

## Privacy Notices



## Policy on the use of Privacy Notices

Version 3.1 March 2022

### Overview

This document sets out how the collection and use of personal information should be completed fairly and lawfully and in accordance with the requirements of Data Protection legislation.

The term 'Privacy Notice' is used to describe the explanations that individuals are given when information is collected about them. These notices are important as they help ensure that individuals are fully informed about how their personal information will be used.

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Version	Date	Comment
1.0	24 <sup>th</sup> September 2004	Agreed by the Cabinet Member for Resources
2.0	25 <sup>th</sup> October 2004	Reformatted, pages and font. Renumbered paragraphs and published on the Intranet
2.0a	July 2007	Policy reviewed – front cover reformatted
2.1	November 2008	References to Privacy Policy replaced by Fair Processing Notice
2.2	January 2010	Reviewed for relevancy and accuracy
2.3	April 2012	Updated to incorporate the Information Commissioners latest guidance on Privacy Notices
2.4	May 2014	Reviewed as per review schedule. No changes made other than the policy date updated
2.5	August 2018	Reviewed in accordance with review schedule. No changes made.
3.0	January 2019	Reviewed and amendments made to reflect changes due to GDPR and ICO Guidance as well as to alter from Guidance to Policy - Approved by the Policies and Procedures Sub-Group
3.1	March 2022	Reviewed as per schedule no changes made

## **1. INTRODUCTION**

- 1.1 This policy sets out how all Solihull Metropolitan Borough Council (the 'Council') employees will collect and use personal information appropriately and in compliance with Data Protection law, including the General Data Protection Regulations (GDPR), by making available clear and informative Privacy Notices. These make sure customers and other individuals know how information about them will be used, and what the implications of this are likely to be.
- 1.2 This is aimed at all Council employees, specifically to individual teams who process personal information and who will be expected to create Privacy Notices specific to their team's processing activities.
- 1.3 This policy should be read in conjunction with the Data Protection Policy and other relevant Information Security Policies.

## **2. WHAT THE LAW SAYS**

- 2.1 The right to be informed is an integral element of fair and lawful processing and also transparency under the GDPR. It is about being clear and open with individuals about how their information is collected and used.
- 2.2 The Council is a 'Data Controller' under GDPR. It is the responsibility of Data Controllers, and therefore all Council employees, to inform people how they are processing their personal information.
- 2.3 A Privacy Notice is a way of satisfying the requirement to keep people informed. It is used to deliver the explanations that individuals are given when information is collected about them; they are also known as 'Fair Processing Notices'.

## **3. FAIR PROCESSING**

- 3.1 Privacy Notices ensure 'Fair processing' of information. Under GDPR fairness has two elements:
  - Using personal information in a way that people would reasonably expect.
  - Ensuring people know how their information will be used.
- 3.2 Privacy Notices must be written in such a way that people they are aimed at will understand them. Avoid the use of jargon and overly complicated or legal language. Other techniques such as visual symbols and standardised icons can be used to aid understanding.
- 3.3 When creating Privacy Notices staff should consider the good practice of putting themselves in the position of the people whose information is being processed; ask yourself the following questions:
  - Would they understand who is collecting it?
  - Would they understand what you're collecting and why?
  - Would they understand the implications of this?
  - Would they be likely to object or complain?

- 3.4 Privacy Notices must be actively communicated to individuals in a way that is easy for them to access. Typically, this is achieved by putting the information in the form of a statement on the forms being used to collect the information.

#### **4. LAWFUL PROCESSING**

- 4.1 As well as being fair, processing personal information must also be lawful. Under GDPR there are five lawful conditions summarised below which a local authority might be able to rely upon and at least one of them must be met every time that personal information is collected or used.
1. Consent of the individual.
  2. Necessary for entering into or the performance of a contract with the individual.
  3. Necessary for compliance with a legal obligation.
  4. Necessary to protect the vital interests of an individual (life/death situations).
  5. Necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the Council.
- 4.2 As local authorities are governed by legislation and can only do those things that they are empowered to do by legislation, or that are reasonably ancillary or incidental to those powers the lawful basis for processing the majority of information the Council uses will be item 5. ***Necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the Council.***
- 4.3 In addition to the above, if the information is “Special Category” personal information (about racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, genetic data, biometric data, health or sex life or sexual orientation) a further condition must be identified from another separate list of conditions. As a local authority the legal basis will normally be ***“the processing is necessary for reasons of substantial public interest and is authorised by domestic law.***
- 4.4 The Council’s website contains further details of these two conditions on its main [Privacy Notice](#).

#### **5. USING CONSENT**

- 5.1 Where the consent of an individual is relied upon as the lawful basis for processing personal information Council staff should ensure it is sought appropriately and in line with the requirements under GDPR.
- 5.2 A key element of consent is that it must be informed. Staff must provide clear and easy to understand information about who will use their information and what will be done with it.
- 5.4 For consent to be valid it must be a positive indication of an individual’s wishes. Consent should not be inferred from a non-response to a communication; Consent should always be ‘opt-in’.
- 5.5 An individual must be able to withdraw their consent easily and at anytime by means of medium consistent with the way it was collected in the first place. Council Staff need to consider this when asking for consent to use personal information.

5.6 Consent should only be sought where individuals can exercise real choice and control over the collection and use of their personal information. The following checklist summarises the above and additional requirements.

- We have checked that consent is the most appropriate lawful basis for processing.
- We have made the request for consent prominent.
- We ask people to positively opt in.
- We don't use pre-ticked boxes or any other type of default consent.
- We use clear, plain language that is easy to understand.
- We specify why we want the information and what we're going to do with it.
- We give separate distinct ('granular') options to consent separately to different purposes and types of processing.
- If it's not already apparent, we name our organisation and any third party's it will be passed to.
- We tell individuals they can withdraw their consent.
- We ensure that individuals can refuse to consent without detriment.
- We avoid making consent a precondition of a service.

## 6. CONTENT OF PRIVACY NOTICES

6.1 GDPR sets out a minimum requirement for the content of Privacy Notices as follows:

- Identity and the contact details of the team/organisation.
- Contact details of the organisations Data Protection Officer.
- Description of how the information will be used.
- Lawful basis for the processing.
- Who information will be shared with, including any third parties.
- Whether information will be transferred outside of the EU.

6.2 In addition, the following further information should be provided if it aids understanding of how personal information is processed:

- Whether replies to questions are mandatory or voluntary.
- How long the personal information will be retained for before being disposed of.
- Any rights individuals have in relation to the use of their information, e.g. access, rectification, erasure, restriction, objection, and data portability.
- Where using consent as the lawful basis for processing, that individuals can withdraw their consent at any time.
- Their rights surrounding complaints to the Information Commissioners Office.
- Whether provision of personal information is required by law or contract, and what will happen if it isn't provided.
- Whether decisions are based solely on automated processing, including profiling, that has legal or similarly significant effects on individuals, and the consequences of this.

6.3 If you receive information about people from other organisations, where appropriate, the following must be added to the Privacy Notice as well:

- The types of information collected about them.
- From where their information was obtained and if from a publicly accessible source.

6.4 Council Staff are expected to create and provide Privacy Notices which include all the required elements. If the way personal information is processed changes significantly or if the information will be used for a new purpose, Staff must update all associated privacy information.

## **7. WHEN TO PROVIDE A PRIVACY NOTICE**

7.1 There is no requirement to provide Privacy Notice information if it is known that the individuals already have the information. Other than this, when information is being collected a Privacy Notice must be provided at the point of collection or as soon as possible afterwards and within one month.

7.2 The requirement to communicate privacy notice information actively to individuals whose information is being processed is the strongest where the intended use of the information may be unexpected or objectionable, where the information is sensitive or when providing the information or failing to do so will have a significant effect on the individual.

7.3 If the information was received from a source other than the individual, such as another organisation, there may be a requirement to provide privacy notice information. This must be done within one month, before the information is further shared or at the first communication with the individual if the personal information is contact details. However, this will not be necessary if:

- They have already had the processing information.
- The provision of such information proves impossible or would involve a disproportionate effort.
- Obtaining or disclosure is expressly required by law.
- The personal information must remain confidential subject to an obligation of professional secrecy.

## **8. HOW TO PROVIDE A PRIVACY NOTICE**

8.1 Privacy notices can be provided through a variety of media:

- Orally - face-to-face or when you speak to someone on the telephone. It's a good idea to document this.
- In writing – printed documents or on forms.
- Through signage – for example an information poster in a public area.
- Electronically – in text messages and on websites and in emails.

Usually, the Privacy Notice is best provided in the medium used to collect personal information.

- 8.2 Simple language, easy to read font and formatting, and a clear and concise explanation should be used when creating privacy notice information.

### **A LAYERED APPROACH**

- 8.3 As this document describes there is a lot of information that must be included in a Privacy Notice and so to assist staff the Council has decided to adopt a 'layered' approach. This means that the majority of the information you need to provide will be delivered for you via the Council's Website. Using the following structure.
- At the highest level there is a Solihull Council's Main Privacy Notice which contains most of the information we need to provide to individuals.
  - Sitting beneath the main notice are sub headings for all the Directorates.
  - Under each Directorate there is a list of all the service areas and each of these provide details of how their service uses information.
- 8.4 Each service must ensure that their privacy notice on the Council's website remains up to date using the headings / template provided by the Information Governance Team. In addition to supplement the main Privacy Notice on the website, any paper or electronic forms or other methods used to collect information should contain the following information:
- a. Who is collecting the information and will hold it (if it's not obvious).
  - b. Why the information is being collected and for what purpose it will be used.
  - c. Third parties it may be shared with and why.
  - d. Also, this statement: "Your information may also be shared with other council services and partner organisations to ensure our records are kept accurate and to help us to identify services or benefits you may be entitled to or interested in. We may also need to share your information for the prevention and detection of fraud and/or other crimes or as the law requires. For further information about how we use your information please refer to the Council's Privacy Statement on [www.solihull.gov.uk](http://www.solihull.gov.uk) or contact [[email address of service](#)]"
- 8.5 There may be occasions when the full wording of item d. (above) is not appropriate for the information you are collecting or you may think it appropriate to reword it for the audience it is intended for. This is permissible but if in doubt please seek advice from the Information Governance Team [infogov@solihull.gov.uk](mailto:infogov@solihull.gov.uk)