

Special Category and Criminal records data

Data Classification	Public Data
Author	Regulatory Compliance Manager
Approval	Legal Director
Last updated	February 2024

Introduction

Purpose

Under the UK General Data Protection Regulation ("UK GDPR") and Data Protection Act 2018 ("DPA"), additional protections for job applicants, employees, subcontractors, and other data subjects apply if a business processes "special categories" of personal data and/or criminal records data.

One of these protections is a requirement to have an appropriate policy document in place. This policy sets out our approach to processing special category data and criminal records data. It supplements our Privacy Notice.

The company named on your contract is part of the PayStream group of companies, of Mansion House, Manchester Road, Altrincham, WA14 4RW, which we refer to as 'us' and 'we' in this policy. Whilst the company named on your contract is the entity which employs you to work on temporary assignments for external third parties, PayStream Accounting Services Limited ("PAS") is the entity which employs internal staff to operate the running of the business and for making decisions as to the data we collect from data subjects and how it is processed. As such, PAS is a Data Controller as defined by Article 4(7) of the UK GDPR and on the instruction of PAS, we process data as outlined in the following policy.

Definitions

"**Criminal records data**" means information about an individual's criminal convictions and offences, and information relating to criminal allegations and proceedings which may also receive special protection.

"**Special category data**" means the following categories of personal data which are considered sensitive and may receive special protection: racial or ethnic origin, political opinions, religious or philosophical beliefs, trade union membership, genetic data, biometric data, data concerning health, and data concerning sex life or sexual orientation.

Why we process special category and criminal records data

We may collect and process the following special category and criminal records data to carry out our legal obligations, for the performance of the contract we hold with you, or as applicable law otherwise permits (for example, with your explicit written consent; where it is needed in the public interest, such as for equal opportunities monitoring; or, where it is necessary to protect you or another person from harm).

Less commonly, we may process this type of information where it is needed in relation to legal claims or where it is needed to protect your interests (or someone else's interests) and you are not capable of giving your consent, or where you have already made the information public.

We expect to process special category data and criminal records data in the following ways:

Equal opportunities data (Racial/ethnic origin, religious & philosophical beliefs, sexual orientation)

Where you provide to us data related to racial and ethnic origin, religious and philosophical beliefs, and/or your sexual orientation this data may be processed for equal opportunities monitoring purposes, to ensure meaningful equal opportunity monitoring and reporting information as part of our equal opportunities or diversity and inclusion.

Biometric data and photographic images

We may collect, store and process biometric data and/or photographic images of you either a physical or digital format as submitted by you or a third party, and whether taken during a social or business environment. This for security and identification purposes, and for the purposes of checking eligibility to work and identity.

Documentation and data related to your nationality, identity and/or right to work will be collected, stored and processed in our legitimate interests and/or to ensure that we are complying with our legal obligations (to check for instance, that our employees are entitled to work in the UK).

Health

We may collect, store and process data related to your health that is relevant to the performance of your duties or to your entitlements (where applicable), and/or any other medical data that is shared with us may include (but is not limited to), information on whether or not you have a disability, details of absences (other than holidays) as well as physical or mental health information. We process such data to:

- make appropriate workplace accommodations (as part of sickness absence monitoring for instance) where necessary,
- ensure meaningful equal opportunity monitoring and reporting information as part of our equal opportunities or diversity and inclusion;
- ensure that we are complying with our health and safety obligations in the workplace;
- assess whether or not you are fit for work and, where relevant, to carry out appropriate performance reviews, where this is related to health or capability procedures if you are not fit for work;
- ensure that, where relevant, you receive sick pay or other benefits to which you may be legally entitled;
- allow us to comply with our duties under the Equality Act 2010 for individuals with a disability; and
- mitigate the risk of the transmission of infections in the workplace, protect our employees including where necessary clinically vulnerable individuals, and to help us make informed decisions as to the safety of the office working environment and whether our employees should work from home. This may include collecting data on whether you have been vaccinated in a pandemic situation.

Criminal records data

We do not envisage that we will hold information about criminal convictions in most cases, and expect to only collect information about criminal convictions if it is appropriate given the nature of the role and/or where we are legally able to do so (this is usually where processing is necessary to carry out our obligations).

Where appropriate, we will collect information about criminal convictions as part of the onboarding process or we may be notified of such information directly by you in the course of you working for us to verify that you are suitable for employment or continued employment, and/or to comply with our legal and regulatory obligations, where relevant.

Compliance with data protection principles

Where we process special category and criminal records data we do so in accordance with the following data protection principles.

1. We process personal data lawfully, fairly and in a transparent manner and for specified, explicit and legitimate purposes.

We can process special category data and criminal records data only where we have a lawful basis to do so and, in addition, where one of the specific processing conditions relating to special category data or criminal records data (as outlined in the DPA) applies.

We process (or may process) special category and criminal records data for the purposes outlined above and in compliance with the following legal conditions:

	Lawful basis for processing	Special category personal data/criminal records data processing condition under sch.1 of the Data Protection Act 2018
Equal opportunities data (including health data where collected for this purposes)	Processing is in our legitimate interests. These interests are not outweighed by the interests of data subjects.	Processing is necessary for monitoring equality of opportunity or treatment, as permitted by the Data Protection Act 2018 (para.8 of sch.1).
Biometric Data (Including photographic images)	Processing of such data, for instance, where contained within right to work and identity documentation is necessary for compliance with legal obligations (e.g. checking job applicants' and employees' right to work in the UK) and is also in our legitimate interests.	Processing is necessary for the purposes of performing or exercising obligations or rights imposed by law in connection with employment (para.1 of sch.1).
Health data	Processing is necessary for compliance with legal obligations (e.g. assessing fitness for work, complying with health and safety obligations, carrying out capability procedures and complying with Equality Act 2010 and Health and Safety at Work Act 1974, as applicable) and to assist us in the protection of and health and safety of our employees.	Processing is necessary for the purposes of performing or exercising obligations or rights imposed by law in connection with employment (para.1 of sch.1).
Criminal record data	Processing is in our legitimate interests and where required by regulatory bodies in line with our legal obligations. These interests are not outweighed by the interests of data subjects.	Processing is necessary to comply with regulatory requirements to establish whether or not someone has committed an unlawful act or been involved in dishonesty, malpractice or other seriously improper conduct (para.12 of sch.1).

We have considered in each case that processing is necessary and proportionate in light of the other safeguards in place and does not pose a high risk to individuals.

We explain to you how special category personal data and criminal records data is used when we collect the data. This information is set out in our privacy notice, made available to you on the online portal and at any time on request.

We review our processing and policies regularly to ensure that we are not using special category personal data or criminal records data for any other purpose.

Special category personal data relating to your health is not disclosed to third parties, except in the context of; seeking medical advice from our occupational health adviser or other medical advisers who are subject to a professional duty of confidentiality; reporting suspected offences to the appropriate authorities, or; where there is a legal obligation on us to disclose. We comply with the Access to Medical Reports Act 1988 where relevant.

Criminal records data is not disclosed to third parties, except where there is legal obligation to do so, or otherwise where we have your consent.

2. We process personal data only where the data is adequate, relevant and limited to what is necessary for the purposes of processing.

We collect and retain the minimum amount of information necessary to allow us to achieve the purposes outlined above. As noted, we include relevant information in our privacy notice as to how special category personal data and criminal records data is used.

All data is reviewed periodically to ensure we do not use data for any other purpose, and unnecessary data is deleted.

Where we have a legitimate need to process any special category or criminal records data for purposes not identified above, we will only do so after providing you with privacy information and, if required by law, obtaining your prior, express consent.

3. We keep accurate personal data and takes all reasonable steps to ensure that inaccurate personal data is rectified or deleted without delay.

We take reasonable steps to ensure that the personal data that we hold is accurate. Special category and criminal records data is usually obtained:

- directly from job applicants, employees, subcontractors and/or other data subjects; or
- from external sources that we are entitled to assume will provide accurate information, such as the Disclosure and Barring Service in the case of criminal records data, or medical professionals in the case of health data.

On becoming aware of any inaccuracies, we will erase or rectify inaccurate data that we hold without delay.

4. We keep personal data only for the period necessary for processing.

We have considered how long we need to retain special category and criminal records data. The periods for which data is retained, including where such data is retained after the end of your employment, are outlined in the data retention schedule within our Privacy Notice.

At the end of the relevant retention period, we erase or securely destroy special category and criminal records data.

We will only retain special category and criminal records data for as long as necessary to fulfil the purposes we collected it for, as required to satisfy any legal, accounting, or reporting obligations, or as necessary to resolve disputes.

5. We adopt appropriate measures to make sure that personal data is secure and protected against unauthorised or unlawful processing, and accidental loss, destruction or damage.

We take the security of special category and criminal records data seriously. We have internal policies and security controls in place to protect personal data against loss, accidental destruction, misuse or disclosure, and to ensure that data is not accessed, except by employees in the proper performance of their duties.

We will always treat special category and criminal records data as confidential and we will only share such data where there is a specific and legitimate purpose to do so.