

Information Sharing

The legal implications of Everyone's Invited



Joe Thomas

Introduction on Data Sharing

- Legal Framework (in outline)
- What this looks like in practice
- Retention

Background – Article 5 GDPR

- The General Data Protection Regulation (GDPR) and Data Protection Act 2018.
- Starting point is that the processing of data (including disclosure or sharing) follows the principals under Article 5:
 - (a) lawfully, fairly and transparently
 - (b) collected for specified purposes
 - (c) adequate relevant and limited
 - (d) accurate
 - (e) kept for no longer than necessary
 - (f) secure

Background – Article 6 GDPR

- What is lawful?
- Starting point is that the processing of data (including disclosure or sharing) is prohibited unless there is a lawful basis (Article 6 GDPR)
 - (a) Consent
 - (b) Performance of a contract (may be relevant to a private school)
 - (c) Performance of a legal obligation
 - (d) “processing is necessary in order to protect the vital interests of the data subject or of another natural person”;
 - (e) Public Interest
- (c) and (e) can be clarified and expanded under national law.

Special Categories of Data – Article 9

- Article 9 has more exacting tests for processing special categories of data
- Special categories of data include: data concerning an individual's health, their sex life or their sexual orientation
- (a) Consent
- (c) processing is necessary to protect the vital interests of the data subject or of another natural person where the data subject is physically or legally incapable of giving consent
- (g) processing is necessary for reasons of substantial public interest, on the basis of Union or Member State law which shall be proportionate to the aim pursued, respect the essence of the right to data protection and provide for suitable and specific measures to safeguard the fundamental rights and the interests of the data subject;

Data Protection Act 2018

- S.8 of the DPA 2018 clarifies that the public interest under Article 6(1)(e) includes the administration of justice.
- S.10(3) of the DPA 2018 provides:

The processing meets the requirement in point (g) [Substantial Public Interest] of Article 9(2) of the GDPR for a basis in the law of the United Kingdom or a part of the United Kingdom only if it meets a condition in Part 2 of Schedule 1

Substantial Public Interest under Part 2, Paragraph 18

Safeguarding and individuals at risk

18(1) Processing which is necessary

*(i) protecting an **individual** from neglect or physical, mental or emotional harm, or*

*(ii) protecting the physical, mental or emotional well-being of an **individual**,*

(b) the individual is—

(i) aged under 18, or

(ii) aged 18 or over and at risk,

*(c) the processing is carried out without the consent of the **data subject** for one of the reasons listed in sub-paragraph (2), and*

*(2) (a) in the circumstances, consent to the processing cannot be given by the **data subject**;*

*(b) in the circumstances, the controller cannot reasonably be expected to obtain the consent of the **data subject** to the processing;*

*(c) the processing must be carried out without the consent of the **data subject** because obtaining the consent of the **data subject** would prejudice the provision of the protection mentioned in sub-paragraph (1)(a).*

What does this look like in practice

- July 2018 guidance: ‘Information sharing Advice for practitioners providing safeguarding services to children, young people, parents and carers’
- Seven Golden Rules
 - 1) GDPR, the Data Protection Act 2018 and the Human Rights Act 1998 DOES NOT PREVENT data sharing without consent where appropriate.
 - 2) Be open and honest about when information will be shared
 - 3) Seek advice (e.g. the LADO).
 - 4) Wherever possible, share with consent.
 - 5) Base decisions on the safety and well-being of others and the data subject.
 - 6) Share only what needs sharing (e.g. relevant, proportionate, adequate etc)
 - 7) Keep a log of your decisions

Not one size fits all

- You will need to develop your own policy on when data will be shared. This policy needs to clarify the processes and principles for when information will be shared.
- You will need to consider the following:
 - When and how to inform the Local Safeguarding Children Boards
 - When and how to inform the Multi-Agency Safeguarding Hubs (MASH)
 - When to inform Universities regarding vulnerable young people who are moving on.

The Seven Principals in the context of Safeguarding

- Necessary and Proportionate – Information must be proportionate to the risks
- Relevant – Only information relevant to the safeguarding concern.
- Adequate – Needs to be sufficient so stake-holders can make decisions
- Accurate – Must distinguish between fact and opinion
- Timely – Particularly important in emergencies
- Secure – Electronic transfers must be secure
- Record – The decision to share must be recorded and justified

Record Keeping Transfers between Schools

- Keeping Children Safe in Education 2021 (from 1 September 2021)
- Paragraph 112:

112. Where children leave the school or college, the designated safeguarding lead should ensure their child protection file is transferred to the new school or college as soon as possible, to allow the new school or college to continue supporting children who have had a social worker and been victims of abuse and have that support in place for when the child arrives, also ensuring secure transit, and confirmation of receipt should be obtained. For schools, this should be transferred separately from the main pupil file

.

Retention

- Guidance from DFE, Information and Records Management Society and NSPCC recommend the following:
- For a young person:
 - Until they are 25 (i.e. 7 years after they finish school leaving age)
- For concerns about adult behaviour
 - Until they reach 65
 - Or for 10 years, whichever is the longer.

Thank you for listening

© Copyright Landmark Chambers 2021

Disclaimer: The contents of this presentation do not constitute legal advice and should not be relied upon as a substitute for legal counsel.

London

180 Fleet Street
London, EC4A 2HG
+44 (0)20 7430 1221

Birmingham

Cornwall Buildings
45 Newhall Street
Birmingham, B3 3QR
+44 (0)121 752 0800

Contact

✉ clerks@landmarkchambers.co.uk
🌐 www.landmarkchambers.co.uk

Follow us

🐦 @Landmark_LC
📘 Landmark Chambers
📺 Landmark Chambers