

Privacy notice 10: Disciplinary and capability procedures

Date completed 03/04/2023

This notice is one of a set which explain what data we collect, store and process to provide our services to customers. It also sets out the legal basis we are using for collecting the data stated.

- Privacy notice 01: Applications for employment
- Privacy notice 03: Primary employment
- Privacy notice 04: Secondary employment
- Privacy notice 05: Medical records
- Privacy notice 06: Grievances, employment complaints and whistleblowing
- Privacy notice 07: Former KFRS employees
- Privacy notice 08: Learning and development
- Privacy notice 09: KFRS housing
- Privacy notice 10: Disciplinary and capability procedures
- Privacy notice 11: Pensions administration
- Privacy notice 12: Insurance
- Privacy notice 26: Videos and images at incidents (employees and volunteers)
- Privacy notice 28: Videos and images at events (employees and volunteers)
- The overall privacy notice
- The breach process contained in Annex 1 of the Data Protection and Information Security Policy which sets out what we will do should any data we collect be lost or misused. This can be found here: <https://www.kent.fire-uk.org/freedom-information-foi>

Our contact details

Kent Fire and Rescue Service
The Godlands
Straw Mill Hill
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ME15 6XB

Email: data.protection@kent.fire-uk.org

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Why we collect and use personal data

This notice covers the personal and sensitive data we will collect as part of the operation of our disciplinary and capability procedures.

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.

The types of personal data we collect and process

During the course of a disciplinary investigation, where appropriate we may process any of the data that we hold which is deemed relevant to the investigation. For a list of this data please see 'Privacy notice 02: Employees and volunteers'.

In addition, we may collect and process data which covers, but is not limited to, the following:

- Allegations, feedback and other records.
- Information about alleged comments, behaviours and opinions expressed.
- Material, documents and evidence relevant to the investigation including records of meetings, communications and correspondence.
- Statements from you, other employees and third parties.
- Photographic, video and sound recordings.
- Information relating to alleged or actual criminal offences that have been committed.
- Information concerning your health or that of third parties.
- Legal or other professional advice from our third-party suppliers.

During a disciplinary investigation, the following types of data may be created:

- An investigation file.
- Reports about you and your actions.
- Legal or other professional advice or reports.
- Medical advice or reports.
- Records of the outcome of the process, any remedial actions to be taken and any sanctions placed on you or other employees, such as warnings, hearing outcomes or dismissal notifications.
- Protected characteristics under the Equality Act 2010 (age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, and sexual orientation).

Our lawful reasons for collecting and processing personal data

The six lawful bases for processing personal data are set out in [Article 6\(1\) of the UK GDPR](#). These are as follows:

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

During the course of a disciplinary investigation we will rely 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 or in the exercise of official authority, require 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.

Special category data

[Article 9 of the UK GDPR](#) covers special category data. Special category data is personal data that needs more protection because it is sensitive. The nine types of special category data are as follows:

- personal data revealing racial or ethnic origin;
- personal data revealing political opinions;
- personal data revealing religious or philosophical beliefs;
- personal data revealing trade union membership;
- genetic data;
- biometric data (where used for identification purposes);
- data concerning health;
- data concerning a person's sex life
- data concerning a person's sexual orientation

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.

In order to lawfully process special category data, we must identify both a lawful basis under Article 6 of the UK GDPR and a separate condition for processing under Article 9. There are ten conditions for processing special category data, which are as follows:

- (a) Explicit consent
- (b) Employment, social security and social protection (if authorised by law)
- (c) Vital interests (of the data subject)
- (d) Not-for-profit bodies
- (e) Made public by the data subject
- (f) Legal claims or judicial acts
- (g) Reasons of substantial public interest (with a basis in law)
- (h) Health or social care (with a basis in law)
- (i) Public health (with a basis in law)
- (j) Archiving, research and statistics (with a basis in law)

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.

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 paragraph 6(2)(a) '*the exercise of a function conferred on a person by an enactment or rule of law*'.

As above, this '*function conferred...by an enactment or rule of law*' is:

- Our compliance 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.

Appropriate policy document

When processing special category data under the '(b) Employment, social security and social protection condition; or (g) Reasons of substantial public interest' condition, there is a requirement under the Data Protection Act 2018 ([Schedule 1, Part 1, Paragraph 1\(1\)\(b\) and Schedule 1, Paragraph 5\(1\) respectively](#)) to have an '**appropriate policy document**' in place.

The appropriate policy document must set out the information below and be retained for six months after the date the relevant processing stops.

- a. Which substantial public interest condition is relied on.
- b. How the processing satisfies Article 6 of the UK GDPR (lawfulness of processing).
- c. Whether the personal data is retained and erased in accordance with the controller's policies, including giving an indication of how long such personal data is likely to be retained.
- d. Explain the controller's procedures for securing compliance with the principles in Article 5 of the UK GDPR (principles relating to processing of personal data) in connection with the processing of personal data in reliance on the condition in question.

In line with these requirements, an appropriate policy document is in place.

Who might we share your data with?

Data will be shared internally with KFRS employees who have a legitimate and justifiable need to access or process this data.

We will share your personal data internally and with third parties where required by law, where relevant to the purposes of any disciplinary investigation or where it is necessary for us to fulfil our contractual or legal obligations to you as your employer or to exercise our legal rights.

We will only share your personal data to the extent needed for these purposes and we will obtain assurance from those third parties of the integrity of their data security arrangements.

If the investigation reveals criminal actions, we may pass this information to the police for investigation or receive information from the police. In certain circumstances we may also share information with the Disclosure and Barring Service.

We will only share your personal data to the extent needed for these purposes and we will obtain assurance from those third parties of the integrity of their data security arrangements.

We may share information with doctors, occupational health advisers or with legal advisers or other professional advisers where required by the circumstances of the case.

We may also share information with the relevant trade union or representative body where the data subject requests that we should do so.

Where is the data stored?

Data generated as part of a disciplinary investigation is stored within KFRS' document management system, which is hosted on a cloud-based server system. Access to the data is restricted to those that require it for their role.

How long will we hold your data for?

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>).

What are my data protection rights?

Under data protection law, you have the following rights:

Your right of access

You have the right to ask us for copies of your personal information. You can ask to see it by making a subject access request. Guidance for making a request is available here: <https://www.kent.fire-uk.org/freedom-information-foi>

Your right to rectification

You have the right to ask us to rectify personal information you think is inaccurate. You also have the right to ask us to complete information you think is incomplete.

Your right to erasure

You have the right to ask us to erase your personal information in certain circumstances.

Your right to restriction of processing

You have the right to ask us to restrict the processing of your personal information in certain circumstances.

Your right to object to processing

You have the the right to object to the processing of your personal information in certain circumstances.

You are not required to pay any charge for exercising your rights. If you make a request, we have one month to respond to you.

If you wish to make a request, please contact us at:

Email: data.protection@kent.fire-uk.org

Telephone: 01622 692121

Address:

Kent Fire and Rescue Service
The Godlands
Straw Mill Hill
Tovil
Maidstone
ME15 6XB

How to complain

If you have any concerns about our use of your personal information, you can make a complaint to us using the contact information above.

You can also complain to the ICO if you are unhappy with how we have used your data.

The ICO's address:

Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Helpline number: 0303 123 1113

ICO website: <https://www.ico.org.uk>