

## Data Protection Policy

<b>Reviewed by:</b>	<b>Data Protection Officer</b>
<b>Approved by:</b>	<b>SMT – March 2020 Audit Committee – March 2020 Corporation – March 2020</b>
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<b>Associated documents / policies:</b>	<ul style="list-style-type: none"> <li>• <b>Retention of Records Policy</b></li> <li>• <b>Personal Data Breach Policy</b></li> <li>• <b>Rights of Individuals Policy</b></li> <li>• <b>Information Security Policy</b></li> <li>• <b>Privacy Notices</b></li> <li>• <b>Confidentiality Policy</b></li> </ul>

### TABLE OF CONTENTS

1. OVERVIEW.....	2
2. ABOUT THIS POLICY .....	2
3. DEFINITIONS .....	3
4. COLLEGE PERSONNEL'S GENERAL OBLIGATIONS .....	4
5. DATA PROTECTION PRINCIPLES .....	5
6. LAWFUL USE OF PERSONAL DATA .....	5
7. TRANSPARENT PROCESSING – PRIVACY NOTICES .....	6
8. DATA QUALITY – ENSURING THE USE OF ACCURATE, UP TO DATE AND RELEVANT PERSONAL DATA .....	7
9. PERSONAL DATA MUST NOT BE KEPT FOR LONGER THAN NEEDED.....	7
10. DATA SECURITY .....	8
11. DATA BREACH .....	8
12. APPOINTING CONTRACTORS WHO ACCESS THE COLLEGE'S PERSONAL DATA.....	9
13. INDIVIDUALS' RIGHTS .....	10
14. MARKETING AND CONSENT.....	11

15. AUTOMATED DECISION MAKING AND PROFILING .....	12
16. DATA PROTECTION IMPACT ASSESSMENTS (DPIA).....	12
17. TRANSFERRING PERSONAL DATA TO A COUNTRY OUTSIDE THE EEA .....	13

## **1. OVERVIEW**

- 1.1 The College's reputation and future growth are dependent on the way the College manages and protects Personal Data. Protecting the confidentiality and integrity of Personal Data is a key responsibility of everyone within the College.
- 1.2 As an organisation that collects, uses and stores Personal Data about its employees, suppliers (sole traders, partnerships or individuals within companies), students, prospective students, alumni, governors, parents, visitors, and representatives of local employers and other businesses the College recognises that having controls around the collection, use, retention and destruction of Personal Data is important in order to comply with the College's obligations under Data Protection Laws and in particular its obligations under Article 5 of GDPR.
- 1.3 The College has implemented this Data Protection Policy to ensure all College Personnel are aware of what they must do to ensure the correct and lawful treatment of Personal Data. This will maintain confidence in the College and will provide for a successful working and learning environment for all.
- 1.4 College Personnel will receive a copy of this Policy when they start and will be informed when there are major revisions of this Policy. This Policy does not form part of any member of the College Personnel's contract of employment and the College reserves the right to change this Policy at any time. All members of College Personnel are obliged to comply with this Policy at all times.
- 1.5 If you have any queries concerning this Policy, please contact our Data Protection Officer, who is responsible for ensuring the College's compliance with this Policy.

## **2. ABOUT THIS POLICY**

- 2.1 This Policy (and the other policies and documents referred to in it) sets out the basis on which the College will collect and use Personal Data either where the College collects it from individuals itself, or where it is provided to the College by third parties. It also sets out rules on how the College collects, uses, transfers and stores Personal Data.
- 2.2 It applies to all Personal Data stored electronically, in paper form, or otherwise.
- 2.3 The Corporation is responsible for approving the policy framework and for monitoring that it is effective in achieving compliance with data protection legislation.

- 2.4 The Principal & Chief Executive is responsible for ensuring that the supporting procedures and guidance are in place and that the policy is implemented throughout the organisation to ensure the College is compliant with data protection legislation.

### 3. DEFINITIONS

- 3.1. **College** – Bath College.
- 3.2. **College Personnel** – Any College employee, worker or contractor who accesses any of the College's Personal Data and will include employees, consultants, contractors, and temporary personnel hired to work on behalf of the College.
- 3.3. **Controller** – Any entity (e.g. company, organisation or person) that makes its own decisions about how it is going to collect and use Personal Data.

A common misconception is that individuals within organisations are the Controllers. This is not the case; it is the organisation itself which is the Controller.

- 3.4. **Data Protection Laws** – UK GDPR and all applicable laws relating to the collection and use of Personal Data and privacy and any applicable codes of practice issued by a regulator including in the UK, the Data Protection Act 2018.
- 3.5. **Data Protection Officer** – Our current Data Protection Officer (DPO) is Kate Hobbs, Deputy Principal, and can be contacted at: telephone 01225 328734 or e-mail [dataprotection@bathcollege.ac.uk](mailto:dataprotection@bathcollege.ac.uk).
- 3.6. **EEA** – Austria, Belgium, Bulgaria, Croatia, Republic of Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, and Sweden.
- 3.7. **ICO** – the Information Commissioner's Office, the UK's data protection regulator.
- 3.8. **Individuals** – Living individuals who can be identified, *directly or indirectly*, from information that the College has. For example, an individual could be identified directly by name, or indirectly by gender, job role and office location if you can use this information to work out who they are. Individuals include employees, students, parents, visitors and potential students. Individuals also include partnerships and sole traders.
- 3.9. **Personal Data** – Any information about an Individual (see definition above) which identifies them or allows them to be identified in conjunction with other information that is held. It includes information of this type, even if used in a business context.

Personal data is defined broadly and covers things such as name, address, email address (including in a business context, email addresses of Individuals in companies such as firstname.surname@organisation.com), IP address and also more sensitive types of data such as trade union membership, genetic data and religious beliefs. These more sensitive types of data are called "Special Categories of Personal Data" and are defined below. Special Categories of Personal Data are given extra protection by Data Protection Laws.

- 3.10. **Processor** – Any entity (e.g. company, organisation or person) which accesses or uses Personal Data on the instruction of a Controller.

A Processor is a third party that processes Personal Data on behalf of a Controller. This is usually as a result of the outsourcing of a service by the Controller or the provision of services by the Processor which involve access to or use of Personal Data. Examples include: where software support for a system, which contains Personal Data, is provided by someone outside the business.

- 3.11. **Special Categories of Personal Data** – Personal Data that reveals a person's racial or ethnic origin, political opinions, religious or philosophical beliefs, trade union membership, genetic data (i.e. information about their inherited or acquired genetic characteristics), biometric data (i.e. information about their physical, physiological or behavioural characteristics such as facial images and fingerprints), physical or mental health, sexual life or sexual orientation and criminal record. Special Categories of Personal Data are subject to additional controls in comparison to ordinary Personal Data.

#### **4. COLLEGE PERSONNEL'S GENERAL OBLIGATIONS**

- 4.1. All College Personnel must comply with this policy.
- 4.2. College Personnel must ensure that they keep confidential all Personal Data that they collect, store, use and come into contact with during the performance of their duties.
- 4.3. College Personnel must not release or disclose any Personal Data:
- 4.3.1. outside the College; or
  - 4.3.2. inside the college to College Personnel not authorised to access the Personal Data,
- without specific authorisation from their manager or the DPO; this includes by phone calls or in emails.
- 4.4. College Personnel must take all steps to ensure there is no unauthorised access to Personal Data whether by other College Personnel who are not authorised to see such Personal Data or by people outside the College.

## **5. DATA PROTECTION PRINCIPLES**

- 5.1. When using Personal Data, Data Protection Laws require that the College complies with the following principles. These principles require Personal Data to be:
  - 5.1.1. processed lawfully, fairly and in a transparent manner;
  - 5.1.2. collected for specified, explicit and legitimate purposes and not further processed in a manner that is incompatible with those purposes;
  - 5.1.3. adequate, relevant and limited to what is necessary for the purposes for which it is being processed;
  - 5.1.4. accurate and kept up to date, meaning that every reasonable step must be taken to ensure that Personal Data that is inaccurate is erased or rectified as soon as possible;
  - 5.1.5. kept for no longer than is necessary for the purposes for which it is being processed; and
  - 5.1.6. processed in a manner that ensures appropriate security of the Personal Data, including protection against unauthorised or unlawful processing and against accidental loss, destruction or damage, using appropriate technical or organisational measures.
- 5.2. In addition to complying with the above requirements the College also has to demonstrate in writing that it complies with them. The College has a number of policies and procedures in place, including this Policy and the documentation referred to in it, to ensure that the College can demonstrate its compliance.

## **6. LAWFUL USE OF PERSONAL DATA**

- 6.1. In order to collect and/or use Personal Data lawfully the College needs to be able to show that its use meets one of a number of legal grounds. Bath College has determined that the lawful basis for processing personal data is predominantly public task – the processing is necessary for Bath College to perform its official public functions. This applies to most aspects of the learners' College journey, including applications, enrolments, English and Maths monitoring, exam access arrangements, training delivered through subcontractors, borrowing library resources and other equipment, providing services to clients and guests as an educational establishment (for example in hair and beauty) and using IT services. Additionally, public task is the lawful basis for processing activities relating to the infrastructure that enables it to perform its official duties, for example in Human Resources, Finance, Safeguarding and with regard to Governors.

- 6.2. Some processing activities are based on consent. This includes marketing, retaining contact with prospective learners and alumni, networks, placing orders for students, learner satisfaction surveys and counselling.
- 6.3. The College undertakes processing activities for staff development on the basis of contract and undertakes marketing activities with current students and external suppliers on the basis of legitimate interests.
- 6.4. In addition, when the College collects and/or uses Special Categories of Personal Data, the College has to show that one of a number of additional conditions is met. Bath College processes special category data for a number of reasons. This includes as part of providing support to SEND learners, ensuring appropriate treatments to Hair and Beauty clients, as part of the application process for Care and Teacher Training students and where necessary for Sport. This is on the basis of explicit consent. Special category data about staff and students is collected and analysed for the purposes of monitoring equality of opportunity.
- 6.5. Criminal offence data is processed by the College by official authority and employment law, the College being exempt from the Rehabilitation of Offenders Act (1974). Criminal offence data is processed for job applicants, staff and some students.
- 6.6. The College sets out the legal grounds for processing data in the privacy notices on its website and in the enrolment form for students.
- 6.7. The College has carefully assessed how it uses Personal Data and how it complies with the obligations set out in paragraphs 6.1 to 6.5. If the College changes how it uses Personal Data, the College needs to update this record and may also need to notify Individuals about the change. If College Personnel therefore intend to change how they use Personal Data at any point they must notify the DPO who will decide whether their intended use requires amendments to be made and any other controls which need to apply.

## **7. TRANSPARENT PROCESSING – PRIVACY NOTICES**

- 7.1. Where the College collects Personal Data directly from Individuals, the College will inform them about how the College uses their Personal Data. This is in a privacy notice. The College has adopted a number of privacy notices, including the following: Staff, Governors, Contractors, Job Applicants and Students.
- 7.2. If the College changes how it uses Personal Data, the College may need to notify Individuals about the change. If College Personnel therefore intend to change how they use Personal Data, please notify the DPO who will decide whether the College Personnel's intended use requires amendments to be made to the privacy notices and any other controls which need to apply.

## **8. DATA QUALITY – ENSURING THE USE OF ACCURATE, UP TO DATE AND RELEVANT PERSONAL DATA**

- 8.1. Data Protection Laws require that the College only collects and processes Personal Data to the extent that it is required for the specific purpose(s) notified to the Individual in a privacy notice (see paragraph 7 above) and as set out in the College's record of how it uses Personal Data. The College is also required to ensure that the Personal Data the College holds is accurate and kept up to date.
- 8.2. All College Personnel that collect and record Personal Data shall ensure that the Personal Data is recorded accurately, is kept up to date and shall also ensure that they limit the collection and recording of Personal Data to that which is adequate, relevant and limited to what is necessary in relation to the purpose for which it is collected and used.
- 8.3. All College Personnel that obtain Personal Data from sources outside the College shall take reasonable steps to ensure that the Personal Data is recorded accurately, is up to date and limited to that which is adequate, relevant and limited to what is necessary in relation to the purpose for which it is collected and used. This does not require College Personnel to independently check the Personal Data obtained.
- 8.4. In order to maintain the quality of Personal Data, all College Personnel that access Personal Data shall ensure that they review, maintain and update it to ensure that it remains accurate, up to date, adequate, relevant and limited to what is necessary in relation to the purpose for which it is collected and used. This does not apply to Personal Data which the College must keep in its original form (e.g. for legal reasons or that which is relevant to an investigation).
- 8.5. The College recognises the importance of ensuring that Personal Data is amended, rectified, erased or its use restricted where this is appropriate under Data Protection Laws. The College has a Rights of Individuals Policy and a Rights of Individuals Procedure which set out how the College responds to requests relating to these issues. Any request from an individual for the amendment, rectification, erasure or restriction of the use of their Personal Data should be dealt with in accordance with those documents.

## **9. PERSONAL DATA MUST NOT BE KEPT FOR LONGER THAN NEEDED**

- 9.1. Data Protection Laws require that the College does not keep Personal Data longer than is necessary for the purpose or purposes for which the College collected it.
- 9.2. The College has assessed the types of Personal Data that it holds and the purposes it uses it for and has set retention periods for the different types of Personal Data processed by the College, the reasons for those retention periods and how the College securely deletes Personal Data at the end of those periods. These are set out in the Retention of Records Policy.

- 9.3. If College Personnel feel that a particular item of Personal Data needs to be kept for more or less time than the retention period set out in the Retention of Records Policy, for example because there is a requirement of law, or if College Personnel have any questions about this Policy or the College's Personal Data retention practices, they should contact the DPO for guidance.
- 9.4. At the end of the retention period Personal data will be disposed of securely.

## 10. DATA SECURITY

- 10.1. The College takes information security very seriously and the College has security measures against unlawful or unauthorised processing of Personal Data and against the accidental loss of, or damage to, Personal Data. The College has in place procedures and technologies to maintain the security of all Personal Data from the point of collection to the point of destruction.

## 11. DATA BREACH

- 11.1. Whilst the College takes information security very seriously, unfortunately, it is possible that a security breach could happen which may result in the unauthorised loss of, access to, deletion of or alteration of Personal Data. If this happens there will be a Personal Data breach and College Personnel must comply with the College's Personal Data Breach Notification Policy. Paragraphs 11.2 and 11.3 show examples of what can be a Personal Data breach. There are important obligations with which College Personnel need to comply with in the event of Personal Data breaches.
- 11.2. Personal Data breach is defined very broadly and is effectively any failure to keep Personal Data secure, which leads to the accidental or unlawful loss (including loss of access to), destruction, alteration or unauthorised disclosure of Personal Data. Whilst most Personal Data breaches happen as a result of action taken by a third party, they can also occur as a result of something someone internal does.
- 11.3. There are three main types of Personal Data breach which are as follows:
  - 11.3.1. **Confidentiality breach** - where there is an unauthorised or accidental disclosure of, or access to, Personal Data e.g. hacking, accessing internal systems that a College Personnel is not authorised to access, accessing Personal Data stored on a lost laptop, phone or other device, people "blagging" access to Personal Data they have no right to access, putting the wrong letter in the wrong envelope, sending an email to the wrong student, or disclosing information over the phone to the wrong person;
  - 11.3.2. **Availability breach** - where there is an accidental or unauthorised loss of access to, or destruction of, Personal Data e.g. loss of a



memory stick, laptop or device, denial of service attack, infection of systems by ransom ware, deleting Personal Data in error, loss of access to Personal Data stored on systems, inability to restore access to Personal Data from back up, or loss of an encryption key; and

11.3.3. **Integrity breach** - where there is an unauthorised or accidental alteration of Personal Data.

## **12. APPOINTING CONTRACTORS WHO ACCESS THE COLLEGE'S PERSONAL DATA**

12.1. If the College appoints a contractor who is a Processor of the College's Personal Data, Data Protection Laws require that the College only appoints them where the College has carried out sufficient due diligence and only where the College has appropriate contracts in place.

12.2. One requirement of GDPR is that a Controller must only use Processors who meet the requirements of the GDPR and protect the rights of individuals. This means that data protection due diligence should be undertaken on both new and existing suppliers. Once a Processor is appointed they should be audited periodically to ensure that they are meeting the requirements of their contract in relation to Data Protection.

12.3. Any contract where an organisation appoints a Processor must be in writing.

12.4. A Processor is considered as having been appointed where someone is engaged to perform a service and as part of that they may get access to College Personal Data. Where a Processor is appointed the College, , as Controller, remain responsible for what happens to the Personal Data.

12.5. GDPR requires the contract with a Processor to contain the following obligations as a minimum:

12.5.1. to only act on the written instructions of the Controller;

12.5.2. to not export Personal Data without the Controller's instruction;

12.5.3. to ensure staff are subject to confidentiality obligations;

12.5.4. to take appropriate security measures;

12.5.5. to only engage sub-processors with the prior consent (specific or general) of the Controller and under a written contract;

12.5.6. to keep the Personal Data secure and assist the Controller to do so;

12.5.7. to assist with the notification of Data Breaches and Data Protection Impact Assessments;

- 12.5.8. to assist with subject access/individuals rights;
- 12.5.9. to delete/return all Personal Data as requested at the end of the contract;
- 12.5.10. to submit to audits and provide information about the processing; and
- 12.5.11. to tell the Controller if any instruction is in breach of the GDPR or other domestic data protection law.

12.6. In addition, the contract should set out:

- 12.6.1. The subject-matter and duration of the processing;
- 12.6.2. the nature and purpose of the processing;
- 12.6.3. the type of Personal Data and categories of individuals; and
- 12.6.4. the obligations and rights of the Controller.

### **13. INDIVIDUALS' RIGHTS**

13.1. GDPR gives individuals more control about how their data is collected and stored and what is done with it. Some existing rights of individuals have been expanded upon and some new rights have been introduced.

13.2. The different types of rights of individuals are reflected below:

#### **13.3. Subject Access Requests**

13.3.1. Individuals have the right under the GDPR to ask the College to confirm what Personal Data they hold in relation to them and provide them with the data. The timescale for providing it is one calendar month from the date of receipt of the request, (with a possible extension if it is a complex request).

13.3.2. Subject Access Requests are often made in the context of a dispute. However, all Subject Access Requests must be handled appropriately to avoid a complaint being made to the ICO.

#### **13.4. Right of Erasure (Right to be Forgotten)**

13.4.1. This is a limited right for individuals to request the erasure of Personal Data concerning them where:

- 13.4.1.1. the use of the Personal Data is no longer necessary;
- 13.4.1.2. their consent is withdrawn and there is no other legal ground for the processing;

- 13.4.1.3. the individual objects to the processing and there are no overriding legitimate grounds for the processing;
- 13.4.1.4. the Personal Data has been unlawfully processed; and
- 13.4.1.5. the Personal Data has to be erased for compliance with a legal obligation.

13.4.2. In a marketing context, where Personal Data is collected and processed for direct marketing purposes, the individual has a right to object to processing at any time. Where the individual objects, the Personal Data must not be processed for such purposes.

### **13.5. Right of Data Portability**

13.5.1. An individual has the right to request that data concerning them is provided to them in a structured, commonly used and machine readable format where:

- 13.5.1.1. the processing is based on consent or on a contract; and
- 13.5.1.2. the processing is carried out by automated means

13.5.2. This right isn't the same as subject access and is intended to give individuals a subset of their data.

### **13.6. The Right of Rectification and Restriction**

13.6.1. Individuals are also given the right to request that any Personal Data is rectified if inaccurate and to have use of their Personal Data restricted to particular purposes in certain circumstances.

13.7. The College will use all Personal Data in accordance with the rights given to Individuals' under Data Protection Laws, and will ensure that it allows Individuals to exercise their rights in accordance with the College's Rights of Individuals Policy and Rights of Individuals Procedure. These documents contain important obligations which College Personnel need to comply with in relation to the rights of Individuals over their Personal Data.

## **14. MARKETING AND CONSENT**

14.1. The College will sometimes contact Individuals to send them marketing or to promote the College. Where the College carries out any marketing, Data Protection Laws require that this is only done in a legally compliant manner.

14.2. Marketing consists of any advertising or marketing communication that is directed to particular individuals

14.3. Privacy and Electronic Communications Regulations (PECR) sit alongside data protection. PECR apply to direct marketing i.e. a communication directed to particular individuals and covers any advertising/marketing material. It applies to electronic communication i.e. calls, emails, texts, faxes. PECR rules apply even if you are not processing any personal data

14.4. Consent is central to electronic marketing.

## 15. **AUTOMATED DECISION MAKING AND PROFILING**

15.1. Under Data Protection Laws there are controls around profiling and automated decision making in relation to Individuals.

**Automated Decision Making** happens where the College makes a decision about an Individual solely by automated means without any human involvement and the decision has legal or other significant effects; and

**Profiling** happens where the College automatically uses Personal Data to evaluate certain things about an Individual.

15.2. Any Automated Decision Making or Profiling which the College carries out can only be done once the College is confident that it is complying with Data Protection Laws. If College Personnel therefore wish to carry out any Automated Decision Making or Profiling College Personnel must inform the DPO.

15.3. College Personnel must not carry out Automated Decision Making or Profiling without the approval of the DPO.

15.4. The College does not carry out Automated Decision Making or Profiling in relation to its employees.

## 16. **DATA PROTECTION IMPACT ASSESSMENTS (DPIA)**

16.1. The GDPR introduce a new requirement to carry out a risk assessment in relation to the use of Personal Data for a new service, product or process. This must be done prior to the processing via a Data Protection Impact Assessment ("**DPIA**"). A DPIA should be started as early as practical in the design of processing operations. A DPIA is an assessment of issues affecting Personal Data which need to be considered before a new product/service/process is rolled out. The process is designed to:

16.1.1. describe the collection and use of Personal Data;

16.1.2. assess its necessity and its proportionality in relation to the purposes;

16.1.3. assess the risks to the rights and freedoms of individuals; and

16.1.4. the measures to address the risks.

- 16.2. A DPIA must be completed where the use of Personal Data is likely to result in a high risk to the rights and freedoms of individuals. The procedure for making an assessment of issues affecting Personal Data which need to be considered before a new product/service/process is rolled out is shown at Appendix A.
- 16.3. Where a DPIA reveals risks which are not appropriately mitigated the ICO must be consulted.
- 16.4. Where the College is launching or proposing to adopt a new process, product or service which involves Personal Data, the College needs to consider whether it needs to carry out a DPIA as part of the project initiation process. The College needs to carry out a DPIA at an early stage in the process so that the College can identify and fix problems with its proposed new process, product or service at an early stage, reducing the associated costs and damage to reputation, which might otherwise occur.
- 16.5. Situations where the College may have to carry out a Data Protection Impact Assessment include the following (please note that this list is not exhaustive):
- 16.5.1. large scale and systematic use of Personal Data for the purposes of Automated Decision Making or Profiling (see definitions above) where legal or similarly significant decisions are made;
  - 16.5.2. large scale use of Special Categories of Personal Data, or Personal Data relating to criminal convictions and offences e.g. the use of high volumes of health data; or
  - 16.5.3. systematic monitoring of public areas on a large scale e.g. CCTV cameras.
- 16.6. All DPIAs must be reviewed and approved by the DPO.

## **17. TRANSFERRING PERSONAL DATA TO A COUNTRY OUTSIDE THE EEA**

- 17.1. Data Protection Laws impose strict controls on Personal Data being transferred outside the UK. Transfer includes sending Personal Data outside the UK but also includes storage of Personal Data or access to it outside the UK. It needs to be thought about whenever the College appoints a supplier outside the UK or the College appoints a supplier with group companies outside the UK which may give access to the Personal Data to staff outside the UK.
- 17.2. So that the College can ensure it is compliant with Data Protection Laws College Personnel must not export Personal Data unless it has been approved by the DPO.
- 17.3. College Personnel must not export any Personal Data outside the UK without the approval of the DPO.

# Data Protection Impact Assessment Procedure

## Appendix A

