

Glasgow City Council – position statement on requests for data processor agreements

Background

We have received a large number of requests from external organisations asking us to enter into ‘data processor agreements’ in order to comply with the General Data Protection Regulation (GDPR).

These requests are mainly from contractors but also from agencies representing our service users)

Data Processing/Sharing Agreements

We have conducted an extensive assessment of data flows into and out of the council.

This review has identified areas where either of the following are required:

- **data processor agreements** - regulating the position where someone acts as our data processor, or much less commonly, where we act as data processor to someone else
- **data sharing agreements** - where personal data is shared on a data controller to data controller basis, are required.

As a result we are contacting these organisations to put the required agreements in place.

NOTE: We do not however consider that such agreements are required for the majority of organisations who have contacted us, particularly where the proposed agreement describes the council as data processor to the organisation or company in question.

Understanding a Data Processor

A ‘**processor**’ is described as a ‘natural or legal person, public authority, agency or other body which processes personal data on behalf of the controller.’

The ‘**controller**’ is defined as a ‘natural or legal person, public authority, agency or other body which, alone or jointly with others, determines the purposes and means of the processing of personal data...’

Important: the critical point is that the ‘processor’ only processes personal data on the documented instructions from the ‘controller’.

There are very few instances where we act on instructions from outside agencies and so only in these very few instances are we acting as a data processor to anyone else. The following examples outline how this works.

Example one: If a contractor or supplier provides us with contact details of their staff, we are not under instruction from the contractor or supplier, in relation to that information, but will instead decide what to do with it, consistent with the data protection principles. We become the data controller of that information.

Example two: The same holds true for external organisations which hold contact details for our staff. Having been given those details, the external organisation is now the data controller of that copy of the information and is itself responsible for processing it in way which complies with the data protection principles.

Understanding a Data Sharing Agreement

We consider that data sharing agreements (between a controller to controller) are appropriate where we are routinely exchanging personal data with other organisations who are able to make their own decisions on how to use the data once they have it.

We do not consider it appropriate or necessary where the only details exchanged are matters such as staff contact details.

The following examples show where we would enter into the different types of agreement.

Example one: data sharing agreements:

- large scale data sharing with other public authorities such the DWP or the NHS
- appointment of contractors who need to be given personal data about our service users in order to provide services to them, such as providers of social care or providers of counselling services (this is only the case if the contractor brings operational independence in how they use the personal data)
- appointment of external advisers who need access to personal data in order to provide services to us.

Example two: data processor agreements – council as data processor:

- we provide ICT services to an external agency
- we provide services under instruction from other public bodies.

Example three: data processor agreements – council as data controller:

- appointment of contractors who do not have operational independence in how they use the personal data, such as a bulk mailing or printing company
- use of externally-hosted ICT applications.

Guidance from the Information Commissioner's Office on data controllers and data processors can be found on their website [here](#).