North Ayrshire Council
Comhairle Siorrachd Àir a Tuath

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Data Protection Policy
Version: 2.3
Date: 29th January 2019

Version Control			
Version	**Date Issued**	**Author**	**Update Information**
V1.0	15.11.12	Hazel Lauder	Approved by Cabinet 23 October 2012
V2.0	25.08.15	Rose Johnston	Approved by Cabinet 18 August 2015
V2.1	30.06.16	Rose Johnston	Minor changes to contact information
V2.2	21.05.18	Rose Johnston	Amended to reflect legislative changes
V2.3	29.01.19	Rose Johnston	Amended to reflect legislative changes

Version Awareness

The audience of this document should be aware that a physical copy may not be the latest available version. The latest version, which supersedes all previous versions, is available only on our website. Those to whom this policy applies are responsible for familiarising themselves periodically with the latest version and for complying with policy requirements at all times.

Document Control Guidelines

Document Control	
Prepared By	Data Protection Officer
Original Authorisation By	Corporate Management Team
Source Location	I:\CEPUBLIC\18 InformationGovernanceTeam\07 Policies\Approved
Reviewed By	R Sharp - Information Governance Manager C Fraser - ICT Security Officer M Davison - Senior Manager Democratic Services L Taylor – Solicitor, Legal Services Data Protection Advisory Group
Published Location	External Website and Connects
Other documents referenced	Data Protection Bill 2018
Classification	Public

Contents Listing

1. Introduction

North Ayrshire Council is required by law to comply with the Data Protection Act 2018 (DPA). To comply with the law, information about individuals must be collected and used fairly, stored safely and securely and not unlawfully disclosed to any third party.

North Ayrshire Council regards the lawful and correct treatment of personal information vital to its successful operations, and to maintaining confidence between the Council and those with whom it carries out business. We want users of our services to feel confident about the privacy and security of their personal information.

The Council is committed to a policy of protecting the rights and privacy of individuals (this includes customers, staff and others) and fully endorses and adheres to the Data Protection Legislation.

Appendix 1 of this document contains technical terms used in this document.

The DPA regulates the processing of information relating to **living** persons in the UK. It requires that data controllers be registered with the UK Information Commissioner and comply with the legally enforceable principles.

In order to operate the Council needs to process certain information about members of the public; current, past and prospective employees, clients and customers; and business partners.

It may be required by law to collect and use information in order to comply with the legislative requirements. The safeguards within the DPA are to ensure that personal information is handled and dealt with properly.

If you require any further information or are unsure about any aspect of data protection you should contact the Council's Data Protection Officer for further guidance.

2. Policy Statement

This policy will be published on the Council's Intranet (Connects) and external facing website. Amendments or revisions will be noted within the document control section. A review will be undertaken every two years. However, policies and guidelines may be altered at any time if amendments are necessary.

This policy applies to all Employees and Elected Members of the Council. Any breach of the Data Protection legislation or the Council's Data Protection Policy is a serious matter and could lead to disciplinary action or criminal proceedings in extreme cases.

Other agencies and individuals working with the Council, and who have access to personal information held by the Council are required to comply with this policy.

Services who deal with external agencies processing Council information are responsible for ensuring those agencies sign a contract agreeing to abide by this policy.

This policy applies to all situations where the Council processes (collect, store, use, share) personal data about living individuals. It includes information stored in any format including but not limited to: electronically, on paper, on CCTV, in photographs and on audio equipment.

All sharing of personal data with other organisations must be appropriately documented. Where sharing is voluntary (rather than statutory) a written agreement called an **Information Sharing Protocol (ISP)** must be in place and signed by all relevant parties. When allowing others to access our data or share data a **Data Processing & Sharing Agreement** must be in place.

The Council in recognising the importance of its data protection obligations approved its first Data Protection Policy in 2012. In addition to the Data Protection Policy there are other key Council policies, supporting information groups, codes and guidance which are in place to support good information handling and further details are documented in Section 4 Roles and Responsibilities

3. Data Protection Principles

The purpose of the DPA is to protect the rights and privacy of living individuals. This ensures that personal data is not processed without their knowledge. The legislation itself is complex; however it is underpinned by a core set of principles. Following these principles will ensure compliance with the DPA. The principles are:-

Principle 1	Personal data shall be processed lawfully, fairly and in a transparent manner.
Principle 2	Personal data shall be collected for specified, explicit and legitimate purposes
Principle 3	Personal data shall be adequate, relevant and not excessive.
Principle 4	Personal data shall be accurate and, where necessary, kept up to date
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 those data are processed
Principle 6	Personal data shall be processed in a manner that ensures appropriate security of the personal data

3.1 Personal & Special Categories (Sensitive Personal) Data

3.1.1 Personal Data

Personal Data is information relating to a living individual who can be identified from that data alone, or from that data and other information which is in the possession of, or is likely to come into the possession of the data controller. For example an address can be personal data if used with other information held to identify someone. The definition of personal data explicitly includes any expression of intention or opinion about the individuals, who is known as the **data subject.**

3.1.2 Special Categories (Sensitive Personal) Data

Special category data is an additional category of personal data that replaces sensitive data and stricter conditions apply to the processing of this type of data. This type of data includes

- the racial or ethnic origin of the data subject
- his/her political opinions
- his/her religious beliefs or other beliefs of a similar nature
- whether he/she is a member of a trade union

- his/her physical or mental condition
- his/her sexual life
- the commission or alleged commission by him/her of any offence
- any proceedings for any offence committed or alleged to have been committed by him/her, the disposal of such proceedings or the sentence of any court in such proceedings.
- Biometric or genetic information

3.2 Data Protection Principles

North Ayrshire Council processes data in relation to its employees, clients, customers and business partners. The Council undertakes to comply with the data protection principles, which are at the core of the DPA and regulate when and how personal data should be processed.

Further information about why the Council manages personal data can be located within our Privacy Policy.

3.2.1 Principle 1 – Processed Fairly, Lawfully and Transparently

North Ayrshire Council will ensure that it has appropriate grounds for processing personal data and ensure it is not used in ways that could have unjustified adverse effects on the individuals. We will ensure that the processing matches the description given to the data subject and highlight any special category or criminal conviction data that will be processed and the relevant processing basis.

All sharing of personal data with other organisations will be appropriately documented.

3.2.2 Principle 2 – collected for specified, explicit and legitimate purposes

North Ayrshire Council must ensure that data is processed for limited purposes. Where personal data is collected the Data Subject will be provided with a fair processing or privacy notice, providing information about what we collect, why this information is needed and how it will be processed. When processing special category data we will ensure that this is in accordance with and reflects the relevant processing conditions set out within the DPA.

3.2.3 Principle 3 – Adequate, Relevant and limited to what is necessary

North Ayrshire Council will identify and collect the minimum amount of information required for the purpose. If it becomes necessary to hold or obtain additional information about certain individuals, that information will only be collected and recorded in relation to those individuals. We will ensure

that the use of special category or criminal conviction data is limited to that which is essential to the purpose of processing.

3.2.4 Principle 4 – Accurate and, where necessary, kept up to date

North Ayrshire Council will have processes in place to ensure that all relevant information is kept accurate and up to date. Where the Council identifies an inaccuracy or a data subject indicates that the information held by the Council or a business partner is inaccurate, the error will be rectified by the **Information Asset Owner**.

3.2.5 Principle 5 – Kept no longer than is necessary for the purposes for which those data are processed

North Ayrshire Council will implement procedures in relation to the retention of personal data in accordance with the Corporate Records Retention Schedule and ensure that we comply with the provisions of the Public Records (Scotland) Act 2011.

The Council will where it is possible, store personal data in a way that limits or prevents identification of the data subject and will in any event ensure that personal data is disposed of in accordance with our retention schedules.

Each Service has a responsibility to ensure that appropriate retention schedules are in place for the records that they hold and secure destruction methods are in place. This applies to both electronic and paper records.

3.2.6 Principle 6 –Personal data shall be processed in a manner that ensures appropriate security of the personal data with regard to technical and organisational measures

The council must evidence and demonstrate to its customers, partners and stakeholders that it can be trusted to protect the confidentiality, integrity and accessibility of the information it holds.

All personal data will be appropriately safeguarded against accidental destruction, theft or any other loss. At all times we will ensure that the confidentiality and integrity of the personal data is maintained.

Where personal data has to be taken off-site this will be restricted to only that which is necessary to undertake the required task. Documented procedures will be in place to mitigate against any loss.

North Ayrshire Council has further guidance and policies available in terms of ICT Security which further addresses the requirements of this principle.

4 Notification of Processing Activities

4.1 Registration

The Data Protection (Charges and Information) Regulations 2018 requires organisations that processes personal information to pay a fee to the Information Commissioner's Office (ICO), unless exempt. The ICO maintains a public register of notified data controllers. The Council is registered under entry number Z4840237

The Council has an Information Asset Register which forms the basis of the Council's documentation of processing activities.

It is the responsibility of the Services' Information Asset Owners to update the register and ensure entries are accurate at all times. The register will be managed by Customer and Digital Data Service.

Elected members require individual notifications because they process personal data in the following capacities:-

- As a member of the Council, e.g. as a member of a Board
- As a representative of constituents, e.g. dealing with complaints
- Representatives of a political party, e.g. campaigning

When processing personal information as a member of the council, Elected Members are covered by the Council's notification and when acting on behalf of their political party they are entitled to rely on the party's notification.

However when processing personal information on behalf of constituents, Elected Members are data controllers in their own right and require to be registered with the ICO. Our Elected Members Privacy policy can be located by clicking here.

4.2 Disclosure of Data

The Council must ensure that personal data is not disclosed to unauthorised third parties which includes, family members, friend, Government bodies, and in certain circumstances, the police. All employees and Elected Members should exercise caution when asked to disclose personal data held on another individual to a third party. Personal data can be disclosed where one of the following conditions applies:

- The individual has given their consent
- Where the disclosure forms part of the Council's statutory task and where DPA permits such disclosure without consent in relation to specific purposes.
- Where the Council is legally obliged to disclose data
- Where disclosure of data is required in relation to a contract which the individual has entered into.

Unless consent has been obtained from the data subject, information should not be disclosed over the telephone. The enquirer should be asked to provide documentary evidence to support their request. This should be a mandate from the data subject authorising the disclosure to the third party.

There are situations where information can, and indeed, must be shared, for example, to protect individuals. Consent can be set aside only if any delay will endanger the health and welfare of the data subject, their dependants or that of another person where this is dependent on the disclosure. A judgement should be formed as to the reasonableness of disclosing the data according to the circumstances.

You must keep a record of third party requests for personal data and of any disclosures made without consent and inform the data subjects of these.

4.3 Information Asset Register

All proposed systems or systems under development which process personal data must be checked prior to final approval to ensure that the data processing will be covered by our Privacy Policy.

All systems (paper & electronic) which process personal data will be recorded on a central log, the **Information Asset Register**.

4.4 Data Subject Rights

Data Subjects have significant and enhanced rights under DPA regarding data processing, and the data that is recorded about them. These rights include

- Right to be informed
- Right of access
- Right to rectification of inaccurate data
- Right to erasure in certain circumstances
- Right to object to certain processing, including the right to prevent processing for direct marketing
- Right to prevent automated decision-making and/or profiling
- Right to data portability

- Right to claim compensation for damages caused by a breach of data protection

An individual has the right to access his/her own personal data. The Council has **30** Calendar days to comply with a request for Subject Access Request (SAR).

No fee will be charged unless the Data Protection Officer considers the request to be manifestly unfounded or excessive and in these cases shall determine the appropriate level of charge.

Further information on compliance with all data subject rights, particularly subject access rights, can be obtained by accessing the Council's SAR guidelines, published on Connects, by contacting your Service area Data Protection Advisory Representative or by contacting the Information Governance Team.

5 Roles & Responsibilities

In recognition of our data protection obligations and in addition to this policy a range of policies, procedures and guidelines promoting compliance and best practice have been developed to support a robust data governance framework.

- Acceptable Computer Use Policy
- Data Breach Reporting and Management Procedures
- Records Management
- Data Protection Impact Assessment Framework
- Freedom of Information
- Information Security
- Information Asset Register
- Risk Management Strategy
- Subject Access Requests
- Privacy and Fair Processing of Personal Data
- Privacy Notice
- Redaction Guidelines

The list is not exhaustive and all relevant data protection and wider information management guidance can be located under the Information Governance section on Connects.

5.1 Employees

All employees and Elected Members are individually responsible for ensuring that processing of personal data is in accordance with the DPA and this policy. It is the responsibility of the individual to familiarise themselves and comply with Council policy and guidance.

Advice can be sought from the Data Protection Officer or the Data Service Team who have responsibility for driving the Council's information governance strategy.

5.2 Data Protection Governance Arrangements

As a controller of data the Council has a corporate responsibility to demonstrate its commitment to data protection and to effectively evidence compliance. Under the DPA, the Council must appoint a Data Protection Officer whose key tasks are legislative and are to;

- Inform and advise the Council of data protection compliance
- Monitor Compliance
- Provide advice of Data Protection Impact Assessments
- Train employees in data protection
- Conduct information audits
- Be the first point of contact for the regulator.
- Have regard to the risk associate with the Council's processing activities.

The Data Protection Officer (DPO) has the corporate responsibility to develop, implement and communicate the Council's Data Protection Policy and procedures. The DPO will help and advise the Council on meeting its data protection obligations including;

The Council's ICT & Cyber Security Architect ensures compliance with principles six of the DPA relating to data security by providing advice and guidance on information security.

The Information Management Officer will promote good information management through the provision of advice and guidance to services and has responsibility for information and records management.

6 Information Sharing

Processing of personal and sensitive personal data must always be fair, lawful and transparent. However the DPA should not be seen as a barrier to effective information sharing with partner organisations and other service areas. It provides a framework to ensure that when personal information is shared that it is:

- appropriate
- proportionate
- on a need to know basis

Refer to Connects for further guidance on Information Sharing. Appendix 2 provides a check list with regard to information sharing.

There are many situations where information can, and legally, must be shared. In these circumstances of information sharing the following must be considered.

- What information needs to be shared?
- With Whom?
- Why?
- How?
- What are the risks of not sharing the information?
- Could the same aim be achieved without sharing the data or by anonymising it?

6.1 Data Processors

Where a third party processes information on behalf of the Council, the Council is known as a data **Controller** and the third party is the **Processor** and there must be in place a written agreement called a data sharing and processing agreement that documents the handling controls in relation to the data.

The Council publishes its Information Governance Procurement Framework on Connects and the purpose of this is to help those involved in supply chain activities to assist, with regard to data protection management, in the:

- Identification of information governance requirements
- Mitigation of information risk within the procurement process

7. Data Protection Impact Assessment

Data Protection Impact Assessments (DPIA) replaces Privacy Impact Assessments (PIAs) which were considered good practice under DPA 98 and in certain circumstances it is mandatory to carry out an assessment.

DPIA is a process which enables the council to address the potential privacy risk and impact from collecting, using and disclosing of personal information as part of proposed new initiatives. A DPIA will ensure data protection compliance and privacy concerns are appropriately addressed.

Services must undertake a DPIA before making major changes to an existing way of handling information.

Its purpose is to;

- identify any potential and likely impact on privacy;
- minimise and manage any identified impact and privacy risk;
- ensure a “privacy by design” approach;
- demonstrate compliance with data protection.

Guidance and details on how to conduct a Data Privacy Impact Assessment can be found on Connects. Advice on and assistance with carrying out a DPIA can be obtained from the Data Protection Officer.

In cases where the processing risks are high and cannot be reduced you should consult with the DPO if you still intend to process the data.

8 Management of Data Incidents and Breaches

The Council has a legal responsibility to ensure that personally identifiable information about living individuals is processed securely, held confidentially and with integrity and accessed only by those who have a justified right of access. This must happen within 72 hours of becoming aware of an incident. Failing to report an incident or doing so late may result in sanctions or penalties being levied on the Council.

It is vital that the details of an incident are established and within 24 hours of becoming aware of an incident an assessment must be undertaken and for an initial evaluation to be made.

Further information on how to report a data breach can be found in the Data Breach Reporting and Management Procedures.

Breach of this policy may be regarded as a serious act of misconduct and may lead to disciplinary action. Employees must therefore make every effort to ensure that they understand their responsibilities under this policy.

The Head of Democratic Services and in discussion with the Data Protection Officer will determine if these breaches are to be reported to the Information Commissioner’s Office.

It is a criminal offence under the DPA to knowingly or recklessly obtain, disclose or procure personal data without the consent of the Data Controller and North Ayrshire Council reserves the right to report any such incidences to the Information Commissioner’s Office and/or Police Scotland.

9 Review

This policy will be reviewed on a two yearly basis, unless earlier review is deemed necessary by changes in legislation, regulatory guidance or a change in Council policy.

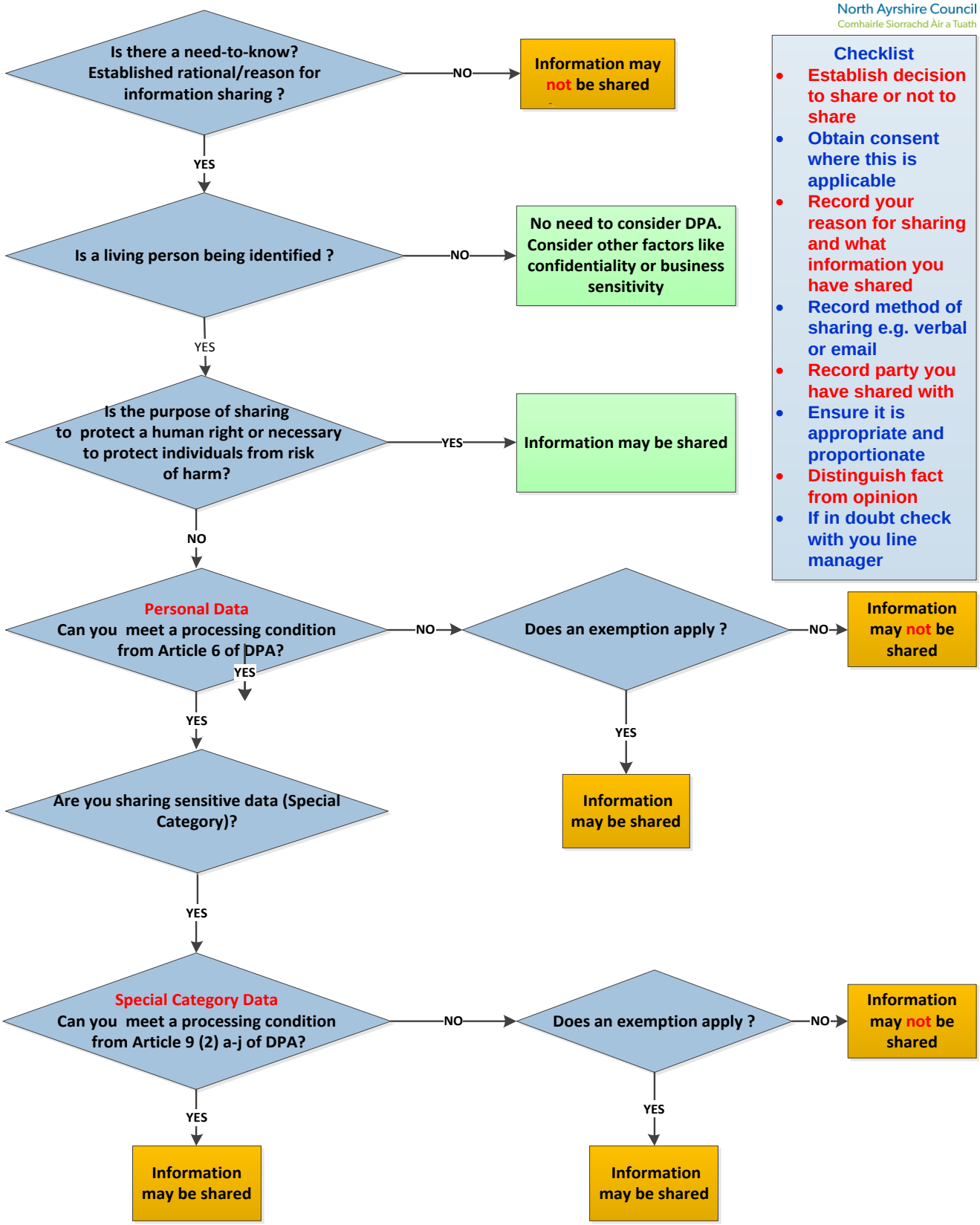
Appendix 1 - Definitions

DEFINITIONS	
Data Controller	Any person (or an organisation) who makes decisions with regard to particular personal data, including decisions regarding the purposes for which personal data are processed and the way in which the personal data are processed.
Data Processor	Any person (or organisation) contracted by a data controller to process information on their behalf. The data controller retains legal liability for the processing and protection of the information.
Data Processing and Sharing Agreement	Ensures the "rules" of sharing have been clearly communicated and understood by all parties. Aims to ensure that methods of sharing, storing, use, in transit, backups, destruction, etc. are agreed before sharing is undertaken.
Data Subject	Any living individual who is the subject of personal or sensitive data.
Information Asset Owner	The business manager who operationally runs and is responsible for the information asset; their role is to understand what information is held and how it is processed
Information Asset Register	Central log located on Connects which records all systems (paper & electronic).
Information Commissioner Office (ICO)	The UK's independent authority set up to uphold information rights in the public interest, promoting openness by public bodies and data privacy for individuals.
Information Sharing Protocol	Is a commitment and agreement to put in place the arrangements required to ensure secure and appropriate sharing of information and data between organisation, whilst maintaining the controls that give assurances and accountability and respects the right to privacy.
Personal Data	Data relating to a living individual who can be identified from that information or from that data and other information in possession of the data controller. Includes name, address, telephone number, national insurance number. Also includes expression of opinion about the individual, and of the intentions of the data controller in respect of that individual.
Processing	Any operation related to the holding, organisation, retrieval, disclosure and deletion of data and includes: obtaining and recording data; accessing, altering, adding to, merging, deleting data; retrieval, consultation or use of data; disclosure or otherwise making available of data.
Special Category Data (Sensitive) Personal Data	Different from personal data, relates to racial or ethnic origin, political opinions, religious beliefs, trade union membership, health, sexual life or criminal convictions, biometric, genetic. This type of data is subject to much stricter conditions of processing.
Third Party	Any individual/organisation other than the data subject, the data controller or its agents.

Appendix 2 – Information Sharing Checklist

Information Sharing Checklist

North Ayrshire Council
Comhairle Siorrachd Àir a Tuath



Checklist

- Establish decision to share or not to share
- Obtain consent where this is applicable
- Record your reason for sharing and what information you have shared
- Record method of sharing e.g. verbal or email
- Record party you have shared with
- Ensure it is appropriate and proportionate
- Distinguish fact from opinion
- If in doubt check with you line manager

Guidance on Processing Conditions, Data Protection and Privacy can be found at the following links on Connects

http://naconnects.north-ayrshire.gov.uk/services/information-governance-assurance/data-protection.aspx#important

http://naconnects.north-ayrshire.gov.uk/documents/information-governance-assurance/data-protection/privacy-fair-processing-guidance.pdf