

Tonbridge & Malling Borough Council

Data Matching

A Code Of Practice

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Introduction

Tonbridge & Malling Borough Council hereinafter referred to as “the Authority” is committed to upholding the laws of this country affecting our participation in all data matching exercises that include the use of personal information about living individuals.

Where data matching is undertaken by official authorities using information obtained under compulsion from this Authority, using existing and appropriate legislation, this Authority is NOT the data user during that process and is therefore not liable for any unlawful use, disclosure, loss or inaccuracy of the information. In such circumstances, this Code of Practice will not apply after the data is disclosed until the results are returned.

The Authority understands - and will strictly observe - its obligations under the terms of the appropriate Acts of Parliament (including the Data Protection Act, the Human Rights Act, the Freedom of Information Act, the Computer Misuse Act, the Police and Criminal Evidence Act, and the Crime and Disorder Act) and any new legislation introduced hereafter, as well as common law requirements affecting the information being held and used. The Authority will ensure that all staff involved in collecting, processing and distributing the information to be used in data matching will receive appropriate training and instruction in their use of the information and will ensure that the affected members of staff understand their personal responsibilities and liabilities under the law.

This Code of Practice forms part of the Authority’s overall commitment to complying with appropriate legislation and does not exist as a standalone document that should be relied upon in terms of conferring an individual’s rights or the legal obligations of the Authority. Members of the public, employees and members of the Authority and any other individuals who are affected by the Authority’s use of their personal information in data matching exercises may access this document to gain a better understanding of the operations, the processes and the possible consequences of the anti-fraud initiatives in which we participate. Individuals’ legal rights are not affected by this document or its interpretation by any officer or member of the Authority named above.

Any queries about the content of the document, the rights of individuals and any complaints should be directed towards the Authority’s Data Protection Officer.

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Notification

The Authority has notified the Information Commissioner under the terms of the Data Protection Act 1998 to collect, process, disclose and store information related to all its functions and, in particular, the Authority is registered for investigation of suspect benefit claims, crime prevention and detection and the apprehension and prosecution of offenders.

The Authority's registration number Z5576542 cover this purpose and a copy of the relevant section of the registration can be obtained on the Information Commissioner's website.

The Authority is also registered for its auditing functions, which may involve, from time to time, data matching of internal records for the purposes of ensuring the efficiency, economy and effectiveness of any of the Authority's functions.

For example, in the Central Personnel function it may be necessary, in order to ensure data accuracy, to match the data with other internal systems such as training records, payroll/pensions data or travel claims information.

Employees' rights under the terms of the Data Protection Act 1998 are no less than those of other data subjects (e.g. clients, customers, benefits/grants claimants) - any queries should be directed to the Authority's Data Protection Officer.

On occasion, statistical details may be used or disclosed for data matching without reference to the individual and no possibility of the person being identified. In such circumstances, the data will not be covered by the Data Protection Act 1998 and will not be subject to the terms of this Code of Practice. As the details would not identify an individual there is no likelihood of harm being done and so data subjects should not have any concerns about this type of processing.

First Principle

The Authority recognises that claimants, benefits/grants recipients and employees are living individuals. If that were not the case, compliance with all the Data Protection Principles would not be necessary.

We will not assume that any claimant or member of staff is defrauding the Authority. The rules of natural justice and UK law dictate that everyone is innocent until proven guilty. The Authority accepts this starting point and will use it to assist compliance with Data Protection law and the other fundamental rights of its data subjects (clients, staff, elected members, etc.).

In all cases where it is known that details collected from an individual (such as benefits/grants claimants or job applicants) are likely to be used in data matching exercises for anti-fraud purposes, the person will be advised of this.

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On all data collection forms the following wording will be prominently displayed (in a typeface not smaller than the general text of the form): -

“This authority is under a duty to protect the public funds it administers, and to this end may use the information provided on this form for the prevention and detection of fraud. It may also share this information with other bodies responsible for auditing or administering public funds for these purposes”

The Council currently undertakes data matching with the Housing Benefits Matching Service (HBMS) and the National Fraud Initiative (NFI). For the HBMS our supplier of data matching processing is the Department For Work and Pensions. For the NFI our supplier of data matching processing is the Audit Commission. Both of these organizations are fully committed to complying with the requirements of the Data Protection Act 1998 and other appropriate legislation. In addition the Council will adopt the principles set out in any Code of Data Matching Practice issued by these bodies.

Objections

If an individual objects to his / her details being used for the purposes of fraud detection or prevention, the Authority will not assume that he / she has something unlawful to hide or that they are dishonest. It may be that a legitimate reason exists why the details should not be included in the general disclosure to an outside body.

Persons objecting will be given the opportunity to explain, in private if they so request, the reason(s) why they feel their information should not be divulged. Where the reason for the objection is considered valid the Authority will make discreet enquiries to establish the lawfulness of the claim rather than include the person's details in the general disclosure for data matching purposes.

Valid reasons for objection may include the following (the list is not exhaustive and the Authority will consider all objections on individual merit):

- where the disclosure might reveal a “safe house” or refuge address;
- where the receiving council employs (in a capacity in which the data might be made available to them) a partner or ex-partner of the objector;
- where the individual is under police protection or investigation;
- where it is certain in the interviewer's opinion that disclosure would lead to harm coming to the individual or their family.

Where the person objects without reasonable excuse, even after being given the chance to present their case, it is probable that this Authority will volunteer that person's details in the general disclosure, for anti-fraud purposes.

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Data Integrity

The categories of data used in data matching exercises will always be the absolute minimum to properly identify the match. The details used or disclosed will never be excessive or irrelevant. The accuracy of the information will be checked wherever possible prior to the matching taking place. As data from third parties may be unreliable it will not be used or disclosed for these matching purposes, without first checking its accuracy.

Relevant data to be disclosed for matching initiatives will include the name of the claimant or applicant, their address, date of birth, details of the claim or application and other details sufficient to identify the individual. It is necessary in many cases to disclose more than name and address in order to distinguish the applicant from other people at the same address or with a similar name. It is in the claimant's or employee's interests as well as essential for efficiency reasons, that individuals are not confused with other people and perhaps wrongly identified as being matched.

When details of matched records are returned to the Authority, after being processed by an outside organisation, the accuracy of the data will be checked where possible against written records and information provided by the data subject. All information irrelevant to further investigations will be deleted immediately. Where the information is found on other Councils' systems about a client, employee or other data subject of this Authority a thorough check will be made to ensure that:

- the "matched" individual is definitely the same person;
- the information held by each Council in respect of that individual is as accurate as possible; and
- the appropriate investigative action is taken to determine the validity of the application for benefit, grant, assistance or employment.

Data Matching Processes

This Authority has received a written assurance from the organisation(s) performing the data matching processes that appropriate matching criteria are applied, that only authorised and trained staff has access to the details that disclosure of the details is controlled as described below and that strict security measures are in place.

The results of the data matching exercises are reported only to Councils who have participated in the initiatives. The Councils receiving information will be just the ones who already hold some details of the individual matched. The resultant computer file / printout is not a list of fraudsters or suspected fraudsters; it is merely a list of identified matches according to the criteria used by the processor. The individuals named may be eligible for multiple

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claims or employed at more than one authority on part-time basis or they may simply have the same or a very similar name as another person.

In general, the data matching processes are designed to identify potential unlawful multiple claims, inaccurate information or organised fraud. In some cases the inaccurate data may be as a result of genuine mistakes and the action taken will obviously reflect this fact. No action to change benefits or to discipline employees will be taken by this Authority based on the results of the data matching process alone. Further investigation will always be undertaken to establish the facts of the case, skilled human intervention will prevent and eliminate any automated decision-making by the computerised equipment.

Where the results of the data matching indicate that a fraud may have taken place, but before any remedial action is taken, affected individuals will be presented with the facts and asked if there is some explanation for the apparent discrepancy(ies). Appeals procedures exist for all claimants and employees who feel they have been unfairly treated in respect of action proposed or taken. A copy of the relevant appeals procedure will be supplied at the appropriate time.

Keeping And Deleting Records

The computer records and / or printed information produced from the data matching exercises will be kept only for a reasonable period. That period of time will be long enough for proper investigation of any possible fraud and as soon as the person is eliminated from our enquiries those anti-fraud details will be properly destroyed using the Authority's approved procedures for disposal of confidential waste. These procedures ensure that the details cannot fall into the wrong hands.

Where a matched record, following our extensive investigations, identifies a definite fraudulent claim appropriate action will be taken to recover the payments made during the period of the illegal claim and / or reported to the appropriate authorities for criminal proceedings to begin.

The record of the unlawful claim and subsequent action taken will be kept on file for the period specified in appropriate legislation including the Rehabilitation of Offenders Act and taking account of Principle Five of the Data Protection Act.

Appropriate Security

All internal computer systems containing sensitive information (including any used for data matching exercises) have strict, password-controlled access restrictions and the Authority will ensure that only authorised staff will be given access to these systems. Such staff will be properly trained in issues of confidentiality and Data Protection. Temporary and contract staff will not be used except where unavoidable, in which case they will be properly vetted

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and will be required to sign a confidentiality contract prior to engagement.

Security of the Authority's buildings, and especially the offices where sensitive details are held and processed, is regarded as high priority and unauthorised visitors are prevented from gaining access. Magnetic media and printed sensitive information about individuals will be stored in secure locations.

The data to be used will be sent by secure method to the data matching organisation(s) who will, when returning the matched information, ensure an equivalent method of secure transportation.

Subject Access Requests

Any person who requests a copy of their computerised information held by this Authority under the Data Protection Act 1998 will receive, within a maximum of 40 days, a full printed copy of the record along with an explanation of any codes used within the computer file. Details of any other individual appearing on the record will be deleted before the printed record is supplied unless the other person has given written consent for the data to be disclosed.

There will be a charge for the provision of the printed report of £10.

Further Information

Further details of Tonbridge & Malling Borough Council's Data Protection measures are available from the Authority's Data Protection Officer.

The Office of the Information Commissioner has more information on data matching, how to complain and details of general Data Protection rights and obligations. They are to be found at:

Information Commissioner
Wycliffe House, Water Lane, Wilmslow, Cheshire. SK9 5AF
Telephone on 01625 545700, Facsimile on 01625 524510
E-mail: mail@ico.gsi.gov.uk Website: www.ico.gov.uk