

LEGITIMATE INTERESTS ASSESSMENT

Lateral Flow Testing

Part 1: Purpose test

You need to assess whether there is a legitimate interest behind the processing.

- Why do you want to carry out this processing?
- What benefit do you expect to get from the processing?
- Do any third parties benefit from the processing?
- Are there any wider public benefits to the processing?
- How important are the benefits that you have identified?
- What would the impact be if you couldn't go ahead with the processing?
- Are you complying with any specific data protection rules that apply to your processing (eg profiling requirements or e-privacy legislation)?
- Are you complying with other relevant laws?
- Are you complying with industry guidelines or codes of practice?
- Are there any other ethical issues with the processing?

To safeguard the health of the teaching workforce and keep as many staff, pupils and students in school and college as possible, rapid lateral flow coronavirus (COVID-19) tests have been made available to schools and colleges. The use of rapid lateral flow tests allows the identification of individuals with coronavirus (COVID-19) who do not have symptoms, which make up around a third of all cases.

Finding asymptomatic cases, along with other infection prevention and control measures such as social distancing, can help us manage the transmission of the virus and ensure the safety of pupils and staff in the school. By reducing transmission, we can support our ability to keep children in education during the pandemic. The school will use the test data for the management of tests and implementing local arrangements in the event of a positive test.

The results of the tests will be shared with the Department for Health & Social Care (DHSC) and Public Health England (PHE) to support the wider national management of the pandemic including test and trace and research. Once data has been shared with DHSC and PHE they become the data controller for that data.

Explicit consent is sought for the medical test. To log, share test results and enact local COVID processes we are relying on legitimate interests. By being able to identify those who are asymptomatic we can act quickly to prevent the further spread of corona virus, protecting pupils and staff. Staff are not required to take the test or agree to this processing. An information sheet is provided to staff explaining the test process and how their information will be processed. A privacy notice is also supplied with the information notice.

Part 2: Necessity test

You need to assess whether the processing is necessary for the purpose you have identified.

- Will this processing actually help you achieve your purpose?
- Is the processing proportionate to that purpose?
- Can you achieve the same purpose without the processing?
- Can you achieve the same purpose by processing less data, or by processing the data in another more obvious or less intrusive way?

This testing will help us to identify those who are asymptomatic and advise them to get a full test. We are able to restrict access to the school to those who are not either showing symptoms or asymptomatic, slowing the spread of the virus in the school. There is no other testing method available to us. Staff have a choice about whether or not they take the test. Even if they have agreed to the test, they can change their mind at any point.

The data being processed is name, contact details, and test result. The data is only retained for up to one year from the date of the last entry. This is to enable results to be provided to the individual, DHSC & PHE and handle any resulting queries.

Part 3: Balancing test

You need to consider the impact on individuals' interests and rights and freedoms and assess whether this overrides your legitimate interests.

First, use the [DPIA screening checklist](#). If you hit any of the triggers on that checklist you need to conduct a DPIA instead to assess risks in more detail.

Nature of the personal data

- Is it special category data or criminal offence data?
- Is it data which people are likely to consider particularly 'private'?
- Are you processing children's data or data relating to other vulnerable people?
- Is the data about people in their personal or professional capacity?

The test data does fall within the special categories of personal data as defined by data protection law as it relates to physical health.

The relevant article for processing this special category data is 9(2) (i) processing is necessary for reasons of public interest in the area of public health. This data is processed under the obligations set out in Public Health legislation (Regulations 3(1) and (4) of the Health Service (Control of Patient Information) Regulations 2002 (COPI)) which allows the sharing of data for COVID related purposes and where it is carried out by a health care professional OR someone who owes an equivalent duty of confidentiality to that data.

Reasonable expectations

- Do you have an existing relationship with the individual?
- What's the nature of the relationship and how have you used data in the past?
- Did you collect the data directly from the individual? What did you tell them at the time?
- If you obtained the data from a third party, what did they tell the individuals about reuse by third parties for other purposes and does this cover you?
- How long ago did you collect the data? Are there any changes in technology or context since then that would affect expectations?
- Is your intended purpose and method widely understood?
- Are you intending to do anything new or innovative?
- Do you have any evidence about expectations – e.g., from market research, focus groups or other forms of consultation?
- Are there any other factors in the particular circumstances that mean they would or would not expect the processing?

There is a clear existing contractual relationship between the school and their staff. Staff are

<p>advised of this use of data via our information notice and privacy notice. The information is collected directly from the individual. The data will be shared with DHSC and PHE for pandemic control purposes, but with no other third parties.</p>	
<p>Likely impact</p> <ul style="list-style-type: none"> • What are the possible impacts of the processing on people? • Will individuals lose any control over the use of their personal data? • What is the likelihood and severity of any potential impact? • Are some people likely to object to the processing or find it intrusive? • Would you be happy to explain the processing to individuals? • Can you adopt any safeguards to minimise the impact? 	
<p>If an individual tests positive the school will enact its own COVID isolation and control processes without telling anyone who it is that has received the positive test.</p> <p>If an individual tests negative or their test is void this information will be recorded for stock control and testing performance purposes.</p> <p>Where a test is positive individuals' personal data will be shared with DHSC, PHE and the County Council for public health analysis. The DHSC may share this information with the individual's GP to support their care, but the school will not.</p> <p>It is not likely that the use of this personal data for this purpose will affect an individual's right to privacy. The data is shared securely, and its use and retention are strictly controlled.</p>	
Can you offer individuals an opt-out?	Yes

Making the decision

This is where you use your answers to Parts 1, 2 and 3 to decide whether or not you can apply the legitimate interest basis.

Can you rely on legitimate interests for this processing?	Yes
<p>This processing is unlikely to have a negative impact on individuals as they are aware of this processing and it is necessary to ensure the safe and effective running of the school.</p> <p>The Legitimate Interests condition allows individuals to object to or restrict this use of their personal data. If a staff member does not wish their personal data to be processed in this way, they can refuse to take the test. This will not negatively impact their employee status.</p>	
LIA completed by	Lauri Almond - DPO
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