



# Phoenix College

## GDPR/Data Protection Policy

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Phoenix Autism Trust (PAT) – A Pathway Towards Independence and Supported Employment

Registered Company no. 09615159 Registered Charity no. 1172227

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## Contents

1. Aims	3
2. Legislation and guidance	3
3. Definitions	3
4. The data controller	4
5. Roles and responsibilities	4
6. Data protection principles	5
7. Collecting personal data	5
8. Sharing personal data	7
9. Subject access request and other rights of individuals	9
10. Parental requests to see the education record	9
11. CCTV	9
12. Photographs and videos	9
13. Data protection by design and default	9
14. Data security and storage of records	9
15. Disposal of records	9
16. Personal data breaches	11
17. Training	11
18. Monitoring arrangements	11
19. Links with other policies	11
20. Appendix 1: Personal Data Breach Procedure	12

### 1. Aims

Our College aims to ensure that all personal data collected about staff, pupils, parents, governors, trustees, visitors and other individuals is collected, stored and processed in accordance with the General Data Protection Regulation (GDPR) and the expected provisions of the Data Protection Act 2018 (DPA 2018) as set out in the Data Protection Bill.

This policy applies to all personal data, regardless of whether it is in paper or electronic format.

### 2. Legislation and guidance

This policy meets the requirements of the GDPR and the provisions of the DPA 2018. It is based on guidance published by the Information Commissioner’s Office (ICO) on the GDPR .It also reflects the ICO’s code of practice for the use of surveillance cameras and personal information.

In addition, this policy complies with our funding agreement.

### 3. Definitions

Term	Definition
<b>Personal data</b>	<p>Any information relating to an identified, or identifiable, individual.</p> <p>This may include the individual’s:</p> <ul style="list-style-type: none"> <li>• Name (including initials)</li> <li>• Identification number</li> <li>• Location data</li> <li>• Online identifier, such as a username</li> </ul> <p>It may also include factors specific to the individual’s physical, physiological, genetic, mental, economic, cultural or social identity.</p>
<b>Special categories of personal data</b>	<p>Personal data which is more sensitive and so needs more protection, including information about an individual’s:</p> <ul style="list-style-type: none"> <li>• Racial or ethnic origin</li> <li>• Political opinions</li> <li>• Religious or philosophical beliefs</li> <li>• Trade union membership</li> <li>• Genetics</li> <li>• Biometrics (such as fingerprints, retina and iris patterns), where used for identification purposes</li> </ul>

	<ul style="list-style-type: none"> <li>• Health – physical or mental</li> <li>• Sex life or sexual orientation</li> </ul>
<b>Processing</b>	<p>Anything done to personal data, such as collecting, recording, organising, structuring, storing, adapting, altering, retrieving, using, disseminating, erasing or destroying.</p> <p>Processing can be automated or manual.</p>
<b>Data subject</b>	The identified or identifiable individual whose personal data is held or processed.
<b>Data controller</b>	A person or organisation that determines the purposes and the means of processing of personal data.
<b>Data processor</b>	A person or other body, other than an employee of the data controller, who processes personal data on behalf of the data controller.
<b>Personal data breach</b>	A breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to personal data.

#### ***4. The data controller***

Phoenix College processes personal data relating to parents, pupils, staff, governors, trustees, visitors and others, and therefore is a data controller.

The College is registered as a data controller with the ICO and will renew this registration annually or as otherwise legally required.

#### ***5. Roles and responsibilities***

This policy applies to **all staff** employed by our College, and to external organisations or individuals working on our behalf. Staff who do not comply with this policy may face disciplinary action.

##### ***5.1 Board of Trustees***

The Board of Trustees has overall responsibility for ensuring that the College complies with all relevant data protection obligations.

### **5.2 Data protection officer**

The data protection officer (DPO) is responsible for overseeing the implementation of this policy, monitoring our compliance with data protection law, and developing related policies and guidelines where applicable.

They will provide an annual report of their activities directly to the Board of Trustees and, where relevant, report to the board their advice and recommendations on College data protection issues.

The DPO is also the first point of contact for individuals whose data the College processes, and for the ICO.

Full details of the DPO's responsibilities are set out in their job description.

Phoenix College's DPO is Judicium and is contactable by email at [enquiries@judicium.com](mailto:enquiries@judicium.com). Tel: 0207 336 8403

### **5.3 The Principal**

The Principal acts as the representative of the data controller on a day-to-day basis.

### **5.4 All staff**

Staff are responsible for:

- Collecting, storing and processing any personal data in accordance with this policy
- Informing the College of any changes to their personal data, such as a change of address
- Contacting the DPO in the following circumstances:
  - With any questions about the operation of this policy, data protection law, retaining personal data or keeping personal data secure
  - If they have any concerns that this policy is not being followed
  - If they are unsure whether or not, they have a lawful basis to use personal data in a particular way
  
  - If they need to rely on or capture consent, draft a privacy notice, deal with data protection rights invoked by an individual, or transfer personal data outside the European Economic Area
  - If there has been a data breach
  - Whenever they are engaging in a new activity that may affect the privacy rights of individuals
  - If they need help with any contracts or sharing personal data with third parties

**In the exceptional circumstance that of a member of College staff is seconded to Phoenix School, or vice versa, they will be able to access both Phoenix School and Phoenix College data, however they are not allowed to share it between the parties.**

## **6. Data protection principles**

The GDPR is based on data protection principles that the College must comply with.

The principles by which personal data must be:

- Processed lawfully, fairly and in a transparent manner
- Collected for specified, explicit and legitimate purposes
- Adequate, relevant and limited to what is necessary to fulfil the purposes for which it is processed
- Accurate and, where necessary, kept up to date
- Kept for no longer than is necessary for the purposes for which it is processed
- Processed in a way that ensures it is appropriately secure

This policy sets out how the College aims to comply with these principles.

## ***7. Collecting personal data***

### ***7.1 Lawfulness, fairness and transparency***

We will only process personal data where we have one of 6 'lawful bases' (legal reasons) to do so under data protection law:

- The data needs to be processed so that the College can **fulfil a contract** with the individual, or the individual has asked the College to take specific steps before entering into a contract
- The data needs to be processed so that the College can **comply with a legal obligation**
- The data needs to be processed to ensure the **vital interests** of the individual e.g. to protect someone's life
- The data needs to be processed so that the College, as a public authority, **can perform a task in the public interest**, and carry out its official functions
- The data needs to be processed for the **legitimate interests** of the College or a third party (provided the individual's rights and freedoms are not overridden)
- The individual (or advocate when an assessment of capacity has taken place) has freely given clear **consent**

For special categories of personal data, we will also meet one of the special category conditions for processing under data protection law

- The individual (or their parent/carer/advocate when appropriate in the case of a student) has given **explicit consent**
- The data needs to be processed to perform or exercise obligations or rights in relation to **employment, social security or social protection law**
- The data needs to be processed to ensure the **vital interests** of the individual or another person, where the individual is physically or legally incapable of giving consent
- The data has already been made **manifestly public** by the individual
- The data needs to be processed for the establishment, exercise or defence of **legal claims**
- The data needs to be processed for reasons of **substantial public interest** as defined in legislation
- The data needs to be processed for **health or social care purposes**, and the processing is done by, or under the direction of, a health or social work professional or by any other person obliged to confidentiality under law
- The data needs to be processed for **public health reasons**, and the processing is done by, or under the direction of, a health professional or by any other person obliged to confidentiality under law

- The data needs to be processed for **archiving purposes**, scientific or historical research purposes, or statistical purposes, and the processing is in the public interest

For criminal offence data, we will meet both a lawful basis and a condition set out under data protection law. Conditions include:

- The individual (or their parent/carer when appropriate in the case of a pupil) has given **consent**
- The data needs to be processed to ensure the **vital interests** of the individual or another person, where the individual is physically or legally incapable of giving consent
- The data has already been made **manifestly public** by the individual
- The data needs to be processed for or in connection with legal proceedings, to obtain legal advice, or for the establishment, exercise or defence of **legal rights**
- The data needs to be processed for reasons of **substantial public interest** as defined in legislation

Whenever we first collect personal data directly from individuals, we will provide them with the relevant information required by data protection law.

We will always consider the fairness of our data processing. We will ensure we do not handle personal data in ways that individuals would not reasonably expect, or use personal data in ways which have unjustified adverse effects on them.

### ***7.2 Limitation, minimisation and accuracy***

We will only collect personal data for specified, explicit and legitimate reasons. We will explain these reasons to the individuals when we first collect their data.

If we want to use personal data for reasons other than those given when we first obtained it, we will inform the individuals concerned before we do so, and seek consent where necessary.

Staff must only process personal data where it is necessary in order to do their jobs.

We will keep data accurate and, where necessary, up-to-date. Inaccurate data will be rectified or erased when appropriate.

In addition, when staff no longer need the personal data they hold, they must ensure it is deleted or anonymised. This will be done in accordance with the College's record retention schedule.

## ***8. Sharing personal data***

We will not normally share personal data with anyone else without consent, but there are certain circumstances where we may be required to do so. These include, but are not limited to, situations where:

- There is an issue with a pupil or parent/carer that puts the safety of our staff at risk
- We need to liaise with other agencies – we will seek consent as necessary before doing this
- Our suppliers or contractors need data to enable us to provide services to our staff and pupils – for example, IT companies. When doing this, we will:
  - Only appoint suppliers or contractors which can provide sufficient guarantees that they comply with data protection law

- Establish a contract with the supplier or contractor to ensure the fair and lawful processing of any personal data we share
- Only share data that the supplier or contractor needs to carry out their service

We will also share personal data with law enforcement and government bodies where we are legally required to do so.

## ***9. Subject access requests and other rights of individuals***

### ***9.1 Subject access requests***

Individuals have a right to make a 'subject access request' to gain access to personal information that the College holds about them. This includes:

- Confirmation that their personal data is being processed
- Access to a copy of the data
- The purposes of the data processing
- The categories of personal data concerned
- Who the data has been, or will be, shared with
- How long the data will be stored for, or if this isn't possible, the criteria used to determine this period
- Where relevant, the existence of the right to request rectification, erasure or restriction, or to object to such processing
- The right to lodge a complaint with the ICO or another supervisory authority
- The source of the data, if not the individual
- Whether any automated decision-making is being applied to their data, and what the significance and consequences of this might be for the individual
- The safeguards provided if the data is being transferred internationally

Subject access requests can be submitted in any form, but we may be able to respond to requests more quickly if they are made in writing and include:

- Name of individual
- Correspondence address
- Contact number and email address
- Details of the information requested

If staff receive a subject access request in any form they must immediately forward it to the DPO.

### ***9.2 Young persons and subject access requests***

Personal data about a young person belongs to that young person, and not the young person's parents or carers. For a parent or carer to make a subject access request with respect to their young person, the young person must have given their consent or be unable to understand their rights and the implications of a subject access request.

Therefore, most subject access requests from parents or carers of students at our College may not be granted without the express permission of the young person. This is not a rule and a young person's ability

to understand their rights will always be judged on a case-by-case basis in line with the Mental Capacity Act (2007).

### **9.3 Responding to subject access requests**

When responding to requests, we:

- May ask the individual to provide 2 forms of identification
- May contact the individual via phone to confirm the request was made
- Will respond without delay and within 1 month of receipt of the request
- Will provide the information free of charge
- May tell the individual we will comply within 3 months of receipt of the request, where a request is complex or numerous. We will inform the individual of this within 1 month, and explain why the extension is necessary

We will not disclose information if it:

- Might cause serious harm to the physical or mental health of the pupil or another individual
- Would reveal that the young person is at risk of abuse, where the disclosure of that information would not be in the young person's best interests
- Would include another person's data that we can't reasonably anonymize, and we don't have the other person's consent and it would be unreasonable to proceed without it.
- Is part of certain sensitive documents, such as those related to crime, immigration legal proceedings or legal professional privilege, management forecasts, negotiations, confidential references or exam scripts.

If the request is unfounded or excessive, we may refuse to act on it, or charge a reasonable fee which takes into account administrative costs. We will take into account whether the request is repetitive in nature when making this decision.

When we refuse a request, we will tell the individual why, and tell them they have the right to complain to the ICO or they can seek to enforce their subject access right through the courts.

### **9.4 Other data protection rights of the individual**

In addition to the right to make a subject access request (see above), and to receive information when we are collecting their data about how we use and process it (see section 7), individuals also have the right to:

- Withdraw their consent to processing at any time
- Ask us to rectify, erase or restrict processing of their personal data, or object to the processing of it (in certain circumstances)
- Prevent use of their personal data for direct marketing
- Object to processing which has been justified on the basis of public interest, official authority or legitimate interests
- Object to decisions based solely on automated decision making or profiling (decisions taken with no human involvement, that might negatively affect them)

- Challenge decisions based solely on automated decision making or profiling (i.e. making decisions or evaluating certain things about an individual based on their personal data with no human involvement)
- Be notified of a data breach in certain circumstances
- Make a complaint to the ICO
- Ask for their personal data to be transferred to a third party in a structured, commonly used and machine-readable format (in certain circumstances)

Individuals should submit any request to exercise these rights to the DPO. If staff receive such a request, they must immediately forward it to the DPO.

### ***10. Parental requests to see the educational record***

Parents, or those with parental responsibility, have a legal right to free access to their child's educational record (which includes most information about a pupil) within 15 College days of receipt of a written request.

If the request is for a copy of the educational record, the College may charge a fee to cover the cost of supplying it.

This right applies as long as the pupil concerned is aged under 18.

There are certain circumstances in which this right can be denied, such as if releasing the information might cause serious harm to the physical or mental health of the pupil or another individual, or if it would mean releasing exam marks before they are officially announced.

### ***11. CCTV***

We use CCTV in various locations around the College site to ensure it remains safe. We will adhere to the ICO's [code of practice](#) for the use of CCTV.

We do not need to ask individuals' permission to use CCTV, but we make it clear where individuals are being recorded. Security cameras are clearly visible and accompanied by prominent signs explaining that CCTV is in use.

Any enquiries about the CCTV system should be directed to the Principal.

### ***12. Photographs and videos***

As part of our College activities, we may take photographs and record images of individuals within our College.

We will obtain written consent from young persons or their parents/ carer/advocate in line with the Mental Capacity Act (2007), for photographs and videos to be taken of students for communication, marketing and promotional materials.

Where we need such consent, we will clearly explain how the photograph and/or video will be used to the student and/or their parent/carer/advocate. Where we don't need formal consent, we will always clearly explain to the student how the photograph and/or video will be used.

Any photographs and videos taken by parents/carers at College events for their own personal use are not covered by data protection legislation. However, we will ask that photos or videos with other students are not shared publicly on social media for safeguarding reasons, unless all the relevant students/parents/carers have agreed to this.

Where the College takes photographs and videos, uses may include:

- Within College on notice boards and in College magazines, brochures, newsletters, etc.
- Outside of College by external agencies such as the College photographer, newspapers, campaigns
- Online on our College website or social media pages

Consent can be refused or withdrawn at any time. If consent is withdrawn, we will delete the photograph or video and not distribute it further.

When using photographs and videos in this way we will not accompany them with any other personal information about the young person, to ensure they cannot be identified.

### ***13. Data protection by design and default***

We will put measures in place to show that we have integrated data protection into all of our data processing activities, including:

- Appointing a suitably qualified DPO, and ensuring they have the necessary resources to fulfil their duties and maintain their expert knowledge
- Only processing personal data that is necessary for each specific purpose of processing, and always in line with the data protection principles set out in relevant data protection law (see section 6)
- Completing privacy impact assessments where the College's processing of personal data presents a high risk to rights and freedoms of individuals, and when introducing new technologies (the DPO will advise on this process)
- Integrating data protection into internal documents including this policy, any related policies and privacy notices
- Regularly training members of staff on data protection law, this policy, any related policies and any other data protection matters; we will also keep a record of attendance
- Appropriate safeguards being put in place if we transfer any personal data outside of the European Economic Area (EEA), where different data protection laws will apply
- Maintaining records of our processing activities, including:
  - For the benefit of data subjects, making available the name and contact details of our College and DPO and all information we are required to share about how we use and process their personal data (via our privacy notices)
  - For all personal data that we hold, maintaining an internal record of the type of data, data subject, how and why we are using the data, , any transfers outside of the EEA and the safeguards for those, retention periods and how we are keeping the data secure

#### **14. Data security and storage of records**

We will protect personal data and keep it safe from unauthorised or unlawful access, alteration, processing or disclosure, and against accidental or unlawful loss, destruction or damage.

In particular:

- Paper-based records and portable electronic devices, such as laptops and hard drives that contain personal data are kept under lock and key when not in use
- Papers containing confidential personal data must not be left on office and classroom desks, on staffroom tables, pinned to notice/display boards, or left anywhere else where there is general access
- Where personal information needs to be taken off site, staff must sign it in and out from the College office
- Passwords that are at least 10 characters long containing letters and numbers are used to access College computers, laptops and other electronic devices. Staff and students are reminded to change their passwords at regular intervals and not reuse passwords from other sites.
- Encryption software is used to protect all portable devices and removable media, such as laptops and USB devices
- Staff, students or governors who store personal information on their personal devices are expected to follow the same security procedures as for College-owned equipment.
- Where we need to share personal data with a third party, we carry out due diligence and take reasonable steps to ensure it is stored securely and adequately protected (see section 8)

The following is taken from the ESFA's 'Record keeping and retention information for training providers' guidance, published 13 January 2021

<https://www.gov.uk/government/publications/record-keeping-and-retention-guidance-for-fe-training-providers/record-keeping-and-retention-information-for-training-providers>

Student Data:

- We mainly store learner' records electronically, in a secure off-site cloud-based server that meets accepted security standards and legal requirements so can be relied upon for audit purposes (including ISO 27001).
- However, should we receive paper-based documentation, these will be stored in individual wallets, one wallet per learner per academic year. They will be stored in secure, lockable, fireproof, non-portable storage containers and access will be strictly controlled and limited to staff that need to access the records.

Current Students:

- **Work Folders:** (*non-accreditation work*) will be kept in students' classrooms for the duration of their course. Students will have a separate work folder for each year that they are at college.
- **Assessment Folders** (live portfolios/accreditation evidence) will be stored in a lockable cupboard for the duration of their course. Unlike work folders, students will have one assessment folder for the duration of the course (3 years).

Alumni:

- **Work folders** and **Assessment Folders** will be stored in a lockable cupboard for two years from end of course

### ***15. Transfer of records***

If the learner moves to a new provider or the contract is terminated, we will do the following:

- Retain their learner file as per retention periods as listed below on session 16. The new provider will gather new evidence for the learner.
- Transfer their portfolios so they can continue their course with the new provider.

### ***16. Disposal of records***

**Learner files will be retained securely for 6 years** from Financial Year End after end of course or until 31/12/2030 if ESF-funded provision. After that they will be disposed of securely. Personal data that has become inaccurate or out of date will also be disposed of securely, where we cannot or do not need to rectify or update it.

**Live portfolios both electronic and paper-based will be retained for 2 years** from end of course. We will list all remaining records with full name, course studied and course dates. All certificates will be returned to the awarding body, if not sent to learner.

For example, we will shred or incinerate paper-based records, and overwrite or delete electronic files. We may also use a third party to safely dispose of records on the College's behalf. If we do so, we will require the third party to provide sufficient guarantees that it complies with data protection law.

### ***17. Personal data breaches***

The College will make all reasonable endeavours to ensure that there are no personal data breaches.

In the unlikely event of a suspected data breach, we will follow the procedure set out in appendix 1.

When appropriate, we will report the data breach to the ICO within 72 hours. Such breaches in a College context may include, but are not limited to:

- A non-anonymised dataset being published on the College website which shows the exam results of pupils eligible for the pupil premium
- Safeguarding information being made available to an unauthorised person
- The theft of a College laptop containing non-encrypted personal data about pupils

### ***18. Training***

All staff and governors are provided with data protection training as part of their induction process.

Data protection will also form part of continuing professional development, where changes to legislation, guidance or the College's processes make it necessary.

### **19. Monitoring arrangements**

The DPO is responsible for monitoring and reviewing this policy.

This policy will be reviewed **every year** and shared with the full governing body and board of Trustees.

### **20. Links with other policies**

This data protection policy is linked to our:

- Freedom of information publication scheme
- E-safety Policy
- Confidentiality Policy
- Whistleblowing Policy
- Acceptable use agreement
- Disciplinary Policy

### **21. Appendix 1: Personal data breach procedure**

This procedure is based on [guidance on personal data breaches](#) produced by the ICO. The requirements set out in the Agreement with the ESFA, will be adhered to.

- On finding or causing a breach, or potential breach, the staff member, governor, trustee or data processor must immediately notify the DPO
- The DPO will investigate the report, and determine whether a breach has occurred. To decide, the DPO will consider whether personal data has been accidentally or unlawfully:
  - Lost
  - Stolen
  - Destroyed
  - Altered
  - Disclosed or made available where it should not have been
  - Made available to unauthorised people
- Staff, governors and trustees will cooperate with the investigation (including allowing access to information and responding to questions). The investigation will not be treated as a disciplinary investigation
- If a breach has occurred or it is considered to be likely that is the case, the DPO will alert the Principal and the chair of trustees.
- The DPO will make all reasonable efforts to contain and minimise the impact of the breach. Relevant staff members or data processors should help the DPO with this where necessary, and the DPO should take external advice when required (e.g. from IT providers). (See the actions relevant to specific data types at the end of this procedure)
- The DPO will assess the potential consequences, based on how serious they are, and how likely they are to happen before and after the implementation of steps to mitigate the consequences.

- The DPO will work out whether the breach must be reported to the ICO and the individuals affected using the ICO's self-assessment tool
  - The DPO will document the decisions (either way), in case it is challenged at a later date by the ICO or an individual affected by the breach/ Documented decisions are store on the College computer system.
  - Where the ICO must be notified, the DPO will do this via the 'report a breach' page of the ICO website, or through its breach report line (0303 123 1113), within 72 hours of the College's awareness of the breach. As required, the DPO will set out:
    - A description, in clear and plain language, of the nature of the personal data breach
    - The name and contact details of the DPO
    - A description of the likely consequences of the personal data breach
    - A description of the measures that have been, or will be, taken to deal with the data breach and mitigate any possible adverse effects on the individual(s) concerned
- The DPO will consider, in light of the investigation and any engagement with affected individuals, whether to notify any relevant third parties who can help mitigate the loss to individuals – for example, the police, insurers, banks or credit card companies
- The DPO will document each breach, irrespective of whether it is reported to the ICO. For each breach, this record will include the:
- Facts and cause
  - Effects
  - Action taken to contain it and ensure it does not happen again (such as establishing more robust processes or providing further training for individuals)

Records of all breaches will be stored on the College computer system.

- The DPO and Principal will meet to review what happened and how it can be stopped from happening again. This meeting will happen as soon as reasonably possible
- The DPO and Principal will meet regularly to assess recorded data breaches and identify any trends or patterns requiring action by the College to reduce risks of future breaches

### **Actions to minimise the impact of data breaches**

We will take the actions set out below to mitigate the impact of different types of data breach, focusing especially on breaches involving particularly risky or sensitive information. We will review the effectiveness of these actions and amend them as necessary after any data breach.

#### ***Sensitive information being disclosed via email (including safeguarding records)***

- If special category data (sensitive information) is accidentally made available via email to unauthorized individuals, the sender must attempt to recall the email as soon as they become aware of the error
- Members of staff who receive personal data sent in error must alert the sender and the DPO as soon as they become aware of the error
- If the sender is unavailable or cannot recall the email for any reason, the DPO will ask the [ICT department/external IT support provider] to attempt to recall it from external recipients and remove it from the College's email system (retaining a copy if required as evidence)

- In any cases where the recall is unsuccessful or cannot be confirmed as successful, the DPO will consider whether it is appropriate to contact the relevant unauthorised individuals who received the email, explain that the information was sent in error, and request that those individuals delete the information and do not share, publish, save or replicate it in any way
- The DPO will endeavor to obtain a written response from all the individuals who received the data, confirming that they have complied with this request
- The DPO will carry out an internet search to check that the information has not been made public; if it has, we will contact the publisher/website owner or administrator to request that the information is removed from their website and deleted.
- If safeguarding information is compromised the DPO will inform the designated safeguarding lead and discuss whether the College should inform any. Or all, of its local safeguarding partners.