

Police entry and search powers: College premises, operations and members¹

The following document is an extract from a broader set of guidance provided to Bursars on the extent of the formal powers of law enforcement agencies, including the police, and how to engage on initial interaction in a variety of circumstances. If you would like a copy of the full document, please contact your Bursar.

This extract covers specifically requests for personal data (e.g. College records and contact details of members) and gives guidance on the constraints for sharing personal data and other information.

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OIS provides a range of key advice on the processing of personal data (of College Fellows, staff and students) on its website at:

<https://www.ois.cam.ac.uk/resources-for-colleges/data-protection-resources>

This section sets out guidance on the constraints for sharing personal data and other information, where such requests come from the police (i.e. a category of “third party” and not the “data subject”), but readers are advised to consider it in the context of that wider guidance.

Key relevant legislation relating to the use (processing) of personal data

Key relevant legislation includes:

- **the “UK GDPR”** – with key principles and requirements for processing:
 - personal data, such as: name; address; contact details; details of studies or employment.
 - special category personal data, such as health data.
 - use of CCTV monitoring for general purposes.
- **the Data Protection Act 2018 (DPA 2018)** – which sets out specific information about the processing of:
 - criminal offence data, such as result of a DBS check (even where there are not details on the register).
 - law enforcement processing – Part 3 only applies to data processing carried out by “competent authorities” (or their processors). Colleges cannot rely on Part 3 provisions for their data sharing, but law enforcement agencies (including but not limited to the police) might.
- **Investigatory Powers Act 2016 (IPA)**
 - section 61 of IPA gives the police powers to identify individuals using their email or IP address, or obtain their usage information, without access to contents of the communications or files. Section 61 requests would come in the form of an official notice served on the College and fall outside data protection legislation.

¹ Primary sources: <https://www.gov.uk/government/publications/pace-code-b-2013/pace-code-b-accessible>
<https://www.gov.uk/government/publications/guidance-on-police-powers-to-close-premises-under-the-licensing-act-2003>
<https://www.gov.uk/police-powers-to-stop-and-search-your-rights>
<https://www.gov.uk/government/publications/search-warrants>

Initial assessment of a police requests for personal data of College members and staff held by the College

ACTIONS: You should:

- a) **check the police identification (warrant cards) to assure yourself of their authenticity or (if the request is an email) it is legitimately from a law enforcement agency.**
- b) **notify your Head of Department and the College Data Protection Lead (CDPL) of the request.**
- c) **be prepared to brief them on whether the requested personal information exists.**

The CDPL should assess whether this is a request under the DPA 2018 or other statutory instrument, or a more informal request for the sharing of personal data or information (see below). In both cases, there are a number of general requirements that should be then followed.

Colleges should have documented procedures that require staff to inform their College Data Protection Lead (CDPL) as soon as they receive such a request. The procedures should identify who to contact in CDPL's absence. If needed, the CDPL may involve the Data Protection Officer for guidance or, in complex cases, may need to seek formal legal guidance.

Any request from the police should be decided on its individual merits and on a case-by-case basis.

It is important to be aware that the UK GDPR and the Data Protection Act 2018 obligate sharing of personal data in specific circumstances relating to the detection or prevention of crime – but does not otherwise prevent sharing personal data with the police, provided the College can demonstrate how it considers sharing to be necessary and proportional, and it is recorded clearly what the legal basis of processing is being used by the College in doing so.

Reviewing a request under a statutory obligation

Police requests for data sharing would generally be made in two ways:

- a) **a court order (Production Order) or another legal obligation** compelling a College to share its data with the police. The most common Production Order relating to personal data is a PACE Production Order, made under Schedule 1 of the Police and Criminal Evidence Act 1984 (PACE). Failure to comply with the order without a justifiable reason would place the College in contempt of court and might be viewed as a criminal offence.
- b) **a direct request made by a police force under their responsibilities to fulfil a statutory law enforcement purpose.** Some police forces use their own request forms, where various laws are listed as assurance that the request is legitimate. There is no legal imperative for the College to provide the data requested and Colleges should feel empowered to challenge any police requests that are vague or seemingly excessive.

Unless submitted during an emergency, Colleges should ensure police requests are made in writing and contain the following information (most police forces use their own forms for such requests):

- whether they are making the request for law enforcement purposes specifically.²
- that they are looking to obtain personal data from the College.
- exactly what personal data they are asking the College to share.
- why they need the personal data (the purpose), including as much information about the specific scenario as possible.

Ideally, the police would also state the format in which it would wish to receive the personal data, (e.g. collected in person from the Porters' Lodge, electronically via an encrypted file, etc.).

It is good practice for any email request to be copied to (or the form signed by) a senior member of the police of the inspector rank or higher.

It is the responsibility of the police to provide the above at the time of making the request. In turn, the College must satisfy itself that the data sharing is necessary and proportionate for the police to achieve those specific law enforcement purposes before providing the personal data.

If the police request is urgent, because someone is at imminent risk of serious harm, the College may decide to share the data prior to carrying out a full due diligence test, noting that the legal basis of processing in this eventuality would be "necessary in order to protect the vital interests of the data subject or of another natural person".

In both cases, whether or not the College provides the personal data, it must document its reasons and justifications for reaching that decision.

Reviewing other requests that are not under a statutory obligation

If the police request is not for specified law enforcement purposes, or the College is not convinced by the information the police has provided, it is under no formal obligation but can still (if it considers the matter to be reasonable) share the requested personal data if it can satisfy itself of the necessity and proportionality after:

- considering the College's "legitimate interests" (or, indeed, the police's).
- balancing these legitimate interests against the individual's rights and reasonable perception of privacy.
- assessing the need to notify the individuals and/or whether it would be appropriate to seek their explicit consent.

Any such assessment should be recorded and retained.

This also applies to circumstances where a College is asked by someone else to share the personal data of other data subjects proactively with the police e.g. to report a crime or suspicion of crime.

² The police do this by citing Schedule 2, Part 1, Paragraph 2 of DPA 2018 (crime and taxation: general), that specifies the purposes as:

- the prevention or detection of crime
- the apprehension or prosecution of offenders
- the assessment or collection of a tax or duty or an imposition of a similar nature

The request could also be made under Article 6(1)(d) of UK GDPR (processing is necessary in order to protect the vital interests of the data subject or of another natural person).

Data protection requirements

- If the College decides to share its personal data with the police, it needs a lawful basis under Article 6(1) of the UK GDPR.
- If the information the College wants to share is special category data, it needs a lawful basis under Article 6(1) and a specified condition for processing under Article 9(2). In some cases, such as where health data is concerned, the College must also have an “appropriate policy document” in place to cover this type of processing. In most cases, the College’s privacy notice may already cover this.
- Where the data the College decides to share is related to a prior criminal offence (covered in Article 10 of the UK GDPR), the College needs an appropriate Article 6 lawful basis and appropriate authority to process such data, which is either under “the control of official authority” or by meeting one of 28 conditions set out in Schedule 1 of the DPA 2018. Most of these conditions also require an “appropriate policy document”.
- OIS has created a checklist that the Colleges can use as a tool for documenting their assessment and justifications. This is available from the OIS website or on request.