

## **Harborough District Council**

### **Data Protection Guidelines**

#### **1. Introduction to 1998 Data Protection Act**

1.1 The 1998 Data Protection Act provides a number of important safeguards and rights for personal data held about living individuals. The Act applies to:

- Personal data held in any organised filing system - the data can be held electronically for automatic processing by a computer or in manually maintained systems eg case files, card indexes etc. The conditions of the Act apply if specific information about an individual is readily accessible.
- Personal data means information which relates to an identified or identifiable living individual, including any opinions about them
- Processing personal data, including obtaining, recording, holding, organising, retrieving, using, disclosing and destroying information

#### **2. Data Protection Principles**

2.1 The 1998 Act places responsibilities on both the organisation and those individuals handling the data. It is recognised that in the course of their authorised duties most HDC elected members and staff will need to handle and/or process personal information. As consequence, all elected members and staff should be aware of the data protection principles, which must be complied with

2.2 The following eight principles apply to all personal data:

##### **Principle 1 - Personal data shall be processed fairly and lawfully and shall not be processed unless certain conditions are met**

First condition is that information is obtained fairly and lawfully and the purpose for which the data is to be used and processed is explained to the data subject, at least in outline. The following information must be provided to the data subject:

- Identity of the Data Controller (the Service Manager) or their representative
- Purpose(s) for which the data is to be processed
- Any other information such as the consequences of processing, including disclosures of information

Secondly the justification for obtaining information must be:

- a. The data subject consenting to the processing
- b. Processing for various contractual or legal or statutory purposes – which will apply to many of the Council's activities where personal data is gathered.
- c. Processing is necessary in order to protect the vital interests of the data subject. The Information Commissioner's view is that such issues must be 'life or death' – for example when a data subjects medical records may need to be passed to a hospital casualty unit if they are involved in serious accident
- d. Processing for the pursuit of the legitimate interests of the data controller (subject to any conditions to be defined by the appropriate minister)

The conditions for processing 'sensitive data' are more rigorous and extensive. Sensitive data is defined as:

- the racial or ethnic origin of the data subject
- the political opinions, religious or similar beliefs
- trade union membership
- physical or mental health
- sexual orientation
- criminal record

Justification for holding sensitive data

- Consent of the data subject
- To comply with employment law eg. Ethnic monitoring
- Vital interest of the data subject or other people
- To fulfil your legal obligations
- For health care and management
- Where the information has been made public
- Holding criminal information where justified eg taxi licensing authority holding drivers convictions, employers holding information of attempted fraud or driving convictions of employees if relevant.

If sensitive data cannot be justified then it should be removed from the records

**Principle 2 - Personal data should be obtained only for one or more specified lawful purposes and shall not be further processed in any manner incompatible with that purpose or purposes**

In other words, personal data obtained for one purpose may not be used for a completely different one without prior reference to the individual

**Principle 3 - Personal data shall be adequate, relevant and not excessive in relation to the purpose or purposes for which it is processed**

What is the minimum information that will allow efficient management and discharge of your duties? A judgement will have to be made about what information it is 'reasonable' to collect and kept in order to discharge your duties but information should not be collected or kept 'just in case it is needed'.

**Principle 4 - Personal data shall be accurate and where necessary kept up to date**

Data are inaccurate if they are incorrect or misleading as to any matter of fact. All reasonable steps must be taken by the Data Controller to keep the data up to date.

**Principle 5 - Personal data processed for any purpose shall not be kept for longer than is necessary for that purpose or those purposes**

**Principle 6 - Personal data shall be processed in accordance with the rights of data subjects under the Act**

These include the rights to:

- a. Subject access – see section 5 below
- b. Prevent processing likely to cause damage or distress
- c. Prevent processing for the purposes of direct marketing
- d. Prevent decisions concerned with the data subject's character being made solely by automatic means eg credit worthiness, reliability or conduct
- e. Take action for compensation if damage is suffered by any contravention of the Act by the Data Controller. Great care must be exercised in holding opinions unless backed by facts.

**Principle 7 - Appropriate technical and organisational measures shall be taken against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data**

It is important that security appropriate to the situation is in place and to remember that processing includes operations from collecting and acquiring information through to disposal. Take care when you take personal data eg on lap top computers, case files etc on site visits, working at home etc to ensure that adequate security is kept over the data

**Principle 8 - Personal data shall not be transferred to a country or territory outside the European Economic Area unless that country or territory ensures an adequate level of protection for the rights and freedoms of data subjects in relation to the processing of personal data.**

For Harborough DC, there are unlikely to be many instances of exporting data outside the European Economic Area, but this can be achieved lawfully with the consent of the data subject to the transfer. One area which the Council could be exposed and requires care, is in publishing any personal data on the internet.

### **3. Sharing Data - interpretation of the Eight Principles**

- 3.1 There is an increasing demand and expectation that personal data will be shared both to improve efficiency and customer service within the Council and possibly with other public bodies. In addition there is also a requirement to share information with other public bodies to combat fraud.
- 3.2 In the past, in many instances there has been a strict interpretation of the eight principles of the Act, which has limited the co-operation and sharing of data between responsible bodies. This has led to some high profile cases. For example the Soham murder case where a Police Authority quoted the Data Protection Act as the reason for not retaining and passing information to the Education Authority concerning the questionable character and history of the school caretaker Ian Huntley who was subsequently found guilty of murdering two schoolgirls. In another high profile case, an elderly confused couple who despite having financial means died of hypothermia in their home after the gas was disconnected for non payment of their bills. The gas supplier claimed that the Data Protection Act prevented them passing personal information on the couple at risk to the Local Authority Social Services Department.
- 3.3 Sharing Data between different local authority departments or services, and other public bodies: -
- i. The Information Commissioner's advice is that the first principle must be satisfied, particularly 'personal data shall be processed fairly and lawfully' but for local authorities, the Act allows for processing 'for the exercise of any other functions of a public nature'. The Information Commissioner does however state that to ensure fair processing (Principle 1), the data subject should be made aware of any 'none obvious' purposes for which the information may be used or disclosed.
  - ii. Equally the Information Commissioner is concerned that in any data sharing, the second Principle is properly considered.

- iii. It will also be necessary to consider the legislation that supports the local authority's activities that requires the data sharing. Does the local authority have the power (vires) to undertake the activity that required data sharing? The Department for Constitutional Affairs has produced a schematic flow chart to help determine if data sharing in particular circumstances is lawful - see appendix 1

3.4 Section 29 of the Data Protection Act already allows for sharing information to help combat fraud and illegal activities

3.5 The legal considerations for data sharing are both complex and difficult. There is a requirement to interpret and exercise judgement on the eight Principles of the Act in light of the particular circumstances where the information is to be shared with another responsible body. If Service Managers have particular issues in this area, please contact the Council's Data Protection Officer - John Hopkinson ext 1310

#### **4. Managers' and Staff Responsibilities**

4.1 The responsibilities under the Act are invested in the Council and are delegated to all levels through the formal management hierarchy. The Data Protection Officer is available to ensure continued registration, liaise with the Information Commissioner and provide guidance and support to all staff

4.2 All new staff should receive a copy of these Data Protection Guidelines. All line managers should be prepared to discuss the implications with their staff.

4.3 Appropriate notices and other publicity material should be used to remind staff of the need for Data Protection and Confidentiality, and reassure the Council's clients that their interests are being protected

4.4 Registration of electronically held and processed data by the Council is a requirement under the 1998 Act and this is controlled centrally by the Council's Data Protection Officer.. Full details of all new electronic data systems that hold information on living people must be sent to the Data Protection Officer so that the purposes may be checked against the Council's registration. The Council's registration can be viewed on the Information Commissioner's web site [www.informationcommissioner.gov.uk](http://www.informationcommissioner.gov.uk).

4.5 Service Managers are required to act as Data Custodians and employ all available security measures to protect personal data held in electronic format and as manual records. These responsibilities include procedures to ensure conformance to the first principle of the 1998 Act, that data is obtained lawfully and fairly. To meet these conditions at the point the personal data is collected from the Data Subject either by interview or form completion the following information must be given to the data subject :

- a. **the identity of the Data Controller** – a possible form of words to be used either verbally or printed on the forms to be completed by the Data Subject: *“Your personal data is under the control of the (title of the Service Manager) and if you want to know what personal information is being held about you, please write to the (title of the Service Manager), Harborough District Council, Council Offices, Adam & Eve Street, Market Harborough, Leics LE16 7AG”*
- b. **the purpose(s) for which the data is to be processed** – possible form of words either verbally or printed on the form completed by the Data Subject *“The information you supply will be used to process your (name of application, transaction etc) to determine the (name of the outcome) and (if applicable) may be used for (name of other purpose(s)) Information may be passed on to (name agencies, departments, organisations, companies etc)”*
- c. **justification for obtaining the information** – possible form of wording
  - i. **Data subject consents** – If verbal “You are providing this information voluntarily and with your consent for the purposes I have outlined to you” but a note to this effect should be placed on the record. If the data are collected from the Data Subject by a form *“By signing this form I agree to the information I provide being held, processed and disclosed for the purposes outlined above”*
  - ii **For contractual or legal or statutory purposes** – the appropriate Act or statutory authority or contractual reason for obtaining the personal information must be stated to the Data Subject either verbally or in writing

## 5. Subject Requests

5.1 Data subjects are entitled under the 1998 Act, on making a written Subject Access request and payment of any fee (currently HDC does not make any charge but it does have the power to do so up to £10), to be given a description of:

- i. the personal data
- ii. the purposes for which it is being held
- iii. those to whom the data is being disclosed

This includes not only electronically held data but also any data held in manual records. The statement or copy of the data must include a description or an interpretation of any codes or abbreviations used.

5.2 The data user (the Council) must be satisfied that the data subject has been correctly identified and may ask the data subject for additional information to assist locating personal information before proceeding with the request.

5.3 On receipt of a Request for Access to personal data, at any point within the Council's organisation, it should be date stamped and immediately brought to the attention of the Information Officer, who will log the request and allocate a request number. Following this process the request will be brought to the attention of the appropriate Service Manager.

5.4 The 40-day period for response commences from that date and includes weekends and Bank Holidays. However, if there is insufficient information (a) to identify the data subject or (b) to identify where the data is held, or (c) any fee due has not been paid, a letter and proforma will be sent to the data subject informing the data subject the 40-days period commences on receipt of the required information and any fee due.

5.5 The Service Managers (Data Custodians) affected by a request will be informed and asked to provide in writing, within the specified time, full details of any data held either electronically or in manual filing systems on the data subject

5.6 The Data Protection Officer will log all communications with data custodians, collate all responses to the data subject. Any anticipated delay in the response time will be reported to the Chief Executive

## **6. Data Protection and the Internet**

6.1 The Principles of the Data Protection Act apply to data collected or published on the Internet. Great care should be taken about publishing personal information on the Internet – particularly with regard to Principle 8, transferring personal data to territories outside the European Economic Area [EEA]. By making personal information available on the Internet, means it can be accessed and used from anywhere in the World. All staff should consult their Manager before publishing any personal on the Internet.

## **7. Data Security**

7.1 Personal data should not be disclosed to anyone outside the Authority (except with authorisation) and only to those inside for whose work it is essential. Care should be taken that disclosures of information are not made inadvertently. For example PC screens with personal data should not be visible to others particularly members of the public or even to staff in other sections not authorised to access the information. The Data Custodians must ensure that storage of manual and electronic files containing personal data are secure.

7.2 Personal data should not be transferred or processed on equipment that does not belong to the Council as this introduces further obligations under the DPA.

7.3 If you are working at home using either a HDC owned computer or manual files containing personal data, care must be taken to secure information and ensure that unauthorised persons do not access it.

## **8. General Data Security Guidance**

8.1 Do not discuss any confidential information, which you happen to see in the course of your work with any persons who are not directly concerned with the matter and never outside your working environment. Consider how you would feel if you were the client of the Council and found that your confidential details were being openly discussed, and of course you could be committing an offence under the Data Protection Act as well as possibly involving yourself in a disciplinary matter.

8.2 Do not leave computer screens or manual files displaying confidential data visible to unauthorised persons

8.3 Do not let anybody handle or read file information, if you do not know who they are or what authority they have. Check their identity and authority.

8.4 Do not give your password for any computer system to anyone. If they do not have a password, they do not have access rights.

8.5 Do not discuss confidential information where you may be overheard by anyone not authorised to have that information

8.6 Do not leave confidential documents lying about or in photocopiers. When confidential data is no longer required make sure it is shredded or packed securely in the confidential waste bags for controlled disposal

8.7 Do not leave computer floppy disks, CDs etc containing confidential information unsecured. They can be read by anyone with similar computer hardware and software.

8.8 Do not send confidential information by fax or e-mail unless specifically authorised to do so – there is risk of it being misdirected or if e-mail of it being intercepted.

8.9 Do not leave files containing confidential data lying on desks or other unsecured area in the office overnight or at weekends. Always move confidential files to secure storage when not in use.



## **9. Further Information**

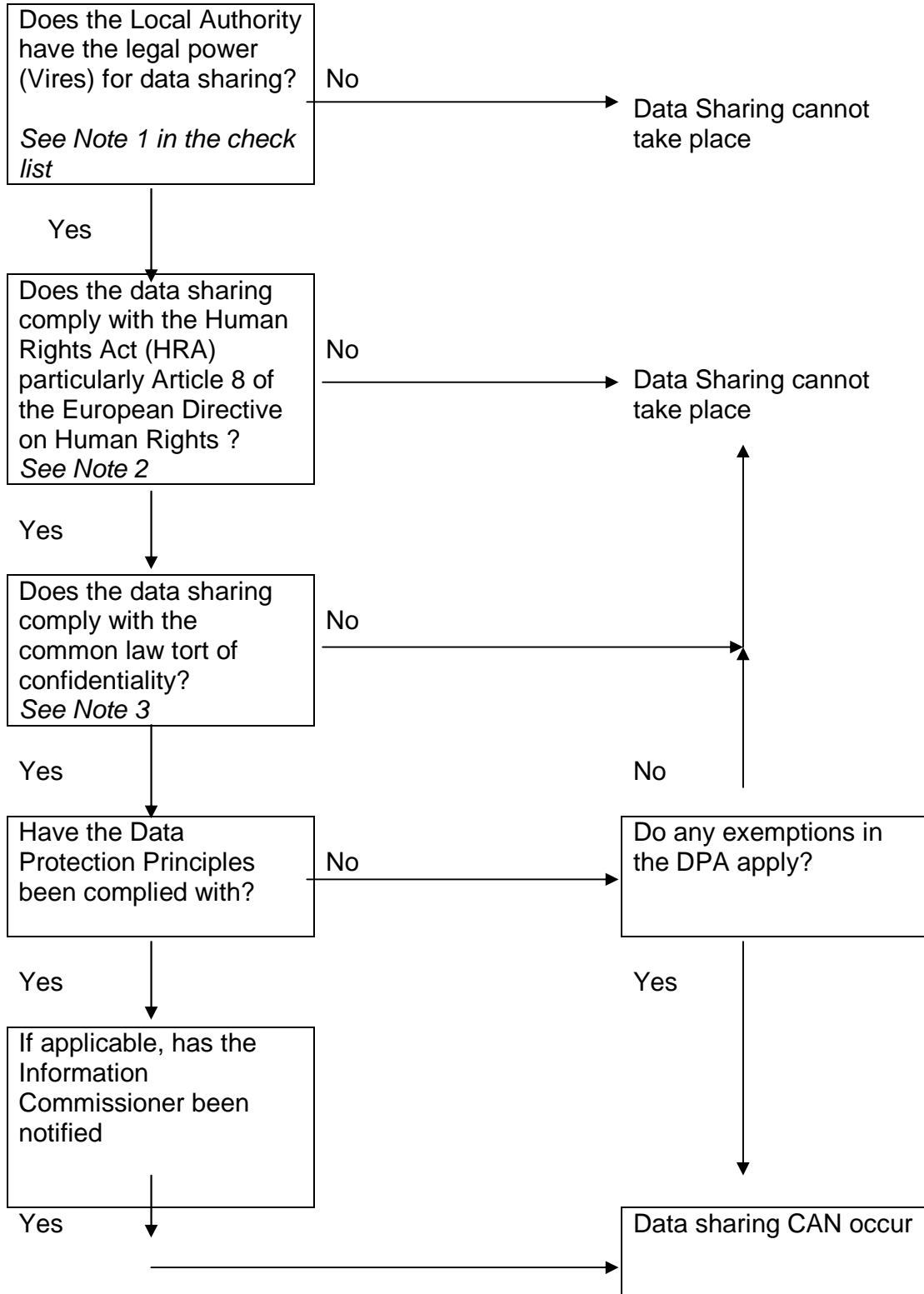
Information and guidance is available on the Data Commissioner's web site - [www.informationcommissioner.gov.uk](http://www.informationcommissioner.gov.uk) - and if you require further information or wish to discuss data protection issues please contact the Council's Data Protection Officer – John Hopkinson on ext. 1310.

## **10. Self assessment testing of your knowledge of the Data Protection Act**

10.1 Please refer to Annex B(i) for some multi-choice self assessment questions for situations which you could encounter in your working life, where data protection considerations apply. You can check your answers in Annex B (ii).

## Annex A

### Lawful Sharing of Personal Data with one or more partners



*Adapted from the Department for Constitutional Affairs - Public Sector Data Sharing - Guidance on the Law*

## **Annex A continued**

### **Checklist of Legal Considerations relating to Data Sharing Partnerships**

A new data sharing initiative which may involve two or more public bodies who wish to share information with each other in order to set up a central data base that they may each access. The following considerations need to be given

#### **Note 1: Vires issues**

- Does the the body that is to hold the and administer the database (the Data Controller) have the legal power (Vires) to do so?
- Is the existing data that is to be shared subject to statutory prohibitions eg sharing Council Tax information is prohibited
- Do the bodies sharing the data have the legal power (Vires) to do so?

#### **Note 2: Human Rights Act issues**

- Will the proposed data collection and sharing information interfere with the right to respect for private and family life, home and correspondence (Article 8 of the ECHR)? If the data collection takes place with the consent of the data subjects this condition will be satisfied
- If Article 8 of the ECHR is engaged, is the interference:
  - In accordance with the law
  - In pursuit of legitimate aim
  - Necessary in democratic society

#### **Note 3: Common Law of Confidence issues**

- Is the information confidential? Has the data been obtained subject to statutory obligations of confidence.
- If the data collection and sharing is taking place with the consent of the data subjects involved, the information will NOT be confidential
- If the information is confidential, is there an overriding public interest that justifies its disclosure?

## **Annex B(i)**

### **Data Protection Act 1998 – Some potential examples of data protection issues in your working life**

1. Mr Green arrives at reception and bangs on the desk and demands to know ALL the information that the Council hold about him 'on their computers' and filing systems and he demands it NOW. He says he is entitled to the information under the 1998 Data Protection Act.

*Select the most appropriate answer:*

- a. *Tell Mr Green that the information is private and cannot be released*
- b. *Immediately start rushing about to get copies of the paper files and print outs of Mr Green's information.*
- c. *Ask Mr Green to put his request in writing to the appropriate Service Manager clearly identifying what information he is interested in and then inform him that when we are satisfied that we have a clear understanding of what information he wants and we are satisfied he is entitled to it, we have 40 days under the Data Protection Act to supply him with the information*

2. Mr Scarlet comes in the office and says he is acting for a friend Miss Smith who lives next door to him. He asks for all the information we have about Miss Smith on our Council Tax system. How should we deal with this?

*Select the most appropriate answer:*

- a. *Immediately go to the Council Tax system and print Miss Smith's details out and give them to Mr Scarlet*
- b. *Ask Mr Scarlet why he wants the information and if it seems reasonable supply it*
- c. *Tell Mr Scarlet that we have an obligation under the Data Protection Act to keep personal information private and secure and that Miss Smith should personally contact us or write to us and we will be pleased to help her.*

3. Mr Black calls into the office to object to the Electoral Register being on display at the local library which shows that he and Miss Pink live together at 4 Acacia Close. He claims that this is an invasion of his privacy and contravenes the Data Protection Act.

*Select the most appropriate answer:*

- a. *Agree with Mr Black that this is an invasion of his privacy and that you will ask the Electoral Registration Officer to get the Electoral Register removed from the library as soon as possible*
- b. *Point out to Mr Black that under the Representation of the People Act we have an obligation to publish the Electoral Roll in public places such as Libraries and this over-rules the requirements of the Data Protection Act*
- c. *Tell Mr Black that the next time he fills in the Electoral Registration form he should tick the box to say he doesn't want his details publishing on the Electoral Roll*

4. You answer the telephone, a woman says she is Molly Jones a clerk in the Credit Control section of Severn Trent Water and she is trying to trace a Mrs Violet White who owes money to the Water company. Molly Jones says that Mrs White recently moved from 4 West Street, Lutterworth which is a council house to another council house in Market Harborough. Molly Jones asks if you can check your computerised housing system and let her have Mrs White's new address.

*Select the most appropriate answer:*

- a. *Remembering the Council's policy to provide a responsive customer service and that you are dealing with reputable public utility, you immediately log onto the system and get Mrs White's new address and pass it on to Molly Jones*
- b. *Tell Molly Jones that under the Data Protection Act you have an obligation of keeping personal data confidential and cannot disclose the information*
- c. *Tell Molly Jones to write in with the request and then we will be able to supply the information she wants*

5. Mrs Grey is upset and calls at the office and demands to know what information is being kept on her by Mr Rose the Housing Officer including the notes he was writing on his note pad when he visited and interviewed her. She demands to see the notes that Mr Rose was writing and states 'she knows her rights under the Data Protection Act'.

*Select the most appropriate answer:*

- a. *Tell Mrs Grey that she is entitled to see the notes if they are kept as part of an organised filing system. But if they are just working notes which Mr Rose*

*throws away after the meeting or doesn't keep in any organised filing system then she is not entitled to see what he wrote.*

- b. Call Mr Rose from his office and tell him to give a copy of the notes to Mrs Grey*
- c. Tell Mrs Grey that under the Data Protection Act, Mr Roses notes are private and confidential*

6. Mr Magenta – a well known community leader who is a very active on his Parish Council telephones to say a new family has moved into a council house on his Parish and could you ‘check your records and let him have all the family names’ so he can write a little section in the Parish Newsletter he publishes to welcome them to their new home.

*Select the most appropriate answer:*

- a. Immediately look up the family's details and pass them to Mr Magenta, after all he is a Parish Councillor and it would be a nice welcoming gesture to the new family*
- b. Point out to Mr Magenta that under the Data Protection Act you have an obligation to keep personal information confidential and also that the information has not been collected by the Council to be published in a local newsletter. You suggest that he should contact the family direct to welcome them and to see if they are happy to have their details published in the Parish Newsletter.*
- c. Tell Mr Magenta to write in with a formal request for the information and then we can supply it*

7. Mrs Lilac calls in the office to give her change of address for housing benefit. After she has gone you remember talking to Mr Eastwood the Environmental Health Officer who is acting on a complaint concerning Mrs Lilac but he is having difficulty tracing her new address. You decide to update the Environmental Services System with Mrs Lilac's new address. Under the DPA, are you correct in your action?

*Select the most appropriate answer:*

- a. There should be no problem under the Data Protection Act since we all work for the same Council.*
- b. You should have asked Mrs Lilac if there where any other records she wanted updating, and only updated those records*

- c. *You should not have updated the Environmental Services System but just told Mr Eastwood of Mrs Lilac's new address*

8. A work colleague is designing a new form to collect some information on planning applications for alterations to private houses. While he is drawing up the form he decides it would be nice to know the age profile and family characteristics of these applicants, so he adds some extra data collection fields. He includes age of applicant, marital status, number of children and their ages, income range of the family and the ethnic origins of the applicant. After all he rationalises, this information could be very useful to give some socio economic characteristics for the area.

You are asked to review the draft form. Are there any issues under the Data Protection Act (DPA)?

*Select the most appropriate answer:*

- a. *No problems under the DPA, it seems a good idea to collect as much information as we can just in case it is needed for the future.*
- b. *Under the DPA you are only allowed to collect information which is relevant for the purpose. If this form is for a planning application, you should only collect the minimum information you need to process the planning application.*
- c. *No problems under the DPA except under the Act, you are not allowed to ask about the ethnic origins of a person.*

9. You are very busy at the office and have taken some confidential case files home to work on at the weekend. You are catching up on the work when unexpectedly Joe Blue, a friend of yours, makes a social call and you leave him to go to the kitchen to make a drink. When you return, you find Joe leafing through the case files on the table. He looks up as you enter and says 'Isn't this the John Brown we went to school with?'

What if any, are the Data Protection Act (DPA) implications?

*Select the most appropriate answer:*

- a. *There are no DPA implications since you are at home in a private house*
- b. *You tell your friend Joe that the information is confidential but since he already knows John Brown you go on to tell Joe all about this particular case involving John Brown*

*c. Under the DPA you under an obligation to take all reasonable steps to keep personal information confidential and secure where ever it is being used or held.*

10. Your boss calls you into her office and says she wants the data you collected as part of a recent survey of visitors to Customer Services Section in the Council offices to be passed to the local Shop Keepers Association. The Shop Keepers Association is planning to use the data for a mail shot of people who visit Market Harborough to let them know about a special shopping promotion. Your boss asks if you can see any problems in doing that.

*a. You point out to your boss that under the Data Protection Act you cannot collect information for one purpose and then use it for something entirely different, unless the people surveyed give their agreement.*

*b. There are no problems under the DPA with passing this information on so long as the Shop Keepers Association is registered with the Information Commissioner*

*c. There are no problems under the DPA so long as we don't charge the Shop Keepers Association for passing the information to them.*

Now check your answers



**Annex B(ii)**  
**Answers to the Questions**

<b>Correct Answer</b>	<b>Reasons</b>
Q1c	<p>The Data Protection Act Principle 6 gives the person the right to see information which we hold about them but the Data Controller (the appropriate Service Manager) must:</p> <ol style="list-style-type: none"> <li>1. Receive the request in writing</li> <li>2. Be satisfied that the person is entitled to the information</li> <li>3. Ask any questions to establish what information is held about the person</li> <li>4. Any fee must be paid (At present HDC does not charge a fee)</li> <li>5. When these conditions are satisfied HDC have 40 working days to respond</li> </ol>
Q2c	<p>Under Principle 7 we have an obligation to keep personal information confidential and secure</p>
Q3b	<p>Particular legislation may over rule the Data Protection Act eg Representation of the People Act. Be sure you are aware and understand any legislation which governs and controls activities in your service area</p>
Q4b	<p>Under Principles 1 &amp; 7 of the Data Protection Act we have an obligation to keep data confidential and cannot disclose personal information to a third party unless it is a 'life and death' matter, and then you would need to seek and obtain your Service Managers approval to releasing the information</p>
Q5a	<p>This is more difficult. Before the 1<sup>st</sup> January 2005, Q5a is the correct answer but from 1<sup>st</sup> January 2005 Mrs Grey would be entitled to see ALL personal information (whether it is kept in an organised filing system or not). Mrs Grey would however have to submit a written request and the conditions in Q1c above apply</p>
Q6b	<p>Mr Magenta's position in the community does not give him any special rights, The Data Protection Principles 1, 2 and 7 still apply.</p>
Q7b	<p>Once more a difficult point, since customers often expect us to update all records we hold on them but to remain within the DPA we should ask them if they have any other dealings and records with the Council and do they want these to be updated.</p>
Q8b	<p>Under Principle 2 and 3 of the Data Protection Act you should only collect information which is relevant and necessary to do the job – we collect information just in case we might need it in the future.</p>
Q9c	<p>It is essential that all reasonable steps are taken at ALL times to keep personal information confidential and secure – Principle 7</p>
Q10a	<p>Principles 1 and 2 of the Data Protection Act states that a person should be told why the data is being collected and personal data collected for one purpose cannot be used for another without the permission of the person concerned</p>

