

POLICY AND PROCEDURE



Solihull
Life
Opportunities

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Charity no: 1102297
Company no: 5025939

Data Protection

Category : Organisational

Introduction

Solihull Life Opportunities provides leisure services to children and adults with learning disabilities which relies on up to date information being recorded and used in the delivery of these services.

The processing of information within Solihull Life Opportunities could present the following risks to the organisation:

- Reputation – for example, misuse of information or giving out inaccurate information that is personal to another
- Lawsuit – for example, if information on medical condition is incorrect and results in inappropriate action
- Compensation – for loss or damage resulting from the misuse of data
- Time and effort – ineffective and inefficient systems for managing data, lost data etc.

The benefits of processing information under this policy are:

- Services are developed in an effective and efficient manner and delivered to the appropriate people
- Monitoring of services is accurate and reflects the true picture
- Staff, Volunteers, Service Users and the General Public are protected
- Up to date information is circulated to service users, their parents and carers as well as those interested in our service in a timely fashion
- Staff and volunteers have the confidence to do the right thing.
- Other partner organisations have confidence in our ability to process information appropriately.

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Policy Statement

This policy is written in compliance with the data protection principles (Appendix 1)

Key principles

- Transparency: SoLo will ensure that the Data Subject gets no surprises from the way we use their data.
- Choice: SoLO will give the Data Subject as much say as possible in the way we use their data.
- Good quality data: SoLO will endeavour to ensure that the information we hold will be accurate, up to date and appropriate.
- Security: SoLO will ensure that confidential material stays confidential and is kept safe.
- Access: SoLO will uphold the right of the Data Subject to see the data we hold and correct any mistakes.
- SoLO will only use the data kept for the purpose that it was given
- SoLO will share information with other agencies in accordance with the information sharing policy and the permission of the service user, i.e. child, young person or person with parental responsibility.

Definition of Data:

All information held on living, identifiable individuals in whatever form, written, electronic or remembered.

Data Protection is about protecting people from things that can go wrong in relation to the data that we hold on them.

1. It is to stop physical, psychological harm to individuals.
2. It is to demonstrate respect for people and build good relationships.
3. It does not stand in the way of other laws (for example, child protection, health and safety)

Solihull Life Opportunities is committed to ensuring that any data relating to:

- Service Users
- Volunteers
- Staff
- Parents or Carers
- Interested Parties

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is dealt with in an appropriate manner giving due consideration to all aspects of the data protection act and ensuring that we act in the best interests of all parties concerned.

Information covered under this policy

'Personal data' is information about identifiable, living individuals, held on computer or in a manual filing system.

Data Protection is safeguarding the rights of the individual to ensure that any information held is used in an appropriate manner and will not cause any harm.

This policy ensure that SoLO complies with the Data Protection Act 1998.

Responsibilities

In our organisation the Data Protection Compliance Manager is the Chief Executive Officer (CEO).

In our organisation, all staff and some volunteers (under supervision) will handle personal data and are expected to work within this policy.

Links to other policies

Our organisation has the following policies that link to Data Protection, or that take Data Protection into account:

- Information Sharing
- Storage and handling of disclosure information
- CRB Policy
- Confidentiality policy
- Child Protection and Vulnerable Adults policies

Procedures

Access to Information

Access to all information is limited to those who need to use it.

Any individual has a right to see information kept on them, and SoLO will provide access to that information provided that:

- written notice is given to access information

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- where copies of files are requested, a charge for copying up to a maximum of £10.00 will be made
- any information about third parties will be removed

If a request is received for access to information under the Freedom of Information Act the matter should be referred to the CEO. In deciding whether there is a duty to disclose the information requested, the CEO should consider the individual's rights of protection under the Data Protection Act.

SoLO reserves the right to request qualified professional support if there is any question about what information to release and what to withhold, or if the consequences of release may be adverse for the organisation

Those with parental responsibility do not have a right to see their children's records unless they exercise their right to act on their children's behalf. A member of staff may need to make a judgement about a person who is acting on behalf of another. This may need to be an organisational judgement rather than an individual judgement. (see Appendix 3 – consent)

The key is if accessing information is in "the best interest of the individual." This is a professional judgement.

Sensitive Personal Data

In the Data Protection Act, sensitive, personal data is categorised under the following headings:

- racial or ethnic origin of a data subject
- his or her political opinions
- his or her religious beliefs or other beliefs of a similar nature
- membership of trade union
- physical or mental health or condition
- sexual life
- commission or alleged commission by him or her of any offence
- any proceedings for any offence committed or alleged to have been committed by him or her, the disposal of such proceedings or the sentence of any court in such proceedings.

Other data is not considered sensitive but may be personal and should be treated as such.

When OBTAINING personal data

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- SoLO will make sure that the Data Subject knows who we are, and why and how the data will be used.
- SoLO will get consent from the Data Subject to use their data, particularly if it is 'sensitive' – covering the Data Subject's racial or ethnic origin, religious or political beliefs, Trade Union membership, health, sex life or criminal record.
- SoLO will offer the opportunity to opt out of some uses of the data, such as direct marketing, disclosure to other organisations, or use for secondary purposes.

When DISCLOSING personal data

- SoLO will make every effort to ensure that the disclosure is appropriate and that the person receiving the information is genuine.
- Check that the Data Subject is aware that this type of disclosure is possible, or that there is an over-riding reason (such as a legal obligation).

SoLO recognises that Data Subjects have the following rights:

- People have the right to see the personal data we hold about them. Although references will remain confidential unless permission is gained to share them.
- SoLO cannot use the data for direct marketing (including fundraising) if the Data Subject indicates that they do not wish this.

Storage and Disposal of personal data

Storage

The storage of personal data should be within the following guidelines:

- Manual records are kept in locked, secured cabinets.
- Personal data is kept separate from other general files.
- Computerised data is kept on password protected systems. Computer held records will be backed up and stored securely off site or in a locked fire-proof safe/box within the office.

Personal data of service users often needs to be held centrally and also on project. In both places, this storage must be in a secure place that is only accessed by those who have authority to see the information.

In some instances, staff will have personal information on their person for instance, when visiting service users, 1:1 leisure support etc. In such circumstances, staff have personal responsibility to ensure that this information is kept safe and returned to the office as soon as possible.

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Adequate security precautions must be taken when laptop computers and personal data are taken out of the office, e.g. not left unattended or kept in the boot of a car.

Notes of meetings with service users will not be freely circulated or accessible and will be stored securely.

It is the responsibility of staff members to pass on updated information to ensure that both project staff and office staff have correct data.

Time frames for the storage of certain data are as follows:

Six months

- The records of unsuccessful job and volunteer candidates will be destroyed after a period of six months.

Seven years

- Personal data of service users must be kept and updated whilst they are on the project. When the service users leave the project, for whatever reason, the records must be returned from the project to a central place, one copy destroyed and the other kept in a secure place for a period of up to seven years. Their details may be kept on the database should they wish to still receive publications from the organisation.
- In the case of records of a service user who has died, although not covered by the data protection act, will be kept for a period of seven years.
- If a service user, parent, carer, volunteer or staff member requests that their records are removed from our database, this must be done immediately, but the central record source will be kept separately in a secure place for a period of up to seven years.

Twenty-five years

- Records relating to complaints or abuse

Disposal

If manual data is required to be destroyed this must be done by shredding. Electronically held information must be deleted and the recycle bin emptied.

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Computerised records must be deleted, including deleted from the recycle bin.

Data Sharing

In the course of SoLO's work, there will be data sharing between agencies, such as social services, health, education and other organisations. This data sharing is to ensure that the service user can access the most appropriate leisure with the appropriate amount of support.

SoLO will:

- Seek the Data Subject's permission to share data.
- Give Data Subjects the chance to opt out of their data being shared, but will explain the consequences of this action, e.g. being unable to provide a specific service.
- Set up an information sharing protocol with any organisations that we regularly share data with.
- Check that the disclosure fits the purpose or purposes for which the data is being held.
- Check that the person you are disclosing it to is authorised to have it.
- Check that the Data Subject is aware that this type of disclosure is possible, or that there is an over-riding reason (such as a legal obligation).

Breaching confidentiality

SoLO will respect confidentiality in all aspects of its operation.

However, there are occasions, usually legal, when confidentiality has to be breached. These are stated below:

- Data Protection is not breached if the requesting agency has a legal right to demand it.
- Data Protection is not breached if we choose to disclose information because not doing so would prejudice child protection, crime prevention, catching criminals or collecting taxes or duties.

Marketing

Marketing is defined as unsolicited 'communication by whatever means (of advertising or marketing material) directed to the Data Subject'

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SoLO occasionally markets its services by the production of a newsletter and also the promotion of special events. Also, fundraising requests are a form of marketing.

SoLO will adhere to the following principles:

- We will not mail out to those people who 'require' us in writing to stop
- We will specify marketing as a purpose when we initially collect the data, or at the first opportunity
- We will include on all our publicity the opportunity for people to opt out of our mailing list
- We will adhere to the Telephone Preference Service check mandatory for calls to domestic lines, unless subscriber has opted in
- We will adhere to Fax Preference Service check mandatory for faxes to business lines (domestic lines only with prior consent)
- E-mail/SMS restrictions to private individuals; existing customers must be given notice and an opt-out opportunity (and messages must be readily identified as marketing); cold lists will not be used without the prior consent of the individual
- Web site marketing to e-commerce regulations (including information to the individual and cooling off period)

Training

All staff and volunteers (where appropriate) will be given training in data protection and given a copy of the data protection policy and expected to comply with the principles and guidelines. Training on this policy should be in conjunction with training on the Confidentiality Policy and any Information Sharing agreements in place.

Appendix 2 shows a flowchart of information that comes into the organisation and out of the organisation and indicates levels of authority in handling that information.

Additional Information

This policy is based on information gained at two training sessions, one run by The Directory of Social Change, and resources obtained at the training (Data Protection for Voluntary Organisations, Paul Ticher)

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Appendix 1

THE DATA PROTECTION PRINCIPLES

1. Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless:
 - (a) at least one of the conditions in Schedule 2 is met, and
 - (b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met.
2. Personal data shall be obtained only for one or more specified and lawful purposes, and shall not be further processed in any manner incompatible with that purpose or those purposes.
3. Personal data shall be adequate, relevant and not excessive in relation to the purpose or purposes for which they are processed.
4. Personal data shall be accurate and, where necessary, kept up to date.
5. Personal data processed for any purpose or purposes shall not be kept for longer than is necessary for that purpose or those purposes.
6. Personal data shall be processed in accordance with the rights of data subjects under this Act.
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.
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 freedom of data subjects in relation to the processing of personal data.

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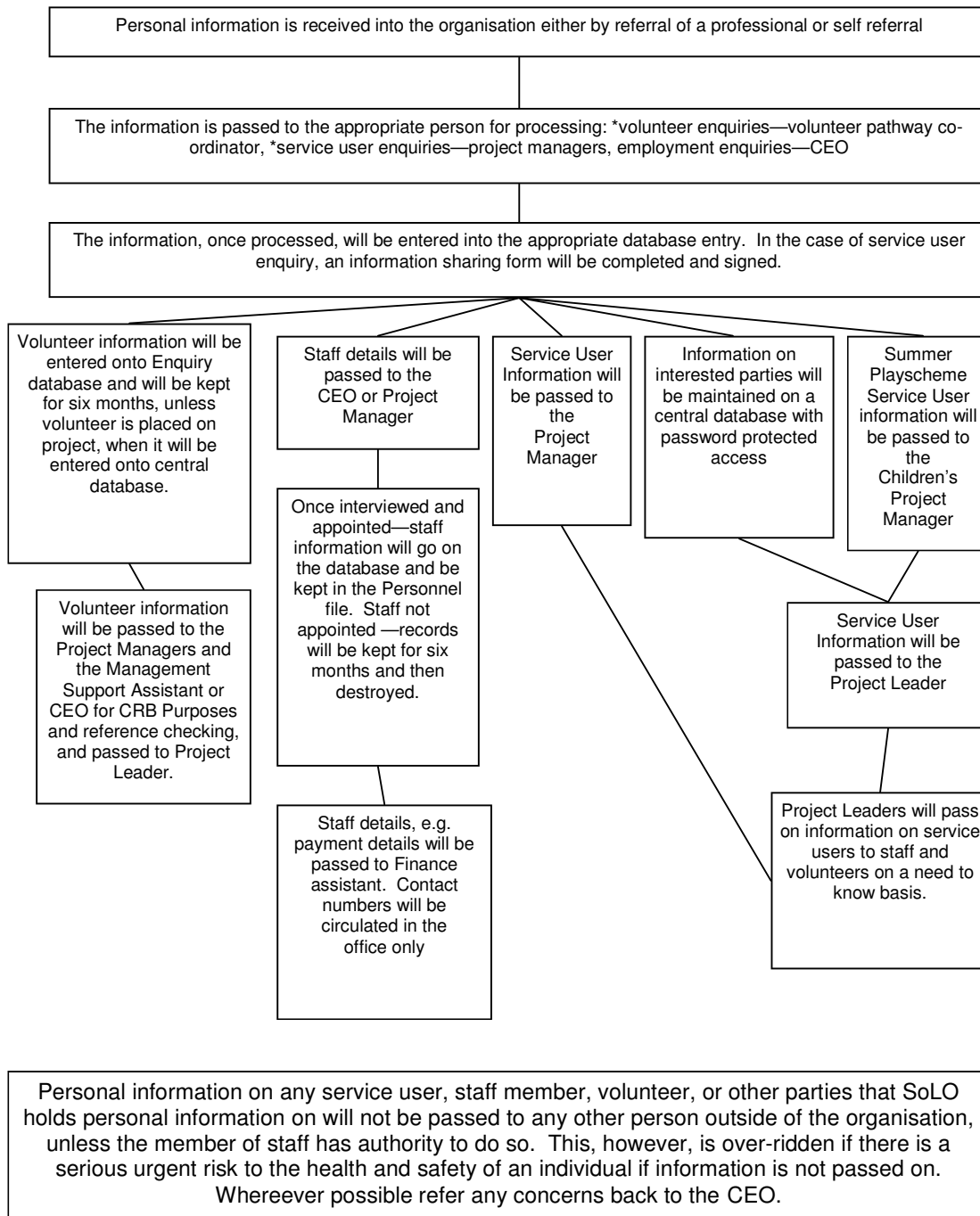
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Appendix 2

Data Protection—the process



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Appendix 3

CONSENT

In Solihull Life Opportunities, consent is required for many activities. Consent can be for:

- Taking part in activities
- Receiving medical intervention
- Having photographs taken
- Sharing information or accessing confidential records.

“How far is the person you care for able to decide for themselves?”

A child or an adult with a learning disability may **seem** unable to understand enough to consent to emergency treatment, their information being shared, or simpler issues such as photos being used in publicity etc.

However, we (either carers or professionals) should not assume that a person with a learning disability is not capable of consenting. It may be possible, if time is spent explaining the situation simply, for the service user to be able to reach an independent decision.

If a service user has some ability to understand and think things over, they should always be encouraged to decide themselves. This should always be the case, even when the decision is not one that either the professional or the carer will agree with. We should always strive to ask the question *“Can the service user understand and weigh up the information provided and have I done enough to assist his or her understanding?”*

“What if the service user is totally unable to decide for themselves?”

Under English law, no-one (even husbands, wives, partners, close relatives or carers) can give consent on behalf of another adult. However, decisions can be made where the professionals can make a decision which they believe to be in the service users ‘best interests’. Wherever possible, this decision will be made in consultation with the parents or carers (those with parental responsibility). People close to the person with learning disability are often helpful in making the best decision on behalf of a person incapable for deciding for themselves.

In most cases, the professional will have to make a judgement based on what is in the best interests of the service users and, in all cases, where there is a dispute, more than one professional should be involved in the final decision and the discussion and decision should be documented.

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