

ADVICE - DATA SHARING

If you send personal data out of the school to a third party – either physically or electronically it is important to have something in place as evidence of GDPR compliance. The type of document you should use will depend on who you are sharing data and whether you have a contract with that party. We have previously provided information on three arrangements which you should use for data sharing:

- Data Sharing Agreement
- Data Processing Agreement
- Amended Contract Terms

Some schools and academy trusts have raised queries about this, noting that it is not always clear which document you should use. We hope that this advice note will clarify the different types of arrangements and the steps you should take to ensure you and the third party are GDPR compliant.

Data Sharing Agreement

If you have a legal obligation to share data with another organisation, usually a local authority or the Department of Education, but do not have any contract or terms and conditions to regulate how the information is used by the recipient, you should use a **Data Sharing Agreement**. In this scenario, both parties are data controllers, i.e. they both collect data and make decisions as to how the data will be processed. You can't force the local authority or government agency to use the data in any particular way. In these circumstances you might assume that both parties are compliant, but it is nevertheless good practice to have a Data Sharing Agreement in place to evidence that you and the other parties are taking your GDPR obligations seriously.

We sent a template Data Sharing Agreement to you last year which you may already have made use of. Alternatively, you may already have received a Data Sharing Agreement from the other bodies which they have asked you to enter into. If however no Data Sharing Agreement is in place yet, you can use our exemplar and complete the following steps:

- Use your Data Mapping Exercise to identify parties that you share personal data with third parties under a *legal obligation*.

- Create a Data Sharing Agreement for each third party. You can use the exemplar we have provided in Bulletin 10.
- On the exemplar, you will need to amend a few details on the first page:
 - **Parties** – change to your school/MAT and the name of the third party
 - **Agreed Purposes** - state why you are sharing data e.g. *Data is shared with Warwickshire County Council to collect data for the School Census.*
 - **Permitted Recipients** – include any other third parties with whom the data may be shared with e.g. School Census data is also shared with the Department for Education for the National Pupil Database.
 - **Shared Personal Data** – state what personal data you are sharing. This should already be detailed in your Data Mapping Exercise so you can pull your information from there e.g. *name, date of birth, SEN information*
- On the last page the appropriate member of staff should sign and date the agreement and another copy.
- Send both copies to the third party for them to sign and date. One should then be returned for your records and the other can be kept by the third party.

Amended Contract Terms

In all other cases where you share information you should be doing so because you choose to do so, either because you want to deliver the curriculum in a particular way (such as signing up to an on-line app, or going on a curriculum trip arranged by a third party) or because you would like an external organisation to deliver necessary support services that you would otherwise have to undertake yourselves (such as a payroll provider or, indeed our DPO service).

You should have a contract with the third parties you use. You may have a physical or electronic copy of your contract, and it may call itself a contract, or a 'Service Level Agreement', or just be described as being the 'Terms and Conditions' attaching to the purchase of a particular service.

Many of your suppliers may have already been in touch with you to amend your current agreement so that it is GDPR compliant. However, if not, in Bulletin 8 we provided a

standard letter to send to suppliers and contractors, and the standard clauses that should be added to your contract. You should follow these steps:

- Use your Data Mapping Agreement to identify data that you share with a third party under the lawful basis of *contract* (you may also want to take this opportunity to review your Data Map – if you have assented to any terms and conditions you may actually have a contract and will want to follow these steps.)
- Use our GDPR Letter to Suppliers exemplar (Bulletin 8) to draft your letter to the supplier. You will need to make a few amendments which are highlighted on the document.
- Use our GDPR Variation Schedule and make a couple of amendments.
- Send both the letter and the Variation Schedule to your supplier. This is on a unilateral basis so there is no need to do anything further unless the supplier does not agree to the clauses, in which case, please get in touch with the DPO Service.
- Ensure you keep a copy of the letter and Variation Schedule.

If you have entered into a contract since 25 May 2018 your contract should be GDPR compliant, in which case you won't need to send the letter and variation schedule. However, if in doubt, please get in touch with us so we can check whether the contract meets the requirements of GDPR.

Data Processing Agreement

You only need to use a Data Processing Agreement where you have no contract in place with a supplier, and where you request a Provider to use your data to perform a service (such as a payroll provider). Where possible, we would advise you to have a contract with other parties as these are legally binding agreements, but if this is not practical, you can use our exemplar from Bulletin 10, to evidence that you have considered your responsibilities and are committed to GDPR compliance. Again, you should follow similar steps as above:

- Use your Data Mapping Tool to identify where you share personal data with third parties under any other lawful basis (not *legal obligation* or *contract*) e.g. *consent*, *public task*.
- Use our exemplar to create a Data Processing Agreement for each party.
- On the exemplar, amend the following details on the first page:
 - **Parties** – change to your school/MAT and the name of the third party. You will also need to go through the other pages and edit each [School/Academy Trust] to suit your school.
 - There are two possible clauses for you to use at Clause 1.5. Either:
 - ‘*The School/Academy Trust does not consent to the Provider appointing any third party processor of Personal Data under this agreement.*’ – Use this where you do not wish for the third party to share any of your data.
 - or
 - ‘*The school consents to the Provider appointing [name of Third Party Processor] as a third-party processor of Personal Data under this agreement. The Provider confirms that it has entered or (as the case may be) will enter with the third-party processor into a written agreement incorporating terms which are substantially similar to those set out in this clause. As between the [School/Academy Trust] and the Provider, the Provider shall remain full liable for all acts or omissions of any third-party processor appointed by it pursuant to this clause.*’ – If the Provider needs to, or may need to, share data, use this clause.
- On the last page the appropriate member of staff should sign and date the agreement and another copy.
- Send both copies to the third party for them to sign and date. One should then be returned for your records and the other can be kept by the third party.

We hope that this advice note is helpful, but please do not hesitate to contact us if you have any further queries.

