

GDPR and Safeguarding, the Easy Way

Frequently Asked Questions

Do I have a legal right to process criminal and special category sensitive data without consent?

YES for the following purposes....

1. Supplying information to police investigations and statutory authority inquiries
– GDPR & Data Protection Act 2018, Part 2, (10)

Legitimate basis:

“in the substantive public interest”

“ for the prevention or detection of an unlawful act”.

2. Recording details, making inquiries, risk assessment and putting safeguarding measures in place
– Data Protection Act 2018 Part 2, (18)

Legitimate basis:

“in the substantive public interest”

“necessary for the protection of an under 18 or an over 18 at risk from neglect, physical or emotional harm”.

This includes specific individuals and groups of a type of individual (e.g. children or adults at risk). “Over 18 at risk” – if you or another suspect with reasonable cause that the individual needs care and support, is at risk from neglect, physical, mental or emotional harm and as a result of those needs is unable to protect themselves from the harm, they are considered to be at risk for this legislation.

Do I still have to give a privacy notice if I have a legal right to process without consent?

Yes. You must still tell people their rights **but this may not happen at the time of disclosure** if...

- You receive a disclosure or information about someone else (other than the person telling you) and you are uncertain as to whether this might become part of a police investigation or social services inquiry (adult or child).

Action: STOP. Take advice of a District Safeguarding Officer and do not provide a privacy notice to any party, other than the person providing the information, before contacting police/adult or child services to take their advice.

- You receive information which may suggest that someone is at risk of harm and you are concerned that if you give a privacy notice, this may cause a problem e.g. where domestic abuse or modern slavery may be taking place.

Action: STOP. Take advice of a District Safeguarding Officer and do not provide a privacy notice. The risk will be considered by the DSO who will decide the appropriate point for the privacy notice to be supplied to relevant parties.

- You receive a disclosure of information by the party concerned but you feel uncertain about the Data Protection Act 2018, GDPR and do not feel able to provide a privacy notice or deal with any questions.

Action: Contact a safeguarding officer as soon as possible and they will help to ensure that a privacy notice is provided.

- You receive the disclosure and the party is not fit or able to understand or receive information about their rights at that point.

Action: Contact a safeguarding officer to ensure this is done at the earliest opportunity (*if appropriate, see above reference police investigations/local authority inquiries*)

Safeguarding Officers who retain records or oversee activities should always retain a copy of the signed document that shows the information has been received or (consent given, when appropriate).

Why do we need ever need to ask for consent in safeguarding?

For some roles, particularly where someone is volunteering e.g. to become part of a Monitoring and Support Group or take up an activity involving children or vulnerable adults, it is right that we ask their permission to process their data. They may choose not to give consent and look to undertake other activities in the Church environment that do not have that requirement for processing. It is important to be transparent, honest and fair with everyone to build trust and confidence. Taking away any party's right of consent is a significant act and we should only use this approach when it is necessary, proportionate and required.

There appear to be many privacy notices for safeguarding but not other areas. Why this additional burden?

We know how busy everyone is and that at the time of dealing with an emotionally challenging situation, data protection can seem to be less important. Therefore, we

have tried to make it as easy as possible. We have produced template forms (which can be amended) in key areas where there is a real need for accountability and where actions may be challenged e.g. risk assessment, Monitoring and Support Groups, safeguarding concerns, DBS blemishes etc. They have also been provided because some people were not aware of the extent of processing for safeguarding activities and this will ensure we treat them fairly.

What privacy notices are available in safeguarding?

Safeguarding concern

Risk assessment

Safeguarding training (Foundation and Advanced Modules)

Monitoring and Support Group

Volunteer working with children and/or vulnerable adults (addition to current form)

Keyholder (addition to current form)

What happens if I start processing information differently after I have given a privacy notice? Do I have to provide another one?

Yes, if someone is engaging in another activity with significantly different processing involved that is not covered by the general processing provisions in other areas, you should provide an additional privacy notice.

I don't think we should be telling this person about the safeguarding concern?

People often want to protect others and feel that they are doing so by not telling them. However, low-level issues can often be resolved by an appropriate discussion and explanation of the concerns, highlighting current policy and practice and providing the relevant information about data protection. During PCR, there have been many cases where things have become much more serious because someone did not challenge, in an appropriate way, at the start. Much hurt has been caused because a difficult truth was not told. After all, no one likes to feel things are being done behind their backs unless there is real, legitimate need to do so.

The following issues may be reasonable grounds for not telling someone:

- There is a likelihood of harm to another party if information is provided at this stage.
- There is potential for a criminal investigation, local authority inquiry or internal complaints, discipline or safeguarding process to be impacted if someone is provided with information at that point.
- The person lacks capacity e.g. through significant ill health.
- The person is untraceable.

Always ask a safeguarding officer if you think these conditions may apply.

I heard that the GDPR isn't a big deal and we don't have to worry about getting ourselves sorted by the date as nothing will happen.

The Information Commissioner has said that they will not be pursuing people for big fines straightaway BUT.... SAFEGUARDING IS DIFFERENT.

Why?

a) Trust = Transparency, Fairness and Knowledge

People will work with us better and make fewer complaints if they know we are up-to-date with practice and can be trusted to follow the rules (legislation, procedure, policy). If we are honest and open about what we do, before we do it, where possible, they will be more inclined to work well with us. Reasonable people do not complain when they understand and trust we will act fairly, even in difficult circumstances.

a) "I know my rights" – Pushing boundaries using data protection

There are a minority of people who use a threat of legal action or a perceived knowledge of their rights to undermine the confidence of those who undertake safeguarding activities. They may try to weaken resolve about applying measures that are justified, reasonable and required to make everyone safe. We have seen this happen on many occasions and it is a natural reaction of those on the receiving end to feel anxious and wonder if they are doing the right thing. This is about power and control.

Know your legal justification. Be confident. Inform people of their rights.

How do I implement GDPR?

Phase 1 – Amend your current procedures for processes, activities or engagement starting on or after May 25, 2018 and start using privacy notices.

Phase 2 – Bring those actively involved now in relevant activities, inquiries or processes which started prior to May 25 in line over a realistic, planned period.

Phase 3 – Assess old records where there is now no engagement and consider the feasibility of taking remedial action where possible and appropriate.

Where can I get more help or find more information?

- District Safeguarding Officers
- Updated safeguarding policies and forms online
- TMCP website