

# Scottish autism

## Data Protection and Freedom of Information Policy

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**Approved by**

**SMT**

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## DOCUMENT HISTORY

Date	Author/Editor	Summary of Changes	Version No.
Sept 2009	Data Protection Group		1
June 2014	M Turner/ L McCairn	Policy Review – no major changes as legislation remains current	2
August 2016	M Turner	Update policy to include Freedom of Information legislation	3
June 2017	M Turner	Revision to SAR process; include reference to GDPR; include PECR information	4

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## CONSULTATION AND RATIFICATION SCHEDULE

Name of Consultative Body	Date of Approval
Board of Trustees	26.08.16, minor 2017 changes did not require approval
Senior Management Team	26.07.17
Policy Subgroup	July 2017
Regional Managers Forum (RMF)	July 2017
New Struan Management Team	July 2017

## CROSS REFERENCE TO OTHER POLICIES / STRATEGIES

This policy should be read in conjunction with:	Detail
Policy 1	Records Management Policy
Policy 2	Information Security Policy and Security Incident Management Procedure
Policy 3	IT and Systems Usage Policy
Guidance	Volunteers Guidance

## EQUALITY & PRIVACY IMPACT ASSESSMENTS

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### Subject Access Request Form

## 1. SCOPE AND PURPOSE OF POLICY

The Data Protection Act 1998 (DP Act) protects personal information held on computers and in manual records. It gives rights to the data subject (the individual about whom data is held) and imposes responsibilities on individuals and on organisations holding personal data and also on the employees of those organisations who use personal information.

Scottish Autism processes data both in paper and electronic format. The organisation must ensure that all records are kept, stored and accessed in a way that complies with the DP Act. Scottish Autism is required to notify the Information Commissioner of the personal data it holds, for what purpose the data is held and to whom it is disclosed. Registration with the Information Commissioner's Office (ICO) is maintained annually.

Those who decide how and why personal data is processed need to be open about their use of that data and to comply with the data protection principles in their information handling practices.

This policy applies to all areas of the organisation, and to all staff, permanent or casual, and volunteers. All staff who have access to personal data will be informed of their responsibilities during their induction period.

New Struan School has been designated a public authority and is therefore subject to The Freedom of Information (Scotland) Act 2002 (the Act/ FOISA). The FOISA legislation applies to information we hold and publish about the School and its **educational activities**, and not our residences or the wider organisation. Alongside the Act, the Environmental Information (Scotland) Regulations 2004 (the EIRs) provide a separate right of access to environmental information we hold.

The purpose of this policy is to enable Scottish Autism to:

- Comply with the law regarding data holding and processing
- Follow good practice
- Enable us to evaluate, respond to and monitor FOISA and EIR requests
- Protect our staff, service users and volunteers and data relating to external contacts
- Protect the organisation from the consequences of a breach of its responsibilities

Scottish Autism is currently preparing for the General Data Protection Regulation, new legislation which comes into force in May 2018. This policy will be updated to reflect ongoing compliance with revisions to privacy legislation, but is set in the framework of the current legislation - Data Protection Act (1998).

## 2. POLICY STATEMENT

The organisation will endeavour to be open and honest with individuals whose data is held and to provide training and support to staff who are handling data so that consistency is achieved. This will enable the organisation to comply with law and good practice, whilst respecting individuals' rights under the DP Act, as well as ensuring that the public's right to access information under FOISA legislation is met.

### **3. THE DATA PROTECTION ACT 1998**

Personal Data refers to data that is recorded and stored about an identifiable individual. The Act covers eight principles which state that data about someone must be:

- Fairly and lawfully processed
- Processed for limited purposes
- Adequate, relevant and not excessive
- Accurate and up to date
- Not kept for longer than is necessary
- Processed in line with the data subject's rights
- Secure to prevent the loss, destruction or unauthorised disclosure of data
- Not transferred to other countries without adequate protection

#### Sensitive Data

There are eight categories of sensitive data (see below), and explicit consent of the individual concerned is required if these types of data are to be held. Where an individual does not have capacity to give consent, this should be discussed with the person responsible for their care. For children under the age of 12, consent to hold this type of data must be sought from their parent or legal guardian. Appropriate storage of such data must also be ensured.

- The racial or ethnic origin of data subjects
- Their political opinions
- Their religious beliefs or other beliefs of a similar nature
- Whether they are a member of a trade union
- Their physical or mental health or condition
- Their sexual life
- The commission or alleged commission by data subjects of any offence
- Any proceedings for any offence committed or alleged to have been committed by them, the disposal of such proceedings or the sentence of any court in such proceedings.

### **4. PRIVACY AND ELECTRONIC COMMUNICATIONS REGULATIONS (PECR)**

Scottish Autism's fundraising and marketing activities include electronic communications (e.g. email, phone, text, social media) with supporters. Scottish Autism complies with the PECR alongside the DP Act. We obtain consent for our fundraising/ marketing communications and have a valid privacy notice on our website. Our supporters may opt out of receiving marketing information at any time. We are clear on our use of cookies and have a statement explaining this.

### **5. FREEDOM OF INFORMATION ACT (SCOTLAND) 2002**

This legislation puts an obligation on public authorities to make information readily accessible to the public and to comply with requests for information that is held but not published. It covers information relating to the educational activities of the school.

The Act requires Scottish public authorities to produce and maintain a **publication scheme**. We call this our 'Guide to Information' and it is available on the New Struan website. This outlines what information New Struan routinely publishes. Public authorities are under a legal obligation to:

- publish the classes of information that they make routinely available
- tell the public how to access the information and what it might cost.

A FOISA request may come in to any part of the school and does not need to quote the legislation. It does however need to be made in writing (or other reviewable format to comply with Equality Act requirements) and a contact name and address (email address is suffice) is required.

Fees may apply – see our 'Guide to Information' for details.

There are formal processes for managing FOISA and EIR requests and all such requests must be forwarded to the Information Governance Manager immediately. There is a 20 day time limit for responses to requests for information.

All requests are logged and monitored, and statistics are reported quarterly to the Scottish Information Commissioner's office.

Not all information is disclosable – there are 'exemptions' which apply and any queries about the validity of a request should be directed to the Information Governance Manager as soon as possible on receipt of request.

Should they be dissatisfied with the response received from new Struan School, requestors have a right to internal review, and then a further right of appeal to the Scottish Information Commissioner. All responses to requests for information will detail these rights to enquirers.

Staff can find further information on the Intranet, New Struan school website, on the Scottish Information Commissioner's website ([www.itspublicknowledge.org](http://www.itspublicknowledge.org)) or from the Information Governance Manager.

## **6. ENVIRONMENTAL INFORMATION REGULATIONS 2004**

Alongside FOISA, the public has a right to access environmental information about New Struan School. The definition of environmental information under these Regulations is very wide. Some examples include information about air, water, land, landscaping, biodiversity, architecture, internal building environment, recycling, and energy usage. This list is not exhaustive.

If you think you may have received a request for environmental information, please forward it to the Information Governance Manager immediately.

EIR requests may be made verbally or in writing. The fee structure for EIRs is slightly different to that for FOISA requests – see our 'Guide to Information' for details.

## **7. RESPONSIBILITIES**

The Board of Trustees has overall responsibility for ensuring the organisation complies with legal obligations under the legislation.

Scottish Autism is a Data Controller under the Data protection Act. The Data Controller is responsible for maintaining registration with the Information Commissioner's Office and for ensuring that necessary steps are taken to ensure compliance with the DP Act. The CEO is the registered Data Controller on behalf of Scottish Autism.

The Information Governance Manager has responsibility for ensuring that the organisation maintains day-to-day compliance with the legislation and for reporting any breaches to the Information Commissioner. They also have responsibility for reporting quarterly statistics for FOISA/ EIR requests.

The IT Manager has responsibility for ensuring that our electronic systems are maintained in line with the legislation.

All staff and volunteers are required to read, understand and accept any policies and procedures relating to the processing, recording and storage of data about individuals that the organisation supports. Staff also have a duty to report any data breaches in line with the Security Incident Management procedure. Breaches of the Data Protection policy may be dealt with under the organisation's disciplinary procedures.

All staff are required to be aware of the FOISA and EIRs legislation, the obligations it puts on New Struan School as a public authority, and how to deal with any such request.

In general, access to personal information will be dealt with as a subject access request (under the DPA) by the Information Governance Manager and the Head of Service within the region concerned. In limited cases personal data may be disclosed under FOISA - the Information Governance Manager can provide guidance on which legislation applies.

## **8. CONFIDENTIALITY**

Confidentiality applies to a wider range of information than that subject to the Data Protection Act, and as such the organisation has a separate Confidentiality policy statement.

## **9. DATA RECORDING AND STORAGE**

Data on any individual will be recorded in as few places as possible, and duplication of data sets is discouraged. Procedures to ensure that all relevant systems are updated when personal information changes will be regularly reviewed.

Scottish Autism has developed a document retention schedule as part of the Records Management Policy and this should be referred to when records are being stored or are to be archived.

## **10. USE OF PORTABLE DEVICES TO RECORD AND TRANSPORT ELECTRONIC DATA**

The Data Protection Act expects anyone handling personal information to protect it and ensure that it is not lost, stolen or misused. Should any information be lost, this would be reportable to the Information Commissioner's Office. Please see the IT policy for guidance on use of portable media.

## **11. THE EMPLOYMENT CODE OF PRACTICE**

The Information Commissioner's Employment Code of Practice is intended to assist employers in complying with the DP Act and to establish good practice for handling personal data in the workplace. The Code covers such issues as the obtaining of information about workers, the retention of records, access to records and disclosure of them. The Code is concerned with data that employers might collect and keep on any individual who might wish to work, currently work or have worked for them.

Explicit consent will not normally be sought for holding and processing the majority of data relating to staff (permanent or casual). However, consent will be sought where requests for information made are for purposes unrelated to work (e.g. financial references).

## **12. SUBJECT ACCESS REQUESTS**

Under Article 12 of Directive 95/46/EC, individuals have the right to access data held about them under a 'subject access request'. A Data subject is an individual about whom data is held. Any such requests will be dealt with by the Information Governance Manager and the Regional Manager of the region concerned (or Principal for New Struan School or Head of Department for Head Office).

Any such request must be made in writing. A copy of this policy and a Subject Access Request Form (Appendix 1) may be sent to anyone making such a request. The organisation will acknowledge receipt of a request in writing and set a date by which the request will be fulfilled. The organisation has 40 days from acknowledging a request and receiving payment, to comply with the request.

For further information refer to the Information Commissioner's Office website, and the code of practice for subject access requests. This can be accessed via this link:

[http://ico.org.uk/for\\_organisations/data\\_protection/subject\\_access\\_requests/~/\\_media/documents/library/Data\\_Protection/Detailed\\_specialist\\_guides/subject-access-code-of-practice.PDF](http://ico.org.uk/for_organisations/data_protection/subject_access_requests/~/_media/documents/library/Data_Protection/Detailed_specialist_guides/subject-access-code-of-practice.PDF)

The requested information will usually be provided in permanent form. A subject must satisfy Scottish Autism of their identity prior to information being released. This may include providing two original forms of identification, one photographic. Supervised access to Scottish Autism's premises to access the relevant records will be granted if appropriate.

### **13. THIRD PARTY INFORMATION**

Some information held about a person may also contain information about other people, who are then known as a 'third party'. If the organisation cannot provide the data requested under a subject access request without disclosing information that would identify that third party, then the organisation does not have to disclose this information. This does not apply if permission to disclose the information has been given by the third party. Further information is included in the Code of Practice referred to above.

The Section 60 Code of Practice provides information to public authorities on good practice and requirements relating to the FOISA and EIR legislation. This includes informing third parties, including suppliers, that their information may be the subject of a FOISA/ EIR request for information. Scottish Autism aims to be as transparent as possible with suppliers and will include appropriate clauses in relevant contracts and tender documents.

### **14. CONSENT**

Scottish Autism's privacy notice can be found on our website. We will ask people's permission to use their data for specific purposes, e.g. communications about organisational activities, and send an 'unsubscribe' option with every such communication.

Some information about volunteers may be made public, depending on their role. Consent from volunteers will be sought for this (see Volunteers Guidance documents). An example of this would be where photographs are taken of activities involving service users and volunteers, and the organisation wishes to publish these. Information about members and supporters will only be made public with their consent.

The above does not apply to 'sensitive data', which will not be disclosed.

Scottish Autism acknowledges that consent to use certain information can be withdrawn at any time by informing the appropriate person in writing. This will apply from the date of receipt of such notification and cannot be backdated. There may be occasions where it would be necessary to retain data for a specific period of time, even though consent for using it has been withdrawn. The organisation will respect the rights of the individual in this regard, unless doing so would endanger the person concerned.

### **15. POLICY REVIEW**

This policy will be reviewed in May 2018.