
Data Protection Rights under GDPR

Guidance for customers

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What is GDPR?

The General Data Protection Regulation – GDPR, is a set of rules and guidelines which came in to force on 25th May 2018. It has been produced to protect the privacy of people when organisations (such as the Council) process the personal data of individuals and sets out rules relating to the free movement of personal data (i.e. when and how the data can be shared with other organisations).

Throughout this Guide you will find reference to the relevant Articles (numbered sections) of the GDPR, for your information. Should you wish to find out more information about any of these areas, you can view the full [General Data Protection Regulation online](#).

What is the Data Protection Bill?

The Government published the Bill in September 2017. The Bill looks to replace the Data Protection Act 1998 with an updated version, which will reflect GDPR and also set out UK specific elements of Data Protection. The Bill is still going through the parliamentary process, and is due to be enacted in 2018.

What is Personal Data?

The GDPR Article 4 defines Personal Data as:

'personal data' means any information relating to an identified or identifiable natural person ('data subject'); an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person;'

Personal data can be factual (for example, a name, address or date of birth) or it can be an opinion about that person, their actions and behaviour.

Some examples of the Personal Data which the Council holds include:

- Tenancy Agreements
- Council Tax records
- Log of phone calls made to the Contact Centre
- Complaints made to the Council
- Direct Debit details
- Holiday activity bookings
- Anti-social behaviour cases
- CCTV Images

Definitions of other terms used in this document:

These definitions are taken from the GDPR (Article 4)

- **Data Subject** – an identifiable natural person
- **Processing** – any operation performed on personal data, such as collection, recording, storage, use and disclosure.
- **Data Controller** – the person, public authority, agency or other body, who alone or jointly with others determine the purpose and means of the processing of personal data.
- **Data Processor** - the person, public authority, agency or other body who processes personal data on behalf of the Controller.
- **Recipient** - the person, public authority, agency or other body to which personal data is disclosed.
- **Third Party** - a person, public authority, agency or other body other than the data subject, controller or processor.

Processing Personal Data

GDPR Articles 5 and 6

The Council is required to process all personal data in accordance with the GDPR Principles which are set out in Article 5. These principles are:

- a) processing data fairly, lawfully and in a transparent manner
- b) collecting data for specified, explicit and legitimate purposes
- c) only holding information that is adequate, relevant and limited to what is necessary
- d) ensuring information is accurate and, where necessary, kept up to date
- e) only keeping the information for as long as it is required
- f) ensuring that all information is kept securely and confidentially including protection against unauthorised or unlawful processing and against accidental loss, destruction or damage

The Council also needs a condition (i.e. good reason) to process your data and these are set out in Article 6 – Lawfulness of processing of the GDPR. These conditions are:

- a) Consent – where a person has agreed to us processing their data
- b) Contract – where processing is necessary for the performance of a contract
- c) Legal Obligation – Where the Council is under a legal obligation to process the data
- d) Vital Interest – Where processing is necessary in order to protect vital interest (an example of this would be monitoring medical epidemics)
- e) Public Interest or Official Authority – where processing is necessary to perform tasks in the public interest or in the exercise of official authority vested in the Council
- f) Legitimate Interest – Where processing is necessary for the legitimate interests of the Council or a third party, except where the interests are overridden by the interest or fundamental rights and freedoms of the data subject.

In cases where you give your consent for the processing of personal data, you will have the right to withdraw your consent at any time.

There are also separate conditions which apply to processing of special categories of personal data (Article 9). Special category data includes:

Race / ethnic origin, political opinions, religious or philosophical beliefs, trade union membership, genetic data, biometric data, health data, sex life or sexual orientation.

What the Council must do

GDPR Articles 13 and 14

Where the Council collects personal data, either from you or from another source, we are required to inform you of various details, this is called the Right to be Informed.

The details we need to let you know include:

- our details as the 'data controller'
- the contact details of our Data Protection Officer
- the purposes for which the data is intended to be used as well as the basis for the processing (i.e. the GDPR Condition)
- the recipients of the data, where applicable (i.e. if the information will be shared with a Processor or third party)

We tell you this information, by signposting you to our [Privacy Notice](#) when we collect your data.

If we intend to further process your personal data for a purpose other than that for which it was collected, we will let you know.

Exemptions

There are some exemptions to the above right to be informed and the other rights which are detailed further on in this document, including when you are already aware of the information or where provision of such information proves impossible or would involve a disproportionate effort.

The updated Data Protection Act provides other exemptions, where the Council may be required to process your data in a way you are not made aware of; such as – sharing personal data with relevant authorities / organisations, where this information can be used for:

- Crime and Taxation – to prevent or detect crime; to aid the capture or prosecution of offenders; and / or for the assessment or collection of tax or duty.
- Regulatory Activities - core functions concerned with protecting members of the public from dishonesty, malpractice, incompetence or seriously improper conduct, or in connection with health and safety.

- Required by Law – where we are required to disclose information under UK law, or in line with a court order.
- Legal Advice and Proceedings – where the disclosure of the data is necessary for or in connection with any legal proceedings (including prospective legal proceedings), for obtaining legal advice; or for establishing, exercising or defending legal rights.
- National Security – where disclosure is necessary for reasons of national security.

Rights requests

Everybody has rights over their personal data, and these are described below. Some rights are absolute – i.e. available to everyone, and some are conditional, where certain criteria must be met in order for the right to apply. The different rights are set out below, along with when they are applicable.

It is free to make rights requests; however there are some circumstances in which the Council can charge a reasonable fee, such as if a second copy of the original response is requested.

Requests can be sent to us using our online form, by email or by letter. You can also call the Data Protection Officer and raise your request that way.

We may ask to see Identification, in order to verify your identity before we process the request. This will help us to identify the person's data and ensure we are only sharing data with those who are entitled to see it.

Once we receive a request, and have verified the requestor, the council must respond without undue delay and within a maximum of 1 month – i.e. if a request is verified on the 3 September, the time limit will start from the next day (4 September). This gives us until 4 October to comply with the request.

Rights of Access

GDPR Article 15

Anybody can request any and all personal data held about them by the Council. You can request all information held about a certain matter (for example your housing file), or you can ask for all the information held by the Council about you.

Requests made on behalf of children will be assessed to ensure the person making the request has the right to see it. Parents / people with parental responsibility do not have an automatic right to their child's data. We will make a judgement as to the level of maturity of the child and whether they are able to understand their rights; if so, information will be sent to the child directly. We will also consider the nature of the personal data, any court orders relating to access, the duty of confidence owed to the young person and any detriment to the young person if their parents cannot access the data.

The Council will respond to requests in electronic form where possible, or in permanent form where required. Our response also needs to set out who holds the data (i.e. which Council service), why it is held, and where applicable who supplied the data to us.

If you have any queries on this Right of Access, please contact the Data Protection Officer for further information.

Right to Rectification

GDPR Article 16

As set out in the Principles of the GDPR, the Council is required to hold accurate information and where necessary keep it up to date.

If someone becomes aware that the Council holds personal data about them which is out of date, incomplete or incorrect, they can request that we rectify the data. The Council must comply with the request or set out why we are unable to make the changes, without delay and in any case no later than 1 month after receiving a request.

The Council will also inform any third parties (where possible) with whom we have shared the information, of the rectification request.

Right to Erasure

GDPR Article 17

Also known as the 'Right to be Forgotten'. People can request that the Council erases personal data which it holds about them. Again the Council must comply with these requests, or notify of why we cannot comply within 1 month. This is a conditional right and is only available when:

- the personal data is no longer necessary for the purpose which the council originally collected or processed it for;
- the basis we are relying on is consent and you withdraw your consent;
- the basis we are relying on is legitimate interests, you object to the processing, and there is no overriding legitimate interest to continue this processing;
- the Council are processing the personal data for direct marketing purposes and you object to that processing;
- the Council have processed the personal data unlawfully; or
- the Council have to do it to comply with a legal obligation.

Therefore we do not need to comply with the request where the criteria above is not met, for example - processing is necessary as we are under a legal obligation or have lawful authority to process it (e.g. to comply with Council Tax legislation). We may also exempt data which is / will be used for the establishment, exercise or defence of a legal claim.

As with the Right to Rectification, the Council will need to inform any third parties with whom we have shared the information, of the request for erasure. In addition, if the information had been made public by us, we will take reasonable steps to inform other controllers that there is a request for erasure; this may include internet search engines for example.

Right to Restriction of Processing

GDPR Article 18

Another conditional right is the right to restrict processing of your personal data where one of the following applies:

- the accuracy of the personal data is contested – processing can be restricted for a period to enable us to verify the accuracy of the data.
- the processing is unlawful, but you do not want the information to be erased – this may be useful should you wish to make a complaint for example.
- you object to the processing – processing can be restricted pending verification of whether our legitimate grounds override your rights to object.

Where there is a restriction to processing, we may only process this data in the following circumstances:

- with the person's consent
- for the establishment, exercise or defence of legal claim
- for the protection of rights of another person, or
- for reasons of important public interest of the EU or UK

If the restriction on processing is to be lifted, we need to inform you of this before processing is recommenced.

Right to Object

GDPR Article 21

A person has the right to object to the Council processing their Personal Data, where the Council relies on either:

- processing being carried out in the public interest or in exercise of official the authority, or
- processing being carried out for the legitimate interests of the Council

If you object to this processing, we must stop the processing activity, unless we can demonstrate compelling legitimate grounds which override your interests, rights and freedoms, or where the data will be used for the establishment, exercise or defence of a legal claim.

In addition to the above, people can object to their personal data being used for direct marketing purposes, and we will no longer be able to process their data for this purpose.

Right to Data Portability

GDPR Article 20

People have the right to receive some of their personal data, in a structured, commonly used and machine-readable format (for example as a spreadsheet).

This right only applies to data which you have directly provided to us and which is processed by automated means. The Council do not currently carry out this type of processing.

Rights related to Automated Decision making including profiling

GDPR Article 22

These rights relate to automated individual decision-making (decisions made solely by a computer programme); and profiling (automated processing of personal data to evaluate certain things about an individual). Profiling can be part of an automated decision-making process.

Organisations are only allowed to carry out this type of decision-making where the decision is:

- necessary for the entry into or performance of a contract; or
- authorised by Union or Member state law applicable to the controller; or
- based on the individual's explicit consent.

Examples of this type of work include:

- an online decision to award a loan; and
- a recruitment aptitude test which uses pre-programmed algorithms and criteria.

The Council do not currently carry out this type of processing.

Contact details

Any request to exercise your rights under GDPR will be processed by the Council's Data Protection Officer.

Please email: FOI@charnwood.gov.uk;

telephone: 01509 634711; or

write to: Data Protection and Information Security Officer, Charnwood Borough Council, Southfields, Southfield Road, Loughborough, LE11 2TU.

How to Complain

If you are unhappy with how the council has managed your personal data, or handled a request in relation to personal data, please contact the Data Protection and Information Security Officer –

Email: foi@charnwood.gov.uk

Tel: 01509 634711

Right to Complain to a Supervisory Authority

GDPR Article 78

You have the right to complain about the Council's handling of your personal data, and / or failures under the GDPR to a supervisory authority.

In the UK, the GDPR supervisory authority is the Information Commissioner's Office (ICO). The ICO will look at the concerns you have raised, and investigate if they feel it is required. If following their investigation, the ICO finds fault with the Council, the ICO can require the authority to take some action; they can take enforcement action against the Council and / or serve a monetary penalty. Further information about the ICO and the action they can take can be found on their [website](#).

You can contact the ICO, by:

Telephone: 0303 123 1113

Email: casework@ico.org.uk

Post: Information Commissioner's Office

Wycliffe House, Water Lane

Wilmslow

Cheshire

SK9 5AF