KILKENNY COUNTY COUNCIL

DATA PROTECTION POLICY & CODE OF PRACTICE

Approved by Management Team on Tuesday, 16th October, 2018

1. Introduction

Kilkenny County Council is the democratically elected organisation whose principal function is to provide a broad range of services in areas such as Housing, Roads & Transportation, Flood Prevention, Water Services, Economic Development & Tourism, Planning & Conservation, Environmental Protection, Heritage & the Arts, Library Services, Community & Culture, Amenity, Sport & Recreation, Fire Services, Energy, Older People & Age Friendly, Children & Younger People, Financial Management & Customer Services development.

In performing its functions, Kilkenny County Council is required to collect and process significant amounts of "personal data" within the meaning of the General Data Protection Regulations [GDPR] and of the Data Protection Acts 1988 and 2018. The Council respects the privacy rights of those whose personal data we process and we are conscious of our obligations under the Data Protection Acts.

The purpose of this Code of Practice is to disclose, in a transparent way, how the Council obtains and processes personal data, so that all those who provide us with personal data will clearly understand our practices and procedures. This Code also sets out our approach to dealing with Data Access Requests under the Data Protection Acts.

2. Registration

All local Authorities must register with the Data Protection Commissioners Office. This registration is publicly viewable and shows the personal data processed. This registration is renewed annually.

Kilkenny County Council is registered as a Data Controller with the Office of the Data Protection Commissioner Registration number 0268/A. Particulars of our registration are available online at www.dataprotection.ie.

Kilkenny County Council is also on the Register of users of Personal Public Service Numbers (PPSN) held by the Department of Employment Affairs & Social Welfare. This register can be viewed online at www.welfare.ie.

3. Types Of Personal Data Held By Us

The Council would typically retain and process the following types of personal data, name, address, gender, date of birth, PPSN, income, bank and financial details. The Council also processes sensitive personal data including health, family, disability and criminal conviction details.

4. Obligations Of Kilkenny County Council

The Council controls the contents and use of certain personal data provided to it in the course of its business. The Council will generally perform its functions itself. The Council in some instances engages third parties to process personal data on its behalf. It will ensure in its contracts that such third parties will also be subject to the Data Protection obligations set out in the Data Protection Acts.

5. What We Do With Personal Data

The Council processes personal data provided to us only for the purposes of complying with our obligations as a Local Authority.

6. Collection, processing, keeping, use and disclosure of personal data

The Council is obliged to comply with the data protection principles set out in the Data Protection Acts. These obligations mean the personal data we hold must meet the following criteria:

(a) *Must be obtained and processed fairly.*
As most personal data obtained by the Council is provided directly by Customers (or their nominees) the Council will regard such data as having been fairly obtained and where it has a legal obligation and it is necessary for the performances of a task carried out in the public interest or in the exercise of official functions of the Council.

(b) *Shall be accurate, complete and kept up to date.*
The Council has a multiplicity of application forms for its various services. By completing and signing a form a customer is indicating that the information they have provided is true and accurate in every respect. The Council cannot accept responsibility for inaccurate information provided by any customer either in error or on purpose. Notwithstanding this the Council will ensure that the data is accurate, complete and kept up to date. The Council will also comply with any data rectification requests received under the Data Protection Acts.

(c) *Shall have been obtained only for one or more specified, explicit and lawful purposes.*
The Council will process personal data that it holds only for the purposes for which it was obtained e.g. provision of housing/planning/waste collection etc. The data will be obtained for purposes which are specific, lawful and clearly stated.

(d) *Must not be further processed for incompatible purposes*

(i) The Council will not process personal data for purposes other than in compliance with and in discharge of its functions.

(ii) The Council will not disclose personal data to third parties unless the Data Subject has consented to this disclosure or unless the disclosure to the third party is necessary for the Council's functions (in such circumstances, the third party is bound by similar data protection requirements), or is otherwise required by law.

(e) *Shall be adequate, relevant and not excessive for those purposes.*
The Council only collects necessary personal data to be processed and which is relevant to the performance of its duties.

(f) *Shall be kept for no longer than is necessary*
The Council subscribes to the National Retention Policy for Local Authority Records. This policy sets out the retention guidelines for the various categories of records held by local authorities. Copies of the policy can be obtained from our website *www.kilkennycoco.ie*. Kilkenny County Council will retain statistical factual information indefinitely, but such data will not be "personal data" as defined in the Data Protection Acts.

(g) *Must be kept secure against unauthorised access, alteration or destruction*
The Council uses robust IT management systems with restricted access to ensure the security of its data. The Council has established appropriate security provisions to ensure that:

1. Access to the Council's computer systems is restricted to Council authorised staff.
2. The Council's systems are password protected.
3. The Council has comprehensive back up procedures in operation in accordance with our security obligations under the Data Protection Acts, our systems are regularly backed-up so as to avoid the loss or compromise of data.

Back-up data is data held specifically for the purpose of recreating a file in the event of the current data being destroyed. Back-up data will not ordinarily be provided in response to a Data Access Request.

Where the Council maintain hard copy files, audio records and microfiche records, access shall be restricted, on a need to know basis for the purposes of carrying out the Council's functions in compliance with law.

7. Right of Individuals

Kilkenny County Council will ensure that the rights of the individual are fully protected. Individuals have certain rights under the Data Protection Acts as follows:

- Right to be informed. A data subject has the right to find out the description and purpose for holding their personal data. This request must be in writing and is free of charge.
- Right of Access - a data subject has the right to get a copy of personal information. This request must be submitted in the form of a written request known as "Access Request".
- Right of rectification or erasure and blocking, if data is no longer relevant or inaccurate.
- Right to have name removed from direct marketing list e.g. edited version of Electoral Register.
- Right to complain to the Data Protection Commissioner e.g. if Access Request is ignored.
- Right to seek compensation through the Courts, e.g. if damage is suffered by a data subject through mishandling of data.

In accordance with the Data Protection Acts, Data Subjects are entitled to the following information from Kilkenny County Council:

(a) Confirmation as to whether we keep personal data relating to them.

(b) A description of the categories of personal data processed.

(c) A copy of such personal data in intelligible form.

(d) A description of the purpose(s) behind the processing of the personal data.

(e) The identity of those to whom we have disclosed (or currently disclose) the data.

(f) The source of the personal data (unless this is contrary to the public interest)

Access requests apply to personal data held by Kilkenny County Council in its computer systems and in manual form within a relevant filing system. However, where a document exists in duplicate, e.g. where correspondence is scanned into our systems, two copies of the same document will not be provided in response to a request.

The Data Protection (Access Modification) (Health) Regulations, 1989 (S.I. No. 82 of 1989) provide that health data relating to an individual should not be made available to the individual, in response to a Data Access Request, if it would be likely to cause serious harm to the physical or mental health of the Data Subject. In the event that these Regulations apply, the health data in question will not be provided to the Data Subject but will, however, be furnished to the Data Subject's own medical practitioner.

8. Formalities for Data Access Requests

A Data Access Request must meet certain requirements as specified in the Data Protection Acts:

(a) It must be in writing;

(b) It must include a reasonable level of appropriate information to help us to locate the information required;

(c) Kilkenny County Council will make reasonable enquiries to satisfy ourselves about the identity of the person making the request to ensure we are not disclosing personal data to a party who is not entitled to it.

Data Access Requests will be complied with within 30 days of receipt of the request. Where reasonable additional information is required to substantiate the request as described in paragraph 8 (b) and 8 (c), the time frame for responding runs from receipt of the additional information.

If we receive a very general Data Access Request, the Data Protection Acts allows us to seek more detailed information to locate the relevant personal data or information, such as the approximate date of a particular incident, our reference number, the identity of the other party etc. However, this will be assessed on a case- by-case basis.

9. Information which will not be provided

Kilkenny County Council will not normally disclose the following types of information in response to a Data Access Request:

(a) *Information about other People*
A Data Access Request may cover information which relates to one or more people other than the Data Subject. The information about the other person may be personal data about that person, to which the usual data protection rules under the Data Protection Acts, including the restrictions on disclosure, apply. In such circumstances we will not grant access to the information in question unless either:

(i) the other person has consented to the disclosure of their data to the Data Subject;

(ii) or in all the circumstances it is reasonable to make the disclosure without that person's consent. If the person's consent is not forthcoming and it is not reasonable to make the disclosure without consent, we will make available as much personal data as we can without revealing the identity of the other person (for example by excluding the person's name and/or other identifying particulars).

(b) *Opinions given in Confidence*
Where we hold personal data about the Data Subject in the form of an opinion given in confidence we are not required to disclose such opinions in response a Data Access Request in all cases.

(c) *Repeat Requests*
The Data Protection Acts provide an exception for repeat requests where an identical or similar request has been complied with in relation to the same Data Subject within a reasonable prior period. Kilkenny County Council will consider that if a further request is made within a period of six months of the original request and where there has been no significant change in the personal data held in relation to the individual, it will be treated as a repeat request. Accordingly, where personal data has recently been provided to the Data Subject or his/her legal representative, the Council will not normally provide a further copy of the same data in response to a Data Access Request.

(d) *Documents already in Public Domain*
The Council will not consider that it is obliged to provide copies of documents that are in the public domain.

(e) *Privileged Documents*
Where a claim of privilege could be maintained in proceedings in a court in relation to communications between an individual and his or her professional legal advisers (or between those advisers) any privileged information which we hold need not be disclosed pursuant to a Data Access Request.

(f) *Reasons for Refusal*
Where Kilkenny County Council refuses a Data Access Request, it will do so in writing and will set out the reasons for refusal. Any person who is dissatisfied with the response of the Council to their request has the right to make a complaint to the Data Protection Commissioner.

10. Exceptions to Right to Access

The Data Protection Acts sets out some limited circumstances in which an organisation may not be required to provide you with a copy of your personal data. In particular, Kilkenny County Council may be exempt from providing you with personal data if a restriction of your right of access is necessary:

- for the prevention, detection, investigation and prosecution of criminal offences and the execution of criminal penalties.
- for the administration of any tax, duty or other money due or owing to the State or a local authority.
- in contemplation of or for the establishment, exercise or defence of, a legal claim, prospective legal claim, legal proceedings or prospective legal proceedings whether before a court, statutory tribunal, statutory body or an administrative or out-of-court procedure.
- for the enforcement of civil law claims, including matters relating to any liability of an organisation in respect of damages, compensation or other liabilities or debts related to the claim, or
- for the purposes of estimating the amount of the liability of an organisation on foot of a claim for the payment of a sum of money, whether in respect of damages or compensation, in any case in which the application of those rights or obligations would be likely to prejudice the interests of the organisation in relation to the claim.
- to safeguard cabinet confidentiality, judicial independence and court proceedings, parliamentary privilege, national security, defence and the international relations of the State.

11. Format of the Response

The Data Protection Acts provide you with a right to obtain a copy or any information relating to you kept on computer or in any manual filing system unless this is not possible or would involve disproportionate effort.

The information must be communicated to the Data Subject in an intelligible form. Usually this will mean that a photocopy or printout of the personal data will be provided to the Data Subject. However, where a Data Subject agrees, information can be provided in electronic format e.g. by email or on disk.

12. Rectification or Erasure

If a Data Subject seeks to have any of his or her personal data rectified or erased, this will be done within 30 days of the request being made provided there is reasonable evidence in support of the need for rectification or erasure.

13. Personal Data Requests

All personal data requests must be complied with within 30 days of the date of the request. All requests for personal data will be channelled through the Data Protection Officer, who will maintain a register of all requests, acknowledge receipt of the request within 7 days, and forward the request to the relevant Department Heads/Data Controllers to formulate the appropriate response. The response should be returned to the Data Protection Officer within 20 days to enable him/her to coordinate and issue the reply to the requestor within the permitted 30 days from the date of the request. Any request for personal data from a Third Party must not be complied with, without first obtaining full written permission from the relevant data subject.

The Data Protection Officer is the _____, Corporate Services.

14. Volume Data Transfer to External Person/Body/Third Party Processors

Kilkenny County Council engages a number of data processors to process personal data on its behalf. Any transfer of data to a third party which contains personal data must have a formal written contract with that processor, which clearly:

- Outlines their obligations in relation to the personal data.
- Specific purpose for which the data may be used.
- Understanding that they will process the data in compliance with Irish Data Protection legislation.
- The maximum period for which the data may be used.
- The method which will be used to dispose of the data.

Without exception all electronic data transfers outside of the organisation must first be encrypted.

15. Disclosures of Personal Data Outside of the EEA

Kilkenny County Council will not ordinarily transfer personal data to countries outside the European Economic Area (EEA). In the event that this position changes, the Council will comply with its obligations under the Data Protection Acts by adopting one of the appropriate measures approved by the Data Protection Commissioner and the European Commission to ensure such transfers are lawful.

16. Data Protection Breach

Kilkenny County Council will manage breaches of data protection in accordance with GDPR/Data Protection legislation. A data protection breach occurs where "a breach of security, leading to the accidental or unlawful destruction, loss, alteration or unauthorised disclosure or access to personal data." A breach may occur in the loss of USB keys, Disks, Laptops, Digital Cameras and Mobile Phones. A breach may also be inappropriate access to personal data on the Council systems or the sending of personal data to the wrong individuals.

In the event of a Data Protection Breach, measures must be taken to prevent a repetition of the incident. The Data Protection Commissioners Office must also be notified immediately and within 72 hours and an investigation be commenced forthwith. All affected individuals must be notified immediately. Kilkenny County Council will put in place a procedure to deal with any breach of personal data.

17. Roles/Responsibilities

Kilkenny County Council has overall responsibility for ensuring compliance with the Data Protection Legislation. However, all employees of the Council who collect and/or control the contents and use of personal data are also responsible for compliance with the Data Protection Legislation. The Council will provide support, assistance and advice to all staff to ensure it is in a position to comply with the legislation.

Kilkenny County Council is registered as a Data Controller in compliance with law.

18. Review

This policy will be reviewed regularly in light of any legislative or other relevant indicators.

END

Encl:

APPENDIX 1: GLOSSARY

Data means personal data and sensitive personal data in a form which can be processed. It includes both automated data and manual data.

Automated data means data held on computer or stored with the intention that it is processed on a computer.

Manual Data means data that is part of a relevant filing system, or is stored with the intention that it should form part of a relevant filing system.

Relevant filing system means any set of information that, while not computerised, is structured by reference to individuals, or by reference to criteria relating to individuals, so that specific information is accessible.

Personal Data means data relating to a living individual who is or can be identified either directly from the data or indirectly from the data in conjunction with other data that is in, or is likely to come into, the legitimate possession of the Data Controller. This can be a very wide definition depending on the circumstances.

Sensitive Personal Data relates to specific categories of data which are defined as data relating to a person's racial origin; political opinions or religious or other beliefs; physical or mental health; sexual life; criminal convictions or the alleged commission of an offence; trade union membership.

Data Subject: A Data Subject is the living individual who is the subject of the personal data. Only a Data Subject is entitled to make a Data Access Request.

Data Access Request: A Data Access Request is a request made in writing to a Data Controller by a Data Subject pursuant to the Data Protection Acts.

Processing means performing any operation or set of operations on data, including:

- obtaining, recording or keeping data
- collecting, organising, storing, altering or adapting the data,
- retrieving, consulting or using the data,
- disclosing the information or data by transmitting, disseminating or otherwise making it available,
- aligning, combining, blocking, erasing or destroying the data.

Data Controller A Data Controller is an individual, local authority or a legal entity who controls and is responsible for the keeping and use of personal information on computer or in structured manual files. For the purposes of this Code of Practice the Data Controller is the legal entity known as Kilkenny County Council.

Data Processor is an individual, local authority or legal entity which processes personal data on behalf of a Data Controller on the basis of a formal written contract.

Data Protection Officer is a person appointed by Kilkenny County Council to ensure compliance with GDPR/Data Protection.