

## Data protection: your rights and obligations

This factsheet aims to deal with some of the questions ATL receives about data protection.

### **What is the Data Protection Act?**

The Data Protection Act 1998 (the Act) provides for the rights of individuals (such as employees and students) and the obligations of employers and organisations (such as schools and Local Authorities) in relation to personal information.

The Act sets out eight principles that data controllers (such as schools, colleges, universities and local authorities) should follow when using personal information (for example, collecting, storing, retrieving, disclosing or destroying this information). These include the obligations to process personal data fairly and lawfully; only to use personal information for the purpose for which it was collected; to keep personal information accurate and, where necessary, up to date; and to keep personal information secure. The Act also provides for individuals' right of access to personal information held about them.

The Information Commissioner's Office ([www.ico.gov.uk](http://www.ico.gov.uk)) produces helpful guidance on data protection issues, including a code of practice on data protection issues in the workplace.

### **Can I obtain my personal information?**

The Act gives you the right (subject to some exceptions) to see most personal information held about you by your employer, businesses and organisations in the public and private sectors. This is known as the right of "subject access" under section 7 (1) of the Data Protection Act. If you make a subject access request you may have the right to see information of which you are the subject. This includes internet access logs and email records.

### **How do I make a request?**

You need to make a written request to the "data controller", this is the person/organisation who holds personal information about you. For example, your employer is a data controller. Your employer can charge a fee of up to £10.00 (including VAT) for each request.

### **Can my request be refused?**

Your employer is allowed to refuse your request if:

- Disclosing the information means giving out information about someone else, or

identifying them as the source of confidential information. For example, it may not be appropriate to disclose the identity of a person alleging bullying to the person accused of bullying.

It may be possible to edit the information to conceal the other person's identity by removing their name or job title. If this is not possible, the employer is not obliged to grant your request unless the other person has consented to their information being disclosed, or it is reasonable in the circumstances to answer the request without their consent.

The employer will have to make a decision as to whether the worker's right to know what information is held about them and its source outweighs the right to privacy of the third party who can be identified through the release of the information.

- Disclosing the information is likely to prejudice the prevention or detection of crime.

There are other exemptions that may entitle your employer to refuse your request, such as instances involving management forecasts, confidential references (see below), information used for research, historical or statistical purposes and information covered by legal professional privilege. If you believe your request has been refused wrongly or unfairly, you may wish to contact the Information Commissioner's Office for further advice.

### **Can I get information about other people and can they get information about me?**

You can only access other people's personal information if you are acting on their behalf and if they have given their permission to the employer for the information to be disclosed to you. This means that your employer may not discuss your concerns with your spouse, partner, friend or trade union representative until you give permission. Similarly, other people can only access your information if they are acting on your behalf and you have given your permission to the employer for the information to be disclosed to them.

### **Can information about me be used or disclosed without my consent?**

This will depend on the particular circumstances in which the information is being processed. Under the Act it is not necessary for your employer to seek your consent to disclose your information in certain situations, such as:

- where the disclosure is for the purposes of preventing or detecting crime, or
- where the disclosure is required by law or by a court order.

There are many other circumstances when explicit consent is not necessary.

### **Can my manager publish my sick record?**

Your employer can publish totals of sickness absence as long as individual employees are not identifiable.

The Information Commissioner's Employment Practices Data Protection Code seeks to ensure that managers have access to no more information about their workers' health than they are likely to need. However, a manager's concern should primarily be with the impact of a medical condition on a worker's fitness for work rather than with the medical details.

### **Do I have a right to see emails about me?**

You may be entitled to make a data subject access request for copies of emails held about you. For information to fall within Act's subject access provisions you have to be identifiable from the data and it must relate to you. This means, for example, that an email about your conduct or performance will almost certainly have to be provided. However, an email that simply mentions you as your name appears on the email address list may not have to be provided.

### **How long can my employer keep information about me?**

There is no specific period given in the Act. It is left to the employer to set retention periods. The Act requires that the personal information in a record should not be kept for longer than is necessary for a particular purpose or purposes. As far as possible, standard retention times should be set out in a school/local authority policy. There may also be other statutory requirements to retain records such as tax records and health and safety records.

### **Do I have a right to see the notes made about me at interview?**

There is no general exemption from the Act's subject access rights in respect of interview notes about candidates. This means that when an individual makes a request for access to the notes, it should be granted in most cases.

### **Do I have a right to see the reference issued by my employer?**

There is a special exemption in the Act from the right of access to a confidential reference issued by your current employer. This exemption does not apply once the reference is in the hands of the third party (eg, a prospective employer). Then, if requested in writing under a subject access request, you should be given a copy unless there is a "compelling reason" not to do so.

For further advice regarding references, please see our *Job References* factsheet, available at [www.atl.org.uk/publications-and-resources/factsheets/job-references.asp](http://www.atl.org.uk/publications-and-resources/factsheets/job-references.asp).

### **Can my employer completely ban the use of private emails and accessing the internet?**

An employer can take this action in accordance with their internet and email policy. However, a ban on private use does not in itself allow the employer to access messages that are clearly private. The employer's access to an employee's private messages must still be justified.

It may be possible to identify an email as private from its subject header and take action against its sender or recipient for breach of the rule against personal use without reading the content.

Where there are grounds to suspect a particular worker or workers are using email to harass others or are downloading inappropriate material from the internet then targeted monitoring of that worker's email or internet use may be justified. Monitoring should be proportionate in the given circumstances.

### **Can we publish our students' examination results?**

Publishing examination results constitutes processing personal information and so falls under the terms of the Act. Any educational institution wishing to publish exam results must therefore ensure they comply with the eight principles under the Act.

In particular, they must ensure the publishing is fair and lawful, pupils and parents should be informed publishing will take place and should be given information about the format of the publishing. This might include the name of the publication in which the results will appear, when

they will be published and whether the results will be listed by grade or in alphabetical order of entrant name. Where publishing results may cause distress or harm, serious consideration should be given to any objections and the results should only be published if there is a justifiable reason to proceed.

Information relating to examination results held by educational institutions is likely to be personal data as defined under the Act. Therefore, students have a right to access some of this data. You may have come across situations where students have asked for copies of exam scripts, examiners' comments and marks. There is an exemption under the act so that students do not have the right to see examination scripts or the information recorded in them.

However, examiners' comments fall outside this exemption. If an examiner recorded comments about a particular candidate in a margin or on a separate sheet, this would probably be personal data and the student would have a right to see the comments. There is also a provision under the act for educational institutions to delay giving a response to a data access request where the request to see exam marks has been made before the results are announced.

### **Can we take and keep fingerprints of students?**

Fingerprints are also likely to be personal information. Therefore, where educational institutions have taken fingerprints of students, this data must be processed in accordance with the principles of fair processing. This means fingerprints should only be used for the purpose for which they were collected. Furthermore, where the information is stored on a computer, the software used should be appropriate and secure. It is also important to inform and consult pupils before fingerprinting and using the information. If there is a possibility a student may be too young to understand the implications fully, their parents or guardians should also be consulted.

### **Are photographs personal data?**

There are many circumstances in which people may want to take photographs in schools. Parents may want to take photos at sports days, plays and other school events. Staff may want to take photos for the school prospectus or website. Where photographs are for personal use there are no data protection implications. Therefore, there is no reason to prevent parents from taking photographs in the situations mentioned above, provided they are for personal use such as placing in a family album.

However, where photos are taken for official use (for school/college business), some of these photographs are personal data as defined under the Act, and must therefore be processed fairly and lawfully. For example, photographs taken for security identification passes and stored on a computer along with other information about the individual are personal data and the act applies. It would therefore be sensible to consult with pupils and/or guardians before taking such photos.

The media should also seek the consent of the school/college and pupils and/or their guardians before publishing photographs of pupils.



### **Need advice?**

Your first point of contact is your ATL rep in your school or college. Your local ATL branch is also available to help with queries, or you can contact ATL's member advisers on **020 7930 6441**, email: [info@atl.org.uk](mailto:info@atl.org.uk) or write to 7 Northumberland Street, London WC2N 5RD. Don't forget you can also get lots of help and advice, as well as download copies of other ATL advice sheets, on our website at [www.atl.org.uk](http://www.atl.org.uk)

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