

Record of Processing - on sharing of Occupational Health (Special Category Data) of an employee.

Question: Am I allowed to share employee Occupational Health (OH) or medical health information with other relevant parties? YES – for the reasons set out below.

Introduction

This ‘record of processing’ is required under Data Protection Act 2018 Schedule 1 Part 4 (41) and sets out the basis for a line manager, group manager or higher manager to share occupational health data or physical or mental health medical data (also known as Special Category Data under GDPR) of an employee in their team, group or directorate. I will examine ‘lawful bases’ for sharing such data under the GDPR.

Lawful Basis for sharing OH or Medical Health Data. (Article 6 is ‘Personal Data and Article 9 is ‘Special Category Personal Data’)

GDPR Article 6(1)(a) – Consent.	Consent can be relied upon, particularly in respect of Occupational Health information. The employee is required to indicate their consent on the OH referral form for information to be shared between medical health professionals and the employee’s management. The Council also has a Human Resources privacy notice which reflects the consent arrangement. ¹
GDPR Article 6(1)(b) - Contractual	A contract with the Data Subject. The working particulars of employment (WPE) document form a contract between employer and employee. The contract includes management of Sickness, health and well-being, and are stated as being part of the terms and conditions of the employment contract. The Council also has a Human Resources privacy notice which reflects the contractual arrangement.
GDPR Article 6(1)(d) – Vital Interests	This condition can be relied upon if an employee threatens to harm themselves or another person.
GDPR Article 9(2)(a) - Consent	Please see Consent condition above.
GDPR Article 9(2)(b) – obligations on the Council in respect of the employee in the field of employment and / or social protection law providing the appropriate safeguards for the rights and interests of the employee	The Council has a contractual obligation to ensure the health, safety and wellbeing of employees for the tenure of employment with the Council. This is stated in the employee’s contract. The Council also has a safeguarding duty to employees and as required by Schedule 1 Part 2 (5)(1) of the Data Protection Act 2018, the Council has an appropriate safeguarding policy in place. ²
GDPR Article 9(2)(c) – Vital Interests	Please see Vital Interests condition above.
GDPR Article 9(2)(h) – processing is necessary purposes of preventive or occupational medicine, for the assessment of the working capacity of the employee, medical diagnosis, the provision of health or social care or treatment or the management of health or social care systems and services on the basis of Union or Member State law or pursuant to contract with a health professional	This is very specific to the arrangements Dacorum has in place for an employee to utilise Occupational Health or be referred to OH by that employee’s management team, and in addition the requirement for an employee and management to manage sickness under the Council’s policies. In each case (OH and Sickness), the employee and management will have access to a health professional.

¹ https://www.dacorum.gov.uk/docs/default-source/opendata/privacy-policies/human-resources-privacy-notice.pdf?sfvrsn=ab93369e_8

² https://www.dacorum.gov.uk/docs/default-source/opendata/privacy-policies/appropriate-policy-document.pdf?sfvrsn=fef30c9e_2

Retention

Retention of the Special Category Data above can be found in the Council's Retention Policy here; [Link](#)
(Section 5)