



CHESTERFIELD BOROUGH COUNCIL

Appropriate Policy Document

Special category and criminal conviction data processing statement

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This is the “appropriate policy document” for Chesterfield Borough Council that sets out how we will protect special category and criminal convictions personal data.

It meets the requirement at paragraph 1 of Schedule 1 to the Data Protection Act 2018 (DPA 2018) that an appropriate policy document be in place where the processing of special category personal data is necessary for the purposes of performing or exercising obligations or rights which are imposed or conferred by law on the controller or the data subject in connection with employment, social security or social protection.

It also meets the requirement at paragraph 5 of Schedule 1 to the DPA 2018 that an appropriate policy document be in place where the processing of special category personal data is necessary for reasons of substantial public interest. The specific conditions under which data may be processed for reasons of substantial public interest are set out at paragraphs 6 to 28 of Schedule 1 to the DPA 2018.

This policy covers:

- substantial public interest processing for Chesterfield Borough Council’s statutory functions
- employment, social security and social protection law for certain benefits functions and processing for HR purposes
- processing for archiving, research and statistical purposes
- law enforcement processing

1. Lawful basis for Processing

As part of Chesterfield Borough Council's statutory and corporate functions, we process special category and criminal conviction data under:

- Article 6(a) of the UK General Data Protection Regulation (UK GDPR) - the individual has given clear consent for you to process their personal data for a specific purpose.
- Article 6(b) of the UK GDPR - the processing is necessary for a contract you have with the individual, or because they have asked you to take specific steps before entering into a contract.
- Article 6(c) of the UK GDPR - the processing is necessary for you to comply with the law (not including contractual obligations).
- Article 6(d) of the UK GDPR - the processing is necessary to protect someone's life.
- Article 6(e) of the UK GDPR - the processing is necessary for the Council to perform a task in the public interest or for the Council's official functions, and the task or function has a clear basis in law.
- Article 6(f) of the UK GDPR - the processing is necessary for the Council's legitimate interests or the legitimate interests of a third party, unless there is a good reason to protect the individual's personal data which overrides those legitimate interests. (This does not apply to processing the council does in the exercise of its official tasks.)

Chesterfield Borough Council processes sensitive data for law enforcement purposes under section 35 of the DPA 2018.

The data protection section of the Council's website has more information about Chesterfield Borough Council's data protection policy and procedures, including the kind of information we hold and what it is used for – www.chesterfield.gov.uk/privacy

2. Definition of special category, sensitive and criminal conviction data

Special category data (defined by Article 9 of the UK GDPR) and sensitive data (defined by section 35 of the DPA 2018) is personal data which 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
- data concerning a natural person's sex life or sexual orientation

Section 11(2) of the DPA 2018 provides that criminal conviction data includes data which relates to the alleged commission of offences and related proceedings and sentencing.

3. Conditions for processing special category data and criminal conviction data

Chesterfield Borough Council processes special category data under the following paragraphs of Article 9 of the UK GDPR:

- paragraph 2(a) - the data subject has given explicit consent to the processing of those personal data for one or more specified purposes
- paragraph 2(b) - processing is necessary for the purposes of carrying out the obligations and exercising specific rights of Chesterfield Borough Council or the data subject in the field of employment and social security and social protection law
 - e.g. some processing of staff personal data by the HR team
- paragraph 2(g) - processing is necessary for reasons of substantial public interest
 - e.g. applications for council tax relief or discounts
- paragraph 2(j) - processing is necessary for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes in accordance with Article 89(1)
 - e.g. archiving records, reporting on equality issues across the borough

Article 10 of the UK GDPR permits processing of personal data relating to criminal convictions and offences under the control of official authority. Chesterfield Borough Council may therefore process criminal conviction data under Article 10 of the UK GDPR as it is exercising official authority within the meaning set out in section 8 of the DPA 2018.

3.1 Substantial public interest

Section 10(3) of the DPA 2018 sets out that in order for processing of special categories of personal data to be necessary for reasons of substantial public interest under Article 9(2)(g) of the UK GDPR, that processing must meet one of the conditions set out in Part 2 of Schedule 1.

Chesterfield Borough Council processes special category data in the performance of its statutory and corporate functions when the following conditions set out in the following paragraphs of Part 2 of Schedule 1 to the DPA 2018 are met:

- paragraph 6 (Statutory etc and government purposes)
- paragraph 8 (Equality of opportunity or treatment)
- paragraph 10 (Preventing or detecting unlawful acts)
- paragraph 12 (Regulatory requirements relating to unlawful acts and dishonesty etc)
- paragraph 14 (Preventing fraud)
- paragraph 18 (Safeguarding of children and of individuals at risk)
- paragraph 24 (Disclosure to elected representatives)

All processing is for the first listed purpose and might also be for others, depending on the context.

3.2 Employment, social security and social protection law

Chesterfield Borough Council processes special categories of personal data for employment, social security and social protection law purposes when the conditions set out in Part 1 of Schedule 1 of the DPA 2018 are met.

3.3 Archiving purposes in the public interest

Under Article 9(2)(j) of the UK GDPR, Chesterfield Borough Council may process special category data where it is necessary for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes in accordance with Article 89(1) based on Union or Member State law which shall be proportionate to the aim pursued, respect the essence of the right to data protection and provide for suitable and specific measures to safeguard the fundamental rights and the interests of the data subject. We may also process criminal conviction data for these purposes under the DPA 2018.

Under section 10(2) of the DPA 2018, Chesterfield Borough Council may process special category data and criminal conviction data for the purposes of archiving, research and statistics when a condition of Part 1 of Schedule 1 to the DPA 2018 is met.

4. Law enforcement processing

Section 31 of the DPA 2018 defines the law enforcement purposes as the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, including the safeguarding against and the prevention of threats to public security. Chesterfield Borough Council is listed as a competent authority for the purposes of law enforcement in section 31 of DPA 2018, to the extent that Chesterfield Borough Council has statutory functions for some law enforcement purposes (e.g. enforcement of some sections of the Environmental Protection Act 1990).

Chesterfield Borough Council does not rely on the consent of the data subject to process sensitive data.

Section 35(5) of the DPA 2018 sets out that where processing is strictly required for law enforcement purposes, Chesterfield Borough Council must meet at least one of the conditions in Schedule 8:

- paragraph 1 (Statutory etc purposes)
- paragraph 3 (Protecting individual's vital interests)
- paragraph 5 (Personal data already in the public domain)
- paragraph 6 (Legal claims)
- paragraph 8 (Preventing fraud)
- paragraph 9 (Archiving etc)

All processing is for the first listed purpose and might also be for others dependent on the context.

5. Procedures for securing compliance

Article 5 of the UK GDPR sets out the data protection principles. These are our procedures for ensuring that we comply with them.

Principle 1

Personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject.

Chesterfield Borough Council will:

- ensure that personal data is only processed where a lawful basis applies, and where processing is otherwise lawful
- 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 full privacy information so that any processing of personal data is transparent

Principle 2

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

Chesterfield Borough 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

Principle 3

Personal data shall be adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed.

Chesterfield Borough Council will only collect the minimum personal data that we need for the purpose for which it is collected. We will ensure that the data we collect is adequate and relevant.

Principle 4

Personal data shall be accurate and, where necessary, kept up to date.

Chesterfield Borough 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.

Principle 5

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 are processed.

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

Principle 6

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.

Chesterfield Borough Council will ensure that there appropriate organisational and technical measures in place to protect personal data.

Accountability principle

The controller shall be responsible for, and be able to demonstrate compliance with, these principles. Our Data Protection Officer is responsible for monitoring Chesterfield Borough Council's compliance with these principles.

We 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
- ensure that a Data Protection Officer is appointed to provide independent advice and monitoring of the council's personal data handling, and that this person has access to report to the highest management level of the council
- 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

6. Data controller's policies as regards retention and erasure of personal data

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

- there is a record of that processing, 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 convictions personal data for the purpose for which it was collected, we will delete it or render it permanently anonymous
- 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

7. Further information

For further information about Chesterfield Borough Council's compliance with data protection law, please contact us.

Data Protection Officer

Email: <mailto:dpo@chesterfield.gov.uk>

Telephone: 01246 345345 (and ask for the data protection officer)