



## Carshalton Boys Sports College

Policy	<b>Data Protection</b>
Policy Number:	PS04
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### **A Background:**

Carshalton Boys Sports College collects and uses personal information about staff, students, parents and other individuals who come into contact with the school. This information is gathered in order to enable the school to provide education and other associated functions. In addition, there is a legal requirement to collect and use certain information to ensure that the school complies with its statutory obligations.

The Data Protection Act controls how personal information is used by organisations, businesses or the government. As a school, we have a responsibility to ensure that we keep personal data in line with the 'data protection principles'. We must make sure the information is:

- used fairly and lawfully
- used for limited, specifically stated purposes
- used in a way that is adequate, relevant and not excessive
- accurate
- kept for no longer than is absolutely necessary
- handled according to people's data protection rights
- kept safe and secure
- not transferred outside the UK without adequate protection

Carshalton Boys Sports College is registered, as is its duty, as a Data Controller with the Information Commissioner's Office (ICO). The allocated member of staff responsible for Data Protection is Jenny Gaylor, Vice Principal.

### **B Purpose of the policy:**

This policy is intended to record that personal information is dealt with correctly and securely and in accordance with the Data Protection Act 1998 and other related legislation. This applies to information regardless of the way it is collected, used, recorded, stored and destroyed and irrespective of whether it is held in paper files or electronically.

The policy also explains the right to personal information held on the individual by the individual and (where relevant) their parents/carers.

## **C Duties and Responsibilities:**

All staff involved with the collection, processing and disclosure of personal data are aware of their duties and responsibilities. Staff understand the need to keep personal information confidential, save for those that are authorised to access information or have a right to know such (eg parents/carers).

The school does have a responsibility to pass on certain information to the Department for Education, other government agencies, social services, and various local authority agencies. Routine aspects of this are described on the website. Other areas are covered by various policies, such as the Child Protection and Safeguarding.

Any individual can ask to see personal data held on them by the school. This is called a subject access request.

## **D Data Protection: Subject Access request.**

### **a. Access to pupils' information held by schools in England**

The school has a responsibility under the Data Protection Act 1998 ("the Act") regarding requests for access to pupils' information. Section 7(1) of the Act gives individuals the right to access their personal data. By making a written request and paying a fee, an individual is entitled to see (among other things):

- the information which is the personal data; and
- any information available to the data controller about the source of the data.

### **b. When is the 'data' 'personal data' for the purposes of the Data Protection Act?**

1. When a living individual can be identified from the data, or, from the data and other information in the possession of, or likely to come into the possession of, the data controller (An individual is 'identified' if distinguished from other members of a group. In most cases an individual's name together with some other information will be sufficient to identify them.)
2. When the data 'relates to' the identifiable living individual, whether in personal or family life, education, business or profession i.e. when the data is obviously 'about' a particular individual (Data which identifies an individual, even without a name associated with it, may be personal data where it is processed to (or as a by-product of the processing incidentally allows one to) learn or record something about that individual.)
3. When the data is used to inform or influence actions or decisions, or in some other way has a clear impact affecting an identifiable individual. E.g. The data focuses on the individual as its central theme rather than on some other person, object, transaction or event.

### **c. Personal Information:**

Under the Act, a pupil, or someone acting on their behalf, has the right to access his/her personal information held by the school.

This includes:

- information held on computer (or other automated means);
- information held in structured files;
- information in the educational record regardless of the form in which it is held;
- unstructured information, for example, held in loose correspondence.

Most pupils' personal information will be held by a school as part of pupils' educational records. However, some pupil information could fall outside this, for example, information provided by the parent of another child or by other children.

Requests should be made in writing and the school is entitled to ask for any further information reasonably required to locate the information and satisfy itself about the identity of the person making the request.

A pupil is also entitled to be told whether or not the personal information they want is held by the school, and to ask what that information is. They will also be entitled to a description of the information, the purposes it is used for, who it is released to, and any information available about the source of the information.

The information must be supplied in an intelligible form (so any codes should be explained) and should be in hard copy unless it is not possible to do this or would involve a disproportionate effort, or if the pupil or parent agrees to access the information in another form.

### **d. What rights exist for access to a pupil's personal information?**

There are two distinct rights to information held by schools about pupils.

- 1. The subject access right (i.e. the right of the subject to a copy of their own personal information).** Parents will only be able to see all the information about their child when the child is unable to act on their own behalf or gives their consent.

When a request is received from a child for access to their own information, the school should take into account whether the child properly understands what is involved in making the request and the type of information they will receive. As a general guide, a child of 12 or older is expected to be mature enough to understand the request they are making. A child who understands the nature of an access request may ask an adult to act on their behalf. Anyone can appoint an agent in this way.

2. **Rights to the educational record** – under the Education (Pupil Information) (England) Regulations 2005, referred to here as the Regulations, a parent has the right to access their child’s educational record.

**e. What is an educational record?**

The Regulations provide a legal definition of an ‘educational record’, (mirrored in Schedule 11 of the Act with the addition of any statement of special educational needs and any personal educational plan).

The definition is wide and includes, regardless of its form, any information about current and past pupils that is processed by or for a school’s governing body or teacher. It includes a 'curricular record', defined as a formal record of a pupil’s academic achievements, other skills and abilities and progress in school.

The educational record is confined to information that comes from a teacher or other employee of a local authority or school, the pupil or their parents.

Communications about a particular child from head teachers and teachers at a school and other employees at an education authority will therefore form part of that child’s official educational record, as will correspondence from an educational psychologist engaged by the governing body under a contract of services. It may also include information from the child and their parents, such as information about the health of the child.

Information kept by a teacher solely for their own use does not form part of the official educational record.

**f. Can any of the information in the educational record be withheld from the parent?**

Generally, any information that could not be disclosed to the child under the Act or to which the child would not have a right of access under the Act should not be disclosed to a parent exercising their independent right of access under the Regulations.

**g. When can any information be withheld from the individual?**

- Where the response includes information about another individual, the school has to take into account their duty to consider the rights of the individual making the request and the privacy of any other individuals who may be identified.\*\*
  
- Where the information is covered by an exemption in the Act. The main exemptions when information may be withheld relate to:
  - information which might cause serious harm to the physical or mental health of the pupil or another individual;

- cases where the disclosure would reveal a child is at risk of abuse;
- information contained in adoption and parental order records
- information given to a court in proceedings under the Magistrates' Courts

(Children and Young persons) Rules 1992;

- copies of examination scripts; and
  - providing examination marks before they are officially announced.
- When the cost of supplying information held in an unstructured way would exceed £450. (Unstructured personal information needs to be distinguished from personal information held in highly or partly structured files, such as a teacher's own records with sections for different classes and pupils, to which the normal rules of subject access apply).  
Where the request is for unstructured personal information, schools are entitled to ask for a description of the information to help them find it. They do not have to supply the information, or confirm whether or not it exists, if it would cost more than £450 to do either of these things. This cost structure is in The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004.

#### **h. What are the timescales for dealing with requests?**

Requests for information from pupils, or parents, for information that contains, wholly or partly, an educational record must receive a response within 15 school days. Schools and authorities are entitled to receive any fee first (see below). Most requests for information are likely to ask for at least some information in the educational record. However, should a subject access request be made just for personal information outside the educational record, a response must be made promptly and at most within 40 calendar days. The 40 days does not begin until after the fee (see below) and any further information about identity or the location of the information is received.

#### **i. Can a charge be made for accessing personal information?**

If a pupil or parent acting on their behalf makes an access request for personal information containing, in whole or part, the 'educational record', the amount that can be charged depends on the number of pages provided. The fees work on a scale basis as shown below.

Pages from	1	20	30	40	50	60	70	80	90	100	150	200	250	300	350	400	450	500
to page no.	19	29	39	49	59	69	79	89	99	149	199	249	299	349	399	449	499	+
Cost (£)	1	2	3	4	5	6	7	8	9	10	15	20	25	30	35	40	45	50

For a personal information request which does not include any information from the educational record, the maximum fee which can be charged is £10.

If a parent exercises their independent right under the Regulations simply to view the educational record, then this is free of charge.

If a copy of the educational records is supplied under the Regulations, a fee can be charged by the Governing Body. This fee must not exceed the cost of supplying the information.

**j. THIRD PARTY INFORMATION:**

\*\*Responding to such subject access requests may involve providing information relating to another individual (a 'third party individual'). For instance, if the requested information relates to witness statements regarding an incident, then it may contain information identifying students or private individuals who have contributed to the investigation. This may lead to a conflict between the subject's right of access and the third party's rights over their own personal information. Section 7(4) of the Act provides that if the request can only be met by disclosing information relating to another individual who can be identified from that information, then the request does not have to be met unless:

- the third party has consented to the disclosure; or
- it is reasonable in all the circumstances to comply with the request without the consent of the third party individual.

Key questions relating to this decision are:

**Does the request require the disclosure of information which identifies a third party individual?**

Section 7(4) of the Act is only relevant if information about a third party individual is **necessarily** part of the information which the requesting individual is entitled to. i.e. Is it possible to comply with the request without revealing information which relates to and identifies a third party individual, taking into account the information being disclosed and any information which it is reasonable to believe that the person making the request may have that may identify the third party individual?

The obligation is to provide **information** rather than documents, names may be deleted or documents edited if the third party information does not form part of the requested information.

However, if it is not possible to separate the third party information from that requested and still comply with the request, the following would be considered:

**1. Has the third party individual consented?**

If yes, then the information, including any reference to the third party can be disclosed. If the third party individual is an education, health or social services professional, information relating to them can be disclosed where necessary.

It is noted that there is no obligation for the data controller to try to get consent. There will be some circumstances where it will clearly be reasonable to disclose without trying to get consent, for example, where the information concerned will be known to the requesting individual anyway. Indeed it may not always be appropriate to try to get consent (for instance, if to do so would inevitably involve a disclosure of personal data about the requesting individual to the third party individual).

**2. Would it be reasonable in all the circumstances to disclose without consent, taking into account any duty of confidentiality owed to the third party individual?**

Information that could be considered confidential would include information which is not generally available to the public and/or that has been disclosed with the expectation that it will remain confidential.. It may be that the information is widely available elsewhere (and so it does not have the 'necessary quality of confidence'), or there may be other factors, such as the public interest, which mean that an obligation of confidence does not arise.

However, in most cases where a clear duty of confidence does exist, it will usually be reasonable to withhold third party information unless the third party individual has consented to disclose it. If the third party information has previously been provided to the individual making the request, is already known by them, or is generally available to the public, it will be more likely to be reasonable for you to disclose that information. It follows that third party information relating to a member of staff (acting in the course of their duties), who is well known to the individual making the request through their previous dealings, would be more likely to be disclosed than information relating to an otherwise anonymous private individual. Similarly, where the third party individual is the source of the information held about the person making the request, there may be a strong case for their identification if the person needs to correct some damaging inaccuracy. However, it will always depend on the circumstances of the case eg a ruling agreed that the data controller could withhold the name of one of its employees who did not consent to disclosing the requested information as the subject requesting access had abused them on the telephone.

**Conclusion:**

Given, further to section 7(5) of the Act, there is an obligation to communicate as much of the information requested as is reasonable without disclosing the identity of the third party individual. So, disclosing the information with any third party information edited or deleted may be the best way to meet this request if all the information cannot be disclosed.

**E WHAT THIS MEANS WITH REGARD TO CARSHALTON BOYS SPORTS COLLEGE**

Within the school context, the data in the table below would usually form part of the student's personal information held by the school; much of this would also form the Education Record.

NB As part of the routine management of materials, not all information would be retained e.g. brief notes in journal, brief note re one day absence etc. It would also be the case that some data would be routinely deleted or otherwise destroyed once it had served its purpose e.g. weekly or departmental report at the end of the academic year, etc.

The school would provide such data as it held, within the constraints and guidance of the notes above.

It should be noted that there are a number of different formats for the same information. E.g. examination grades would be on the school central system; they would also be held by departments, individual teachers in markbooks, and in analysis sheets for cohorts. However, the school would provide the information in one format, rather than each separate sheet which repeats the information. There are also times when a summary of information will be made using the data held by a range of different sheets.

With regard to unstructured data, the school holds a wealth of this for any one student, given that students are in school for up to 190 school days and that school provides much opportunity for student involvement, interaction and communication. This would not be considered to be part of the formal educational record.

A request for personal information that is held in an unstructured way would need to be specified. The school would not provide all personal information without a clear focus and query point, given that to do so would exceed the £450 limit noted above.

<b>Data held regarding the student</b>	<b>Educational Record</b>	<b>Personal Information</b>	<b>Comments:</b>
Examination Grades once published by the Examination Board.	yes	yes	Held in various formats, one copy would be given
Annual subject report and interim report information	yes	yes	

<b>Data held regarding the student</b>	<b>Educational Record</b>	<b>Personal Information</b>	<b>Comments:</b>
Information provided by parents or student	some	yes	Not all information will be retained e.g. brief notes in journal, information re one day absence etc
Health Information	yes	yes	
Reward Certificates, post cards home etc.	some	yes	Not all information will be retained. Where it is, much will be unstructured information.
Emails/letters within the school about the students' progress, welfare or behaviour	some	yes	Not all information will be retained or kept in structured form e.g. letters re missing homework.
Emails/letters inviting parents in for e.g. academic tutoring, parents' evening; informing of trips and other generic letters	no	rarely	These are generic organisational letters, or letters re appointment times; these are not usually kept in any structured form and not necessarily kept for any length of time..
Attendance and Punctuality Records	yes	yes	
Written/email communications with educational professionals outside the school including referral forms, CAFs etc	usually	yes	Matters relating to certain exceptions stated above would not be disclosed. Some of these may be clarification/organisational emails which would be unstructured. Any judgements or advice not included in any reports would be usually included in the student file.

<b>Data held regarding the student</b>	<b>Educational Record</b>	<b>Personal Information</b>	<b>Comments:</b>
School or departmental tracking, analysis and/or intervention records	yes	yes	These often overlap with report or examination information held by the school in other formats.
Behavioural Referral Forms, Meeting Records, Analysis and Intervention Outcomes	some	yes	Other student names would not usually be provided, given their right to confidentiality. Minor behaviour matters would not be recorded centrally e.g. personal detention notes
Individual Education Plans, Personal Health Plans, Medical Plans or Personal Support Plans etc	usually	yes	
Short term daily or lesson report outcomes	some	yes	These are not usually kept in the longer term and/or are sent home with the student.
Teacher Markbooks	depends	depends	Where these are records solely for use by the teacher, these would not be part of the available data
Feedback on individual pieces of work	rarely	yes	This would be largely part of unstructured information held within the school; much of this feedback would be either part of examination work or within folders or books used by the student.
Notes or other information kept by an employee for their own information i.e. not for processing for use by others	no	no	

<b>Data held regarding the student</b>	<b>Educational Record</b>	<b>Personal Information</b>	<b>Comments:</b>
Information from other students or individual third party not employed by the school	no	yes	Witness statements or parents reporting concerns about other students would not usually be provided, given that there can be anxiety about repercussions and/or individual identification. A summary of the information would be available.
Other(not in list above eg spending on cashless card, library borrowing records etc)	If on the student file	some	Depends on the information, but would usually be unstructured information.

## **F Complaints**

Complaints will be dealt with in accordance with the school's complaints policy. Complaints relating to information handling may be referred to the Information Commissioner (the statutory regulator).

## **G Review**

This policy will be reviewed as is deemed appropriate, but at least every two years.

## **H Enquiries**

If you have any enquiries in relation to this policy, please contact the school by letter or email with your enquiry or request. All queries should be directed to Jenny Gaylor, Vice Principal.

Further advice and information is available from the Information Commissioner's Office, [www.ico.gov.uk](http://www.ico.gov.uk) .