

10 May 2018

General Data Protection Regulations - GDPR

Purpose of Report

1. The purpose of this report is to present to staffing policy committee the impact that the GDPR regulations will have on HR&OD processes and to outline the action being taken to prepare for this new legislation.

Background

2. The GDPR regulations are the first major change to data protection law in twenty years. The regulations come into effect on 25 May 2018 and, although they are EU regulations, the UK government has confirmed they will form part of UK law both pre and post Brexit.
3. Although the GDPR's data protection principles are similar to those under the Data Protection Act the conditions for obtaining valid consent for processing personal data will be stricter, as follows:
 - There will be a greater focus on the legal basis for processing data.
 - There will be an increased obligation to provide information to employees and job applicants about the processing of their personal data.
 - Individuals will have increased rights to access their personal data.
 - The processing and sharing of information will be limited to what is necessary for each purpose.
 - There will be new record keeping obligations and greater transparency obligations in that employers will have to provide more information on what data they hold and what they do with that data.
 - Personal data must not be stored for any longer than necessary and there will be increased financial sanctions.
4. The information and governance team has overall responsibility for producing Wiltshire Council's GDPR data protection policy, and other GDPR data protection information such as a council privacy notice. The team has recently purchased software for GDPR purposes (Flowz) which, when fully operational, will contain a comprehensive record of all the personal data and assets that the council holds.
5. In addition each council service that collects personal information and data about individuals will also need to undertake an audit of this personal information and produce a service privacy notice.

Main Considerations for the council

6. To prepare for GDPR, HR&OD has drafted privacy notices (attached at appendix 1 and 2). These contain a record of the personal information and data that is collected to manage the employment relationship with our employees or potential employees. They detail how the information is obtained, what it is used for, who it is shared with, how it is protected and the employee's rights under the GDPR regulations.
7. The first privacy notice (appendix 1) covers the overall functions of HR&OD, and the second privacy notice (appendix 2) is specifically for recruitment purposes. These privacy notices will be available on HR Direct for employees to access, and the recruitment notice will be available on the careers website for all applicants to see.
8. The HR&OD team is in the process of checking employment policies, forms, letters and contracts of employment to make sure they are GDPR compliant and, where applicable, include a reference to the GDPR regulations. As this affects many of our policies we are prioritising the key policies such as sickness absence, disciplinary, improving work performance and grievance where personal information is collected as part of the investigation process. The team are also updating the contract of employment templates to incorporate a reference to GDPR compliancy, and links to accessing the HR&OD privacy notices and the council's GDPR data policy.
9. To prepare for the transfer of data onto the new GDPR software that the information and governance team is implementing HR&OD has conducted an audit of its HR processes and HR personal data and updated the information assets register. This includes the purpose for processing the data and the basis for doing, for example whether it is a legal obligation or it is necessary for the performance of the employment contract.
10. The team are also working with the information and governance team and the legal team to produce a suggested contract document which is GDPR compliant for 3rd parties (e.g. schools) to consider using if they buy our HR&OD services, e.g. payroll, recruitment and advisory services.
11. As a new piece of legislation there is still quite a bit of clarification needed on the GDPR. The Data Protection Bill which will replace the Data Protection Act 1998, and will supplement the GDPR, is still going through parliament. If passed the Data Protection Bill will define legitimate interests for public authorities as a legal reason for processing under GDPR, as at present there is a limitation on public authorities being able to do this. It is also expected that there will be further provision on the processing of special categories of personal data and criminal conviction data.

Environmental Impact of the Proposal

12. None

Equalities Impact of the Proposal

13. As forthcoming legislation, the GDPR must be complied with but for processing special categories of information such as sensitive personal data including racial or ethnic origin, political opinions, religious or philosophical beliefs, trade union membership, data concerning health, sex life or sexual orientation there are restrictions unless one of the specific grounds set out in the GDPR applies. This includes that processing the data is necessary for carrying out obligations or exercising rights under employment law and equal opportunities monitoring, which has been detailed in the HR&OD privacy notice.

Risk Assessment & Financial Implications

14. Fines can be imposed by the information commissioner's office, which is the government office responsible for data protection, if employers fail to meet their obligations under GDPR. The advice from the information and governance team is that the information commissioner has stated that no organisation is going to be fully GDPR compliant by 25 May 2018, but it needs to show that it is working towards compliancy.

Recommendation

15. It is recommended that staffing policy committee note the contents of the report, and that the HR&OD team are working towards compliance. An updated report will be provided in due course to outline any further GDPR developments in HR&OD as a result of receiving clarification on some aspects of the GDPR and the Data Protection Bill being passed.

Joanne Pitt
Director – HR and Organisational Development

Report Author:
Margaret Roots – HR Policy Officer

Human Resources and Organisational Development, Wiltshire Council

This notice informs you on how Wiltshire Council collects and uses your personal data in HR and OD (Human Resources and Organisation and Development).

Wiltshire Council is committed to being transparent about how it collects and uses the data of its employees to manage the employment relationship and in accordance with the data protection obligations under the General Data Protection Regulation (GDPR), May 2018

Data controller: Wiltshire Council is the data controller for the personal information you provide and can be contacted at dataprotection@wiltshire.gov.uk

Data Protection Officer: Andrew Holyoake, Corporate, Services and Digital Directorate.

What employee information does the Council collect?

Wiltshire Council will use your personal information to manage the employment relationship. This information is collected in a variety of ways. For example, data will be collected through application forms, CVs or resumes; obtained from passports or other identity documents such as a driving licence; from forms completed when applying for a position or during employment; from correspondence; or through interviews, meetings or other assessments.

This includes:

- your name, address, date of birth and gender and contact details including your email address and telephone number.
- your application form or CV with details of your qualifications, skills, experience, employment history including volunteering.
- your terms and conditions of employment as detailed in your contract of employment.
- details of your bank account and national insurance number to administer your pay and other contractual benefits such as pension deductions, tax and national insurance contributions.
- information about your remuneration, including entitlement to benefits such as pensions, child care vouchers, cycle to work scheme etc.
- information about your marital status, next of kin, dependants and emergency contacts
- pre-employment checks including criminal record checks, nationality and entitlement to work in the UK checks and reference checks
- details of your work schedule (days of work and working hours), information about absences including annual leave, sickness absence, unpaid leave, family leave (maternity/paternity/adoption etc) and the reasons for the leave.
- information about medical or health conditions and if there is the need for reasonable adjustments. Correspondence and information relating to sickness absence reviews.

- details of any disciplinary or grievance procedures in which you have been involved, including any warnings issued and related correspondence.
- assessments of your performance, including appraisals, one to one supervisory meetings and any improving work performance plans and related correspondence.
- details of trade union membership.
- equal opportunities monitoring information including information about your ethnic origin, sexual orientation and religion or belief.

What is the data being used for?

Wiltshire Council needs to process data to meet its obligations with you under your employment contract and to pay you and to administer benefit and pension entitlements.

In some cases, Wiltshire Council needs to process data to ensure that it is complying with its legal obligations. For example, it is required to check an employee's entitlement to work in the UK, to deduct tax, to comply with health and safety laws and to enable employees to take periods of leave to which they are entitled.

In other cases, in order to deliver its services Wiltshire Council needs to process personal employee data before, during and after the end of the employment relationship including to:

- run recruitment and promotion processes.
- maintain accurate and up-to-date employment records and contact details and records of employee contractual and statutory rights during employment and those connected to the termination and transfer of employment including TUPE.
- operate and keep records of employee relations including disciplinary, grievance and safeguarding processes to ensure acceptable conduct within the workplace
- operate and keep a record of employee performance and related processes to plan for career development, succession planning and workforce management purposes.
- undertake workforce, management and organisational planning activities, including completing statutory and legislative returns, to ensure effective operations of the Council
- operate and keep a record of absence and absence management procedures to allow effective workforce management and ensure that employees are receiving the pay or other benefits to which they are entitled.
- information about medical or health conditions including occupational health advice, to ensure that it complies with duties in relation to individuals with disabilities, meet its obligations under health and safety law and ensure that employees are receiving the pay or other benefits to which they are entitled.
- operate and keep a record of all leave (including annual, maternity, paternity, adoption, parental and shared parental leave etc.) to allow effective workforce management and to ensure that Wiltshire Council complies with its duties in relation to leave entitlement and that employees are receiving the pay or other benefits to which they are entitled.

- ensure effective general HR and business administration.
- provide references on request for current or former employees.
- respond to and defend against any legal claims.

Special categories

Where Wiltshire Council processes other special categories of personal data, such as information about ethnic origin, sexual orientation or religion or belief, this is done for the purposes of equal opportunities monitoring. This is to carry out its obligations and exercise specific rights in relation to employment.

Who will the data be obtained from?

In some cases Wiltshire Council may collect personal data about you from third parties, such as references supplied by former employers, information from employment background check providers, information from credit reference agencies and information from criminal records checks permitted by law.

Who will your data be shared with?

HR and OD will only share your data with third parties where it is required to do so and permitted under legislation e.g. in order to obtain pre-employment references, obtain employment checks from third-party providers and obtain necessary criminal records checks from the Disclosure and Barring Service. For applicants who require permission to work in the United Kingdom Wiltshire Council may need to share personal data with legal advisers and the Home Office to make sure it complies with immigration requirements.

Wiltshire Council will also share data with third parties that process data on its behalf e.g. in connection with payroll, the provision of benefits and the provision of occupational health services including R powered, Corvid, CGI, SW Audit partnership, HMRC, relevant pension funds and the Ministry of Justice.

Who has access to data?

HR and OD will share your personal data within the Council internally where necessary including your line manager, managers in the service area in which you work and managers if you are transferring to another service area.

How does the organisation protect data?

Wiltshire Council takes the security of your data seriously. The Council has internal policies and controls in place to try to ensure that your data is not lost, accidentally destroyed, misused or disclosed and is not accessed except by its employees in the performance of their duties.

Where the council engages third parties to process personal data on its behalf, they do so on the basis of written instructions, are under a duty of confidentiality and are obliged to implement appropriate technical and organisational measures to ensure the security of data. (link to any relevant policies/guidance)

For how long does the organisation keep data?

Wiltshire Council will hold your personal data for the duration of your employment and to comply with statutory legislation. The periods for which your data is held after the end of employment are detailed in the corporate retention schedule ([link](#)).

Your rights

As a data subject you have a number of rights.

Your rights are set out in Articles 13 to 22 of the General Data Protection Regulation 2016 and include:

- the right to access your personal information, to request rectification or erasure of certain personal information and to object to processing in certain circumstances.
- the right to withdraw any consent you may have given to process your personal information.
- the right to complain to the Information Commissioner if you feel we are processing your personal information unlawfully.
- the right to restrict processing activity in certain circumstances.
- the right to object to certain types of processing activity.

If you would like to exercise any of these rights, please contact our information governance team at dataprotection@wiltshire.gov.uk

What if you do not provide personal data?

Under your employment contract you have some obligations to provide Wiltshire Council with data. In particular, you are required to report absences from work and may be required to provide information about disciplinary or other matters under the implied duty of good faith. You may also have to provide the Council with data to exercise your statutory rights, such as in relation to statutory leave entitlements. Failing to provide the data may mean that you are unable to exercise your statutory rights.

Certain information, such as contact details, your right to work in the UK and payment details, have to be provided to enable the organisation to enter a contract of employment with you. If you do not provide this information, this will hinder Wiltshire Council's ability to administer the rights and obligations arising as a result of the employment relationship efficiently.

Automated decision-making

Employment decisions are not based solely on automated decision-making.

Link to full Privacy Notice

For further information about how Wiltshire Council uses your personal data including your rights as a data subject, please see the Council's Corporate Privacy Notice on ([link to website](#))

Job applicant privacy notice

This privacy notice in accordance with the General Data Protection regulation (GDPR), May 2018 informs job applicants about how Wiltshire Council will use their personal data.

As part of any recruitment process Wiltshire Council collects and processes personal data relating to job applicants. Wiltshire Council is committed to being transparent about how it collects and uses that data and to meeting its data protection obligations.

Data controller: Wiltshire Council is the data controller for the personal information you provide and can be contacted at dataprotection@wiltshire.gov.uk

Data protection officer: **Andrew Holyoake**, Corporate Services and Digital Directorate

What information does the Council collect?

Wiltshire Council collects a range of information about you. This includes:

- your name, address and contact details, including email address and telephone number.
- details of your qualifications, skills, experience and employment history.
- information about your current level of remuneration, including benefit entitlements.
- whether you have a disability for which the Council needs to make reasonable adjustments during the recruitment process.
- information about your entitlement to work in the UK for the purpose of immigration requirements.

Wiltshire Council can collect this information in a variety of ways e.g. from application forms, CVs or resumes, obtained from your passport or other identity documents, or collected through interviews or other forms of assessment, including online tests.

Wiltshire Council may also collect personal data about you from third parties, such as references supplied by former employers, information from employment background check providers and information from criminal records checks. The council will seek information from third parties only once a job offer to you has been made and will inform you that it is doing so apart from safeguarding roles within children's services when references will be sought prior to interview.

Data will be stored in a range of different places, including on your application record, in HR management systems and on other IT systems (including email).

Why does Wiltshire Council process personal data?

Wiltshire Council needs to process data to take steps, at your request, prior to entering into a contract with you. It may also need to process your data to enter into a contract with you.

In some cases, Wiltshire Council needs to process data to ensure that it is complying with its legal obligations e.g. it is required to check a successful applicant's eligibility to work in the UK before employment starts.

Processing personal data from job applicants and keeping records of the process allows the Council to deliver a service, manage the recruitment process, assess and confirm a candidate's suitability for employment and decide to whom to offer a job. Wiltshire Council may also need to process data from job applicants to respond to and defend against legal claims.

Wiltshire Council may process special categories of data, such as information about ethnic origin, sexual orientation or religion or belief, to monitor recruitment statistics for equality monitoring purposes. It also collects information about whether applicants are disabled to make reasonable adjustments for candidates who have a disability. Wiltshire Council processes such information to carry out its obligations and exercise specific rights in relation to employment.

For some roles Wiltshire Council is obliged to seek information about criminal convictions and offences. Where the Council seeks this information, it does so because it is necessary for it to carry out its obligations and exercise specific rights in relation to employment.]

If your application is unsuccessful, Wiltshire Council may keep your personal data on file in case there are future employment opportunities for which you may be suited. The Council will ask for your consent before it keeps your data for this purpose and you are free to withdraw your consent at any time.

Who has access to data?

Your information may be shared internally for the purposes of the recruitment exercise. This includes members of the HR and recruitment team, interviewers involved in the recruitment process and managers in the service area with a vacancy.

Wiltshire Council will not share your data with third parties unless your application for employment is successful and it makes you an offer of employment. If successful, the Council will then share your data with former employers and personal referees to obtain references and with employment background check providers to obtain necessary background checks and the Disclosure and Barring Service to obtain necessary criminal records checks. The only exception to this is for safeguarding roles in Children's Services when references will be requested before interview.

For applicants who require permission to work in the United Kingdom Wiltshire Council may need to share personal data with legal advisers and the Home Office to make sure it complies with immigration requirements.

If you seek employment outside the EEA we may supply a reference to a prospective employer in response to an official reference request.

How does Wiltshire Council protect data?

Wiltshire Council takes the security of your data seriously. It has internal policies and controls in place to ensure that your data is not lost, accidentally destroyed, misused or disclosed, and is not accessed except by our employees in the proper performance of their duties.

For how long does Wiltshire Council keep data?

If your application for employment is unsuccessful, Wiltshire Council will hold your data on file for 12 months after the end of the relevant recruitment process so it can respond to any queries and for statistical purposes in order to produce the annual equalities data report.

If your application is unsuccessful and the Council wants to hold your personal data on file for a further period (specify period) to consider you for future employment opportunities your consent will be obtained. At the end of that period (or once you withdraw your consent), your data will be deleted or destroyed.

Should Wiltshire Council conduct a resident labour market test for the sponsorship of a non-UK/EU applicant because there are no suitably qualified candidates from the UK/EU personal data for unsuccessful applicants may need to be retained for up to seven years for Home Office compliance audit purposes.

If your application for employment is successful, personal data gathered during the recruitment process will be transferred to your personnel file and retained for the duration of your employment. The details on your personnel file will be held in accordance with the Council's retention policy.

Your rights

As a data subject you have a number of rights.

Your rights are set out in Articles 13 to 22 of the General Data Protection Regulation 2016 and include:

- the right to access your personal information, to request rectification or erasure of certain personal information and to object to processing in certain circumstances.
- the right to withdraw any consent you may have given to process your personal information.
- the right to complain to the Information Commissioner if you feel we are processing your personal information unlawfully.
- the right to restrict processing activity in certain circumstances.
- the right to object to certain types of processing activity.

If you would like to exercise any of these rights, please contact our information governance team at dataprotection@wiltshire.gov.uk

What if you do not provide personal data?

You are under no statutory or contractual obligation to provide data to Wiltshire council during the recruitment process. However, if you do not provide the information Wiltshire Council may not be able to process your application properly or at all.

Automated decision-making

Recruitment processes are not based solely on automated decision-making.