are for pupils between the ages of 13 and 19 years.

The information which schools are required to provide consists of :

- (a) the names and addresses of pupils and their parents. This information must be supplied to those providing Connexions services in any event;
- (b) other information requested 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.

The provision of information as described in (b) is an **opt-out**, not an opt-in process.

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 must also advise them of the right to instruct the school not to provide information beyond name and address.

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.

Parents or pupils are entitled to register an opt-out at any time, 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 the Connexions Service receives 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.

Funding and accountability for Connexions lies with the Local Authority.

### **Information provided to Connexions before parents or pupils have been notified**

In Dorset, the Connexions Service obtains the information it requires from the LA rather than from schools. This helps both to minimise burdens on schools and to maximise the flow of information to Connexions. Transfers of information at LA level will not take place in cases where parents or pupils have exercised their opt-out right or have not yet been given the opportunity to do so. The Connexions flag included in the School Census means that these cases are readily known to the LA.

If pupil information beyond name and address has been provided to the Connexions Service inadvertently, without parents or pupils having been notified that this is happening, and then a parental or pupil opt-out is received when a fair processing notice is issued, the school must advise the parent or pupil of the situation, as well as the LA. The LA will then inform the Connexions service provider that the opt-out has been claimed, and of the need for them to take appropriate action. In the event of pupils, at age 16, opting out of the provision of information to Connexions providers when their parents have not previously done so, the Connexions provider should be informed in the same way.

### **Passing information to ContactPoint**

Provisions in The Children Act 2004 Information Database (England) Regulations 2007, made under section 12 of the Children Act 2004, require all maintained

schools to provide certain information to the database known as **ContactPoint**.

ContactPoint will provide a quick way for practitioners (e.g. headteachers) to find out who else is working with the same child.

The information required to be provided by schools consists of basic information about the child or young person, the contact details of the school and the contact address and telephone numbers for the parents or carers, with parental responsibility, of the child or young person. The data will be provided to ContactPoint nationally by the DCSF, from the information provided in the School Census, rather than from individual schools.

As this is the first time that personal data about parents and carers has been collected via the School Census it is extremely important that the appropriate FPN is sent to all parents or carers who have parental responsibility for the child.

Within the school MIS system, schools will need to ensure that they have recorded accurate addresses, phone numbers including local area codes and used the relationship codeset accurately. The DCSF is aware that some schools use the FAM code which is intended for "other family members" as a place to record information about parents. As the Children Act only gives ContactPoint the right to receive information on parents, the DCSF can only collect information on contacts identified as Father, Mother, Step Father, Step Mother, Foster Mother and Foster Father or as Carer where the parental responsibility tag is set as Yes. The DCSF appreciates that in many cases that there will be multiple returns for an individual child.

## APPENDIX A

### Fair Processing Notice (Layer One) : Schools WITHOUT Secondary Age Pupils

**X School** processes personal data about its pupils and is a “data controller” in respect of this for the purposes of the Data Protection Act 1998. It processes this data to:

- support its pupils’ teaching and learning;
- monitor and report on their progress;
- provide appropriate pastoral care, and
- assess how well the school as a whole is doing.

This data includes contact details, national curriculum assessment results, attendance information, characteristics such as ethnic group, special educational needs and any relevant medical information.

This data may only be used or passed on for specific purposes allowed by law. From time to time the school is required to pass on some of this data to Local Authorities, the Department for Children, Schools and Families (DCSF), and to agencies that are prescribed by law, such as the Qualifications and Curriculum Authority (QCA), Ofsted, the Learning and Skills Council (LSC), the Department of Health (DH), Primary Care Trusts (PCTs) and ContactPoint (mentioned below). All these are data controllers in respect of the data they receive, and are subject to the same legal constraints in how they deal with the data.

The governing body of a maintained school in England is also required by law to supply basic information to ContactPoint. ContactPoint is a directory that will help people who work with children to quickly find out who else is working with the same child, making it easier to deliver more coordinated support. The basic information which needs to be supplied to ContactPoint only includes the name and address of the child, contact details for their parents or carers (with parental responsibility) and the contact details of the school.

Pupils, as data subjects, have certain rights under the Data Protection Act, including a general right to be given access to personal data held about them by any data controller. The presumption is that by the age of 12 a child has sufficient maturity to understand their rights and to make an access request themselves if they wish. A parent would normally be expected to make a request on a child’s behalf if the child is younger.

If you wish to access your personal data, or that of your child, then please contact the relevant organisation in writing. Details of these organisations can be found on the following website [www.dorsetforyou.com/fairprocessing](http://www.dorsetforyou.com/fairprocessing) or for those pupils/parents where this is not practical, a hard copy can be obtained from the School (**add name and contact telephone number**)

Your attention is drawn to Layer Two of this Fair Processing Notice, which gives supplementary information about the processing of pupil data by the organisations mentioned above, and gives greater details of how the pupil data is processed and the rights of parents and pupils.

Either layer can be obtained by accessing the following website [www.dorsetforyou.com/fairprocessing](http://www.dorsetforyou.com/fairprocessing) (*school can also provide via the school website*). For those pupils/parents where this is not practical, a hard copy can be obtained from the School.

## APPENDIX B

### Fair Processing Notice (Layer One) : Schools WITH Secondary Age Pupils

**X School** processes personal data about its pupils and is a “data controller” in respect of this for the purposes of the Data Protection Act 1998. It processes this data to:

- support its pupils’ teaching and learning;
- monitor and report on their progress;
- provide appropriate pastoral care, and
- assess how well the school as a whole is doing.

This data includes contact details, national curriculum assessment results, attendance information, characteristics such as ethnic group, special educational needs and any relevant medical information.

This data may only be used or passed on for specific purposes allowed by law. From time to time the school is required to pass on some of this data to Local Authorities, the Department for Children, Schools and Families (DCSF), and to agencies that are prescribed by law, such as the Qualifications and Curriculum Authority (QCA), Ofsted, the Learning and Skills Council (LSC), the Department of Health (DH), Primary Care Trusts (PCTs), ContactPoint (mentioned below), organisations that require access to data in the Learner Registration System as part of the MIAP (Managing Information Across Partners) programme and Connexions (see below). All these are data controllers in respect of the data they receive, and are subject to the same legal constraints in how they deal with the data.

The governing body of a maintained school in England is also required by law to supply basic information to ContactPoint. ContactPoint is a directory that will help people who work with children to quickly find out who else is working with the same child, making it easier to deliver more coordinated support. The basic information which needs to be supplied to ContactPoint only includes the name and address of the child, contact details for their parents or carers (with parental responsibility) and the contact details of the school.

Pupils, as data subjects, have certain rights under the Data Protection Act, including a general right to be given access to personal data held about them by any data controller. The presumption is that by the age of 12 a child has sufficient maturity to understand their rights and to make an access request themselves if they wish. A parent would normally be expected to make a request on a child’s behalf if the child is younger.

If you wish to access your personal data, or that of your child, then please contact the relevant organisation in writing. Details of these organisations can be found on the following website [www.dorsetforyou.com/fairprocessing](http://www.dorsetforyou.com/fairprocessing) or for those pupils/parents where this is not practical, a hard copy can be obtained from the

School (***add name and contact telephone number***)

For pupils of 13 years and over, the school is legally required to pass on certain information to Connexions services providers on request. Connexions is the government's support service for all young people aged 13 to 19 in England. This information includes the name and address of the pupil and parent, and any further information relevant to the Connexions services' role. However parents, or the pupils themselves if aged 16 or over, can ask that no information beyond name and address (for pupil and parent) be passed on to Connexions. If as a parent, or as a pupil aged 16 or over, you wish to opt-out and do not want Connexions to receive from the school information beyond name and address, then please contact the school.

Your attention is drawn to Layer Two of this Fair Processing Notice, which gives supplementary information about the processing of pupil data by the organisations mentioned above, and gives greater details of how the pupil data is processed and the rights of parents and pupils.

Either layer can be obtained by accessing the following website **[www.dorsetforyou.com/fairprocessing](http://www.dorsetforyou.com/fairprocessing)** (***school can also provide via the school website***). For those pupils/parents where this is not practical, a hard copy can be obtained from the School.