



The Planning Inspectorate  
Yr Arolygiaeth Gynllunio

## **Frequently Asked Questions (FAQ)**

# **How does the General Data Protection Regulation apply to Examination events?**



**February 2020**

## **1. INTRODUCTION AND PURPOSE OF THIS DOCUMENT**

- 1.1 This FAQ document has been published under s51 of the Planning Act 2008 (PA2008). It consists of advice to persons involved in the examination of Nationally Significant Infrastructure Project applications about how the General Data Protection Regulation 2016 (GDPR) applies to oral representations at, and digital audio recordings of, Examination events.
- 1.2 For these purposes, Examination events include:
- Preliminary Meetings;
  - Issue Specific Hearings;
  - Open Floor Hearings; and
  - Compulsory Acquisition Hearings.
- 1.3 For more information about what the Planning Inspectorate does with your data please see the [National Infrastructure Planning Privacy Notice](#)<sup>1</sup>.
- 1.4 **The advice within this FAQ document does not repeat or replace the important information set out in the Privacy Notice.**
- 1.5 This FAQ document may from time to time be updated at the discretion of the Planning Inspectorate. You can sign up to be notified by email if/when these updates occur using the tool on [this page of the National Infrastructure Planning website](#).

---

<sup>1</sup> **Appendix A** to this document and available at: <https://infrastructure.planninginspectorate.gov.uk/wp-content/uploads/2018/05/ni-privacy-statement.pdf>

## 2. FREQUENTLY ASKED QUESTIONS (FAQ)

### FAQ 1 What is the GDPR?

**Advice** The GDPR is the primary law regulating how organisations must protect all European Union (EU) citizens<sup>2</sup> from privacy and data breaches in today's data-driven world<sup>3</sup>.

All public sector organisations, including the Planning Inspectorate, have a duty to understand and comply with the GDPR.

The full text of the GDPR can be viewed at [eur-lex.europa.eu](http://eur-lex.europa.eu).

Guidance about the GDPR and how it is applied by public authorities can be viewed at <https://ico.org.uk/for-organisations/guide-to-data-protection/guide-to-the-general-data-protection-regulation-gdpr/>.

### FAQ 2 What personal information does the Planning Inspectorate collect and publish on the National Infrastructure Planning website?

**Advice** Please see the [National Infrastructure Planning Privacy Notice](#)<sup>4</sup>.

### FAQ 3 Why does the Planning Inspectorate publish digital audio recordings of Examination events?

**Advice** The fundamental values of the Planning Inspectorate are our commitment to openness, transparency and impartiality in the conduct of our business and we are committed to proactively publishing information that we hold.

Digital audio recordings of Examination events held under the Planning Act 2008 process are published so that any persons who are interested in the examination of an application can find out what happened, whether they were able to attend an event or not.

### FAQ 4 How does the GDPR apply to digital audio recordings?

**Advice** Because digital audio recordings are retained and published on the National Infrastructure Planning website, they form a public record that contain personal information and to which the GDPR applies.

**If you participate in an Examination event, it is important that you understand that you will be recorded and that the digital audio recording will be retained by**

---

<sup>2</sup> The GDPR is expected to be retained in UK law after the UK exits the EU

<sup>3</sup> <https://eugdpr.org/the-regulation/>

<sup>4</sup> **Appendix A** to this document and available at: <https://infrastructure.planninginspectorate.gov.uk/wp-content/uploads/2018/05/ni-privacy-statement.pdf>

**the Planning Inspectorate and published on the National Infrastructure Planning website.**

If you do not consent to having your oral representations recorded at an Examination event, the Examining Authority<sup>5</sup> will offer you the written process as an alternative means to make your representations. Representations made in writing carry the same weight as representations made orally.

**FAQ 5 Will I be asked to provide personal information at an Examination event?**

The Planning Inspectorate will only ever ask for information to be placed on the public record that is important and relevant to a planning decision (ie to the carrying on of its public task). This will normally be your name and the content of any oral representations that you make.

At a Compulsory Acquisition Hearing, your oral representations may necessarily include the address of land or property in which you hold a legal interest. Digital audio recordings of Compulsory Acquisition hearings are removed from the National Infrastructure Planning website circa six weeks after the Secretary of State has taken the final decision about whether to grant development consent. See **FAQ 10** for further information.

It will only be in the rarest of circumstances that an Examining Authority might ask you to provide personal information of the types that most of us would prefer to keep private or confidential ('special category data' in the [National Infrastructure Planning Privacy Notice](#) attached at **Appendix A**).

See **FAQ 6** for further advice in this respect.

**FAQ 6 What if I cannot avoid including sensitive personal information in my oral representation?**

**Advice**

To avoid the need to edit digital audio recordings, the Planning Inspectorate asks that you try your best not to add information to the public record that you wish to be kept private and confidential.

If you or the Examining Authority (ExA) genuinely consider that there is no alternative to the disclosure of such information, the ExA will confirm the process to enable it to be made available without it forming part of the public record.

The normal way to do this will be for the ExA to ask you to make general oral submissions, but to include the private and confidential information that you need to support it in a written submission. Whilst the written submission will also need to be published, it can be redacted – a process through which certain

---

<sup>5</sup> The Inspector or Inspectors appointed to examine the application

personal content is removed ('blacked out') – before publication takes place.

It follows that if you begin to make oral submissions at an Examination event that appear likely include information that would normally be kept private and confidential, the ExA will ask for you not to include the private and confidential information in your oral representation and offer you the written process instead.

**FAQ 7      Can I audio record, film or tweet about Examination events?**

**Advice**      You may audio record, film or tweet about the proceedings at an Examination event. However, you do need to do this responsibly and in a way that does not interrupt the proceedings in any way, and which takes into account the GDPR.

**If you decide to audio record, film or tweet about proceedings, you are responsible for satisfying yourself that you are operating lawfully within the data protection regime.**

If you plan to film an Examination event, you will need to bear in mind that some individuals in attendance may not wish to be filmed.

See **FAQ 8** for further advice in this respect.

**FAQ 8      What if I do not wish to be filmed by another attendee?**

If an individual indicates to the Examining Authority (ExA) that they wish to film proceedings, at the beginning of the event the ExA will ask all attendees if there is anyone present who does not wish to be filmed.

If a person requests not to be filmed, the ExA will ask for the individual filming to respect that wish. If filming continues, the ExA can adjourn the hearing.

**FAQ 9      What status do third party recordings have in the examination of applications under the Planning Act 2008?**

The only official record of the proceedings at Examination events are the audio recordings that are published on the National Infrastructure Planning website<sup>6</sup>.

Other audio recordings, films, tweets, blogs or other social media communications arising out of Examination events will not be accepted as evidence in the examination of applications.

---

<sup>6</sup> And in the case of Preliminary Meeting, the written meeting note

It should be noted that some applicants request to video-stream proceedings to private rooms in order to assist their wider teams. These streams should not be recorded, retained or distributed by applicants. Applicants are expected to declare that streaming of this type is taking place at the beginning of each applicable event. Streaming of this type should avoid including any attendees other than members of the Applicant's team and the Examining Authority.

**FAQ 10      How long are digital audio recordings retained on the National Infrastructure Planning website?**

**Advice**      The digital audio recordings of any Compulsory Acquisition Hearings are removed from the National Infrastructure Planning website at the end of the Judicial Review (JR) period<sup>7</sup>.

The digital audio recordings of:

- the Preliminary Meeting;
- any Open Floor Hearings; and
- any Issue Specific Hearings;

are removed from the National Infrastructure Planning website at the end of the period of five years from the date of the Secretary of State's decision.

The Planning Inspectorate will retain all depublished material on its internal business systems for 20 years and review it in line with its document retention policy.

More information about document retention is available in the [National Infrastructure Planning Privacy Notice](#) attached at **Appendix A**.

---

<sup>7</sup> Six weeks after the Secretary of State has made its decision about whether to grant development consent

# National Infrastructure Planning's Privacy Notice

## Introduction

This Privacy Notice explains the types of personal information the Planning Inspectorate may collect about you when you interact with us in the [Planning Act 2008](#) process, what we do with your personal information and why we publish your personal information on the National Infrastructure Planning website. It also explains what rights you have and how we will protect your data and keep it safe.

## Who are we?

The Planning Inspectorate is an executive agency, sponsored by the [Ministry of Housing, Communities and Local Government](#) (MHCLG) and [Welsh Government](#). The fundamental values of the Planning Inspectorate are our commitment to openness, transparency and impartiality in the conduct of our business and we are committed to proactively publishing information which we hold provided it is lawful to do so.

We have duties and responsibilities under the [Planning Act 2008](#) and its procedural rules and regulations in relation to Nationally Significant Infrastructure Projects (NSIPs).

MHCLG is the 'Data Controller' for personal data we hold that relates to NSIP cases in England.

Welsh Government is the 'Data Controller' for personal data we hold that relates to NSIP cases in Wales.

## What is the legal basis for our use of personal information?

The Planning Inspectorate has statutory functions and duties under the [Planning Act 2008](#) and its procedural rules and regulations which require us to make certain documents and information, which may include personal information, publicly available. We do this by publishing documents and information on the National Infrastructure Planning website.

The use and disclosure of your personal information is governed by the [General Data Protection Regulation](#) (GDPR) and the [Data Protection Act 2018](#).

The Planning Inspectorate obtains, holds, uses and discloses personal information under the lawful basis detailed in:

- GDPR Article 6(1)(c), where processing is necessary for compliance with a legal obligation to which the controller is subject;
- GDPR Article 6(1)(e), where processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller; and
- GDPR Article 9(2)(g), where the processing of special categories of personal data is necessary for reasons of substantial public interest. This 'special category data' includes personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, and the processing of genetic data, biometric data for the purpose of uniquely identifying a natural person, data concerning health or data concerning a natural person's sex life or sexual orientation.

## National Infrastructure Planning Portal Pilot

We are currently running a live pilot on the National Infrastructure Planning website which uses industry standard security with data encrypted in transit and at rest.

The pilot will involve Interested Parties being able to submit written submissions via a web-based portal. Participation by Interested Parties in this live pilot is voluntary. Planning Inspectorate inspectors and casework staff will also participate.

If Interested Parties do not wish to use the portal to make written submissions, they can also do this in the traditional way by emailing submissions to the existing project mailbox.

## Surveys

It is appropriate to highlight that we carry out user satisfaction surveys to evaluate our performance and effectiveness. The [Data Protection Act 2018](#) states that, as a government agency, the Planning Inspectorate may process personal data as necessary for the effective performance of a task carried out in the public interest ie a consultation.

Survey Monkey is the third party processor we use to gather information on our behalf. Any data collected by Survey Monkey is stored on servers in the US. You can read their privacy policy [here](#).

The information we obtain from the surveys is used to help us improve our services.

## Why do we process personal information?

It is necessary for us to process your personal information under the lawful basis of [public task](#) in order to enable us to operate the planning process under the [Planning Act 2008](#).

For the processing of written representations and documents, the lawful basis is that processing is necessary for compliance with a legal obligation to which the Planning Inspectorate is subject<sup>8</sup>.

For the processing of digital audio recordings, the lawful basis is that processing is required for the performance of a task carried out in the public interest or in exercise of official authority vested in the Planning Inspectorate<sup>9</sup>.

The Planning Inspectorate takes its responsibilities very seriously and great care is taken to ensure your personal data is processed appropriately.

## How do we collect information?

The personal information that we use is provided to us by you if you participate in the [Planning Act 2008](#) process.

We also use personal information provided to us by applicants within their application documents.

Personal information may also be provided by applicants and other Interested Parties if they refer to you in their representations.

## What type of information do we collect?

Under the [Planning Act 2008](#) process, the Planning Inspectorate collects information in the form of:

- Electronic and hard copy correspondence;
- application documents;
- written submissions made by Interested Parties and others;
- audio recordings of Examination events, including:
  - Preliminary Meetings;
  - Open Flood Hearings;

---

<sup>8</sup> GDPR Article 6(4)(c)

<sup>9</sup> GDPR Article 6(4)(e)

- Issue Specific Hearings; and
- Compulsory Acquisition Hearings; and
- written notes.

This list is not exhaustive.

The personal information will be your name and contact details plus any other personal information that you provide in your correspondence or representation.

Occasionally, your correspondence or representation may also include [special category data \(SCD\)](#); for instance where you are providing information regarding your personal circumstances that you want to be considered.

We take care to ensure that we do not publish SCD without considering the GDPR implications. However, if you are providing SCD please make sure it is relevant to the case and that you make clear that your representation contains SCD.

Your personal information may be held on a computer system, or in a manual record such as in a physical file.

## Cookies

You can find out more about how the Planning Inspectorate uses cookies [here](#).

## How is the information that we collect used?

The information provided to us is used to assist the examination of applications under the [Planning Act 2008](#) process.

The Planning Inspectorate produces advice about taking part in examinations which references the statutory procedural rules and regulations that apply.

In accordance with Rule 21 of [The Infrastructure Planning \(Examination Procedure\) Rules 2010](#), the Planning Inspectorate must make all Relevant Representations, Written Representations and other documents submitted in relation to the examination of an application available to the public. Under [s39 of the Planning Act 2008](#) we are also required to make available to the public the documents comprising each application for development consent. In both cases this is achieved by publishing these documents on the National Infrastructure Planning website.

Under [section 51 of the Planning Act 2008](#) we are also required to publish any advice that we issue about:

- Applying for a Development Consent Order; and
- making a representation about an application for a [Development Consent Order](#).

This advice, which must include the name of the person requesting the advice, is recorded on the [Register of advice](#) on the National Infrastructure Planning website.

When we publish your representation, or the advice issued to you, we will only ever publish your name and the content of your representation or enquiry.

Please note that we do not accept anonymous or confidential representations.

The Examining Authority<sup>10</sup> will consider the information provided in all representations in the course of its examination and in preparing its Recommendation Report. This report is sent to the Secretary of State, who takes the final decision on applications under the [Planning Act 2008](#).

---

<sup>10</sup> The Inspector or Inspectors appointed to carry out the examination of an application

## The information that we publish online

### ***Documents***

The [Planning Act 2008](#) and the statutory procedural rules and regulations require us to publish application documents, Relevant Representations, Written Representations and other documents on the National Infrastructure Planning website. These published records will include the name of the person that has submitted the document.

Before publishing the above documents, we redact (or 'blank out') certain personal details eg telephone numbers; addresses; email addresses; signatures and sensitive personal information (special category data). We also redact any content that we consider to be potentially libellous.

We don't redact any personal information in documents produced by applicants where this would hinder the effective examination of an application ie the Planning Inspectorate's carrying out of its public task. For example, certain documents that are published (eg the Book of Reference) include the names **and addresses** of Interested Parties because the land or rights of those Interested Parties would be affected by the Proposed Development.

We also publish the Examining Authority's Recommendation Report and the Secretary of State's decision, both of which may contain personal information.

### ***Digital audio recordings***

We also publish digital audio recordings of Preliminary Meetings and any hearings held in the course of an Examination. Before publishing digital audio recordings, we edit them to ensure that the following is not placed on the public record:

- Personal information that is not relevant to the carrying out of the public task;
- special category data; and
- potentially libellous information.

If you have concerns about the publication of your information, then you should discuss this with the Planning Inspectorate's Case Team or the Planning Inspectorate's [Data Manager](#) (full contact information below) before submitting your representation.

### **Who do we share your personal information with?**

The Planning Inspectorate will disclose personal information to other bodies or individuals when required to do so by any legislation, rule of law or court order. These may include:

- Local authorities;
- applicants;
- Interested Parties;
- national and local government;
- ombudsmen and regulatory bodies; and
- the courts.

We provide your information to the relevant Secretary of State that makes the final decision on the applications that we examine via:

- The Department for Business, Energy and Industrial Strategy;
- The Department for Transport;
- The Department for Environment, Food and Rural Affairs; and

- The Ministry of Housing, Communities and Local Government.

We use third party service providers to process information on our behalf. These are:

- GoPro;
- Red Hat;
- UK Cloud;
- Google Analytics; and
- Survey Monkey.

Where third party service providers are used, contracts/licences are put in place to ensure that your personal information is processed only as instructed by us (unless otherwise required by law), and that appropriate measures are in place to ensure the security of information.

Digital audio recordings of examination events are processed by third party audio visual service providers. This service is bound by contract between the applicant and the third party service provider. At the end of Examination events the audio visual service provider provides the Planning Inspectorate with an unedited copy of the digital audio recording which is subsequently processed by the Planning Inspectorate and published on the National Infrastructure Planning website.

### **What are the consequences of failing to provide information?**

If you are an applicant and you fail to provide the statutory information needed to consider your application, we may not be able to accept your application for Examination under [s55 of the Planning Act 2008](#).

If you are another Interested Party and you fail to provide your name and/or the name of the organisation or group that you represent, we may be unable to accept your representation.

We do not accept anonymous or confidential representations.

### **How long do we keep the information?**

We will keep your personal information for 20 years and review it in line with our document retention policy.

However, we only publish personal information on the National Infrastructure Planning website as long as it is necessary to enable the effective examination of an application. On that basis the following rules of retention generally apply:

The following documents are removed from the National Infrastructure Planning website after the Judicial Review period, which runs six weeks from the issue of the Secretary of State's decision, has elapsed:

- The Book of Reference;
- any audio recording of Compulsory Acquisition Hearings which may have taken place;
- any land interest tables; and
- all Relevant Representations.

Five years after the Secretary of State's decision was issued, all remaining published documents associated with an application are removed from the National Infrastructure Planning website, with the exception of the following which are retained in line with our document retention policy:

- The Secretary of State's decision notice and statement of reasons;

- if made, the Development Consent Order;
- the Examining Authority's Recommendation Report and associated appendices;
- any documents relating to material/non-material change applications;
- any correction notices; and
- all section 51 advice issued in respect of an application.

In certain circumstances, certain information will be held longer than the retention periods above eg in judicial high court cases or in the event of a dispute and reviewed as necessary by the relevant owners.

### **How do we keep your personal information safe?**

We are committed to doing all that we can to keep your data secure. We have set up systems and processes to prevent unauthorised access or disclosure of your data eg we protect your data using varying levels of encryption.

We also make sure that any third parties that we deal with keep all personal data they process on our behalf secure.

### **What are my rights?**

[Data protection legislation](#) provides you with rights in respect of your personal information. These are:

- The right to be informed;
- the right of access;
- the right to rectification;
- the right to data portability; and
- the right to object.

Given our lawful basis for processing information, your rights to erasure, data portability and to object to the processing of your information may not apply and we do not use automated decision making or profiling.

Your other rights may also not be absolute and as our legal basis for processing information is not "consent", withdrawal of consent is not normally applicable. However, if you have concerns over the use of your personal information, or wish to exercise your rights, then please contact us.

### **Transfer of data overseas**

The information that we publish on the National Infrastructure Planning website is available worldwide. We do not otherwise transfer your information outside of the European Economic Area.

### **Complaints about the processing of your personal information**

When we process your personal information, we will comply with the [Data Protection Act 2018](#) and all other relevant legislation.

If you are unhappy with the way we process your personal information then you should first contact the Planning Inspectorate's Data Manager: [dataprotection@planninginspectorate.gov.uk](mailto:dataprotection@planninginspectorate.gov.uk).

Alternatively, you can contact the relevant Data Protection Officer directly (please make clear that your query relates to the Planning Inspectorate):

MHCLG: [dataprotection@communities.gov.uk](mailto:dataprotection@communities.gov.uk)

Welsh Government: [dataprotectionofficer@gov.wales](mailto:dataprotectionofficer@gov.wales)

If you are still not happy, or for independent advice about data protection, privacy and data sharing, you can contact:

The Information Commissioner's Office

Wycliffe House

Water Lane Wilmslow, Cheshire,

SK9 5AF

Telephone: 0303 123 1113 or 01625 545 745

<https://ico.org.uk/>

### **Changes to this Privacy Notice**

We keep our Privacy Notice under regular review. This Privacy Notice was last updated in February 2020.

### **Disclaimer**

Neither any department of Her Majesty's Government nor any of its employees, agents or sub-contractors make any warranty, express or implied, or assume any legal liability or responsibility for the accuracy or completeness of any information contained on this site ([infrastructure.planninginspectorate.gov.uk](http://infrastructure.planninginspectorate.gov.uk)) or any website referred to. Those who access the site or any site referred to should take appropriate steps to verify all such information.

Any Department of Her Majesty's Government cannot be held responsible for the contents of any pages referred to by a link to an external website. Any reference on our sites to any persons, products, websites or services does not constitute or imply their endorsement, recommendation or favouring by any Department of Her Majesty's Government, its employees, agents or sub-contractor.