



The Smith Foundation

Special Category Data Policy

Policy Details

Status:	In-house
Frequency of review:	Annually
Lead member of staff:	Tom Gilbody
Last reviewed:	Spring 2023
Next Review Date:	Spring 2024
Policy Number:	WS66

STATEMENT OF INTENT:

This document sets out:

- how we will comply with the data protection principles to process special category personal data
- how we will handle special category data that we process, our lawful basis and purpose of processing and the relevant condition for processing under GDPR and data protection law
- it explains our policies for the retention and erasure of personal data processed under the relevant condition

This policy document will be retained, reviewed and (if appropriate) updated by the Data Protection Officer and (if requested) made available to the Information Commissioner, until six months after we cease carrying out the processing.

1. Special category data at a glance

Special category data is personal data which the General Data Protection Regulations (GDPR) says is more sensitive, and so needs more protection. In order to lawfully process special category data, we must identify both a lawful basis under GDPR and a separate condition for processing special category data.

The special categories are personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, and the processing of genetic data, biometric data for the purpose of uniquely identifying a natural person, data concerning health or data concerning a natural person's sex life or sexual orientation.

The special category personal data that we may process are ethnic origin, biometrics (where used for ID purposes for door entry and cashless catering), health and school specific sensitive data which may include but not limited to SEN/AEN. Pupil Premium and child protection.

The provision of equality monitoring data such as race or ethnic origin and health (disability) is optional in some circumstances. We will tell you when this applies at the time we collect the information.

2. Principles

The General Data Protection Regulations (GDPR) has 6 principles that we must follow when collecting and using personal information and to comply we must take steps to make sure all personal information is:

- processed lawfully, fairly and in a transparent manner
- collected for specified, explicit and legitimate purposes
- adequate, relevant and limited to what is necessary
- accurate and up to date
- kept in a form which permits identification of data subjects for no longer than is necessary processed securely

3. What are the lawful bases for processing?

The lawful bases for processing are set out in Article 6 of the GDPR. At least one of these must apply whenever we process personal data:

- Consent: the individual has given clear consent for us to process their personal data for a specific purpose.
- Contract: the processing is necessary for a contract we have with the individual, or because they have asked us to take specific steps before entering into a contract.
- Legal obligation: the processing is necessary for us to comply with the law (not including contractual obligations).
- Vital interests: the processing is necessary to protect someone's life.
- Public task: the processing is necessary for us to perform a task in the public interest or for our official functions, and the task or function has a clear basis in law.
- Legitimate interests: the processing is necessary for our 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 cannot apply if to a public authority processing data to perform official tasks.)

The special conditions under GDPR which allow processing of special category personal data are:

- Article 9(2) (a) – explicit consent has been given.
- Article 9(2) (b) – for employment, social security and social protection purposes.
- Article 9(2) (c) – for vital interests.
- Article 9(2) (d) – for legitimate activities by a foundation, association or any other not for profit body with political, philosophical or religious or trade union aim.
- Article 9(2) (e) – for employment, social security and social protection purposes.
- Article 9(2) (f) – for defence of legal claims.
- Article 9(2) (g) – for substantial public interest purposes.
- Article 9(2) (h) – for health and social care purposes.
- Article 9(2) (i) – for public health purposes.
- Article 9(2) (j) – for archiving, research and statistics purposes.

Conditions relating to the processing of the special categories of personal data

Schedule 1 of the Data Protection Act 2018 establishes conditions that permit the processing of the special categories of personal data and criminal convictions data. The Schedule is split into four parts:

- Part 1 – Conditions relating to employment, health and research
- Part 2 – Substantial public interest conditions
- Part 3 – Additional conditions relating to criminal convictions
- Part 4 – Appropriate policy document and additional safeguards

Schedule 1 of the Data Protection Act 2018 establishes conditions that permit the processing of the special categories of personal data as follows:

- The processing of the special categories of personal data meets the requirements in points (b), (h), (i) or (j) of Article 9(2) of the GDPR if it meets one of the conditions listed in Part 1 of Schedule 1.
- The processing of the special categories of personal data meets the requirement in point (g) of Article 9(2) of the GDPR if it meets one of the conditions listed in Part 2 of Schedule 1.

4. Schedule 1 Conditions that are relevant to us

a) Schedule 1, Part 1 conditions for processing in connection with employment, health and research that are relevant to us are:

- Employment, social security and social protection: Processing necessary for the purposes of performing or exercising obligations or rights of the controller or the data subject under employment law, social security law or the law relating to social protection.
- Health or social care: Processing necessary for health or social care purposes.

b) Schedule 1, Part 2 conditions for processing in the substantial public interest that are relevant to us are

- Statutory and government purposes: Processing necessary for the exercise of a function conferred on a person by enactment or the exercise of a function of the Crown, a Minister or a government department.
- Equality of opportunity or treatment: Processing necessary for identifying or keeping under review the existence or absence of equality of opportunity or treatment between groups of people with the view to enabling such equality to be promoted or maintained.
- Counselling etc
- Safeguarding of children and individuals at risk

5. The processing of special category personal data by us

a) Ethnic origin (Students)

- Purpose: Required by the DfE for Census purposes.
- GDPR Article 6 (1) (e) Public task, Article 9 (2) (g) substantial public interest.
- Data Protection Bill Schedule 1 part 2, 1 condition: statutory and government purpose.
- Retention period: current record. 25 years after DOB of data subject.
- Disclosed to: refer to The William Henry Smith School & Sixth Form privacy notice for details www.whsschool.org.uk

b) Ethnic origin (Staff)

- Purpose: Equality and diversity.
- Law: Equality Act 2010 and associated regulations.
- GDPR Article 6 (1) (e) Public task, Article 9 (2) (g) substantial public interest.
- Data Protection Bill Schedule 1 part 2, 3 condition: equality of opportunity or treatment.
- Retention period: current record retained as long as is necessary to comply with equality law.
- Disclosed to: refer to The William Henry Smith School & Sixth Form privacy notice for details www.whsschool.org.uk

c) Student Counselling

- Purpose: Advice and support for students
- Law: Children and Young Peoples Act 1989
- GDPR Article 6 (1) (e) Public task, Article 9 (2) (g) substantial public interest.
- Data Protection Bill Schedule 1 part 2, 17 condition Counselling etc.
- Retention period: current record. 25 years after DOB of data subject.
- Disclosed to: refer to The William Henry Smith School & Sixth Form privacy notice for details www.whsschool.org.uk

d) Safeguarding of children

- Purpose: Advice and support for students
- Law: Children and Young Peoples Act 1989
- GDPR Article 6 (1) (e) Public task, Article 9 (2) (g) substantial public interest.
- Data Protection Bill Schedule 1 part 2, 18 condition Counselling etc.
- Retention period: current record. 25 years after DOB of data subject.

6. The purposes of the processing

To deliver a balanced and broadly based curriculum which - promotes the spiritual, moral, cultural, mental and physical development of pupils at the school and society, and prepares pupils for the opportunities, responsibilities and experiences of later life. This includes school trips and activities; where appropriate counselling services and child safeguarding”.

7. Retention period or criteria used to determine the retention period

We retain and erase personal data in accordance with our records management policy and retention schedules. Our retention schedules for each service area are published on our website www.whsschool.org.uk. They contain a list of records, the length of time the records are kept and what happens to them. We retain your personal data in accordance with legal requirements or as long as is necessary to deal with your enquiry or complaint.

8. Data security

We are committed to protecting the information you provide. To safeguard the special category data, we have physical and electronic processes in place to protect the security of the data collected and processed.

9. Privacy Notice

Our privacy notice is available on our website www.whsschool.org.uk