

Appropriate policy document for privacy notice 15: Enforcement, Investigation and Prosecution Activity

Date completed 09/01/2023

How Kent Fire and Rescue Service (KFRS) protects special category personal data relating to enforcement, investigation and prosecution activity.

1. What is enforcement, investigation and prosecution activity?

Under the [Regulatory Reform \(Fire Safety\) Order 2005](#) we have a duty to ensure that responsible persons (as defined in the Order) are complaint with fire safety in non-domestic premises. This includes undertaking enforcement, investigation and prosecution activity against organisations or individuals who may be in breach of the Order.

The responsible person has a legal duty under the Regulatory Reform (Fire Safety) Order 2005 to maintain fire precautions by taking reasonable steps to reduce the risk from fire and complete a risk assessment.

Under the [Fire and Rescue Services Act 2004](#), we have a legal duty to promote safety in this area and enforce the Order up to and including enforcement, investigation and action through the courts.

One way we do this is by engaging with service users to promote appropriate behaviours. To engage with users of our services, we need to have mechanisms to collect feedback and data requests and take relevant action, and feedback to them. In working with businesses and regulated premises this includes how we provide generalist advice, respond to queries, raise concerns, and ultimately take enforcement action where non-compliance with the law is identified.

2. About this appropriate policy document

This is the 'appropriate policy document' that sets out how KFRS will protect special category personal data relating to enforcement, investigation and prosecution activity.

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

When planning or undertaking investigation/enforcement activity, we rely on compliance with a legal obligation (UK GDPR Article 6(c)) and performance of a task carried out in the public interest or in the exercise of official authority (UK GDPR, Article 6(e)) as the lawful basis for collecting and processing personal data.

Both of these require a separate basis in law. This comes from the following:

- Our responsibilities under the [Regulatory Reform \(Fire Safety\) Order 2005](#), in particular Part 3 Enforcement.
- Our compliance with the requirements of [Section 6 of the Fire and Rescue Services Act 2004](#) for fire and rescue authorities to actively promote fire safety and fire prevention strategies (achieved through the provision of a programme of Safe and Well Visits).
- The requirement placed upon us to meet the Public Sector Equality Duty as set out in [Section 149 of the Equality Act 2010](#). Specifically that as part of meeting our public sector equality duty, we actively seek to improve the effectiveness with which we exercise our powers and undertake our duties, both statutory and non-statutory. Gathering information about the protected characteristics of our customers – including those subject to enforcement activity – assists us in achieving that aim.

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 034 – Enforcement, investigation and prosecution activity](#).

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

Among the data listed above that we might collect during the course of any investigation/enforcement activity, 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
- religion or belief
- sexual orientation
- health data (medical conditions/physical and cognitive impairments)

This data is collected to ensure we can actively seek to improve the effectiveness with which we exercise our powers and undertake our duties, both statutory and non-statutory. Gathering information about the protected characteristics of our customers – including those subject to enforcement activity – assists us in achieving that aim.

In addition, this data is collected to ensure that we can meet our responsibilities in the Public Sector Equality Duty as set out in [Section 149 of the Equality Act 2010](#). As part of this we actively seek to remove barriers to services in order to improve access to our services. In order to assist us in this, we may seek to gather information about some protected characteristics of our customers. Specifically that as part of meeting our public sector equality duty, we actively seek to improve the effectiveness with which we exercise our powers and undertake our duties, both statutory and non-statutory. Gathering information about the protected characteristics of our customers – including those subject to enforcement activity – assists us in achieving that aim.

To lawfully process this data, KFRS is relying on the “*reasons of substantial public interest*” condition as set out in [Article 9\(2\)\(g\) of the UK GDPR](#).

Again, the basis in law for this is our compliance with the requirements set out the Regulatory Reform (Fire Safety) Order 2005; Section 6 of the Fire and Rescue Services Act 2004; and the Public Sector Equality Duty set out in Section 149 of the Equality Act 2010. Gathering information about the protected characteristics of our customers – including those subject to enforcement activity – assists us in achieving these requirements.

3.3. Where ‘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 Schedule 1, Part 2 of the Data Protection Act 2018

KFRS is meeting the specific substantial public interest condition **statutory and government purposes** as set out in [paragraph 6, Schedule 1, Part 2 of the DPA 2018](#); specifically paragraph 6(2)(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 the requirement under:

[The Regulatory Reform \(Fire Safety\) Order 2005](#), in particular Part 3 Enforcement. Gathering information about the protected characteristics of our customers – including those subject to enforcement activity – assists us in achieving that aim.

[Part 2 paragraph 6\(2\)\(a\) and \(b\) of the Fire and Rescue Services Act 2004](#) for a fire and rescue authority to give advice on request about how to prevent fires and restrict their spread in buildings and other property. This advice may be provided as part of our investigation/enforcement activity.

The other basis for this substantial interest condition is to ensure that we can meet our responsibilities in the Public Sector Equality Duty as set out in [Section 149 of the Equality Act 2010](#). As part of this we actively in order to improve access to our services. In order to assist us in this, we may seek to gather information about some protected characteristics of our customers. Specifically that as part of meeting our public sector equality duty, we actively seek to remove barriers to services and improve the effectiveness with which we exercise our powers and undertake our duties, both statutory and non-statutory. Gathering information about the protected characteristics of our customers – including those subject to enforcement activity – assists us in achieving that aim.

4. Retention

Personal data collected as part of our investigation and/or enforcement activity will be held for a period of 7 years from the conclusion of all relevant enforcement activity and investigations.

This is in accordance with the periods set out in section 3 of the Authority's Publication and Retention Scheme, which can be found here: <https://www.kent.fire-uk.org/about-us/freedom-of-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

Whilst the retention period for this data is set at seven years from the conclusion of all relevant enforcement activity and investigations, a review will be conducted every 12 months by a panel which includes, but is not limited to, the Head of Building Safety and the Information Officer.

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

Telephone: 01622 692121