

# Ealing Council

## Data Protection and HR Records Policy and Guidance

Effective 1<sup>st</sup> August 2009

For HR advice on this policy, raise a request on the Service Ealing Portal accessed via the intranet <http://serviceealing.com> Alternatively, telephone the HR Shared Service Centre (HRSSC) on extn: 9000 option 1 (0208 825 9000).

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# **Data Protection and HR Records Policy & Guidance**

## **1. Policy Statement**

Ealing Council is committed to ensuring all personal data whether held in manual or electronic files is held and processed in accordance with data protection legislation and associated codes of practice.

This document is concerned solely with the Council's position in respect of personal data as an employer, and should be read in conjunction with the Council's general Data Protection Policy, which is available on the Intranet under Working in Ealing, Employment Policies pages.

This policy covers what personal data is held about all Council employees in the form of HR records, which they consent to as a condition of their contract of employment and also their individual rights of access to their own personal data. If this information should change, managers and employees are required to let the Council know as soon as possible, so that records can be updated accordingly.

## **2. Purpose**

This policy informs employees:

- That personal data on prospective, current and former employees is being stored in the form of either manual and/or electronic HR records
- The reasons for storing it and how it is maintained
- The rights of individual employees to access their personal data and
- The responsibilities of all those who work with personal data as part of their job

## **3. Scope**

This policy and the associated guidance apply to all employees with a contract of employment with the Council, except teaching and school support staff directly employed by Schools for whom separate provisions exist. The principles of how to handle personal data covered within this policy, also apply to other users who are responsible for handling the personal data of Council employees through information systems, this includes Councillors, agency workers, consultants and contractors.

## **4. Definitions**

The term 'HR record(s)' is used throughout this document to refer to all personal data held by the Council about an individual employee in a paper file held by

Human Resources (including hr operations, recruitment, advisory, payroll, pensions, occupational health, health and safety services) or electronically in HR databases (Resource Link, Service Ealing Portal).

## **5. The Eight Data Protection Principles**

The Data Protection Act 1998 (DPA) sets out eight principles relating to the processing of personal data, which the Council must follow. The principles require that:

- Personal data must have been obtained fairly and lawfully (employees agree to data being gathered and processed through their job application and as a condition of their contract of employment);
- Personal data must be held only for specific and lawful purposes and not processed in any manner incompatible with those purposes;
- Personal data must be relevant, adequate and not excessive for the purposes for which it is used;
- Personal data should be accurate and kept up to date;
- Personal data should not be kept for longer than is necessary for the purposes for which it is processed;
- Personal data should be processed in accordance with the rights of the data subject under the DPA;
- Measures should be taken to guard against unauthorised or unlawful processing of personal data and against accidental loss, destruction or damage to personal data;
- Personal data must not be transferred to countries outside the European Economic Area (EEA) without adequate protection (for instances where this eighth principle does not apply, refer to the Council's Data Protection page under Working in Ealing, Employment Policies, Data Protection and link to eight principles)

## **6. Access to HR Records**

### **6.1 Individual Right of Access**

In accordance with the Local Terms and Conditions of Service, employees (current and former) are entitled to inspect their HR records. All requests should be notified in writing to the HRSSC. A request may be raised in writing by raising a request on the Service Ealing Portal accessed via the intranet <http://serviceealing.com>. Employees who call the HRSSC on (020) 8825 9000 option 1, will be advised that all requests should be put in writing. Where a person is unable to make a written application for example, due to a disability, they should be provided with support to make their request.

To arrange inspection, a minimum notice of 5 working days is required and the employee will be invited to make an appointment at a mutually convenient time. Before inspection, the HR representative will check the identity of the employee.

The HR records will be inspected at the place where they are held and in the presence of a HR representative, and may not be removed. Employees are also entitled to request copies of any item (other than confidential references) in their HR records. There is a statutory duty to comply with a written request for copies of any information within 40 days and a reasonable administration charge (no more than £10) may be charged to cover the cost of photocopying any part of the HR records where requested. For the majority of requests, no charge will be made. However, a charge will be made where the employee wants a copy of the entire or bulk of the HR record, or where there have been repeated requests for access, as opposed to simply having access to the information.

## **6.2 Disputed Information**

Employees can query the accuracy or completeness of information in their HR records by requesting that the information is removed if they feel that the information held is inappropriate. A request must be addressed to their manager in writing and specify the reasons why it is inappropriate. The manager has 21 days from the receipt of the request to provide a response to the employee in writing. The response must consist of one of the following:

- A statement that the Council has complied with the employee's request or;
- A statement that the Council regards part or all of the employee's request as unjustified and the extent to which the Council has complied or intends to comply with it.

If the disputed information is retained on the HR records, the employee may submit a brief written statement identifying the alleged errors or inaccuracies to be placed on the file. The statement will remain on the employee's HR records as long as the disputed information is retained.

## **6.3 External Access**

Ealing Council has a duty to protect the public funds it administers; therefore it may share information with external bodies administering public funds for the prevention and detection of fraud/collection of tax or other companies to which the Council has contracted work (pension scheme administrators). In addition, where employment is transferred to another organisation under the provision of the Transfer of Undertakings (Protection of Employment) Regulations (TUPE), it may provide personal data about employees to any prospective successor in the course of negotiations. So far as possible, such data will be provided in an anonymous form, and if this is not possible the prospective successor will be required to keep the information request confidential. The Council will transfer your personal data on any transfer falling within the TUPE Regulations.

## **7. Exemptions**

There are some exemptions from or to the above provisions to have a right of access to any personal data held by Ealing Council including:

- References received if disclosure would give information about another individual, unless that third party has explicitly stated that they consent to the disclosure or that disclosure would cause harm to the person who wrote the reference or the data subject;
- Personal data processed for the purposes of management forecasting or management planning (for example, information about plans to promote, transfer or propose redundancies) to assist the Council in the conduct of its activities, to the extent that disclosure would prejudice the conduct of the Council's activities;
- Personal data needed for legal proceedings or prospective proceedings or for obtaining legal advice;
- Data that might prejudice the prevention or detection of crime.

## **8 Roles and Accountabilities**

To comply with the law, personal data must be collected and used fairly, stored safely and not disclosed to any other person unlawfully. This means complying with the eight data protection principles set out above at all times.

### **8.1 For all employees**

As an employee you are responsible for:

- Checking that any personal data you provide in connection with your employment is accurate and up to date
- Notifying the Council in writing if this information changes to ensure personal data you have provided is accurate and up to date, for example, change of address, name, etc
- Ensuring that you are familiar with and follow the Council's general Data Protection Policy, the eight data protection principles, this policy and the associated guidance at all times

#### **8.1.1 Data Security**

You are also responsible for ensuring that any personal data that you hold, whether in electronic or paper format, is held and processed securely including:

- Appropriately password/screen saver protection when going home or leaving your desk for any length of time
- Not disclosing passwords to anyone
- Use of confidential send options for emails
- A suitable secure environment for the storage of information on portable disks/manual records
- Personal data is not disclosed either verbally or in writing, accidentally or otherwise, to any unidentified or unauthorised third party

If you are in any doubt about what you may or may not do under data protection legislation, seek advice from your manager. If you are in doubt and cannot get in

touch with him/her or the Council's data protection officer, do not disclose any personal data.

Failure on the part of any employee to comply with any of the requirements set out in this policy and associated guidance is a disciplinary offence and may result in disciplinary action. In some cases this could result in dismissal and also a criminal prosecution.

## **8.2 For all managers**

In addition to the above, all managers are responsible for:

- Making their direct reports aware of the employee's obligations under the DPA, the Council's general Data Protection Policy, this policy and associated guidance and of any local security protocols/requirements for the holding and processing personal data (including any other users of Ealing Council's information systems that they are responsible for)
- Ensuring any personal data they hold for day to day operational management purposes (for example, notes that may be needed in relation to formal proceedings) is kept to a minimum, processed for a specific purpose and held confidentially in accordance with the eight data protection principles

## **8.3 All Human Resources**

In addition to the above, all employees who work in Human Resources and handle personal data are responsible for:

- Ensuring all employment records are kept up to date and accurate
- Limiting internal access to HR records to authorised users only (i.e. on the need to know principle, by restricting confidential personal data only to those who need to have access in order to carry out their duties/role effectively. Other designated employees with a legitimate need, including Audit and Investigation and Legal Services are also granted access as appropriate)
- Holding all manual HR records confidentially and securely in lockable metal cabinets, (which are only left open during normal office hours and files leaving the area will be booked in and out by an authorised HR employee only)

### **8.3.1 *Disclosure requests from and to external organisations***

Disclosure requests are requests made from third parties to the Council for information about employees containing personal data.

The Council will not normally disclose any personal data to a third party without the consent of the employee, unless the disclosure is permitted by law under statute or is necessary for the prevention or detection of crime. (See paragraph 8.3.2 for disclosure in relation to reference requests)

Where a request by a third party for disclosure is made, which requires the consent of the employee to be given, then the employee should be informed as soon as is

practicable and their consent obtained, unless the Council is prevented by law from doing so or if obtaining consent would prejudice a criminal or tax investigation. Where a disclosure request is received, the identity and the authority of the person/organisation making it will be verified before any disclosure is made.

### **8.3.2 References**

The DPA includes an exemption in relation to the right of access to confidential references provided by an employer. Thus employees do not have a statutory right to see references that the Council has given about them. However, the Council operates an open references policy, whether provided or received by the Council. Therefore references provided to or given by the Council are made available for inspection by employees and former employees of the Council on request. The Council notifies all referees in the written request as part of the recruitment process that the Council operates an open references policy, and that therefore all references provided to the Council are made available to applicants on request. References received in relation to successful candidates are kept in the HR file. References received in relation to unsuccessful candidates are kept securely in the job file for a period of 12 months. Where reference requests are received by the HRSSC, they will be checked to see that they appear to be genuine (for example, whether they are on relevant headed paper and from a potential employer). If so, then the Council will usually assume that the employee has given their consent to the referee, and will answer the request. Any employee who does not want the Council to make this assumption should notify the Council in writing so that their objection can be recorded on their file. In that case, any reference requests will be ignored, unless they are accompanied by the employee's written consent. (For further guidance on handling reference requests for an existing or former employee contact the HRSSC)

## **9 HR Records**

### **9.1 Why HR Records are kept**

HR Records are used for various business planning and statistical monitoring purposes, for example to:

- Assist in the recruitment and selection process
- Provide training and development information
- Provide information to help in managing performance e.g. labour turnover, retention rates, absence, salary costs and accidents
- Provide information for pay and pension administration
- Provide general employment information for dealing with issues such as changes to an employee's individual contract of employment
- Provide information for health, safety and welfare
- Ensure legal compliance and provide information for statutory returns e.g. statutory sick pay, paternity etc

## **9.2 What HR Records are kept**

The following information is held on HR records:

### **Initial recruitment documents**

- Advert and role profile (job description, person specification and competencies)
- Appointment checklist
- Application form
- References
- Medical clearances
- Other pre-employment clearances, e.g. notice of Criminal Records Bureau (CRB) check, driver's licence
- Copy of necessary qualifications/registration with professional bodies (if applicable)
- Asylum and Immigration Act check e.g. evidence of National Insurance Number, copy of passport, eligibility to work in the UK, proof of address
- Offer letter and acceptance
- Contract of employment and acknowledgement receipt of Council's policies
- Details of emergency contact/next of kin

### **Subsequent HR Records**

- Probation reports
- Recruitment documents for all promotions, transfers, secondments
- Accident /investigation forms and reports
- Records relating to formal procedures e.g. disciplinary correspondence (suspension and allegation letters, hearings, appeals and outcomes), capability matters (meetings, appeals, outcomes)
- Sickness absence records, e.g. medical referrals and outcomes
- Formal complaints e.g. grievance notification forms, meetings, outcomes and appeal papers
- Changes to the individual contract of employment e.g. job evaluation data
- Name, marital and address changes
- Any other relevant correspondence e.g. resignation letter and leavers form

## **9.3 Retention of HR Records**

HR Records are not retained for any longer than is necessary and will be in line with statutory retention periods, best practice recommendations and/or organisational reasons, for example, to deal with legal proceedings. The normal retention periods are provided in Appendix 1.

## **10. Related policies and other documents**

This policy should be read in conjunction with the Council's general 'Data Protection Policy', which covers the general responsibilities of all employees for ensuring the

proper use and management of personal data, and the rights of individuals in relation to information about themselves.

A number of other Council policies and guidance should be read in conjunction with this policy, including:

- Employee Code of Conduct
- Corporate Retention and Disposal Policy and Procedures
- Data Handling Policy and Procedures
- Electronic Communications Policy
- Information Resource Classification, Management and Control Policy

This policy also takes into account guidance published by the Information Commissioner's Office, (which is a UK independent supervisory authority reporting directly to UK Parliament code of practice) Employment Practices Data Protection Code. As data protection legislation is a developing area of law, further information can be sought from the HR Shared Service Centre or from the Council's data protection coordinator.

## **11. Monitoring and Review**

The Director of Human Resources and Organisational Development will approve changes to this policy and associated guidance, which are required by legislation, best practice or periodic reviews. The recognised trade unions have been consulted in preparation of this policy and will be notified and consulted on any subsequent revisions.