

General Data Protection Regulation Policy



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1 Introduction

1.1 Policy statement

The EU General Data Protection Regulation (GDPR herein) will come into force on 25th May 2018; the extant Data Protection Bill published in September 2017 is to be read in conjunction with the GDPR. The GDPR applies to all EU member states and Jenner House Surgery must be able to demonstrate compliance at all times. Understanding the requirements of the GDPR will ensure that personal data of both staff and patients is protected accordingly.

1.2 Status

This document and any procedures contained within it are non-contractual and may be modified or withdrawn at any time. For the avoidance of doubt, it does not form part of the staff contract of employment.

1.3 Training and support

The practice will provide guidance and support to help those to whom it applies understand their rights and responsibilities under this policy. Additional support will be provided to managers and supervisors to enable them to deal more effectively with matters arising from this policy.

2 Scope

2.1 Who it applies to

This document applies to all employees, partners and directors of the practice. Other individuals performing functions in relation to the practice, such as agency workers, locums and contractors, are encouraged to use it.

2.2 Why and how it applies to them

All personnel at Jenner House Surgery have a responsibility to protect the information they process. This document has been produced to enable all staff to understand their individual and collective responsibilities in relation to the GDPR.

The practice aims to design and implement policies and procedures that meet the diverse needs of our service and workforce, ensuring that none are placed at a disadvantage over others, in accordance with the Equality Act 2010. Consideration has been given to the impact this policy might have in regard to the individual protected characteristics of those to whom it applies.

3 Definition of terms

3.1 Data Protection Bill

The Data Protection Bill is a complete data protection system, covering general data, law enforcement data and national security data. The Bill will be referred to as the Data Protection Act 2018 (DPA18) in May 2018.

3.2 Data Protection Officer

An expert on data privacy, working independently to ensure compliance with policies and procedure.

3.3 Data Protection Authority

National authorities tasked with the protection of data and privacy.

3.4 Data Controller

The entity that determines the purposes, conditions and means of the processing of personal data.

3.5 Data Processor

The entity that processes data on behalf of the Data Controller.

3.6 Data Subject

A natural person whose personal data is processed by a controller or processor.

3.7 Personal data

Any information related to a natural person or 'data subject'.

3.8 Processing

Any operation performed on personal data, whether automated or not.

3.9 Recipient

The entity to which personal data is disclosed.

4 The build-up to the GDPR

4.1 Background

The GDPR is based on the 1980 Protection of Privacy and Transborder Flows of Personal Data Guidelines, which outlined eight principles:

- Collection limitation
- Data quality
- Purpose specification

- Use limitation
- Security safeguards
- Openness
- Individual participation
- Accountability

4.2 NHS Digital

The Information Governance Alliance (IGA) is the authority that gives advice and guidance on the rules governing the use and sharing of healthcare-related information for the NHS. As a result of the imminent introduction of the GDPR, an NHS policy is being developed by the GDPR working group and will be published in due course.

NHS Digital provides up-to-date information regarding the GDPR as well as a range of useful guidance documentation.¹

4.3 Aim of the GDPR

The GDPR was designed to harmonise data privacy laws across Europe, to protect and empower all EU citizens' data privacy and to reshape the way in which organisations across the region approach data privacy.²

4.4 Brexit and the GDPR

Despite leaving the EU, the GDPR will still be enforced, as it applies prior to the UK leaving the EU. The Regulation will be applicable as law in the UK with effect from 25th May 2018.

4.5 GDPR and DPA18

To ensure that organisations have a complete overview of the legislation as of 25th May 2018, it will be necessary to view the GDPR and DPA18 side by side.³

5 Roles of data controllers and processors

5.1 Data controller

At Jenner House Surgery the role of the data controller is to ensure that data is processed in accordance with Article 5 of the Regulation. He/she should be able to demonstrate compliance and is responsible for making sure data is:⁴

- Processed lawfully, fairly and in a transparent manner in relation to the data subject
- Collected for specified, explicit and legitimate purposes and not further processed in a manner that is incompatible with those purposes

¹ [NHS Digital GDPR guidance](#)

² [EU GDPR overview](#)

³ [IGA The General Data Protection Regulation What's New](#)

⁴ [Article 5 GDPR Principles relating to processing of personal data](#)

- Adequate, relevant and limited to what is necessary in relation to the purposes for which the data is processed
- Accurate and, where necessary, kept up to date; every reasonable step must be taken to ensure that personal data which is inaccurate, having regard to the purposes for which it is processed, is erased or rectified without delay
- Kept in a form that permits identification of data subjects for no longer than is necessary for the purposes for which the personal data is processed
- Processed in a manner that ensures appropriate security of the personal data, including protection against unauthorised or unlawful processing and against accidental loss, destruction or damage, using appropriate technical or organisational measures

The data controller at Jenner House Surgery is Dr Ku Rama (Deputy: Marie Edwards); they are responsible for ensuring that all data processors comply with this policy and the GDPR.

5.2 Data processor

Data processors are responsible for the processing of personal data on behalf of the data controller. Processors must ensure that processing is lawful and that at least one of the following applies:⁵

- The data subject has given consent to the processing of his/her personal data for one or more specific purposes
- 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
- Processing is necessary for compliance with a legal obligation to which the controller is subject
- Processing is necessary in order to protect the vital interests of the data subject or another natural person
- 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
- 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

At Jenner House Surgery, all staff are classed as data processors as their individual roles will require them to access and process personal data.

6 Access

6.1 Data subject's rights

All data subjects have a right to access their data and any supplementary information held by Jenner House Surgery. Data subjects have a right to receive:

- Confirmation that their data is being processed
- Access to their personal data
- Access to any other supplementary information held about them

⁵ [Article 6 Lawfulness of processing](#)

Jenner House Surgery ensures that all patients are aware of their right to access their data and has privacy notices displayed in the following locations:

- Waiting room
- Practice website
- Practice information leaflet

To comply with the GDPR, all practice privacy notices are written in a language that is understandable to all patients and meet the criteria detailed in Articles 12, 13 and 14 of the GDPR.

The reason for granting access to data subjects is to enable them to verify the lawfulness of the processing of data held about them.

6.2 Fees

Under the GDPR, Jenner House Surgery is not permitted to charge data subjects for providing a copy of the requested information; this must be done free of charge. That said, should a request be deemed either “unfounded, excessive or repetitive”, a reasonable fee may be charged. Furthermore, a reasonable fee may be charged when requests for additional copies of the same information are made. However, this does not permit the practice to charge for all subsequent access requests.

The fee is to be based on the administrative costs associated with providing the requested information.

6.3 Responding to a data subject access request

In accordance with the GDPR, data controllers must respond to all data subject access requests within one month of receiving the request (previous subject access requests had a response time of 40 days).

In the case of complex or multiple requests, the data controller may extend the response time by a period of two months. In such instances, the data subject must be informed and the reasons for the delay explained.

6.4 Verifying the subject access request

It is the responsibility of the data controller to verify all requests from data subjects using reasonable measures. The use of the practice Subject Access Request (SAR) form supports the data controller in verifying the request. In addition, the data controller is permitted to ask for evidence to identify the data subject, usually by using photographic identification, i.e. driving licence or passport.

6.5 E-requests

The GDPR states that data subjects should be able to make access requests via email. Jenner House Surgery is compliant with this and data subjects can complete an e-access form and submit the form via email.

The data controller is to ensure that ID verification is requested and this should be stated in the response to the data subject upon receipt of the access request. It is the responsibility of the data controller to ensure they are satisfied that the person requesting the information is the data subject to whom the data applies.

6.6 Third-party requests

Third-party requests will continue to be received following the introduction of the GDPR. The data controller must be able to satisfy themselves that the person requesting the data has the authority of the data subject.

The responsibility for providing the required authority rests with the third party and is usually in the form of a written statement or consent form, signed by the data subject.

As of the 1st September, Jenner House Surgery will no longer provide third party requests directly to the requestor. Instead all patients will be contacted and asked to fill in a subject access request form. The medical record will be provided directly to the patient who will then share with the third party.

7 Data breaches

7.1 Data breach definition

A data breach is defined as any incident that has affected the confidentiality, integrity or availability of personal data.⁶ Examples of data breaches include:

- Unauthorised third-party access to data
- Loss of personal data
- Amending personal data without data subject authorisation
- The loss or theft of IT equipment which contains personal data
- Personal data being sent to the incorrect recipient

7.2 Reporting a data breach

Any breach that is likely to have an adverse effect on an individual's rights or freedoms must be reported. In order to determine the requirement to inform the ICO, to notify them of a breach, the data controller is to read this supporting [guidance](#).

Breaches must be reported without undue delay or within 72 hours of the breach being identified.

When a breach is identified and it is necessary to report the breach, the report is to contain the following information:

- Organisation details
- Details of the data protection breach
- What personal data has been placed at risk
- Actions taken to contain the breach and recover the data
- What training and guidance has been provided
- Any previous contact with the Information Commissioner's Office (ICO)
- Miscellaneous support information

The ICO data protection breach notification [form](#) should be used to report a breach. Failure to report a breach can result in a fine of up to £10 million.⁷

The data controller is to ensure that all breaches at Jenner House Surgery are recorded; this includes:

⁶ [ICO – Personal data breaches](#)

⁷ [ICO Personal data breaches](#)

- Documenting the circumstances surrounding the breach
- The cause of the breach; was it human or a system error?
- Identifying how future incidences can be prevented, such as training sessions or process improvements

7.3 Notifying a data subject of a breach

The data controller must notify a data subject of a breach that has affected their personal data without undue delay. If the breach is high risk (i.e. a breach that is likely to have an adverse effect on an individual's rights or freedoms), then the data controller is to notify the individual before they notify the ICO.

The primary reason for notifying a data subject of a breach is to afford them the opportunity to take the necessary steps in order to protect themselves from the effects of a breach.

When the decision has been made to notify a data subject of a breach, the data controller at Jenner House Surgery is to provide the data subject with the following information in a clear, comprehensible manner:

- The circumstances surrounding the breach
- The details of the person who will be managing the breach
- Any actions taken to contain and manage the breach
- Any other pertinent information to support the data subject

8 Data erasure

8.1 Erasure

Data erasure is also known as the “right to be forgotten”, which enables a data subject to request the deletion of personal data where there is no compelling reason to retain or continue to process this information. It should be noted that the right to be forgotten does not provide an absolute right to be forgotten; a data subject has a right to have data erased in certain situations.

The following are examples of specific circumstances for data erasure:

- Where the data is no longer needed for the original purpose for which it was collected
- In instances where the data subject withdraws consent
- If data subjects object to the information being processed and there is no legitimate need to continue processing it
- In cases of unlawful processing
- The need to erase data to comply with legal requirements

The data controller can refuse to comply with a request for erasure in order to:

- Exercise the right for freedom of information or freedom of expression
- For public health purposes in the interest of the wider public
- To comply with legal obligations or in the defence of legal claims

8.2 Notifying third parties about data erasure requests

Where Jenner House Surgery has shared information with a third party, there is an obligation to inform the third party about the data subject's request to erase their data; this is so long as it is achievable and reasonably practical to do so.

This policy will be updated once the NHS IGA have issued guidance regarding data erasure.

9 Consent

9.1 Appropriateness

Consent is appropriate if data processors are in a position to "offer people real choice and control over how their data is used".⁸ The GDPR states that consent must be unambiguous and requires a positive action to "opt in", and it must be freely given. Data subjects have the right to withdraw consent at any time.

9.2 Obtaining consent

If it is deemed appropriate to obtain consent, the following must be explained to the data subject:

- Why the practice wants the data
- How the data will be used by the practice
- The names of any third-party controllers with whom the data will be shared
- Their right to withdraw consent at any time

All requests for consent are to be recorded, with the record showing:

- The details of the data subject consenting
- When they consented
- How they consented
- What information the data subject was told

Consent is to be clearly identifiable and separate from other comments entered into the healthcare record. At Jenner House Surgery it is the responsibility of the data controller to demonstrate that consent has been obtained. Furthermore, the data controller must ensure that data subjects (patients) are fully aware of their right to withdraw consent, and must facilitate withdrawal as and when it is requested.

9.3 Parental consent

Whilst the GDPR states that parental consent is required for a child under the age of 16, the DPA18 will reduce this age to 13 in the UK. Additionally, the principle of Gillick competence remains unaffected; nor is parental consent necessary when a child is receiving counselling or preventative care.

⁸ [ICO Consent](#)

10 Preparing for the GDPR

10.1 Data mapping

Data mapping is a means of determining the information flow throughout an organisation. Understanding the why, who, what, when and where of the information pathway will enable Jenner House Surgery to undertake a thorough assessment of the risks associated with current data processes.

Effective data mapping will identify what data is being processed, the format of the data, how it is being transferred, if the data is being shared, and where it is stored.

10.2 Data mapping and the Data Protection Impact Assessment

Data mapping is linked to the Data Protection Impact Assessment (DPIA), and when the risk analysis element of the DPIA process is undertaken, the information ascertained during the mapping process can be used.

Data mapping is not a one-person task; all staff at Jenner House Surgery will be involved in the mapping process, thus enabling the wider gathering of accurate information.

10.3 Data Protection Impact Assessment

The DPIA is the most efficient way for Jenner House Surgery to meet its data protection obligations and the expectations of its data subjects. DPIAs are also commonly referred to as Privacy Impact Assessments or PIAs.

In accordance with [Article 35](#) of the GDPR, DPIA should be undertaken where:

- A type of processing, in particular using new technologies, and taking into account the nature, scope, context and purposes of the processing, is likely to result in a high risk to the rights and freedoms of natural persons; then the controller shall, prior to the processing, carry out an assessment of the impact of the envisaged processing operations on the protection of personal data. A single assessment may address a set of similar processing operations that present similar high risks.
- Extensive processing activities are undertaken, including large-scale processing of personal and/or special data

DPIAs are to include the following:

- A description of the process, including the purpose
- An evaluation of the need for the processing in relation to the purpose
- An assessment of the associated risks to the data subjects
- Existing measures to mitigate and control the risk(s)
- Evidence of compliance in relation to risk control

It is considered best practice to undertake DPIAs for existing processing procedures to ensure that Jenner House Surgery meets its data protection obligations. DPIAs are classed as “live documents” and processes should be reviewed continually. As a minimum, a DPIA should be reviewed every three years or whenever there is a change in a process that involves personal data.

10.4 DPIA process

The DPIA process is formed of the following key stages:

- Determining the need
- Assessing the risks associated with the process
- Identifying potential risks and feasible options to reduce the risk(s)
- Recording the DPIA
- Maintaining compliance and undertaking regular reviews

11 Summary

Given the complexity of the GDPR, all staff at Jenner House Surgery must ensure they fully understand the requirements within the Regulation, which become enforceable by law with effect from 25th May 2018. Understanding the changes required will ensure that personal data at Jenner House Surgery remains protected and the processes associated with this data are effective and correct.

Regular updates to this policy will be applied when further information and/or direction is received.