

# Holy Family Catholic Primary School



## Information Rights Policy

**Reviewed:** November 2018

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**Adopted by the Governing Body:** 12<sup>th</sup> December 2018

## **Introduction**

The General Data Protection Regulation (GDPR) contains a number of rights for the data subject, which allows the data subject to control the use of their personal data by data controllers. The rights of the individual are a central part of data protection legislation and the School is legally bound to respond to them.

The General Data Protection Regulation expands upon the rights of the individual that exist within the Data Protection Act 1998 by introducing more rights, but also changing the fundamental timeframes and expectations that the School must meet.

## **The Rights**

The GDPR gives individuals the following rights: -

1. The right to be informed (covered as part of the School's Privacy Notice and Transparency Guidance)
2. The right of access
3. The right to rectification
4. The right to erasure
5. The right to restrict processing
6. The right to data portability
7. The right to object
8. Rights in relation to automated decision making and profiling

All Rights under the GDPR are not absolute. For this reason, the Data Protection Officer should be consulted for advice.

## **The Right of Access**

The right of access (known as Subject Access Requests) gives the individual the right to ask for: -

- Confirmation that the School is processing (using) their personal data
- Access to their personal data itself as well as supporting information about who their information is shared with and what it is used for.

The right of access gives an individual the right to request their own information from the School. They are not entitled to view information about another individual unless they have obtained that individual's explicit consent.

An individual may request personal data from the School on behalf of another person, for example – a child. In these cases the requester must provide the following documentation.

- Proof of identification for both the requester and the person they are requesting the information on behalf of.
- Proof of authority to act on their behalf. This may include Power of Attorney forms, signed authority from a solicitor's office or in the case of a child, proof of parental responsibility.

All documents must be redacted to remove any personal data about third parties (other people) before release. This redaction must be dip sampled and approved by the appropriate Senior Officer (Cathy Glanvill / Marie Evans DPO) before release to the requester.

## **The Right of Rectification**

The right of rectification gives the data subject the right to request that inaccurate data held by the School is rectified or deleted.

Where the School receives a request to rectify inaccurate data, it is best practice that the personal data is restricted from use whilst an assessment of its accuracy is carried out.

All requests for Rectification of data will be referred to the Data Protection Officer at the same time they are referred to the relevant service. The DPO must approve the service's action before it is conducted.

Where the requester can manifestly prove that data is inaccurate (e.g. an address inaccurately entered) the School may ask for proof of the correct address in order to appropriately correct the mistake.

Where the requester queries whether an opinion recorded about them has any merit, the School may take the action to clearly mark the data as an opinion rather than fact. This may also mean that the School does not rectify or delete this data.

## **The Right to Erasure (Right to be Forgotten)**

The right to be forgotten is not absolute and only applies in certain circumstances. They are: -

- The personal data is no longer necessary for the purpose which the School originally collected or used it for;
- The School are relying on consent as the lawful basis for holding the data, and the individual withdraws their consent;
- The School are relying on legitimate interests as the basis for using the personal data. The individual objects to the processing of their data, and there is no overriding legitimate interest to continue this processing;
- The School are using the personal data for direct marketing purposes and the individual objects to that processing;
- The School has processed the personal data in breach of the General Data Protection Regulation
- The law states that the personal data has to be deleted
- The School has collected the personal data through offering online services to a child.

The right to be forgotten does not apply in numerous situations, including: -

- Where the School has a statutory duty to keep the information
- Where there is a high public interest in the School keeping the information and it is used for a public function (e.g. safeguarding)
- Where the information is necessary for a legal claim

Where a right to be forgotten request is received, the Data Protection Officer must be consulted at the earliest opportunity in order to advise regarding the deletion of the personal data in question.

Some School systems will not facilitate the erasure of personal data. Where this is the case, the data must be flagged on the system as being "not to be used" and must not be included in any reports or documents produced from that system.

Where an applicant successfully applies their right to be forgotten and the School has previously shared the deleted information with another agency, the service must immediately contact the recipient agency and ask them to remove the data from their systems.

## **The Right of Restriction**

The right of restriction gives an individual the right to ask the School to temporarily stop using their information in the following circumstances: -

- The individual disputes the accuracy of their personal data and the School is verifying the accuracy of the data.
- The data has been unlawfully used or shared and the individual chooses for the School to restrict access to the data, rather than delete it.
- The School no longer needs the personal data but the individual needs the School to keep it in order to establish, exercise or defend a legal claim
- The individual has objected to the School using their data (see right to objection below) and you are considering whether your legitimate grounds override those of the individual.

Where a right to restriction (or rectification/objection) request is received, the Data Protection Officer must be consulted at the earliest opportunity in order to advise regarding the restriction of the personal data in question.

Some School systems will not facilitate the restriction of personal data. Where this is the case, the data must be flagged on the system as being “not to be used” and must not be included in any reports or documents produced from that system.

Where an applicant successfully applies their right to restriction and the School has previously shared the deleted information with another agency, the service must immediately contact the recipient agency and ask them to restrict the data on their systems.

## **The Right of Data Portability**

The right of data portability gives the individual the right to receive any information that they have previously supplied to the School back, in a commonly used, machine readable format.

This right only applies in the following situations: -

- Where the School is using personal data with the consent of the individual involved
- Where the School is using personal data as part of a contract with the individual
- Where the use of personal data is done in automated (computerised) way

The right only applies to personal data that the individual has directly provided to the School. The School is not obliged to provide information that it has generated about the individual, only the information they initially provided to us. If the requester requires information wider than what they have provided to the School, they must make a Subject Access Request.

The requester has the right to receive their information directly, or ask the School to provide to another organisation. The requester must make their wishes clear in this regard.

Where a right to data portability request is received, the Data Protection Officer must be consulted at the earliest opportunity in order to advise regarding the restriction of the personal data in question.

The personal data requested must be provided in a commonly used, machine readable format. It may be appropriate to ask the requester for their preferred method and file format in which to receive their disclosure.

Where the personal data requested is not accessible to be removed in a portable manner, the Data Protection Officer must be informed immediately so that appropriate communication can take place with the requester and a compromise reached about the format of the disclosure.

### **The Right to Object**

The right to object gives individuals the right to request that the School stops processing their personal data in certain circumstances.

The right to object applies in the following situations: -

- Where the School is using the individual's personal data in line with their public tasks and functions (Article 6(e) of the GDPR) or in the School's legitimate interests (Article 6(f)).
- Where the School is using the personal data for direct marketing or profiling purposes.
- Where the School is using the personal data for scientific/historical research or statistical purposes

The right to object is not absolute with regards to personal data processing by the School for its functions. In order to refuse a right to object, the School must demonstrate compelling and legitimate grounds for keeping the information. This may include grounds of public interest, safeguarding purposes or crime prevention.

If the School requires the personal data for defending a legal claim then the requester cannot use their right to object.

Where the requester would like to object to direct marketing from the School, this request must be honoured immediately. There are no exemptions to this right. The School must remove the requester's data from all mailing lists and ensure that they receive no further marketing communications from that point. Written confirmation of this action must be sent to the DPO.

Where a right to object request is received, the Data Protection Officer must be consulted at the earliest opportunity in order to advise regarding the application of this right.

### **The Right to Prevent Automated Decision Making (including Profiling)**

The GDPR gives the individuals the right to object to any automated decisions being made about them that would have a significant effect. It also gives the individual the right to prevent automated profiling of them.

Automated decision making is a decision that is made about an individual without any human involvement. An example of this is a credit check before buying a product on higher purchase.

Profiling is specifically mentioned in the GDPR as automated profiling that is used to evaluate a person's behaviour to analyse or predict their actions or needs. The text specifically mentions employment, economic situation, health, personal preferences, interests, reliability, behaviour and movements (location).

The use of information must result in a decision being taken about the individual in question. If no decision is taken, the individual cannot prevent the processing using this right, they must exercise their right to object.

The School may only carry out this type of processing in the following circumstances: -

- The decision is necessary for entering into a contract with the individual(s) involved
- Authorised by law (e.g. for preventing crime or fraud)
- The individual has given their explicit consent.

If the decision making is to include sensitive (special category) personal data, then the School must have:

- A substantial public interest in the decision being taken
- The individual's explicit consent

This use of personal data cannot be undertaken without completing a Data Protection Impact Assessment.

Where a right to preventing automated processing request is received, the Data Protection Officer must be consulted at the earliest opportunity in order to advise regarding the application of this right.

## **Expectations and Basic Principles**

### **Making a Request**

An individual can make a request for any of their rights (2-8 above) at any time and in any form that they see fit. This can include in writing, via email, verbally or via social media.

The individual does not have to state that they are using their rights under the GDPR, or even state which right they wish to use in order for the request to be valid. Requests can take any form and be phrased in any way. For this reason, School staff must be aware of all data protection rights and their responsibilities when receiving a request.

### **SEE – GUIDANCE FOR STAFF – SEPARATE ATTACHMENT**

The School has made a specific mailbox available for all rights requests – [cathy.glanvill@knowsley.gov.uk](mailto:cathy.glanvill@knowsley.gov.uk)

All requests received by School staff must be forwarded to this address **immediately**.

The rights process is administered by Cathy Glanvill / Marie Evans (DPO), who will log and respond to all requests.

### **Proof of Identity**

Where the School deems it necessary, the applicant will be asked for proof of their identity as their request is being logged. Where the School cannot be satisfied as to the requester's identity, the response will not be disclosed until the necessary proof of identity has been provided.

The School considers the following documents to be good examples of appropriate proof of identity:

- Driving licence
- Passport
- Recent utility bill or similarly addressed document

The School will accept scanned copies of documents from a requester as adequate proof of identity.

Lack of a proof of identity should not be used to delay requests unduly.

## **Fee**

Under the GDPR, the School cannot charge a fee for the disclosure of information as part of a rights request.

The School may exercise its discretion in levying an administration fee if a request is: -

- For information that the School has already provided to the applicant as part of a previous response
- Manifestly unreasonable or excessive

Where an administration fee is levied, the applicant must be informed of the charge at the earliest opportunity.

## **Logging of Requests**

The School must keep a central log of all rights requests and all responses to these requests for audit purposes.

## **Time Limits**

The School must respond to all requests within 30 calendar days (one month) of receipt.

For example, if the School receives a request on 3<sup>rd</sup> September, the time limit would begin from the next day (4<sup>th</sup> September). The response would be due on 4<sup>th</sup> October.

The School may extend the deadline by a further 2 months, if the request is complex or one of many ongoing rights requests from the individual.

The time limit cannot be extended because: -

- The request is unfounded or excessive
- An exemption applies
- The requester has yet to adequately prove their identity.

## **Exemptions**

The GDPR does not provide any exemptions from the rights of the individuals, it sets the circumstances in which the rights apply. All exemptions to the rights of the individual are contained in the Schedules of the Data Protection Act 2018. Passed by Parliament in May 2018.

The exemptions include, but are not limited to: -

- Crime & Taxation purposes
- Immigration (subject to legal challenge)
- Legal Proceedings
- Regulatory Services
- Legal Professional Privilege
- Management forecasts
- Negotiations with the requester
- Confidential references
- Emotional Harm relating to social care
- Adoption records (complete exemption)

Where an exemption is applied, a record must be kept of where the exemptions are applied and this record must be provided to the DPO before disclosure. This is so an accurate audit trail can be kept.

## Overall School Process

- Rights request is made to the School. If this request is made to a member of staff in any form, it must be immediately forwarded to the DPO
- The DPO will then log the request and liaise with the requester to obtain proof of identification or clarification around their request. The DPO will send the customer an acknowledgment of receipt of the request upon completion of this stage.
- The DESIGNATED CONTACT will consult with the Data Protection Officer where necessary regarding the application of rights to specific personal data or circumstances to ensure compliance with GDPR. (This will relate to all rights bar the right of subject access)
- The DPO's decision must be documented on the School's Request Record.
- The DPO will liaise with all relevant staff within the school to which the rights request applies. For example, if the requester has asked for a copy of a teacher's emails, the teacher will be asked to provide them. This will include details of the requester, the type of request (which GDPR right applies), the information involved and deadline for the response.
- The DPO will then collate and prepare the school's response to the request. This may include redacting information or performing a specific action to the requester's personal data as stipulated in the specific right they have requested. (E.g. – deleting information in line with the Right to be Forgotten). This will be carried out by the school's DPO dealing with the request after seeking advice from the LA DPO, if needed.
- Where the Right of Subject Access is being requested, all redacted documents must be approved and signed off by Headteacher before being sent to the DPO
- Where any other GDPR right is being requested, the School's Data Protection Officer must be consulted before any further steps are taken.
- All responses must be sent to the DPO for disclosure to the requester. Individual members of staff must not disclose information to the requester directly.
- The DPO will respond to the applicant using secure email or the applicant's chosen method
- The DPO will then update the school's log of rights requests and close the request upon disclosure.