

2. Lawful basis & legal framework

1. The Legal Position in Respect of Information Sharing

The Legal Framework

The principal legislation concerning the protection and use of personal information is:

- a) General data Protection Regulation 2016
- b) Data Protection Act 2018
- c) Human Rights Act 1998 (Article 8)
- d) The Common Law Duty of Confidence

Other legislation may be relevant when sharing specific types of information.

2. Legal powers to share information

Local authorities are able to provide services, collect revenue and undertake a wide range of functions because they are authorised to do so either expressly or implicitly by statute. In view of this any sharing of information that is not authorised by statute would be unlawful.

Therefore, a legislative basis must be identified prior to any sharing of information within a partnership arrangement.

Appendix 2 identifies some of the relevant legislation that facilitates the lawful sharing of information. The legislation listed is not definitive, but represents the most likely to apply to partnership arrangements involving Wiltshire local authorities and partner organisations.

3. The General Data Protection Regulation 2016

Lays down rules relating to the protection of natural (living) persons with regard to the processing of their personal information, and provides in particular a range of rights to protect personal data.

Any organisation processing personal information must comply with six principles, and demonstrate compliance with the regulatory requirements including meeting individuals' rights. The Regulation recognises the importance of sharing by stating that free movement of personal data shall not be restricted provided the principles are met.

4. The Data Protection Act 2018

The Data Protection Act 2018 governs the protection and use of personal information relating to living individuals and specifically adopts the bulk of GDPR, applies broadly similar principles to processing activity falling outside of GDPR, and implements the Law Enforcement Directive in respect of processing for law enforcement and intelligence service purposes.

Any organisation processing personal information is still responsible for notifying the Information Commissioner of that processing.

Although primarily concerned with protecting personal information, the Act recognises the need to share personal information in certain circumstances. It therefore contains provisions which permit the sharing of such information in certain situations.

2. Lawful basis & legal framework

5. The Human Rights Act – Article 8

Article 8.1 states that:

“Everyone has a right to respect for his private and family life, his home and his correspondence”

However, this right is not absolute. Article 8.2 acknowledges that under certain conditions, this right can lawfully be overridden

6. The Common Law Duty of Confidentiality

Information has a necessary quality of confidence when it is of a confidential character. This does not mean that the information need be particularly sensitive, but simply that it must not be publicly or generally available. For personal information to have the necessary quality of confidence it:

- (a) Is not in the public domain or readily available from another source;
- (b) Has a degree of sensitivity; and
- (c) Is communicated for a limited purpose and in circumstances where the individual is likely to assume an obligation of confidence, e.g. health practitioner/patient, banker/customer, solicitor/client, etc.

The Common Law duty of Confidentiality requires that unless there is a statutory requirement or other legal reason to use information that has been provided in confidence, it should only be used for purposes that the subject has been informed about and has consented to.

This duty extends to deceased persons as well as living individuals.

Where such a duty exists, it is not absolute. It can lawfully be overridden if the holder of the information can justify disclosure as being in the public interest.