

REPORT OF: THE CLERK
TO: THE PARISH COUNCIL
DATE: 2 AUGUST 2017
SUBJECT: DATA PROTECTION POLICY

1 INTRODUCTION

The Data Protection Act 1998 is the main piece of legislation which governs the protection of personal data today.

Data protection law will significantly change on 25 May 2018, when the 2016 EU Directive (2016/680) known as the *General Data Protection Regulation* ('GDPR') takes effect. This will effectively replace the 1998 Act and will be directly applicable in the UK without the need to implement national legislation. The UK's decision to leave the EU will not affect the commencement of the GDPR in 2018.

2 PREPARING FOR THE GENERAL DATA PROTECTION REGULATION

Compliance with the new regulation will have resource implications and the Clerk is reviewing the Information Commissioner Office's guide 'Preparing for the General Data Protection Regulation' and will report back to the Council in due course. In the meantime, the current Act is in force and the following is a proposed Data Protection Policy.

DATA PROTECTION POLICY

1 INTRODUCTION

The Council needs to gather and use certain information about individuals and this can include clients of the village hall, suppliers, business contractors, other councils or any other organisation which has a relationship with the Parish Council.

This policy describes how this personal data must be collected, handled and stored to comply with the law. It was formally adopted by Shavington-cum-Gresty Council on [date]. It applies to all employees, councillors and any third parties acting on the Council's behalf.

The Parish Council will ensure that personal information is treated lawfully and correctly, adhering always to the principles of the Data Protection Act 1998.

2 THE DATA PROTECTION ACT 1998

The Data Protection Act 1998 (the Act) establishes a framework of rights and duties which are designed to safeguard personal data. This framework balances the legitimate needs of organisations to collect and use personal data for business and other purposes, against the right of individuals, known as 'data subjects' to respect for the privacy of their personal details. This is underpinned by eight principles:

- 1 Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless:
 - (a) At least one of the conditions in Schedule 2 is met; and
 - (b) In the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met.

- 2 Personal data shall be obtained only for one or more specified and lawful purposes, and shall not be further processed in any manner incompatible with that purpose or those purposes.
- 3 Personal data shall be adequate, relevant and not excessive in relation to the purpose or purposes for which they are processed.
- 4 Personal data shall be accurate and, where necessary, kept up-to-date.
- 5 Personal data processed for any purpose or purposes shall not be kept for longer than is necessary for that purpose or those purposes.
- 6 Personal data shall be processed in accordance with the rights of data subjects under the Act.
- 7 Appropriate technical and organisational measures shall be taken against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data.
- 8 Personal data shall not be transferred to a country or territory outside the European Economic Area unless that country or territory ensures an adequate level of protection for the rights and freedoms of data subjects in relation to the processing of personal data.

The Information Commissioner is responsible for implementing and overseeing the Act and the Head Office is based in Wilmslow at Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF (Tel: 0303 123 1113 or 01625 545 745).

3 SCOPE/RIGHTS OF DATA SUBJECTS

As part of its role, the Council is required to gather and process information about people in the community in order to operate effectively. This will be carried out in accordance with the Data Protection Act 1998 and other related government legislation. This information may also be shared with other agencies involved in the provision of services, where the Council is legally required to do so.

The Council, as custodians of personal data, recognises its legal duty to ensure that all such data is handled properly and confidentially at all times, irrespective of whether it is held as paper documents or electronic means. This covers the following:

- Obtaining personal data.
- Storage and security of personal data.
- Use of personal data.
- Disposal/destruction of personal data.

The Council also has a responsibility to ensure that data subjects have appropriate access, upon written request, to details regarding personal information relating to them.

Data subjects have the right –

- To ask if the Council is processing any personal data about them.
- To be given a description of the personal data.
- To ask the Council the purpose of holding the information and to be given details of the purpose for which the information is used and to whom it is disclosed, if at all.
- To be provided with a copy of the information held.
- To ask for incorrect data to be corrected.
- To be given details of the source of the data held (where this is available).

4 DATA PROTECTION RESPONSIBILITIES

All Parish Councillors have some responsibility for ensuring the collection, storage and handling of data. However, it is the Parish Clerk who has overall responsibility.

The Act references the roles of Data Processor and Data Controller in respect of data.

- The Data Controller exercises overall control over the purposes for which, and the manner in which, personal data are processed.
- The Data Processor processes the data on behalf of the Data Controller.

The Clerk, as the only employee of the Parish Council, is both the Data Processor and the Data Controller.

5 PERSONAL DATA HELD

The information is held on a secure computer and in a secure manual filing system. Maintenance and security is the responsibility of the Parish Council.

It is held for as long as is required by law. If there is no legal requirement to keep the records, they will be destroyed as soon as is practicable. Where there is a legal requirement to retain information, this is not normally more than six years.

The type of information which can be held without the consent of data subjects is:

- Carrying out a legal duty or as authorised by the Secretary of State.
- Protecting vital interests of a data subject or other person.
- The data subject has already made the information public.
- Conducting any legal proceedings, obtaining legal advice or defending any legal rights.
- Monitoring for equal opportunities purposes, eg, race, disability or religion.
- Providing a confidential service where the data subject's consent cannot be obtained or where it is reasonable to proceed without consent, eg, where the Council would wish to avoid compelling stressed or ill data subjects to provide consent signatures.

If a data subject wishes to see their information, they should write to the Council addressing it to the Parish Clerk by e-mail at the address on the website (www.shavingtononline.co.uk). If they wish to send a letter through the post, they should contact the Clerk direct for her address.

To ensure that information is released to the correct data subject concerned, there will be a need to provide the following evidence as proof of identity –

- Full name and date of birth
- Address and previous addresses, if relevant
- Two forms of identification to confirm the identity of the data subject; one which confirms identity and one which confirms current address.
 - Proof of identity: current passport, or birth certificate or unexpired photo-card driving licence
 - Proof of address: utility bill dated within the last three months, or Council Tax bill for current year; or bank statement dated within the last three months; or Benefits Agency/State Pension correspondence (on official letter-head) dated within the last three months.

The Council does not currently make a charge for requesting the information.

Once requested, the Council is obliged to provide the information within 40 days of receiving the written application.

If the data held is incorrect, data subjects can request that it be corrected and this must be in writing or by e-mail, unless the data subject has a disability which would prevent this or make it unreasonably difficult for them. Such information must be corrected within 28 days of the request to make the amendment. If the correction is not made, the data subject can appeal to the Information Commissioner's Office.

6 COMPLAINTS

If data subjects are dissatisfied about any matter, they can complain to the Information Commissioner's Office. Complaints can be made if a data subject considers the Council has breached any of the requirements of the Data Protection Act and these include the following, but the list is not exhaustive.

- A breach of any of the Data Protection principles.
- Processing personal data without having notified the Commissioner.
- Failure to respond to any of the data subject's written notices.
- Processing personal data without a data subject's consent, where consent is necessary.
- Refusing to provide a data subject with the information requested.

The Commissioner will carry out an assessment of the Council's processing to establish whether the Council has complied with the Act. If the finding is that the Council has not complied, the Council will be issued with a notice requiring compliance.