

CALNE TOWN COUNCIL

DATA PROTECTION POLICY

1. Introduction

- 1.1. An essential activity of Calne Town Council is the requirement to gather, process and store information about its employees, people in the community, suppliers', business contacts and other sources in order to operate effectively.

The Data Protection Act 1998 (DPA) is a law that was introduced to comply with the European Directive 1995 and replaces the Data Protection Act 1984. It also amends or partially repeals other statutes.

The Act can be seen at - <http://www.legislation.gov.uk/ukpga/1998/29/contents>

The DPA was put into place to help protect people's personal data. It aims to ensure that people know where their data is held, what it is used for and who it is shared with. It also ensures that an organisation treats people's data correctly and has systems and controls in place for effective management of that data.

The Act is the legal framework within which all organisations who are controllers of personal data must operate. It covers all data held about an individual (data subject) in both manual and computerised files.

Personal data is further qualified as being any information about an individual from which the individual can be identified, i.e. name, address, date of birth, photograph, video image, payroll number, etc. Personal information also includes any written opinions about the individual.

The overall responsibility for ensuring compliance lies with the Town Clerk who will report in writing to the Policy and Resources Committee any legislation updates or issues related to Data Protection Act that may impact on the effectiveness of this policy.

A member of the town council staff will be nominated as Data Protection Officer reporting directly to the Town Clerk.

This Policy will be reviewed every three years, however in the interim, it may be re-presented as necessary to include updates or changes required to keep it morally and legally correct. (Subject to Councillors decision at the meeting).

2. Policy Scope

This policy applies to:-

- * All properties in the ownership of Calne Town Council
- * All Councillors, permanent and casual staff, CCTV volunteers and all other volunteers working for or on behalf of Calne Town Council

- * All contractors, suppliers and other people working on behalf of Calne Town Council

It applies to all data that the Town Council holds relating to identifiable individuals, even if that information technically falls outside of the Data Protection Act 1998. This can include:-

- * Names of individuals
- * Postal addresses
- * E-mail addresses
- * Telephone numbers
- * Plus any other information relating to individuals

3. Why this Policy Exists

The purpose of this policy ensures:-

- * Compliance with data protection law and adherence to good practice
- * Protection of the rights of staff, customers and partners
- * Transparency about how the council stores and processes individuals' data
- * Protection from the risks of a data breach
- * To ensure everyone who works for or with the Town Council understands their responsibility with regard to compliance of this policy

The Data Protection Act 1998 describes how organisations must collect, handle and store personal information.

These rules apply regardless of whether data is stored electronically, on paper or on other method.

To comply with the law, personal information must be collected and used fairly, stored safely and not disclosed unlawfully.

The Data Protection Act is underpinned by eight important principles. These say that personal data must be:

1. fairly and lawfully processed
2. processed for limited purposes
3. adequate, relevant and not excessive
4. accurate
5. not to be kept longer than is necessary
6. processed in line with the data subject's (individual) rights
7. secure
8. not transferred to countries outside of the EU without adequate protection

The Principles listed below

Principle 1 – Data must be processed fairly and lawfully

Fair – if personal data is used, the persons concerned must be informed of the reasons why.

Lawfully – use of data must not break a law or be used outside the powers of the Town Council e.g. the Town Council can only use council tax data for the collection and administration of council tax.

There are certain conditions that need to be met for the Town Council to use personal data.

For normal personal data one condition in schedule 2 of the act needs to be met:

The person concerned has to give consent (This does not have to be in writing)

Contracts – the use is necessary;

- a) to carry out a contract to which an individual has signed up
- b) at an individuals request with a view to entering into a contract

Legal Obligation – the use is necessary to comply with any legal obligation to which the Town Council are subject, other than an obligation imposed by contract

Vital interests - the use is necessary to protect an individuals vital interests.

Public functions/legal administration of justice

- a) for the administration of justice
- b) to carry out functions conferred on any person by or under any enactment
- c) to carry out any functions of the Crown, a minister of the Crown or a government department, or
- d) to carry out any other functions of a public nature carried out in the public interest by any person

Legitimate interest – the use is necessary for legitimate interests pursued by the Town Council or by a third party or parties to whom the data is disclosed, except where the use is unwarranted because of prejudice to an individuals rights and freedoms or legitimate interests. (The Secretary of State may by order specify particular circumstances in which this condition is, or is not, to be taken as being satisfied).

Many of the services the Town Council undertake are required by law therefore it is not always necessary for the Town Council to get consent for the use of personal data. However, individuals should always be informed about the reasons information is being collected and used. If any individual believes they are not being told, they have the right to ask. If any person has problems please contact the Town Clerk and/or the Data Protection Officer.

Some types of information have even more protection, these are known as Sensitive Personal Information for example racial or ethnic origin, religious or other similar belief. In order for the Town Council to use sensitive personal data, one condition in schedule 3 of the act – Explicit Consent – needs to be met as well as one of the conditions detailed above.

Explicit consent – you have given written consent

Employment law obligations - the use is necessary to perform any right or obligation conferred or imposed by law on the Town Council in connection with employment.

Vital interests

- a) to protect vital interests or those of an individual, where
 - (i) consent cannot be given by the individual or on their behalf, or
 - (ii) the Town Council cannot reasonably be expected to obtain consent
- b) in order to protect the vital interest of another individual, where consent by or on behalf of an individual has been unreasonably withheld.

Not-for-profit organisations existing for political, philosophical, religious or trade union purposes- the use:

- a) is carried out in the course of its legitimate activities by any organisation which
 - (i) is not established or conducted for profit, and
 - (ii) exists for political, philosophical, religious or trade union purpose
- b) is carried out with appropriate safeguards for the rights and freedoms of individuals
- c) relates only to individuals who either are members of the organisation or have regular contact with it in connection with its purposes, and
- d) does not involve disclosure of the personal data to a third party without the consent of the individual.

Information made public by an individual - the information contained in the personal data has been made public as a result of steps deliberately taken by the individual.

Legal rights – the use:

- a) is necessary for any legal proceedings (including prospective legal proceedings).
- b) is necessary to obtain legal advice, or
- c) is necessary for establishing, exercising or defending legal rights.

Public functions/legal requirement – the use is necessary:

- a) for the administration of justice,
- b) for the exercise of any functions conferred on any person by or under an enactment, or
- c) for the exercise of any functions of the Crown, a Minister of the Crown, or a government department.

Medical purposes – the use is necessary for medical purposes and is undertaken by:

- a) a health professional
- b) a person who owes a duty of confidentiality equivalent to that of a health professional.
“Medical purposes” includes preventative medicine, medical diagnosis, medical research, the provision of care and treatment and the management of healthcare services.

Records on racial equality – the use:

- a) is of sensitive personal data consisting of information about racial or ethnic origin,
- b) is necessary for the purpose of racial and ethnic equality, with a view to enabling such equality to be promoted or maintained.
- c) is carried out with the appropriate safeguards for the rights and freedoms of individuals.

Unlawful activity detection – the use must be:

- a) in the substantial public interest
- b) necessary for the prevention or detection of any unlawful act or failure to act
- c) necessarily carried out without explicit consent being sought so as not to prejudice those purposes

Protection of the public – the use;

- (a) is in the substantial public interest;
- (b) is necessary for the discharge of any function which is designed for protecting members of the public against:-
 - (i) dishonesty, malpractice, or other seriously improper conduct by, or the unfitness or incompetence of any person, or
 - (ii) mismanagement in the administration of, or failures in services provided by any body or association; and
- (c) necessarily carried out without explicit consent being sought so as not to prejudice the discharge of that function

Public interest disclosure – the disclosure of personal data:

- (a) is in the substantial public interest;
- (b) is in connection with –
 - (i) the commission by any person of any unlawful act (whether alleged or established),
 - (ii) dishonest, malpractice, or other seriously improper conduct by, or the unfitness or incompetence of, any person (whether alleged or established), or
 - (iii) mismanagement in the administration of, or failures in services provided by, any body or association (whether alleged or established);
- (c) is for the special purposes as defined in section 3 of the Act; and
- (d) is made with a view to the publication of those data by any person and the Town Council believes that such publication would be in the public interest.

Confidential counselling – the use must be in the substantial public interest and

- (a) is necessary for the discharge of any function which is designed for the provision of confidential counselling, advice, support or any other service; and
- (b) is carried out without explicit consent because the use –
 - (i) is necessary in a case where the person cannot give consent
 - (ii) is necessary in a case where the Town Council cannot reasonably be expected to obtain explicit consent or,
 - (iii) must necessarily be carried out without explicit consent being sought so as not to prejudice the provision of that counselling, advice, support or other service.

Insurance and pensions – the use:

- (a). is necessary for the purpose of –
 - (i) carrying on insurance business, or
 - (ii) making determinations in connection with eligibility for, and benefits payable under, an occupational pension scheme
- (b) is of sensitive personal data consisting of information falling within section 2 (e) of the Act relating to an individual who is the parent, grandparent, great grand parent or sibling of –
 - (i) in the case of paragraph (a) (i), the insured person, or
 - (ii) in the case of paragraph (a) (ii), the member of the scheme;
- (c) is necessary in a case where the Town Council cannot reasonably be expected to obtain the explicit consent of that individual and the Town Council are not aware of the individual withholding their consent; and
- (d) does not support measures or decisions with respect to that individual.

Insurance and pensions – old processing – the use must be

- (a) of sensitive personal data in relation to any particular individual that is subject to use which was already under way immediately before the coming into force of this Order.
- (b) necessary for the purpose of –
 - (i) carrying on insurance business, as defined in section 95 of the Insurance Companies Act 1982, falling within Classes I, III, or IV of Schedule I to that Act; or
 - (ii) establishing or administering an occupational pension scheme as defined in section 1 of the Pension Schemes Act 1993; and
- (c) either –
 - (i) is necessary in a case where the Town Council cannot reasonably be expected to obtain the explicit consent of the individual and that individual has not informed the Town Council that they do not consent, or
 - (ii) must necessarily be carried out even without the explicit consent of the individual so as not to prejudice those purposes.

Religion and health – equality or opportunity – the use of sensitive personal data consisting of information as to your religious beliefs or physical or mental health is permissible so long as it is:

- (a) necessary for the purpose of identifying or keeping under review the existence or absence of equality of opportunity or treatment between persons -
 - (i) holding different beliefs as described in section 2(c) of the Act, or
 - (ii) of different states of physical or mental health or different physical or mental conditions as described in section 2(e) of the Act, with a view to enabling such equality to be promoted or maintained;
- (b) does not support measures or decisions with respect to any particular individual otherwise than with the explicit consent of that individual; and
- (c) does not cause, nor is likely to cause, substantial damage or substantial distress to you or any other person.

Political opinions - use of information consisting of the political opinions of the subject is permissible if it is ;

- (a) carried out by any person or organisation included in the register maintained pursuant to section 1 of the Registration of Political Parties Act 1998(4) in the course of their or its legitimate political activities; and

- (b) of a type which does not cause, nor is likely to cause, substantial damage or substantial distress to the individual or any other person.

Research – the use;

- (a) is in the substantial public interest;
- (b) is necessary for research purposes (which expression shall have the same meaning as in Section 33 of the Act);
- (c) does not support measures or decisions with respect to any particular individual otherwise than with their explicit consent; and
- (d) does not cause, nor is likely to cause, substantial damage or substantial distress to the individual or any other person.

Police processing – the use is necessary for the exercise of any functions conferred on a constable by any rule of law.

Elected members - the use;

- (a) is carried out by an elected representative or a person acting with his authority;
- (b) is in connection with the discharge of his functions as such a representative;
- (c) is carried out pursuant to a request made by you to the elected representative to take action on your behalf or on behalf of any other individual; and
- (d) is necessary for the purposes of, or in connection with, the action reasonably taken by the elected representative pursuant to that request.
- (e) is carried out without your explicit consent because the processing –
 - (i) is necessary in a case where your explicit consent cannot be given
 - (ii) is necessary in a case where the elected representative cannot reasonably be expected to obtain your explicit consent.,
 - (iii) must necessarily be carried out without your explicit consent being sought so as not to prejudice the action taken by the elected representative, or
 - (iv) is necessary in the interests of another individual in a case where your explicit consent has been unreasonably withheld.

Principle 2 – Obtained for specific purpose(s)

Information must not be used in any way incompatible with the purposes it was originally collected for, e.g. information collected for rights of way issues can not be used for assessing social care needs without gaining your consent.

Principle 3 – Data must be adequate, relevant and not excessive

The Town Council must collect enough information to do the task or provide the service but must ensure that what is collected is needed and not being collected just in case it might be needed in future.

Principle 4 – Information is accurate and up to date

The Town Council must take care of the information it holds and make sure that it is kept accurate.

Principle 5 - Information is not kept for longer than is necessary

The length of time that information should be kept is not set out under the Data Protection Act. Legislation and regulations relating to each area of work will provide the majority of minimum periods that information must be kept for.

When there is no such guidance, the length of time to keep information is set out by the Town Council. The Town Council will look at common practice, other retention periods and appeal and complaints time limits to help achieve this.

Principle 6 – Used in line with your rights

The public have the right

- to request information
- to prevent processing that would cause damage and distress
- to prevent automated decision taking
- to prevent processing for direct marketing
- to compensation
- to request an assessment

Principle 7 – Security

The Town Council has to make sure that there are sufficient organisational and technical measures to protect personal data. These must prevent:

- Unauthorised and unlawful use
- Accidental loss
- Accidental destruction
- Accidental damage

Principle 8 – Not transferred to countries without adequate data protection

The Town Council must not transfer personal information to countries outside the European Economic Area, unless that country or territory ensures an adequate level of protection for the rights and freedoms of data subjects.

By placing data on the Internet it is being transferred to every country in the world. Personal information will not be placed on the Internet by the Town Council without written consent.

There are circumstances when the Town Council is able to transfer information to such countries, some of which are:

- Prior consent to the transfer has been granted
- Reasons which apply with regard to contracts, public interest and legal proceedings.

Responsibilities

Everyone who works for, or with the Town Council has some responsibility for ensuring data is collected, stored – these actions will be detailed in a separate procedural document which will expand and identify the roles and responsibilities required to facilitate this policy.

Issue Record

Issue 1 - Original – November 2015

Adopted by Policy & Resources – 9 November 2015 (in error)

Adopted by Full Council – 4 April 2016