



# **Policy for the Processing of Special Category and Criminal Offence Data**

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## DOCUMENT CONTROL

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1.1	01/02/2021	Melissa Ashdown-Hoff	Julie Reid	Removal of references to VIPER in advance of move to West Yorkshire Police on 1/1/2021. Additions to categories of individual who undergo vetting in 4.3. Addition of VRU research data at 6.2. And updated legislation to reflect EU Exit.

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## 1. Introduction

- 1.1. The General Data Protection Regulation place an emphasis on accountability for organisations in the way they handle personal data and has extended the rights that individuals have over their data.
- 1.2. The Office of the Police and Crime Commissioner for West Yorkshire (OPCC) is committed to protecting the rights of individuals with regard to the processing of their personal data.
- 1.3. The function of the OPCC means it will frequently process special category and criminal offence data concerning individuals. This policy document is necessary in order to ensure that such processing is lawful and fair and in compliance with our obligations under the Data Protection Act 2018 to publish an appropriate policy document.

## 2. Legislation

- 2.1. **The General Data Protection Regulation (GDPR)** updates and replaces the previous EU Directive and Data Protection Act 1998. The GDPR provides a stronger protection to individual's personal data. It gives individuals more rights and control over their personal data and increases the penalties on organisations for non-compliance. Accountability is at the heart of the GDPR and the OPCC must be able to demonstrate how it complies with the GDPR.
- 2.2. **The Data Protection Act 2018** compliments the GDPR. It completes data protection law where the GDPR made space for individual countries to define their own legislation. It details the exemptions where the GDPR provisions do not apply. The Act clarifies some of the terms used in UK GDPR and makes it a requirement for organisations to adopt an appropriate policy document where they are processing special category and criminal conviction and offence data in certain circumstances. This policy document has been produced in order to comply with this requirement found in Parts 1, 2 and 3 of Schedule 1 of the Act. Part 3 of the The Data Protection Act Implements the Law Enforcement Directive.
- 2.3. **The Law Enforcement Directive** covers the processing of personal information by competent authorities for the purposes of prevention, investigation, detection or prosecution of criminal offences. The OPCC is not a competent authority and all processing done by the OPCC is bound by UK GDPR and the Part 2 of Data Protection Act.
- 2.4. **The European Union Withdrawal Act 2018** directly incorporated all direct EU Legislation including the UK GDPR into UK Law upon the UK's Exit from the European Union.

- 2.5. **The Data Protection, Privacy and Electronic Communications (Amendment etc.)(EU Exit) Regulation** to be known as **UK GDPR** amended the UK GDPR as it applies to the UK and the Data Protection Act 2018. The UK GDPR removes references to Members States and bodies such as the European Data Protection Board and replaces them with their UK equivalents.

### **3. Processing of Special Category and Criminal Offence Data**

- 3.1. The OPCC processes special category data and criminal conviction/offence data in relation to the following UK GDPR Articles:

- **6(1)(b) – Contract**
- **6(1)(e) – Public Task**

**AND**

- **9(2)(b) – Employment**
- **9(2)(g) – Substantial Public Interest**
- **9(2)(j) - Archiving and Research in the Public Interest**

- 3.2. When processing special category and criminal offence data under these conditions the DPA 2018 states that the OPCC must have an appropriate policy document detailing such processing. This policy must set out how such processing complies with the data protection principles and include information regarding the retention and erasure of the data.

### **4. Details of Processing for Employment Purposes**

- 4.1. Article 9(2)(b) covers information where processing is necessary for the purposes of performing or exercising obligations or rights which are imposed or conferred by law on the OPCC in connection with employment, social security or social protection.
- 4.2. Examples of our processing include employee, member, volunteer vetting and vetting for those employees and volunteers in our commissioned services, employee sickness absences and political activity declarations. We process special category data about our employees to fulfil our obligations as an employer and this is necessary as part of the performance of the employment contract. This includes information about health and wellbeing, ethnicity, and membership of any trade union.

- 4.3. Volunteers at the OPCC such as a independent custody visitors, Independent Members for Police Misconduct and Police Appeals Tribunals, Joint Independent Audit and Ethics Committee Members, employees and volunteers at the Victims Services commissioned by the OPCC and other contracted services to the OPCC undergo vetting to ensure the safety and security of sensitive information and the safety of vulnerable individuals is safeguarded. Such vetting will involve the processing of criminal offence and special category data for those individuals and their family members. Further information about this processing can be found in our [privacy notice](#)

## **5. Details of Processing for Substantial Public Interest.**

- 5.1. Article 9(2)(g) covers processing where there is a substantial public Interest.
- 5.2. The DPA 2018 defines what circumstances/ lawful basis constitute substantial public Interest.
- 5.3. The following DPA 2018 conditions apply to the processing undertaken by the OPCC:
- Statutory and government purposes.
  - Equality of opportunity or treatment.
  - Safeguarding of children and individuals at risk.
  - Protecting the public against dishonesty.
  - Regulatory requirement which involves establishing if a person has been involved in improper conduct.
  - Elected representatives responding to requests.
  - Disclosure to elected representatives.
  - Preventing and detecting unlawful acts.
- 5.4. The OPCC is the “Appropriate Authority” to deal with Chief Constable Complaints and conduct matters. This may involve the processing of special category data. The conditions under which any processing of special category data is done are: “statutory and government purpose”, “protecting the public against dishonesty” and a “regulatory requirement which involves establishing if an individual has been involved in improper conduct”.
- 5.5. The OPCC has a statutory duty under the Policing and Crime Act 2017 and the Police (Complaints and Misconduct) Regulations 2020 to review most complaints that were handled by their police force under Section 3 of the Police Reform Act 2002. This may involve the processing of special category and criminal offence data. The condition under which this processing is done is “statutory and government purposes”.

- 5.6. As an elected official, the Commissioner has a duty to engage with the public they serve. The OPCC is keen hear about people's experience of policing and community safety from constituents, victims, suspects and anyone who has come in to contact with the criminal justice system in West Yorkshire. This often involves the processing of special category and criminal offence data. Our processing of personal data in this context relates to the casework undertaken by the commissioner and their representatives. The conditions under which this processing is done are: "elected representatives responding to requests" and "disclosure to elected representatives".
- 5.7. Under the Police Reform and Social Responsibility Act the OPCC has a duty to hold the chief constable to account and to bring together criminal justice and community safety partners to make sure local priorities are joined up. One of the ways the OPCC does this is by the independent analysis and provision of criminal offence data by the OPCC Research Manager to the PCC and to Domestic and Sexual Abuse Board. The lawful basis under which this processing is done is "statutory and government purposes".
- 5.8. The West Yorkshire Violence Reduction Unit (VRU) sits within the OPCC. The VRU takes a fundamentally different approach to addressing violence reduction. It brings together specialists from health, police, local government, education, youth justice, prisons, probation and community organisations to tackle violent crime and the underlying causes of violent crime. In order to do this the VRU gathers a wide and varied set of data which includes open source anonymous information but also personal, criminal and special category data from WYP, health, criminal justice and other public services. This data is used to help identify the underlying risk factors that can lead to violence, diagnose the problem and then assist in the development and the delivery of plans and interventions - alongside communities - to tackle them. The processing of such data is in accordance with the OPCC's statutory obligations set out in the *Police Reform and Social Responsibilities Act 2011* and the same lawful basis applies as per 5.3.

## **6. Details of Processing for Archiving in the Public Interest and Research**

- 6.1. The OPCC under the Police Act 1996 as amended by the Police Reform and Social Responsibility Act 2011, must obtain the views of the community on policing. We also transfer some information relating to our corporate records which must be retained permanently to the local archive service. The details of records which must be held permanently can be found in our retention and disposal schedule.

- 6.2. The VRU from time to time, participate in academic research into the causes of violent crime in West Yorkshire. Such research is done so under strict controls to ensure that any risks to the rights and freedoms of individuals are mitigated. All research partners are vetted to ensure they have the appropriate technical and organisational controls in place to ensure the confidentiality and security of any data processed. Research commissioned by the VRU will generally involve the processing of anonymised data.

## **7. Accountability Principle**

- 7.1. We have put in place appropriate technical and organisational measures to meet the requirements of accountability. These include:

- The appointment of a data protection officer who reports directly to our highest management level.
- Training our staff
- Adopting and implementing data protection policies
- Implementing appropriate security measures in relation to the personal data we process.
- Carrying out data protection impact assessments for our high risk processing.
- Maintaining a Record of Processing Activity
- Mapping our data flows

## **8. Lawfulness, Fairness and Transparency**

- 8.1. We provide clear and transparent information about why we process personal data including our lawful basis for processing in our privacy notices and this policy document.
- 8.2. Our processing for purposes of substantial public interest is detailed in this policy document.
- 8.3. Our processing for the purposes of employment relates to our obligations as an employer.
- 8.4. We maintain a record of our processing activities which documents our lawful basis for processing.

## **9. Purpose Limitation**

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



## 10. Data Minimisation

10.1. We collect the minimum personal data necessary for the relevant purposes and ensure it is not excessive. The information we process is necessary for and proportionate to our purposes. Where personal data is provided to us or obtained by us, but is not relevant to our stated purposes, we will erase it.

## 11. Accuracy

11.1. We 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.

11.2. Where we 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 don't apply, we will document our decision.

## 12. Storage Limitation

12.1. We will only keep personal data in identifiable form 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 or rendered permanently anonymous.

12.2. All special category data processed by us for the purpose of employment or substantial public interest is, unless retained longer for archiving purposes, retained for the periods set out in our [retention schedule](#). We determine the retention period for this data based on our legal obligations and the necessity of its retention for our business needs. Our retention schedule is reviewed regularly and updated when necessary.

12.3. The OPCC has established a Data Subjects Rights Procedure which sets out how erasure requests will be dealt with and has published a guide for individuals on their rights over their data including the right of erasure and this can be viewed [here](#).

## 13. Integrity, Confidentiality & Security

13.1. We will ensure that there appropriate organisational and technical measures in place to protect personal data.

13.2. Electronic information is processed within our secure network. Hard copy information is processed in line with our security procedures.

13.3. Our electronic systems and physical storage have appropriate access controls applied.