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For the future you want

Special Category & Criminal Convictions Personal Data Policy

Schedule 1, Part 4, Data
Protection Act 2018



Corporate Development

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1. INTRODUCTION

Edinburgh College is a *Public Authority* for the purposes of data protection law.

The Data Protection Act 2018 requires the College, as a Public Authority, to have an appropriate policy document (and supporting procedures) in place which outline the College's approach to the management of special category personal data and criminal convictions data (as required by the General Data Protection Regulation (GDPR), Article 9 and the Data Protection Act 2018, Schedule 1, Part 4).

2. PURPOSE

Edinburgh College processes special category and criminal conviction data as part of its statutory duties under employment and social protection law, or processing for reasons of substantial public interest. Through this Policy the College will explain its procedures for compliance with the principles of Articles 5 and 6 of the GDPR, and outline its policies as regards retention and erasure of this data.

3. SCOPE

This policy applies to all College staff (which includes contractors, temporary staff and anyone else who can access or use data, including personal and special categories of data, in their work for the College) processing special category personal data, protected characteristics and criminal convictions data.

4. KEY DEFINITIONS

4.1 Criminal Convictions Data

Criminal convictions data is data processed in relation to criminal convictions and offences, or related security measures (GDPR, Article 10). The most common processing of this data in the College is when staff are checked for recorded criminal convictions with Disclosure Scotland under the Protecting Vulnerable Groups (PVG) scheme. Students on work placements may also be Disclosure

Scotland checked, for example, if their placement is at a nursery or requires them to work with children or vulnerable adults.

4.2 Special Category Data

Special category data is defined by GDPR Article 9(1) as:

- Racial or ethnic origin;
- Political opinions;
- Religious or philosophical beliefs;
- Trade Union membership;
- Genetic and biometric data used to identify an individual;
- Health data;
- Sexual/sex life data; and
- Sexual orientation.

4.3 Protected Characteristics

Protected Characteristics, as defined under the Equality Act 2010 (Section 4), should be treated as Special Category Data for data processing purposes and includes:

- Age;
- Disability;
- Gender reassignment;
- Marriage and Civil Partnership;
- Pregnancy and maternity;
- Race;
- Religion or belief;
- Sex; and
- Sexual orientation
- Care Experienced*

Please note that not all of the data above is defined as special category data or a protected characteristic in law, however it is recognised that the data (*) is sensitive and therefore should be handled in the same manner as special category data.

5. LEGAL GOVERNANCE

Due to the sensitive nature of special category data; protected characteristics data and criminal convictions data, there are a number of laws in place to protect

processing of this information by organisations including colleges. The three areas of legislation most relevant at this time are described below. Please note that, should any of these legislative vehicles be superseded during the period of this policy, then the most relevant legislation will be deemed to be covered by this policy.

5.1 Equality Act 2010

The Equality Act is in place to support and increase equality of opportunity by reducing social and economic inequalities through preventing discrimination and harassment related to certain personal characteristics. These 'protected characteristics' are listed in the legislation as age; disability; gender reassignment; marriage and civil partnership; pregnancy and maternity; race; religion or belief; sex; and sexual orientation.

The Scottish Funding Council (SFC) requires the College to provide information on 'protected characteristics' and special category data for equalities monitoring purposes. This ensures that the SFC meets its obligations in relation to equalities law and the College meets its obligations to the SFC.

Data relating to 'protected characteristics' must be treated by the College as special category (sensitive) personal data to ensure it is managed with the due care such sensitive data requires under data protection law. The lawful basis used to process this data is outlined below.

5.2 General Data Protection Regulation (GDPR) (EU) 2016/679

The GDPR is EU legislation which came into force on 25 May 2018. It provides the legal framework in which organisations must process personal data.

The reason for this legislation is to ensure that the privacy rights of individuals are upheld by organisations, including colleges, that process any personal data. Organisations must only process personal data in accordance with the data protection principles. Therefore, the College will only process personal data:

- Where it is lawful, fair and transparent in how it processes this data;
- For the purpose it was collected (purpose limitation);
- Collecting the minimum amount of data required for the purpose (data minimisation);
- Ensuring the data is accurate and up-to-date (accuracy);

- Ensuring that the data is not kept longer than necessary (storage limitation); and
- Has appropriate technical and organisational measures in place to ensure the security of the data (integrity and confidentiality).

The GDPR provides protection in relation to personal data; that is information that relates to a clearly identifiable living individual, for example a student or a member of staff.

The GDPR supports an individual's rights in relation to the personal data an organisation processes, including being made aware of how their data is processed; requesting copies of some or all of this information; requesting that their information is changed, updated or deleted; and restricting processing of their data.

Most personal data collected by the College from students and staff is processed on the basis of contract (Article 6(1)(b)), or public task (Article 6(1)(e)). Most special category and protected characteristics data are collected by the College on the basis of employment and social protection law (Article 9(2)(b)) or substantial public interest (Article 9(2)(g)). For some functions of the College, e.g. Hair and Beauty salons; Gym Club; Complaints will involve collection and processing of members of the public (as well as staff and students') data. Criminal convictions data collected by the College is done so in line with Article 10 of the GDPR, which stipulates that processing can only be carried out under the control of official authority, or when the processing meets the requirements of the Data Protection Act 2018 (see below), with appropriate safeguards in place to protect the rights and freedoms of data subjects.

5.3 Data Protection Act 2018 (DPA 2018)

The DPA 2018 enacts the EU GDPR law into UK law and establishes additional safeguards for handling special category data (Schedule 1, Part 4), namely:

- An appropriate policy document (this document);
- Outlining how the controller's procedures comply with the GDPR Principles (Article 5) (e.g. Data Protection Policy, procedures, guidance);
- Outlining the controller's policies on retention and deletion of data, and whether policies are strictly adhered to;
- Retaining and reviewing policy document(s); and
- Making this document available to the Information Commissioner's Office (ICO) upon request.

6. STAFF TRAINING

The College will ensure all staff are trained in data protection through its mandatory eLearning module, specifically relating to personal, special category and 'protected characteristics' data and the legislation underpinning this (see Section 5.0 above). This mandatory training is completed every two years. The content of the training will be periodically refreshed. The induction process for all new staff includes a data protection briefing.

7. ADVICE FOR STAFF

While all staff will receive training (outlined in Section 6.0 above), the College recognises that staff may either require specialist advice or assistance where a request for personal and/or College information goes beyond what a reasonable member of staff would consider a normal request for someone in their role.

Staff should, in the first instance, discuss their query with their line manager. Should their line manager be unavailable (e.g. on leave or off ill) they should contact the Information Management Team, which includes the Data Protection Officer (DPO), on DataProtection@edinburghcollege.ac.uk for advice as soon as possible.

8. GDPR ARTICLE 5 COMPLIANCE

The College complies with the GDPR Principles under Article 5, as outlined in the College [Data Protection Policy](#). Edinburgh College's dedicated Data Protection team processes all Data Subject Requests (DSR) received, and data breaches reported, as outlined in the College's Data Protection Policy and Data Breach Reporting Procedure. All College staff undertake mandatory Data Protection training outlining their responsibilities in line with these documents, and data protection is embedded in the College's induction process for new staff. Employment contracts, and the College's Standard Contractual Clauses for procured goods and services, have been updated to include appropriate data protection clauses.

9. SPECIAL CATEGORY DATA: LAWFUL BASIS

Special category and/or 'protected characteristics' staff and student data will be processed by the College for a number of reasons related and not incompatible with the specified purpose for which it was originally collected (as outlined within the [College's Privacy Notices](#)).

9.1 Staff, as defined within Data Protection Policy

Sickness Absence

- GDPR Article 6(1)(b) - performance of a contract;
- GDPR Article 9(2)(b) - employment law;
- DPA 2018, Schedule 1, Part 1, 2(2) - health or social care purposes: (b) assessment of working capacity of an employee; and
- Employment law including the Employment Rights Act 1996, Employment Relations Acts.

Occupational Health

- GDPR Article 6(1)(b) - performance of a contract;
- GDPR Article 9(2)(h) - occupational medicine and assessment of working capacity of an employee;
- DPA 2018, Schedule 1, Part 1, 2(2) - health or social care purposes: (a) occupational medicine and (b) assessment of working capacity of an employee; and
- Employment law, Health and Safety at Work etc. Act 1974, Access to Medical Reports Act 1988.

Personal Emergency Evaluation Plans

- GDPR Article 6(1)(c) - legal obligation;
- GDPR Article 9(2)(g) - reasons of substantial public interest;
- DPA 2018, Schedule 1, Part 2, 16 - support for individuals with a particular disability or medical condition; and
- Employment law and Health and Safety law, including the Health and Safety at Work etc Act 1974.

Disciplinary and Grievance Procedures

- GDPR Article 6(1)(b) - performance of a contract;
- GDPR Article 9(2)(b) - employment law;

- DPA 2018, Schedule 1, Part 2, 11 protecting the public against dishonesty etc. (2)(a) – protect members of the public against dishonesty, malpractice, or other seriously improper conduct; and
- Employment law including Employment Rights Act 1996 and Employment Relations Acts.

Trade Union Membership Data

- GDPR Article 6(1)(e) – performance of a contract;
- GDPR Article 9(2)(b) – employment and social protection law;
- DPA 2018, Schedule 1, Part 2, (6)(2)(a) – exercise of a function conferred by an enactment or rule of law;
- Trade Union and Labour Relations (Consolidation) Act 1992; and
- Trade Union Reform and Employment Rights Act 1993

Equality and Diversity Data (racial/ethnic origin, religious/philosophical beliefs, health, sexual orientation)

- GDPR Article 6(1)(b) – performance of a contract;
- GDPR Article 9(2)(g) – reasons of substantial public interest;
- DPA 2018, Schedule 1, Part 2, (8)(1) – equality of opportunity or treatment; and
- Equality Act 2010 and associated regulations.

Protected Disclosures

- GDPR Article 6(1)(b) – performance of a contract;
- GDPR Article 9(2)(g) – reasons of substantial public interest;
- DPA 2018, Schedule 1, Part 2, (6)(2)(a) – exercise of a function conferred by an enactment or rule of law; and
- Employment Rights Act 1996, Public Interest Disclosure Act 1998.

9.2 Students

The College processes students' special category and 'protected characteristics' data on the following legal bases:

Equality and Diversity Data (racial/ethnic origin, religious/philosophical beliefs, health, sexual orientation)

- GDPR Article 6(1)(c) – legal obligation;
- GDPR Article 6(1)(b) – performance of a contract (specifically for International Students);
- GDPR Article 9(2)(g) – reasons of substantial public interest;

- DPA 2018, Schedule 1, Part 2, (8)(1) – equality of opportunity or treatment; and
- Equality Act 2010 and associated regulations.

Equality and Diversity data (age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, sex, sexual orientation, care experienced)

- GDPR Article 6(1)(c) – legal obligation or;
- GDPR Article 6(1)(b) – performance of a contract (specifically for International Students);
- GDPR Article 9(2)(g) – reasons of substantial public interest;
- DPA 2018, Schedule 1, Part 2, (6)(2)(a) – exercise of a function conferred by an enactment or rule of law; and
- Equality Act 2010 and associated regulations.

Counselling Services

- GDPR Article 6(1)(b) – performance of a contract;
- GDPR Article 6(1)(c) – legal obligation;
- GDPR Article 9(2)(g)- reasons of substantial public interest;
- DPA 2018, Schedule 1, Part 2, (17) – counselling etc; and
- Equalities Act 2010 and associated regulations for certain data.

Student Support (including Personal Learning Support Plans)

- GDPR Article 6(1)(c) – legal obligation;
- GDPR Article 6(1)(e) – public task;
- GDPR Article 9(2)(g) - reasons of substantial public interest;
- DPA 2018, Schedule 1, Part 2, (16) – support for individuals with a particular disability or medical condition;
- Equality Act 2010 and associated regulations; and
- Additional Support for Learning (Scotland) Acts

Personal Emergency Evaluation Plans

- GDPR Article 6(1)(b) – contract;
- GDPR Article 9(2)(g) - reasons of substantial public interest;
- DPA 2018, Schedule 1, Part 2, (16) – support for individuals with a particular disability or medical condition; and
- Equality Act 2010 and associated regulations

Safeguarding

- GDPR Article 6(1)(c) legal obligation;

- GDPR Article 9(2)(g) reasons of substantial public interest;
- DPA 2018, Schedule 1, Part 2, (18) Safeguarding of children and of individuals at risk; and
- Children and Young People (Scotland) Act 2014, Part 9 Corporate Parenting provisions.

9.3 Exceptional Circumstances

There may be exceptional circumstance where the College may have to share special category or 'protected characteristics' data using a different lawful basis, including but not limited to:

An Emergency

For example, where a student or member of staff is in a life-or-death situation, the College may have to share special category data to a paramedic, or other health worker:

- GDPR Article 6(1)(d) – vital interests; and
- GDPR Article 9(2)(c) – vital interests

Legal Claims

For example, where the College is approached and asked to provide data on staff or students necessary to establish, exercise or defend a legal claim or as evidence for court:

- GDPR Article 6(1)(c) – legal obligation; and
- GDPR Article 9(2)(f) – legal claims

9.4 Hair and Beauty

The Hair and Beauty department collects special category (sensitive) personal data in order to offer clients a safe, and effective salon service. Clients include members of the public.

Salon Data (Health and Allergy Data)

- Article 6(1)(a) – consent; and
- Article 9(2)(a) - explicit consent

9.5 The Club (Gym Club Membership)

The Club (Gym Club Membership) collects special category (sensitive) personal data in order to process the gym membership application and manage and sustain the contract whilst individuals are members at Edinburgh College Club, gym and spa.

The Club (Medical Conditions and Disabilities Data)

- Article 6(1)(b) – contract;
- Article 9(2)(g) - reasons of substantial public interest;
- DPA 2018, Schedule 1, Part 2, (20) Insurance;
- Public Liability/Indemnity Insurance policies; and
- Health and Safety law

9.6 Complaints, Causes for Consideration and Compliments (3Cs)

The Complaints, Causes for Consideration and Compliments policy may collect special category (sensitive) personal data in order to process an individual's complaint, cause for consideration or compliment regarding the College.

Complaints, Causes for Consideration and Compliments (3Cs) (Racial or ethnic origin, political opinions, religious or philosophical beliefs, Trade Union membership, sex life or sexual orientation)

- Article 6(1)(c) legal obligation;
- Article 9(2)(a) explicit consent; and
- Scottish Public Services Ombudsman Act 2002 (SPSO)

10. CRIMINAL CONVICTIONS DATA: LEGAL JUSTIFICATION

The College has a statutory duty to protect children and vulnerable adults, as outlined in the [Protection of Vulnerable Groups \(Scotland\) Act 2007](#). Where appropriate, the College will conduct criminal convictions checks to ensure that staff in contact with children and vulnerable adults do not pose a threat to their safety.

Similarly, the College will conduct criminal convictions checks to ensure that students undertaking a work placement where they will be in contact with children and vulnerable adults do not pose a threat to their safety.

This means that the College processes staff and/or student criminal convictions data on the following legal bases:

- GDPR Article 6(1)(c) - legal obligation;
- GDPR Article 9(2)(g) - reasons of substantial public interest;
- DPA 2018, Schedule 1, Part 2, (18) - Safeguarding of children and individuals at risk; and
- Protection of Vulnerable Groups (Scotland) Act 2007.

11. RETENTION AND ERASURE

The College retains the data defined in this policy for the minimum periods of time required to meet its statutory duties. Edinburgh College completed its comprehensive 18-month audit of College information assets in December 2019 and will issue an updated College retention and disposal schedule to all staff in academic session 2020-2021. Revised retention and disposal procedures for physical and electronic data will be issued to staff as part of an integrated approach to the holistic management of data protection, records management and information security, being published by the College in academic session 2020-2021 and including appropriate delivery timescales.

12. POLICY MONITORING AND EVALUATION

This policy will be reviewed on a tri-annual basis, as per College document control procedure, unless circumstances/significant changes in processing dictate otherwise, and will be made available to the ICO upon request and without charge. It will be held and reviewed until a period of at least six months after the College has ceased processing such data.

The Head of Corporate Development will set up management processes to monitor compliance with this policy and will report to the Chief Operating Officer, Information Management Group, and Audit and Risk Assurance Committee any breaches of this policy which present data protection risks and issues, and agree actions to address these.

The terms of this policy must be observed at all times. Any failure to comply with the terms of this policy may lead to disciplinary action being taken against the user in accordance with the College disciplinary policy and/or legal proceedings.

The type of disciplinary action taken will be dependent on the seriousness of the issue. Factors that will be taken in to account include:

- Breaches of confidentiality, security and the law;
- Damage to the College's reputation;
- Damage to data subjects' rights and/or freedoms;
- Creation of a hostile working environment;

The College reserves the right to:

- Pass information to the relevant statutory authorities;
- Withdraw a user's access to any IT system, including internet services;

The above list of sanctions is not exhaustive and may be altered or augmented by the College depending on the nature of the incident.

13. RELATED POLICIES & PROCEDURES

Data Protection Policy

Data Breach Reporting Procedure

IT Facilities Acceptable Use Policy

14. FURTHER HELP AND ADVICE

For further information and advice about this policy contact:

Email: DataProtection@edinburghcollege.ac.uk

Telephone: 0131 297 8663