

Data Protection Policy

THE NORTH HIGHLAND COLLEGE

Data Protection Employee Records - Policy and Practice

Introduction

The Data Protection Act 1998 replaces the Data Protection Act 1984. The new Act is in many ways similar to the 1984 Act. Data Controllers must follow certain principles in relation to the data that they hold. Individuals have rights of access to data which is held on them and rights to sue for damages if various offences occur. In relation to employee records, the most important differences are that the 1998 Act: covers manual as well as computerised records introduces a broader definition of 'sensitive personal data' and restrictions on its processing. In implementing the legislation the North Highland College intends to adopt a simple and straightforward policy that will, so far as is possible, be easy to understand and unambiguous in its application. This is best achieved by adopting the principles of openness which will, in turn, contribute to the fostering of open and honest management. We should not keep in record form any information, opinion or judgement that we would not be comfortable showing to its subject and explaining and justifying if called upon to do so.

Policy

Subject to the following provisions employees will have the right of open access to their personal employment records.

1. SCOPE

A *personal employment record* is a manual and/or electronic record, and their contents, which is capable of enabling the identification of the particular employee by way of an index and/or a personal identifier e.g. name, any form of reference number etc. including:

- any record the contents of which relate exclusively to a named employee and which is held in the Human Resources Department, and which would be regarded, in whole or in part, as being the '*personnel record*'.
- any record the contents of which relate exclusively to a named employee and which is held in the Payroll Section, and which would be regarded, in whole or in part, as being the '*payroll record*'.



- any record the contents of which relate exclusively to a named employee and which is held in the Payroll Section, and which would be regarded, in whole or in part, as being the 'payroll record'.
- any similar or equivalent record.

The above does not imply any requirement to create such a record where no such record exists at present. However, any records that exist or are created must comply with this policy.

2. WHO MAY KEEP SUCH RECORDS?

2.1 The ownership of a personal employment record rests with the North Highland College. In order to ensure clear accountability for the proper conduct of such records it is important to identify who may establish and maintain them. This can only properly be based on the principles of 'need' and then 'access'.

Personal employment records may only be established and maintained by:

- the Human Resource Team under the direction of the Section Leader of Human Resources.
- the Assistant Finance Officer (Payroll) under the direction of the Finance Section Leader.

2.2 Low level data (e.g. job descriptions) may be kept at a lower level and would not fall within the scope of these provisions except where it is traceable by a personal identifier.

2.3 Responsibility for maintenance shall be delegated to the relevant staff within the HR Department.

2.4 It follows that, operationally, the Human Resource Section Leader is responsible for the proper application of this policy.

2.5 No other personal employment records may be established or maintained. In due course electronic records will lead to the position whereby it will be inappropriate for reason of economy and efficiency for more than one record to be established and maintained.

2.6 By the effective date of this policy any other records of the type, or equivalent to the type, covered by this policy will be destroyed. Responsibility for this rests with the IT Section Leader and relevant Head of School/Department.

3. OTHER EMPLOYMENT RECORDS

There are, from time to time, requirements to establish and maintain 'one off' records for particular purposes e.g. complex disciplinary cases, grievances etc. where it is not reasonably practicable to keep the whole record in a single



file. Secondary records may be established for these purposes however they must be referenced in the main record and the same rights of access apply.

4. WHAT MAY A PERSONAL EMPLOYMENT RECORD CONTAIN?

4.1 It may contain any information legitimately required for the purposes of:

- statutory employment records, and / or
- operational management and administration

These may include, *inter alia* :

- applications for vacancies and CV's
- interview records
- references
- medical reports
- offers of employment
- statutory statements of terms and conditions
- disciplinary and grievance records
- performance appraisals and similar reviews
- notes of informal meetings and interviews
- relocation details
- allowances and expenses
- training details
- salary, additional payments and bonuses etc
- work permits
- related correspondence
- attendance records
- personal information relating to gender, ethnicity etc, required for monitoring purposes

These are examples only and there will be other legitimate entries that may be included.

4.2 What may not be included is information, data or other material that cannot legitimately be shown to be related directly or indirectly to the employment of the employee concerned.

4.3 Within the individual personal employment record, all records must be kept in a form that is, by and large, chronological, easily readable and auditable. They should be kept in a secure location with controlled access for those that are authorised to have access.

5. SENSITIVE PERSONAL DATA

5.1 The 1998 Data Protection Act defines 'sensitive personal data' as personal data which relates to:

- a. racial or ethnic origin of the data subject
- b. his/her political opinions
- c. his/her religious beliefs or other beliefs of a similar nature



- d. whether he is a member of a trade union
- e. his/her physical or mental health or condition
- f. his/her sexual life
- g. the commission or alleged commission by him of any offence, or
- h. any proceedings for any offence committed or alleged to have been committed by him, the disposal of such proceedings or the sentence of any court in such proceedings

5.2 The Act prohibits the processing of sensitive data except in specified circumstances, for example ethnic monitoring. It is the North Highland College's policy that the explicit and informed consent of employees will be obtained for the processing of information which may include sensitive personal data.

5.3 For prospective and new employees this will be obtained by a specific signed declaration in the employment Application Form. For current employees consent will be sought when they are issued, normally annually, with copies of their personal data for verification of its accuracy.

6. 'SECRET' OR 'ALTERNATIVE' RECORDS

Secret or alternative records may not be established for the purposes of bypassing the spirit or intention of this policy.

7. EMPLOYEE RIGHTS

7.1 Employees will have right of access to their personal employment record normally ***within 40 days*** of written notice being received by the Human Resource Section Leader. If a telephone request for access is received the caller must be notified that the request should be put in writing using the North Highland College's request for access form. ***In response to a request, the appropriate official receiving the access request will confirm, in writing, the date, time and place at which access will be provided.***

7.2 That access will be by arrangement and viewing of the contents of the record will be at its kept location in the presence of the Human Resource Section Leader. (The sole purpose of this provision is solely for the purposes of ensuring that no material is inappropriately removed or destroyed).

7.3 The access charge for subject access will be the maximum permitted by the Regulations.

7.4 Employees may, within reason, request one copy of any information they are entitled to view. A record will be made of any copies requested and ***where possible***, provided, including date and place together with the name of the person providing them.

7.5 An employee may challenge the accuracy of an entry in the record and where, on investigation, it is found to be inaccurate shall be entitled to have the entry corrected or removed, whichever is the most appropriate and to have this action confirmed in writing as having been done.



7.6 An employee may challenge the legitimacy of making or keeping particular data or other information in the record.

8. ACCESS BY OTHER EMPLOYEES

The Human Resource Section Leader and his/her authorised staff. For more information see the File Access Policy documentation available from the Human Resource Team.

8.2 Other employees who have line management responsibility may be authorised e.g. Section Heads. Such authorisation shall be in writing. It may be for complete access or for defined limited purposes (as per file access policy).

8.3 Personal pay information will be available only to the above persons on a "need to know basis".

9. HOW MAY AN EMPLOYEE EXERCISE THE RIGHT TO CHALLENGE THE ACCURACY OR LEGITIMACY OF AN ENTRY?

9.1 In the case of the records held by HR and Payroll to the Human Resource Section Leader or Assistant Finance officer (Payroll) respectively.

9.2 At all stages, any decision shall be taken in consultation with the appropriate HR Adviser and reasons shall be given to the employee explaining the decision. Under the Data Protection Act 1998 the employee should receive a written response within 21 days stating what action has or will be taken or stating the reasons for regarding the concerns as unjustified.

9.3 If still not satisfied the employee may refer the matter to the Human Resource Section Leader, (or his/her nominee) for adjudication.

10. REFERENCES - EMPLOYEES AND PROSPECTIVE EMPLOYEES

References made on behalf of NHC can only be given by the Principle or Human Resources Section Leader.

10.1 These require particular care. There are legal as well as personal and professional obligations.

10.2 In general the obligation is to ensure that all references, oral or in writing, given in respect of an employee of the North Highland College should contain only information that is factual or is honest opinion or judgement that is capable of being demonstrated as being reasonable by reference to actions, events or circumstances. An individual may sue for damages if he/she suffers loss or detriment as a consequence of information given in error or with malicious intent.

10.3 References given formally on behalf of the North Highland College shall be given on headed letter paper and **signed** by the author. Where a proforma is completed, this must be authenticated by an official The North Highland



College stamp and/or the signature of the author. All references should contain the statement:

"this is a reference given in strictest confidence and without legal responsibility. We do not expect you to release this to any third parties without first obtaining our explicit and written consent."

this makes it clear that the recipients rely on the reference at their own risk. However, this will provide no defence against an action for libel and no certain defence against an action for negligence.

10.4 A copy of each reference given should be retained in the data subject's personal employment record.

10.5 Confidential references given by the North Highland College are exempt from subject access under the Data Protection Act. Nevertheless they should be written in the knowledge that the receiver ***may seek consent to*** disclose the reference to the prospective employee before or after he/she has been engaged. The North Highland College may, or may not, agree to such disclosure. ***In addition, there are certain legal procedures under which disclosure may be ordered.***

10.6 Employees will be entitled to have access to references received should they so request ***if*** the provider of the reference has consented and there is no other substantial reason for the North Highland College to do otherwise.

10.7 References already received at the implementation date and understood at the time of writing to be "confidential" shall remain so.

11. REFERENCES - FOR CURRENT OR PREVIOUS STUDENTS SEEKING EMPLOYMENT

11.1 The same guidance, responsibilities and obligations described above generally apply.

11.2 The assumption must be that, if any employee is asked to give a reference in whatever capacity (e.g. Course Leader, Tutor etc.) then the reference must be considered to be in an official capacity and must be prepared accordingly.

11.3 Heads of School must ensure that relevant staff are briefed appropriately and that a proper ***record is kept.***

12. PERSONAL REFERENCES - GIVEN IN AN ENTIRELY PERSONAL CAPACITY

These may not be issued on The North Highland College headed paper, must not in any way suggest that comments are other than personal, and do not form part of the employment record.

13. AUDIT



An audit protocol shall be established and included in the programme of internal and external audits.

14. RETENTION

14.1 Employee records covered by this policy shall be retained, after the actual date of the employee leaving, for the following period.

- i. Faculty/School/Department records - 10 years
- ii. HR Records – 5 years (complete record) thereafter (summary of record)
- iii. Payroll Records - In accordance with tax requirements
- iv. Superannuation Records - In accordance with pension scheme requirements
- vi. Student IT accounts - deleted at the end of the Academic Year
- vii. Electronic Data - 1 year for staff electronic data (including Groupwise email), thereafter records shall be destroyed.

14.2 The aim is to achieve a continuous progression towards the standards of best practice that this policy prescribes. However, provision has to be made for repeated non-compliance by a person responsible for the proper establishment and maintenance of a record. Serious and/or repeated non compliance will be regarded as misconduct and will render the person liable to disciplinary action; as detailed in the NHC disciplinary procedures.

15. EFFECTIVE DATE

This policy shall come into effect on 12th August 2002

This policy is without prejudice to other rights that an employee may have as a consequence of Data Protection or other statutory provisions.

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