



Local Authority Privacy Notices and Information

Introduction

The requirement to flow ASC Client Level Data from April 2023 represents a significant shift in the level of detail and the frequency of Adult Social Care data that is to be provided by Local Authorities across England. Whilst Local Authorities will each have a Privacy Policy and Privacy Notices in place for Service User data and the rights of individuals in relation to the personal data recorded and retained by the Local Authority, ASC CLD represents a 'step-change' in the way that data is shared and controlled at a national level and outside of the direct control of the Local Authority. In this context, it is recommended that each Local Authority reviews its privacy policy and the public information (e.g. Privacy Notices) it published to ensure that the changes to the requirements to sharing of ASC data nationally are transparent.

Privacy Notices are a legal requirement under GDPR and the Data Protection Act 2018. They ensure that individuals are aware of the way their personal data is processed and can exercise their rights. The GDPR guidelines are published under the general topic of 'Transparency'

GDPR Guidelines on transparency under Regulation 2016/679

<https://ec.europa.eu/newsroom/article29/items/622227>

This guidance provides an overview and signposts information about best practice with links to resources to support Local Authorities to publish their Privacy Information in a consistent way that conforms to best practice. It is not just for Local Authority Data Protection Officers; it is applicable for all Local Authority staff that are involved in processing and managing personal data across the organisation. This guidance includes:

- General information about Privacy Information and Notices best practice
- An FAQ section that handles the common areas of doubt or concern in a direct and clear way
- Links to authoritative online resources that provide detailed information and best practice guidance

Privacy, Privacy Policy, Privacy Notice or Data Protection?

Many organisations use these terms, as well as others such as 'GDPR Policy' and 'Data Protection Policy', often in an interchangeable way to label and signpost their Privacy Information. GDPR transparency guidance acknowledges the different terms used but recommends adopting a 'commonly used term'¹.

¹ Item 11, page 8 of 20180413_article_29_wp_transparency_guidelines_7B894B16-B8B9-B044-ED400A6DBAA4FA60_51025.pdf
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A Privacy Notice is a public or external statement that sets out what, why and how an organisation uses the data collected by them about their customers, constituents or 'data subjects'. A Privacy Policy is an internal document (although some organisations publish all policies openly) that describes and defines how personal information is processed and managed to meet its legal obligations and GDPR and Data Protection compliance requirements. A Privacy Notice will therefore include or refer to information set out in an organisations' Privacy Policy as well as referring to the relevant legal compliance regulations and obligations.

Recommendation: It is common practice to use the term 'Privacy Notice' or simply 'Privacy' to label your external statements and to use the term 'Privacy Information' to collectively describe and refer to the various elements of your Privacy Notice and the underpinning policies and regulations. It is common practice to signpost Privacy Information at the 'footer' of a corporate website. This should be augmented with additional signposting and links throughout the content of a website and a separate sub-section about Privacy Information and/ or links included (if possible) as part of a corporate or 'About Us' section.

General implementation guidance

Authoritative guidance about Privacy Information is provided by the Information Commissioner's Office (ICO). Its website provides detailed guidance on the 'what, when and how' Privacy Information should be provided as well as support for handling practical issues that may arise.

<https://ico.org.uk/for-organisations/guide-to-data-protection/guide-to-the-general-data-protection-regulation-gdpr/the-right-to-be-informed/>

There is a tendency for organisations to rely on website information as the primary and sometimes only channel for communicating Privacy Information; whereas the organisational responsibility is to communicate effectively using a range of channels – for example to those service users that do not use the internet or digital communication devices.

<https://ico.org.uk/for-organisations/guide-to-data-protection/guide-to-the-general-data-protection-regulation-gdpr/the-right-to-be-informed/what-methods-can-we-use-to-provide-privacy-information/#how1>

Guidelines on how to use a 'layered approach' are relevant to Local Authorities wishing to provide a hierarchy of information i.e. service-level resources and to promote easy navigation, browsing and relevant search results accuracy and performance for their online Privacy Information.

<https://ico.org.uk/for-organisations/guide-to-data-protection/guide-to-the-general-data-protection-regulation-gdpr/the-right-to-be-informed/what-methods-can-we-use-to-provide-privacy-information/#how2>

When dealing with a wide audience range (in the case of CLD this is generally an adult i.e. over 18 audience although the information may be applicable to younger aged carers for example), it is important to ensure that the content is, as far as is feasible, tailored to each audience segment , for example when dealing with people whose first language is not English.

<https://ico.org.uk/for-organisations/make-your-own-privacy-notice/>

The ICO resources include a template for how to structure your Privacy Notice information:

<https://ico.org.uk/for-organisations/make-your-own-privacy-notice/>

This can be augmented with additional 'layers' of information relating specifically to Adult and Social Care and ASC CLD.

If your Local Authority relies mainly on its website to communicate Privacy Information, then it is critical (and a legal requirement) that the content conforms to Accessibility Guidelines and that you publish an Accessibility Statement. The Local Government Association and Central Digital and Data Office (Gov.uk_ have published useful guidance:

<https://www.local.gov.uk/our-support/accessibility>

https://www.gov.uk/guidance/make-your-website-or-app-accessible-and-publish-an-accessibility-statement?utm_source=CampaignPage1&

Recommendation: The ICO guidance is applicable to all organisations handling personal data and provides a framework together with associated guidance that has been and continues to be widely adopted; Local Authorities should consider and adopt these guidelines and in particular.

ASC CLD

With specific reference to how Local Authorities should handle ASC Client level data Privacy Information, and the level of detail provided, this is ultimately a local decision. The ICO guidance *What privacy information should we provide?* <https://ico.org.uk/for-organisations/guide-to-data-protection/guide-to-the-general-data-protection-regulation-gdpr/the-right-to-be-informed/what-privacy-information-should-we-provide/> sets out the mandatory and context-driven layers of information that will apply.

The specific information relating to the ASC data flow (selected from the ICO table sections - <https://ico.org.uk/for-organisations/guide-to-data-protection/guide-to-the-general-data-protection-regulation-gdpr/the-right-to-be-informed/what-privacy-information-should-we-provide/#what1>) is set out below:

What information should be provided?	What information should be included?	Is it mandatory?
What data is being processed	Provide information about the types and categories of personal and personal sensitive data provided as part of the ASC CLD specification. If you feel it is appropriate and in line with the policy and practice of your LA, provide the CLD specification or provide a link to the specification which will be hosted by AGEM and NHS Digital.	Ideally, for full transparency, yes. Although this could be covered under a more generalised ASC Service-level statement i.e. the level of detail provided is ultimately an LA decision. The key difference with CLD is the fact that the data is provided at person-level
The purpose of the processing	Describe a summary of the purpose of the data flow as set out in the Data Provision Notice and Data Sharing Agreement with NHS Digital. Include a link to these resources if appropriate to the level of detail provided by your LA.	Yes, the information is required either at the specific CLD level or as a minimum, a statement that covers the legal requirement for the LA to provide the data under the Health and Social Care 2012 Act provisions.

The lawful basis for the processing	Provide the information and relevant links for the lawful basis for the processing. The detailed information for the ASC CLD collection can be found on the NHSD Digital site: https://digital.nhs.uk/about-nhs-digital/corporate-information-and-documents/directions-and-data-provision-notice/secretary-of-state-directions/collection-of-client-level-adult-social-care-data-no-2	Yes, it is mandatory to provide this information, either in a generic context i.e. all LA data provided under the Health and Social Care Act or specifically in relation to a Direction made by DHSC on behalf of the Secretary of State for Health and Social Care.
The legitimate interests for the processing	Provide a summary of the legitimate interests of the Local Authority in fulfilling its information obligations to government e.g. statutory data returns and of NHS Digital in fulfilling its remit and obligations to publish analysis reports and data for the wider health and care system to improve the health and well-being of people in England under the Health and Social Care Act 2012.	Yes this is applicable for ASC CLD as NHS Digital becomes the controller of the data once the LA has submitted it and will share it with other organisations under its responsibility and authority as data controller.
The recipients, or categories of recipients of the personal data	Provide the categories and specific organisations that will receive the ASC CLD data described in the Direction, DPN and DSA. Explain that the data shared to these organisations will not be identifiable.	Yes. If the specific organisations are not provided then the detailed categories of organisation should be listed and a link to the NHSD DARS registry.
The rights available to individuals in respect of the processing	Provide the specific information relating to ASC CLD i.e. that the data provided by the LA is mandatory and a legal obligation under the Health and Social Care Act 2012.	Yes. This should include the generic information relating to legal requirements or specifically to the ASC CLD.
The right to withdraw consent	This information may be included in the narrative provided under the rights available to individuals however it should be made explicit that for CLD, there is no requirement for the LA to obtain consent and no opportunity for individuals to opt-out or withdraw their consent.	Yes.