DOCUMENT DETAILS

Document Name:	Special Category & Conviction Data Processing Procedure			
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Document author	Jo Welham, Data Protection Officer			
Document owner	Andy Comyn, Deputy CEO & CFO			
Applicability	Students	X	Staff	X
	Governors	X	Other	
Summary	The purpose of this document is to set out legally compliant procedure for handling and processing special category data and conviction data.			

DOCUMENT CONSULTATION & APPROVAL

Consultation person / body	Date passed
n/a	

Approval body	Date approved
IT/MIS Board	09/12/22
Digital Strategy Group	08.01.25

IMPACT ASSESSMENT

A significant negative impact has been identified in the following area and a full impact assessment / risk assessment is available.

Equality & diversity	No
UK GDPR	No
Health & safety	No
Safeguarding	No

Friendly version of policy available	No

POLICY CHANGES

Key updates	Impact	Section reference
Update to procedure for referring student disclosures to safeguarding team		5.4

CONTENTS

1. INTRODUCTION

1.1 The UK GDPR requires that processing of any personal data needs to satisfy one of the six legal bases for processing that it defines. If the personal data you need to process falls under the definition of 'special category' data as defined by the UK GDPR, or is data relating to an individual's criminal convictions, it is necessary to identify a further condition for processing that data in addition to the legal basis already identified. These further conditions are also defined by the UK GDPR and detail is given in the procedure below.

1.2 Processing of this information is in accordance with Schedule 1 of the Data Protection Act 2018, and this procedure is the appropriate policy document that enables that processing.

2. OBJECTIVE

2.1 This procedure aims to ensure that colleagues process special category and criminal conviction data lawfully as defined by the UK GDPR and the Data Protection Act 2018 where processing of this nature is necessary.

3. RESPONSIBILITIES

3.1 All information users who process special category or criminal conviction data are responsible for reading this procedure and acting on it.

4. DEFINITIONS

4.1 'Special Category' data is defined by the UK GDPR and itemised in the procedure statement below.

5. PROCEDURE STATEMENT

5.1 Article 6(1) of the UK GDPR states that processing shall be lawful only if and to the extent that at least one of the following applies:
   (a) The data subject has given consent to the processing of their personal data for one or more specific purposes.
   (b) Processing is necessary for the performance of a contract to which the data subject is party or in order to take steps at the request of the data subject prior to entering into a contract.
   (c) Processing is necessary for compliance with a legal obligation to which the controller is subject.
   (d) Processing is necessary in order to protect the vital interests of the data subject or of another natural person.
   (e) Processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller.
   (f) Processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party, except where such interests are overridden by the

interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child.

5.2   The UK GDPR defines Special Category Data as personal data relating to:
- Ethnicity or racial origin
- Political or philosophical beliefs, religious beliefs and trade union membership
- Health, sex life or sexuality
- Genetic or Biometric data

Processing of any of these types of data requires both a legal ground (as in 5.1) for processing the personal data, and a further special category condition in order for the processing of this data to be lawful.

Criminal conviction data is not defined as special category data under the UK GDPR, but needs to be treated the same way as special category data and can only be processed after meeting one of the special category conditions for processing in addition to a legal basis for processing.

5.3   Additional conditions for processing special category and criminal conviction data are contained within Article 9(2) of the UK GDPR:
- (a) The data subject has given explicit consent to the processing of those personal data for one or more specified purposes.
- (b) processing is necessary for the purposes of carrying out the obligations and exercising specific rights of the controller or of the data subject.
- (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.
- (d) processing is carried out in the course of [the organisation's] legitimate activities with appropriate safeguards by a foundation, association or any other not-for-profit body with a political, philosophical, religious or trade union aim.
- (e) Processing relates to personal data which are manifestly made public by the data subject.
- (f) processing is necessary for the establishment, exercise or defence of legal claims or whenever courts are acting in their judicial capacity.
- (g) processing is necessary for reasons of substantial public interest.
- (h) processing is necessary for the purposes of preventive or occupational medicine.
- (i) processing is necessary for reasons of public interest in the area of public health, such as protecting against serious cross-border threats.
- (j) processing is necessary for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes.

In the main, special category data and criminal conviction data are processed on the basis of the college's statutory obligations (condition 9(b)) or substantial public interest (condition 9(g)). Occasionally data related to health is processed on the basis of consent (condition

9(a)). These are also the conditions under which processing information of this nature meets the requirements of Schedule 1 of the Data Protection Act 2018.

5.4   A data subject will normally disclose a criminal conviction, or special category information such as a health condition, when joining the College. Please see Section 7 for college policies and procedures relevant to recruitment. This will be the point at which consent will most usually be given to processing where this is necessary.

Occasionally, disclosure of previously unknown special category information or a criminal conviction will happen during the course of a student's or staff member's time with the College. If a disclosure is made to you:
by a student: please refer this immediately to the safeguarding team using the Safeguard system:
https://portal.nottinghamcollege.ac.uk/portal_apps/corporate/safeTrack_apps/Safeguarding/default.aspx
by a member of staff: please refer this directly to the relevant area's People Services Business Partner.

5.5   If you need to process data of this nature, you need to establish your legal basis for processing this data **and** the **further** condition that is applicable because the data that you need to process is special category. It is essential that you ensure that there is no other means of obtaining the same information, for example, asking someone for dietary requirements is preferable asking someone for their special category health data when all you need to know is what kind of meal they need.

It is also essential that data of this nature is held securely and that it is available only to people who absolutely need to see it. This security should be afforded to any personal data.

If you need assistance with identifying your legal basis and/or conditions for processing, how this data should be stored or how to notify a data subject that is necessary to process their personal data, please contact the data protection officer at dataprotectionofficer@nottinghamcollege.ac.uk.

6. RECORDS

6.1   The College is obliged to record where it holds all the personal data it processes and this is particularly important with special category and criminal conviction data. If you need support with processing of this nature, please contact the data protection officer at dataprotectionofficer@nottinghamcollege.ac.uk.

7. REFERENCES

7.1   This procedure was written to aid compliance with the UK GDPR and the Data Protection Act 2018.

7.2   Related College policies, procedures and information:
- Safeguarding Policy
- Employee, Worker and Contractor Privacy Notice (for staff)
- Privacy Notice for students
- Data Protection Policy
- Recruitment and Selection Policy
- DBS and Recruitment of Ex-Offenders Policy
- Equality, Diversity and Inclusion Policy