

# Appropriate Policy – Processing Special Categories of Data

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# 1. Introduction

As part of Bury Council's statutory and public functions, we process special category data and criminal offence data in accordance with the requirements of Article 9 and 10 of the UK General Data Protection Regulation ('GDPR') and Schedule 1 of the Data Protection Act 2018 ('DPA 2018').

This policy is part of Bury Council's Information Governance Framework and should be read in conjunction with the other policies and procedures within the framework.

## Scope

This policy applies when Bury Council is processing special category data when relying on the requirements listed in Parts 1, 2 and 3 of Schedule 1 of the Data Protection Act 2018. This policy lists the procedures, which are in place to secure compliance with the UK General Data Protection Regulation and data protection principles, needed when processing special category data. It applies to all Bury Council staff. "Staff" for the purposes of this policy includes Bury Council officers, including contractors, consultants and agency staff.

# 2. Special Category Data

The UK GDPR defines Special Category Data as personal data that reveals:

- Racial or ethnic origin;
- Political opinions;
- Religious or philosophical beliefs;
- Trade union membership;
- Genetic data;
- Biometric data for the purpose of uniquely identifying a natural person;
- Data concerning health; or
- Data concerning a natural person's sex life or sexual orientation.

### 3. Criminal conviction data

While not formally defined as special category data, similar additional conditions and requirements also apply to criminal convictions and offences or related to security measures under Article 10 UK GDPR.

Section 11(2) of the DPA 2018 specifically confirms that this includes personal data relating to the alleged commission of offences or proceedings for an offence committed or alleged to have been committed, including sentencing. When processing such data, Bury Council will ensure the relevant additional conditions and requirements are met.

### 4. This policy document

Under DPA 2018, there is a requirement for an Appropriate Policy Document to be in place when processing special category and criminal offence data under certain conditions. This will explain our procedures and compliance with the principles in Article 5 and our policies in relation to retention and erasure of this personal data. This document explains our processing and satisfies the requirements of Schedule 1, Part 4 of the DPA 2018.

In addition, it provides some further information about our processing of special category and criminal offence data where a policy document is not a specific requirement. The information supplements our primary privacy notice which can be viewed here: [Privacy - Bury Council](#).

### 5. Conditions for processing special category and criminal offence data

Schedule 1 of DPA 2018 establishes conditions that permit the processing of the special categories of personal data and criminal convictions data.

## Part 1 – Conditions relating to employment, social security and social protection

Bury Council will process personal data concerning health in connection with the following:

- Our rights under employment law and to support employees in their work environment.
- Health and social care purposes
- Reasons of public interest in the area of public health
- Archiving purposes, scientific or historical research purposes or statistical purposes
- Processing data concerning criminal records in connection with employment in order to reduce the risk to the Council and the local community
- Carrying out investigations and disciplinary actions relating to employees

## Part 2 – Substantial Public Interest Conditions

### **Statutory etc. and government purposes**

- Fulfilling obligations under UK legislation for the provision, evaluation and financial/contractual monitoring of services funded by Bury Council for residents.
- Complying with other legal requirements, such as the requirement to disclose information in connection with legal proceedings.

### **Equality of opportunity or treatment**

- Ensuring compliance with Bury Council obligations under legislation such as the Equality Act 2010.
- Ensuring that we fulfil our public sector equality duty when carrying out our work.
- Ensuring we provide equal access to our services, to all sections of the community in recognition of our legal and ethical duty to represent and serve communities.

### **Racial and ethnic diversity at senior levels of organisations**

- Applies only to the processing necessary to identify suitable individuals to hold senior positions within the Council due to substantial public interest.

### **Preventing or detecting unlawful acts**

- Processing data concerning criminal records in connection with employment in order to reduce the risk to Bury Council.

### **Regulatory requirements relating to unlawful acts and dishonesty**

- Carrying out enforcement action in connection with Bury Council statutory duties.
- Processing data concerning dishonesty, malpractice, unlawful acts or other improper conduct in order to protect the residents of Bury.
- Carrying out enforcement action in connection with the Bury Council statutory duties, such as the Regulatory Reform (Fire Safety) Order 2005
- Carrying out investigations and disciplinary actions relating to our employees.
- Assisting other authorities in connection with their regulatory requirements.

### **Preventing fraud**

- Disclosing personal data in accordance with arrangements made by a Government anti-fraud organisation.

### **Support for individuals with a particular disability or medical condition**

- To provide services or raise awareness of a disability or medical condition in order to deliver services to service users and their carers.

### **Counselling**

- For the provision of confidential counselling, advice or support, or for another similar service provided confidentially.

### **Safeguarding of children and individuals at risk.**

- Protecting vulnerable children and/or an individual aged over 18 from neglect, physical, mental or emotional harm.
- Identifying individuals at risk whilst providing services and/or attending emergency incidents.
- Obtaining further support for children and individuals at risk by sharing information with relevant agencies.

### **Safeguarding of economic well-being of certain individuals**

- To protect the economic wellbeing of an individual at economic risk who is aged 18 or over.
- Identifying individuals at risk whilst providing services and/or attending emergency incidents.

- Data sharing with our partners to assist them to support individuals.

### **Insurance**

- Claims for loss or damage to Council property
- Claims for compensation made against the Council by third parties

### **Occupational pensions**

- Fulfilling Bury Council's obligation to provide an occupational pension scheme.
- Determining benefits payable to dependents of pension scheme members.

### **Disclosure to elected representatives**

- Assisting elected representatives such as local government Councillors and members of Parliament with requests for assistance on behalf of their constituents

## Part 3 – Additional Conditions Relating to Criminal Convictions, etc.

Extension of conditions in Part 2 of Schedule 1 referring to substantial public interest.

Bury Council may process personal data where it is strictly necessary relating to criminal convictions in connection with its service obligations or as part of recruitment and employment checks to protect the public against dishonesty.

## 6. Procedures for ensuring compliance with the Principles

### Accountability principle

The UK GDPR state that the data controller must be responsible for, and be able to demonstrate, compliance with these principles. The Data Protection Officer and Senior Information Risk Owner are responsible for ensuring that Bury Council is compliant with these principles.

Bury Council will:

- ensure that records are kept of all personal data processing activities and that these are provided to the Information Commissioner on request
- carry out a Data Protection Impact Assessment for any high risk personal data processing and consult the Information Commissioner if appropriate



- appoint a Data Protection Officer to provide independent advice and monitoring of Bury Council's personal data handling and that this person has access to report to the highest management level of the department
- have in place internal processes to ensure that personal data is only collected, used or handled in a way that is compliant with data protection law
- all employees receive annual data protection and information security training
- maintain logs of security incidents, data protection rights requests and details of information sharing with partners.

### Principle 1: Lawfulness, Fairness and Transparency

Processing personal data must be lawful, fair and transparent. It is only lawful if and to the extent it is based on law and either the data subject has given their consent for the processing, or the processing meets at least one of the conditions in Schedule 1.

Bury Council will:

- ensure that personal data is only processed where a lawful basis applies
- only process personal data fairly, and will ensure that data subjects are not misled about the purposes of any processing
- ensure that data subjects receive details on why we use and collect their data by providing privacy notices for services, so that any processing of personal data is transparent, as well as being clear and easy to understand.

Our processing for purposes of substantial public interest is necessary for the exercise of a function conferred on Bury Council by Bury Council Orders or any other enactment (whenever passed or made).

Our processing for the purposes of employment relates to our obligations as an employer.

We also process special category personal data to comply with other obligations imposed on Bury Council in its capacity as a public authority, e.g. the Equality Act.

## Principle 2: Purpose Limitation

Personal data shall be collected for specified, explicit and legitimate purposes and not further processed in a manner that is incompatible with those purposes.

Bury Council will:

- only collect personal data for specified, explicit and legitimate purposes, and we will inform data subjects what those purposes are in a privacy notice
- not use personal data for purposes that are incompatible with the purposes for which it was collected. If we do use personal data for a new purpose that is compatible, we will inform the data subject first
- if we are sharing data with another controller, document that they are authorised by law to process the data for their purpose.

We process personal data for purposes of substantial public interest when the processing is necessary for us to fulfil our statutory/public functions, where it is necessary for complying with or assisting another organisation to comply with a regulatory requirement.

Bury Council is authorised by law to process personal data for these purposes.

We may process personal data collected for any one of these purposes (whether by us or another data controller), for any of the other purposes here, providing the processing is necessary and proportionate to that purpose.

## Principle 3: Data Minimisation

Bury Council will only collect data that is adequate, relevant and limited to what is necessary in relation to the purposes for which it is processed. Bury Council will only collect the minimum personal data that we need for the purpose for which it is collected.

Where personal data is provided to us or obtained by us, but is not relevant to our stated purposes, this will be erased/disposed of in a confidential and secure manner.

#### Principle 4: Accuracy

Bury Council will ensure that personal data is accurate and kept up to date where necessary. We will take particular care to do this where our use of the personal data has a significant impact on individuals.

Where Bury Council become aware that personal data is inaccurate or out of date, having regard to the purpose for which it is being processed, we will take every reasonable step to ensure that data is erased or rectified without delay. If we decide not to either erase or rectify it, for example because the lawful basis we rely on to process the data means these rights do not apply, we will document our decision.

#### Principle 5: Storage Limitation

Personal data shall be kept in a form which permits identification of data subjects for no longer than is necessary for the purposes for which the personal data is processed.

Bury Council will only keep personal data in an identifiable form for as long as is necessary for the purposes for which it is collected, or where we have a legal obligation to do so. Once we no longer need personal data, it shall be deleted/confidentially destroyed or rendered permanently anonymous.

- Retention periods are set out in our Retention and Disposal Schedules and are published in our Records of Processing Activity Register and Privacy Notices.
- Retention periods are based on legal requirements to retain data and consideration of the needs of data subjects through data protection impact assessments.

## Principle 6: Integrity and Confidentiality (security)

Personal data shall be 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.

Bury Council will ensure that there are appropriate organisational and technical measures in place to protect personal data:

- We adhere to the Government's Minimum Cyber Security Standards and implement information security controls in line with Public Sector Network, Payment Card Industry and the Data Security and Protection Toolkit
- The Information Governance Steering Group meets regularly to ensure suitable information governance is deployed throughout Bury Council
- Employees looking after our IT network are vetted in line with the HMG Baseline Personnel Security Standard.
- Technical security controls such as encryption are employed to secure sensitive information within systems
- Role-based access controls are implemented to restrict access to sensitive data
- Where possible, anonymisation or pseudonymisation techniques are used to reduce the risk of sensitive data being compromised.
- Retention and erasure policies are in place to ensure data is retained in line with agreed retention periods, and securely disposed of when appropriate.

We will ensure, where special category or criminal convictions personal data is processed, that:

- there is a record of that processing, which complies with the requirements of Article 30 GDPR and paragraph 41 of Schedule 1 of the DPA and that record will set out, where possible, the envisaged time limits for erasure of the different categories of data
- where we no longer require special category or criminal conviction personal data for the purpose for which it was collected, we will delete it or render it permanently anonymous

- we ensure all contracts with data processors include clauses regarding the exit of the contract and the return or destruction of any personal data processed
- data subjects receive full privacy information about how their data will be handled, and that this will include the period for which the personal data will be stored, or if that is not possible, the criteria used to determine that period
- we retain personal information only for as long as necessary to fulfil the purposes we collected it for, including for the purposes of satisfying any legal, accounting, or reporting requirements.

## 7. Compliance and Monitoring

### Legal and professional Obligations

Bury Council will take actions to comply with the relevant legal and professional obligations.

### Training

Bury Council will provide relevant training both online and face to face to ensure that staff understand the legislation and its application to their role.

All staff must complete mandatory training every year and undertake any further training provided by Bury Council to enable them to perform their duties appropriately.

Completion of training will be monitored by the Policy and Compliance Team and all employees must have regard to the Data Protection Legislation and this policy when collecting, accessing, using, disclosing or destroying personal information. Failure to do so may result in disciplinary action and legal prosecution.

If an employee is in any doubt about how to handle personal or special category data they should speak to their line manager or contact the Policy and Compliance Team by emailing [IG@bury.gov.uk](mailto:IG@bury.gov.uk).

### Policy review

This policy will be reviewed regularly by the Policy and Compliance Team to ensure that it is updated in line with any change in legislation.

Bury Council will continue to review the effectiveness of this policy to ensure that it is achieving its intended purpose.

Any breaches of the principles in this policy must be reported to the Policy and Compliance Team immediately at [ig@bury.gov.uk](mailto:ig@bury.gov.uk).

Where staff fail to follow and comply with this policy it may result in disciplinary action via the HR channels