

# Appropriate policy document for Privacy notice 10: Disciplinary and capability procedures

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**How Kent Fire and Rescue Service (KFRS) protects special category data of employees in relation to operating our disciplinary and capability procedures.**

## 1. Collecting data as an employer

We committed to creating a positive and inclusive working environment. All employees and volunteers are required to abide by the Code of Ethical Conduct. This forms part of your contract of employment. When behaviours or performance fall or are alleged or suspected to have fallen below the standards of our Code of Ethical Conduct we will begin an investigation process under our disciplinary and capability procedures. As part of this additional personal records will be created about you.

In order to allow us to do this we may need to process a range of personal data. Some of this data meets the definition of special category data under Article 9 of the UK GDPR.

## 2. About this appropriate policy document

This is the 'appropriate policy document' that sets out how for the purposes of operating our grievance, bullying and harassment, employment complaints, and whistleblowing process, KFRS will protect special category data of its employees.

It meets the requirement set out in [Schedule 1, Part 1, Paragraph 1 of the Data Protection Act 2018](#) that an appropriate policy document be in place where the processing of special category personal data is necessary for '**employment, social security and social protection**' as set out in [Article 9\(2\)\(b\) of the UK GDPR](#).

It meets the requirement set out in [Schedule 1, Part 2, Paragraph 5 of the Data Protection Act 2018](#) that an appropriate policy document be in place where the processing of special category personal data is necessary for '**reasons of substantial public interest**' as set out in [Article 9\(2\)\(g\) of the UK GDPR](#).

The specific conditions under which data may be processed for reasons of substantial public interest are set out in [Schedule 1, Part 2, Paragraphs 6 to 28 of the Data Protection Act 2018](#) (see section 3.3 below).

### 3. Lawful basis for processing this data

#### 3.1 Lawful basis under Article 6 of the UK GDPR

KFRS is relying on the following lawful bases:

- **Contract** as set out in [Article 6\(1\)\(b\) of the UK GDPR](#). All employees and volunteers are required to abide by the Code of Ethical Conduct, which forms part of the contract of employment. When behaviours or performance fall or are alleged or suspected to have fallen below the standards of our Code of Ethical Conduct we will begin an investigation process under our disciplinary and capability procedures. As part of this we need to be able to retain and process the information set out in the privacy notice.
- **Performance of a task carried out in the public interest or in the exercise of official authority** as set out as set out in [Article 6\(1\)\(e\) of the UK GDPR](#). It is in the public interest that we have ability to ensure that our organisation has a positive working environment, a culture of respect and a workforce that are adhering to our Code of Ethical Conduct and lawful modes of behaviour.

**Performance of a task carried out in the public interest** requires a separate basis in law. This comes from the following:

- Our compliance with the requirements of [Part 2 of the Fire and Rescue Services Act 2004](#) for fire and rescue authorities to make provision for fire safety, fire-fighting and road traffic accidents. Ensuring that the organisation remains effective is underpinned by having a positive working environment and a workforce that is meeting its contractual obligations and requirements of our Code of Ethical Conduct. The ability to investigate and operate an effective disciplinary process is an essential function in meeting these requirements.

The requirement under [Article 13 of the UK GDPR](#) (information to be provided where personal data are collected from the data subject), is met through the provision of [privacy notice 10: Disciplinary and capability procedures](#).

#### 3.2 Condition for processing special category data under Article 9 of the UK GDPR

Among the data listed above that we might collect as part of our disciplinary process, the following types meet the definition of 'special category data' as set out in Article 9 of the UK GDPR:

- disability
- pregnancy and maternity
- race
- trade union membership

- religion or belief
- sexual orientation
- health data: medical conditions; physical and cognitive impairments, including those for which we might need to make reasonable adjustments; role-related fitness assessments.

This data is collected to allow KFRS to investigate behaviours or performance that are alleged or suspected to have fallen below the standards of our Code of Ethical Conduct. To lawfully process this special category data, KFRS is relying on the following conditions:

- **Employment, social security and social protection (with a basis in law)** condition as set out in [Article 9\(2\)\(b\) of the UK GDPR](#).
- **Reasons of substantial public interest (with a basis in law)** condition as set out in [Article 9\(2\)\(g\) of the UK GDPR](#).

The requisite basis in law for both the **Employment, social security and social protection** condition and the **Reasons of substantial public interest** condition comes from the following:

- Our compliance with the requirements of [Sections 5 to 9 of the Fire and Rescue Services Act 2004](#) to maintain a fire and rescue service. Ensuring that the organisation remains effective is underpinned by having a positive working environment and a workforce that is meeting its contractual obligations and requirements of our Code of Ethical Conduct. The ability to investigate and operate an effective disciplinary process is an essential function in meeting these requirements.

### **3.3. Where ‘reasons of substantial public interest’ is identified as the condition for processing under Article 9 of the UK GDPR, then the organisation also needs to meet one of 23 specific substantial public interest conditions set out in [Paragraphs 6 to 28, Schedule 1, Part 2 of the Data Protection Act 2018](#)**

Because we are relying on the **reasons of substantial public interest condition** in Article 9(2)(g), we also need to meet one of 23 specific substantial public interest conditions set out in [paragraphs 6 to 28 Schedule 1, Part 2 of the DPA 2018](#).

The first of the two substantial public interest conditions that we are relying upon is:

[6 Statutory etc and government purposes](#), specifically section 62(a), *‘the exercise of a function conferred on a person by an enactment or rule of law’*.

This *‘function conferred...by an enactment or rule of law’* is:

- Our compliance with with the requirements of [the Fire and Rescue Services Act 2004](#).

The second of the two required substantial public interest conditions that we rely upon is:

- [10 Preventing or detecting unlawful acts](#). It is in our organisation and the public interest that we have ability to ensure that our organisation has a positive working environment, a culture of respect and a workforce that are adhering to our Code of Ethical Conduct and lawful modes of behaviour.

## 4. Retention

Personal data generated and collected as part of the process of investigating grievances, employment complaints, bullying and whistleblowing claims will be held in accordance with the periods set out in section 7 of KFRS' Publication and Retention Scheme (<https://www.kent.fire-uk.org/freedom-information-foi>).

Where we no longer require the special category data for the purpose for which it was collected, we will delete it, put it beyond use or render it permanently anonymous

## 5. Procedures for securing compliance with the data protection principles

[Article 5 of the UK GDPR](#) sets out the data protection principles. Below are our procedures for ensuring that we comply with them.

### 5.1 Principle 1

Personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject.

KFRS will:

- Ensure that personal data is only processed where a lawful basis applies, and where processing is otherwise lawful.
- Only process personal data fairly, and will ensure that data subjects are not misled about the purposes of any processing.
- Ensure that data subjects receive full privacy information so that any processing of personal data is transparent.

### 5.2 Principle 2

Personal data shall be collected for specified, explicit and legitimate purposes and not further processed in a manner that is incompatible with those purposes.

KFRS will:

- Only collect personal data for specified, explicit and legitimate purposes, and we will inform data subjects what those purposes are in a privacy notice.
- Not use personal data for purposes that are incompatible with the purposes for which it was collected. If we do use personal data for a new purpose that is compatible, we will inform the data subject first.

### **5.3 Principle 3**

Personal data shall be adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed.

KFRS will only collect the minimum personal data that we need for the purpose for which it is collected. We will ensure that the data we collect is adequate and relevant.

### **5.4 Principle 4**

Personal data shall be accurate and, where necessary, kept up to date.

KFRS 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.

### **5.5 Principle 5**

Personal data shall be kept in a form which permits identification of data subjects for no longer than is necessary for the purposes for which the personal data are processed.

KFRS 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, but beyond use or rendered permanently anonymous.

### **5.6 Principle 6**

Personal data shall be processed in a manner that ensures appropriate security of the personal data, including protection against unauthorised or unlawful processing and against accidental loss, destruction or damage, using appropriate technical or organisational measures.

KFRS will ensure that there appropriate organisational and technical measures in place to protect personal data. All data will be held in electronic format on password protected devices provided by the Authority and accessible only to those who have a specified need.

## **6. Accountability principle**

The controller shall be responsible for, and be able to demonstrate compliance with these principles. The Data Protection Officer is responsible for ensuring that KFRS is compliant with these principles.

We will:

- Ensure that, where appropriate, records are kept of personal data processing activities, and that these are provided to the Information Commissioner's Office (ICO) on request.
- Carry out a Data Protection Impact Assessment for any high risk personal data processing, and consult the ICO if appropriate.
- Ensure that a Data Protection Officer is appointed to provide independent advice and monitoring of departments' personal data handling, and that this person has access to report to the highest management level within KFRS.
- Have in place internal processes to ensure that personal data is only collected, used or handled in a way that is compliant with data protection law.

## **7. Data controller's policies as regards retention and erasure of personal data**

We will ensure, where special category personal data is processed, that:

- There is a record of that processing, and that record will set out, where possible, the envisaged time limits for erasure of the different categories of data. This is set out in section 4 (Retention).
- Where we no longer require special category data for the purpose for which it was collected, we will delete it, put it beyond use or render it permanently anonymous.
- Data subjects receive full privacy information about how their data will be handled, and that this will include the period for which the personal data will be stored, or if that is not possible, the criteria used to determine that period.

## **8. Further information**

For further information about this appropriate policy document or KFRS's compliance with data protection law, please contact us at:

Data Protection Officer  
Kent Fire & Rescue Service  
The Godlands  
Straw Mill Hill  
Maidstone

ME15 6XB

Email: [dataprotection@kent.fire-uk.org](mailto:dataprotection@kent.fire-uk.org)

Telephone: 01622 692121