



# Data Protection Policy

## PURPOSE

This policy is intended to ensure that personal information is dealt with properly and securely and in accordance with the Data Protection Act 1998 (“the DPA”) and other related legislation. It will apply to information regardless of the way it is used, recorded and stored and whether it is held in paper files or electronically.

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Type of policy:	<input checked="" type="checkbox"/> Network-wide <input type="checkbox"/> Tailored by school	Approval:	Board
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## POSITIONING WITHIN ARK OPERATIONAL MODEL

Component	Element
<input type="checkbox"/> Strategic Leadership & Planning <input checked="" type="checkbox"/> Monitoring, Reporting & Data <input type="checkbox"/> Governance & Accountabilities <input type="checkbox"/> Teaching & Learning <input type="checkbox"/> Curriculum & Assessment <input type="checkbox"/> Culture, Ethos & Wellbeing <input type="checkbox"/> Pathways & Enrichment <input type="checkbox"/> Parents & Community <input type="checkbox"/> Finance, IT & Estates <input type="checkbox"/> Our People	Data

## **1. Legislation, approach and delegated responsibilities**

### **1.1. Core legislation**

All academies within the Ark Schools network collect and use certain types of personal information about staff, pupils, parents and other individuals who come into contact with the academy in order to provide education and associated functions. This includes CCTV images which may be used to capture material for security and safety purposes. The academies may be required by law to collect and use certain types of information to comply with statutory obligations.

This policy is intended to ensure that personal information is dealt with properly and securely and in accordance with the Data Protection Act 1998 (“the DPA”) and other related legislation. It will apply to information regardless of the way it is used, recorded and stored and whether it is held in paper files or electronically. It is also prepared with reference to the upcoming General Data Protection Regulation (GDPR) due for implementation in spring 2018.

### **1.2. Approach to data protection**

The eight data protection principles as laid down in the DPA are followed at all times:

- (1) Data must be processed fairly and lawfully, and only where one of the conditions in Schedule 2<sup>1</sup> can be met. If sensitive personal data, a condition in Schedule 3 must also be met
- (2) Personal data shall be obtained only for one or more specific and lawful purposes
- (3) Personal data shall be adequate, relevant and not excessive in relation to the purpose(s) for which they are processed
- (4) Personal data shall be accurate and where necessary kept up to date
- (5) Personal data processed for any purpose(s) shall not be kept for longer than is necessary for that purpose
- (6) Personal data shall be processed in accordance with the rights of data subjects under the DPA
- (7) Appropriate technical and organisational measures shall be taken against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data
- (8) Personal data shall not be transferred to a country outside the European Economic Area, unless that country or territory ensures an adequate level of protection for the rights and freedoms of data subjects in relation to the processing of personal data

Ark Schools is committed to maintaining those principles at all times. This means that each academy will:

- (1) Inform all individuals and where appropriate their parent or guardian as to the purpose of collecting any information from them, as and when they ask for it
- (2) Be responsible for checking the quality and accuracy of the information, regularly review the records to ensure information is not held longer than is necessary
- (3) Ensure that when information is authorised for disposal it is done appropriately
- (4) Ensure appropriate security measures to safeguard personal information whether that is held in paper files or on your computer system
- (5) Share personal information with others only when it is necessary and legally appropriate to do so, ensuring that pupil names are replaced with unique pupil numbers in the records before the data is transferred

- (6) Set out clear procedures for responding to requests for access to personal information known as subject access in the DPA and ‘the right of access by the data subject’ under the GDPR.

### **1.3. Roles and responsibilities**

Ark Schools is a registered data controller. The Ark Schools board are ultimately accountable for ensuring that Ark complies with all relevant legislation including for data protection. Data protection sits under the remit of the Ark Schools CFO.

Primary responsibility for data protection sits with the Ark Schools CFO who is the registered data controller for the organisation. The governance team are responsible for overall coordination of data protection including ICO registration and responses to FOI and SAR requests. The wider staff body are made aware of this policy and their duties under the DPA as part of their induction to Ark Schools. In addition, regular training opportunities are made available to staff, in particular those for whom data protection is of particular relevance to their role.

## **2. Personal Data**

### **2.1. Approach to Personal Data**

‘Personal data’ is information that identifies an individual. A sub-set of personal data is known as ‘sensitive personal data’. Sensitive personal data is information relating to race or ethnic origin, political opinions, religious beliefs or other beliefs of a similar nature, trade union membership, physical or mental health, sexual life or the commission of any offence. Sensitive personal data is given special protection.

Ark Schools does not intend to seek or hold sensitive personal data about staff or pupils except where they have been notified of the information, or it comes to their attention via legitimate means (e.g. a grievance) or needs to be sought and held in compliance with a legal obligation or as a matter of good practice. Staff or pupils are under no obligation to disclose to the academy their race or ethnic origin, political or religious beliefs, whether or not they are a trade union member or details of their sexual life (save to the extent that details of marital status and/or parenthood needed for other purposes, e.g. pension entitlements, may be indicative of some aspects of sexual life). The DPA applies to all computerised data and manual files if they come within the definition of a relevant filing system as well as unstructured manual data. Broadly speaking, this means that they are readily searchable and it is easy to locate personal data within them.

### **2.2. Use of Personal Data by Ark Schools**

It is required under the DPA that the personal data held must only be used for specific purposes allowed by law. The personal data held by academies applies to staff and pupils. For pupils this includes contact details, assessment/examination results, attendance information, special educational needs and photographs and may hold information about characteristics such as ethnic group and any relevant medical information. The data is used in order to support the education of the pupils, to monitor and report on their progress, to provide appropriate pastoral care, and to assess how well the academy as a whole is doing, together with any other uses normally associated with this provision in an independent school environment. Ark Schools may make use of limited personal data (such as contact details) relating to pupils, their parents or guardians for fundraising, marketing or promotional purposes and to maintain relationships with pupils of the academy, but only where consent has been provided to this.

In particular, Ark Schools may:

- (a) transfer information to any association society or club set up for the purpose of maintaining contact with pupils or for fundraising, marketing or promotional purposes relating to the academy;

- (b) make use of photographs of pupils in academy publications and on the academy website;
- (c) disclose photographs and names of pupils to the media (or allow the media to take photographs of pupils) for promotional and congratulatory purposes where a pupil may be identified by name when the photograph is published e.g. where a pupil has won an award or has otherwise excelled;
- (d) keep the pupil's previous school informed of his/her academic progress and achievements e.g. sending a copy of the school reports for the pupil's first year at the academy to their previous school.

Photographs with names identifying pupils will not be published on the academy website without the express permission of the appropriate individual. If parents wish to limit or object to any use of personal data, the Principal should be notified in writing. Parents who do not want their child's photograph or image to appear in any of the academy's promotional material, or be otherwise published, must also make sure their child knows this.

Pupils, parents and guardians should be aware that where photographs or other image recordings are taken by family members or friends for personal use, the DPA will not apply where a parent takes a photograph of their child and some friends taking part in the school sports day or at other events.

### **2.3. Security of Personal Data**

Ark Schools will take reasonable steps to ensure that members of staff will only have access to personal data relating to pupils, their parents or guardians where it is necessary for them to do so. Ark Schools will take all reasonable steps to ensure that all personal information is held securely and is not accessible to unauthorised persons. Ark Schools' Incident Response Strategy outlines how data kept on Ark's servers/ cloud-based storage will be kept secure, and then recovered, in the event of a major incident.

### **2.4. Conditions that Allow Disclosure of Personal Data to Third Parties**

There are a number of conditions in the DPA which if met allow disclosure of personal data to third parties, and the processing of personal data by the academy and its employees. Examples of these conditions are:

- (1) the data subjects have given their consent;
- (2) for the prevention or detection of crime;
- (3) for the assessment of any tax or duty;
- (4) where it is necessary to exercise a right or obligation conferred or imposed by law upon Ark Schools (other than an obligation imposed by contract);
- (5) for the purpose of, or in connection with, legal proceedings (including prospective legal proceedings);
- (6) for the purpose of obtaining legal advice;
- (7) for research, historical and statistical purposes (so long as this neither supports decisions in relation to individuals, nor causes substantial damage or distress);
- (8) where it is necessary to disclose the information for a legitimate interest Ark Schools or the third party to whom the disclosure is made.

### **2.5. Disclosure of Personal Data to Third Parties**

Ark Schools may receive requests from third parties (i.e. those other than the data subject, the academy, and employees of the academy) to disclose personal data it holds about pupils, their parents or guardians.

This information will not generally be disclosed unless one of the specific exemptions under the DPA which allow disclosure applies; or where necessary for the legitimate interests of the individual concerned or the academy.

The following are the most usual reasons an academy may have for passing personal data to third parties:

- (1) to give a confidential reference relating to a pupil;
- (2) to publish the results of public examinations or other achievements of pupils of the academy;
- (3) to disclose details of a pupil's medical condition where it is in the pupil's interests to do so, for example for medical advice, insurance purposes or to organisers of school trips;
- (4) to provide information to another educational establishment to which a pupil is transferring;
- (5) to provide information to the Examination Authority as part of the examinations process;
- (6) to provide standard disclosures to the relevant Local Authority in particular in relation to safeguarding-related disclosures to any Multi-Agency Safeguarding Hub
- (7) to provide the relevant Government Department concerned with information relating to their functions as a regulator.

The DfE uses information about pupils for statistical purposes, to evaluate and develop education policy and to monitor the performance of the nation's education service as a whole. The statistics are used in such a way that individual pupils cannot be identified from them.

Any wish to limit or object to any use of personal data by third parties, except as stated above, should be notified to the Principal of the relevant academy in writing, or to the relevant authority (the contact details for which can be supplied by the academy).

Where the academy receives a disclosure request from a third party it will take reasonable steps to verify the identity of that third party before making any disclosure.

## **2.6. Confidentiality of pupil concerns**

Where a pupil seeks to raise concerns confidentially with a member of staff and expressly withholds their agreement to their personal data being disclosed to their parents or guardian, the academy will maintain confidentiality unless it has reasonable grounds to believe that the pupil does not fully understand the consequences of withholding their consent, or where the academy believes disclosure will be in the best interests of the pupil or other pupils.

## **3. Subject Access Requests**

### **3.1. Dealing with a Subject Access Request**

Anybody who makes a request to see their file or their child's file or other personal data held on them is making a request under the DPA. Where a child or young person does not have sufficient understanding to make his or her own request, a person with parental responsibility can make a request on their behalf. The Principal/Headteacher must, however, be satisfied that:

- (1) the child or young person lacks sufficient understanding; and
- (2) the request made on behalf of the child or young person is in their interests.

Ark Schools will only grant pupils' access to their personal data if, in the relevant academy's reasonable belief, the pupil understands the nature of the request. It is generally accepted that, by the age of 12, a child can be expected to have sufficient maturity to understand the nature of the request but any relevant special educational needs will be taken into account in assessing the child's capacity.

Any individual, including a child or young person with ownership of their own information rights may appoint another person to request access to their records. In such circumstances the academy must have written evidence that the individual has authorised the person to make the application and the principal must be confident of the identity of the individual making the request and of the authorisation of the individual to whom the request relates.

A person who has parental responsibility for a child who does not have sufficient understanding to make their own Subject Access Request, may make a request for that child's personal information. In such circumstances, Ark Schools needs to be satisfied that the individual making the request does have the necessary parental responsibility, and that the request is in the interests of the child.

Access to records will be refused in instances where an exemption in the DPA applies, for example, information sharing may place a child at risk of significant harm or jeopardise police investigations into any alleged offence(s).

A request under the DPA must be made in writing to the Ark Schools FOI/Data Protection Co-ordinator, which must be responded to within 40 calendar days. Following this request, Ark Schools on behalf of the academy, may ask for any further information reasonably required to locate the information. An individual only has the automatic right to access information about themselves. The Principal will have responsibility for ensuring the child's welfare is appropriately considered in deciding whether to comply with a request from a pupil and will make use of exemptions under the Act as appropriate.

All files must be reviewed before any disclosure takes place. Access will not be granted before this review has taken place. Where all the data in a document cannot be disclosed a permanent copy should be made and the data obscured or retyped if this is more sensible. A copy of the full document and the redacted document should be retained, with the reason why the document was redacted.

If an individual discovers that information which Ark Schools holds in relation to them is inaccurate or out of date, they should write to the Principal/Headteacher, setting out the inaccuracy, and the accurate position. This information should be corrected where Ark Schools is in agreement that the previous information was inaccurate. If Ark Schools disagrees that the information is inaccurate, it will discuss the matter with the individual, but the academy has the right to maintain the original information but the fact that the individual disputes the accuracy of the information must be recorded. If the individual is unhappy with this outcome they have the right to instigate the appropriate procedure.

### **3.2. Educational records**

Academies are not required to provide educational records if a parent requests it, as the Education (pupil information) Regulations 2005, which places this obligation on maintained schools, does not apply to academies. An academy may choose to comply but parents no longer have a legal right to this information. However, please refer to the section on subject access above.

The Independent School Standards Regulations which applies to academies by virtue of their funding agreement, states that the standard about provision of information is met if the Academy Trust ensures that an annual written report of each registered pupil's progress and attainment in the main subject areas taught, is sent to the parents of that registered pupil.

### **3.3. Exemptions to Access by Data Subjects**

Confidential references given, or to be given by the academy, are exempt from access. Ark Schools will therefore treat as exempt any reference given by them for the purpose of the education, training or employment, or prospective education, training or employment of any pupil, member of staff, or volunteer.

It should be noted that confidential references received from other parties may also be exempt from disclosure, under the common law of confidence. However, such a reference can be disclosed if such disclosure will not identify the source of the reference or where, notwithstanding this, the referee has given their consent, or where disclosure is reasonable in all the circumstances.

Examination scripts, i.e. information recorded by pupils during an examination, are exempt from disclosure. However, any comments recorded by the examiner in the margins of the script are not exempt even though they may not seem of much value without the script itself. Examination marks do not fall within an exemption as such.

However, the 40 calendar day compliance period for responding to a request is extended in relation to examination marks to either five months from the day on which the academy received the request (if all the necessary conditions set out in paragraph 34 are fulfilled), or 40 calendar days from the announcement of the examination results, whichever is the earlier. Where a claim to legal professional privilege could be maintained in legal proceedings, the information is exempt from disclosure unless the privilege is waived.

### **3.4. Repeated Requests for Access to Records**

Unless a reasonable period of time has lapsed between the compliance with one request and receipt of the next, the DPA allows for access to be refused when the applicant has made repeated requests for information already provided. In the event that a request is refused, Ark Schools will outline why this is the case without undue delay.

### **3.5. Charging**

When a subject access request is made the maximum fee charged will be £10. This charge will no longer apply after the implementation of the GDPR on 25 May 2018 at which point subject access will generally be at no cost. In the case of manifestly unfounded or excessive requests the Academy Trust will be permitted to refuse the request or charge a reasonable fee for compliance.

## **4. Freedom of information**

From January 2011, Academies became subject to the Freedom of Information (FOI) Act 2000. See the FOI Policy and Ark Schools Publication Scheme for further details.

## **5. Contacts**

If anyone has any concerns or questions in relation to this policy they should contact [foi@arkonline.org](mailto:foi@arkonline.org) who will also act as the contact point for any requests under the Freedom of Information Act.

Further advice and information, including a full list of exempt information, is available from: Information Commissioner's Office (ICO) <https://ico.org.uk>; telephone: 0303 123 1113 or 01625 545 745.

**This policy will be updated as necessary to reflect best practice or amendments made to the DPA and GDPR.**

### **Appendix A:**

[http://www.legislation.gov.uk/ukpga/1998/29/pdfs/ukpga\\_19980029\\_en.pdf](http://www.legislation.gov.uk/ukpga/1998/29/pdfs/ukpga_19980029_en.pdf)