

REPORT TO: Cabinet

MEETING DATE: 11 September 2011

BY: Executive Director (Support Services)

SUBJECT: Data Protection Policy

1 PURPOSE

- 1.1 To seek approval from Cabinet of the proposed Data Protection Policy.

2 RECOMMENDATIONS

- 2.1 That Cabinet approves the Data Protection Policy and adopt it as a Council Policy.

3 BACKGROUND

- 3.1 The Data Protection Act 1998 imposes certain obligations on East Lothian Council as to how it handles the personal information that it has about individuals and how it deals with requests from individuals who want to gain access to any personal information that the Council holds about them. East Lothian Council is registered as a Data Processor with the Information Commissioner.
- 3.2 It is good practice and important for reasons of transparency and openness that the Council should have a Data Protection Policy in place.
- 3.3 The Information Commissioner in his published guidance places particular emphasis on the importance of Data Processors such as the Council having policies in place as to how personal information will be handled and how it proposes to fulfil its obligations under the Act.
- 3.4 The Data Protection Policy has been subject to Council Management Team consideration and approval as well as workforce and Trades Unions Consultation. The Policy on Data Protection is not a collective agreement with the Trades Unions. The draft was commented on and approved by a senior official from the Information Commissioner's Office.

4 POLICY IMPLICATIONS

- 4.1 The Policy will provide clarity and consistency of approach for staff, clients and members of the public

5. EQUALITIES IMPACT ASSESSMENT

- 5.1 An EQIA has been undertaken and no negative impacts have been identified.

6 RESOURCE IMPLICATIONS

- 6.1 Financial – None.
6.2 Personnel – None
6.3 Other – None

7 BACKGROUND PAPERS

- 7.1 Data Protection Policy
7.2 Data Protection Act 1998
7.3 The Information Commissioners Guidance

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DATE	29 August 2012

EAST LOTHIAN COUNCIL

Data Protection Policy

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Data Protection Policy

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1. Introduction

- 1.1 This document sets out East Lothian Council's policy regarding data protection. The Council is fully committed to compliance with the requirements of the Data Protection Act 1998 (the DPA) and will follow procedures that aim to ensure that all employees, elected members, contractors, agents, consultants, partners of the Council who have access to any personal data held by or on behalf of the Council, are fully aware of and comply with their duties and responsibilities under the DPA.
- 1.2 The DPA came into force in 2000. Under the DPA, there are two general rights relating to personal data: the right of access and the right to have personal data processed. East Lothian Council needs to collect and use certain types of information about people with whom it deals in order to operate. These include current, past and present employees, suppliers, members of the public and others with whom it communicates.

2. Statement of Intent

- 2.1 East Lothian Council regards the lawful and correct treatment of personal data as very important to successful operations, and to maintaining confidence between those with whom it deals, both internally and externally.
- 2.2 East Lothian Council recognises the importance of ensuring that the Council treats personal data lawfully and correctly and the Council fully endorses and adheres to the principles of data protection detailed in the DPA. Any employee found to be breaching the terms and conditions of this policy may be subject to disciplinary procedures.

3. Definitions

- 3.1 Personal data: Data which relate to a living individual who can be identified from those data or any other data likely to come into the possession of the data controller. This includes any expressions of opinion and any indications of the intentions of the data controller, or any other person, in respect of the individual.

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- 3.2 Data controller: Legal person or persons who decide the purpose for which personal data are to be processed. In this instance the Council is the data controller for all personal data it processes.
- 3.3 Data Processor: A person (other than an employee of the data controller) who processes personal data on behalf of a data controller.
- 3.4 Data subject: An individual about whom the Council holds personal data.
- 3.5 Principles: There are 8 data protection principles in accordance with which personal data must be processed. See Appendix 1 for the list in full.

4. Notification

- 4.1 Data Controllers are required to notify the Information Commissioner of the processing that they undertake.
- 4.2 The Council will maintain its register entry and annually review its processing to ensure that its register entry is accurate and up to date.

5. The Data Protection Principles

Specifically, the Principles require that personal information-

- shall be processed fairly and lawfully and, in particular, shall not be processed unless specific conditions are met;
- shall be obtained only for one or more specified and lawful purposes and shall not be further processed in any manner incompatible with that purpose or those purposes;
- shall be adequate, relevant, and not excessive in relation to the purpose or purposes for which they are processed;
- shall be accurate and, where necessary, kept up to date;
- shall not be kept for longer than is necessary for that purpose or those purposes;
- shall be processed in accordance with the rights of the data subjects under the Act;
- appropriate technical and organisational measures shall be taken against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to personal data;
- shall not be transferred to a country outside the European Economic Area unless that country or territory ensures an adequate level of

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protection for the rights and freedoms of data in relation to the processing of data.

6. Compliance with the Principles

East Lothian Council will, through appropriate application of criteria and controls

- ensure the fair collection and use of information;
- meet its legal obligations to specify the purposes for which information is used; including specific requirements that must be met to ensure fair and lawful sharing of personal data both internally and externally;
- collect and process appropriate information only to the extent that is needed to fulfill operational needs or to comply with any legal requirement;
- ensure the accuracy of information used;
- implement procedures to restrict the length of time information is held;
- ensure that people about whom information is held, are able to fully exercise their rights under the Act, including the right to be informed that processing is undertaken, the right of access to their personal information, the right to prevent processing in certain circumstances and the right to correct, rectify, block or erase information which is regarded as inaccurate information;
- ensure compliance with the East Lothian Council IT Policies/ Information Security Policies to safeguard personal data;
- ensure that information is not transferred abroad without suitable safeguards.

7. Information Handling and Collection (1st and 2nd Principles)

- 7.1 East Lothian Council will process all personal data for the purpose of providing an effective delivery of service in accordance with the aims, responsibilities and obligations of the Council.
- 7.2 All personal data will be processed in accordance with the Council's notification to the Information Commissioner.
- 7.3 The Council will, when collecting personal data, as far as it is practicable inform data subjects of the purposes for which the Council will use their personal data.
- 7.4 Personal data will only be collected where there is a specific purpose for doing so. It will not be used for any other purpose except where allowed by the DPA or required by law.

8. Records Management (3rd, 4th and 5th Principles)

- 8.1 The Council will implement procedures to ensure that all personal data it holds are accurate in respect of matters of fact and, where necessary, kept up to date.
- 8.2 Opinions of officers of the Council that are recorded will be carefully and professionally expressed.
- 8.3 The Council will not hold personal data for longer than is reasonably required. The Council will comply with its retention schedule.
- 8.4 Further information about retention schedules can be found in East Lothian Council's Records Management Policy.

9. Individual Rights (6th Principle)

- 9.1 The DPA gives individuals a general right of access to their personal data. This is called the subject access right. A data controller has 40 calendar days to respond to any subject access request made in writing. East Lothian Council will deal with all subject access requests accordingly. Upon receiving a request, departments will forward it on to the Data Protection/FOI Team. Subsequently, when asked, the department will scan the relevant data and email the resulting PDF files to the Data Protection/FOI Team who will do the necessary redacting before releasing the information to the data subject.

10. Security (7th Principle)

- 10.1 East Lothian Council will ensure that there is someone with specific responsibility for data security. Currently, the IT Security Officer has this responsibility.
- 10.2 All officers of the Council are responsible for ensuring that personal data are held securely at all times.
- 10.3 Access to all Council systems is password protected and only authorised personnel have access.
- 10.4 Personal data will be safely and responsibly destroyed when they are no longer required.
- 10.5 All officers of the Council and individuals undertaking work for the Council will adhere to the Council's IT security policies and procedures.

11. Data Export (8th Principle)

- 11.1 East Lothian Council will adhere to the 8th Principle and ensure that no personal data are transferred outside the EEA.
- 11.2 ELC will not use external data storage providers that cannot guarantee that data will not leave the EEA.

12. Disclosures

- 12.1 East Lothian Council reserves the right to disclose information under certain circumstances where allowed by law.
- 12.2 When a request for disclosure is made, the Council will consider each request individually and where a disclosure is justified, the Council will only disclose the minimum data required.
- 12.3 In order to improve service delivery and to meet its responsibilities, the Council may enter into data sharing agreements with other organisations where data sharing is allowed by law. Where this is the case, the Council will ensure that a Data Sharing Protocol with that organisation is in place which ensures the data sharing is in compliance with the law and this policy.

13. Elected Members and Data Protection

- 13.1 Where Elected Members work on behalf of the Council, this policy applies to them. Should any breach of the DPA occur, it will be the Council's responsibility.
- 13.2 Where Elected Members work for their constituents, they are data controllers in their own right and must register with the Information Commissioner. Should any breach of the DPA occur, it will be the Elected Member's responsibility.

14. Complaints, Enforcement and Dealing with Breaches

- 14.1 All complaints regarding data protection should be made through the Council's feedback procedure.

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- 14.2 The maximum fine for data protection breaches is £500,000. Therefore, the Data Protection & Freedom of Information Compliance Officer should immediately be informed of any suspected internal breaches of the DPA.
- 14.3 All Council staff, contractors and elected members will cooperate fully with any investigation into an alleged breach of the DPA undertaken by the Data Protection & Freedom of Information Compliance Officer or the Information Commissioner.
- 14.4 The Data Protection & Freedom of Information Compliance Officer will apply a fair and consistent approach to the recording and management of all data protection breaches, including notification of breaches to affected individuals where necessary. In each case, this will include a risk assessment of the consequences of the breach, conducted in line with the relevant guidance from the Information Commissioner's Office and up to date case law. Precedent within the Council will also be taken into account.

15. Managing Data Protection

East Lothian Council will ensure that-

- the Data Protection & Freedom of Information Compliance Officer will provide advice on all aspects of this policy to all officers processing personal data within Council;
- everyone managing and handling personal data understands that they are responsible for following good data protection practice;
- everyone managing and handling personal data is appropriately trained to do so and has the opportunity to attend training sessions;
- everyone managing and handling personal data is appropriately supervised;
- queries about managing and handling personal data are promptly and courteously dealt with;
- methods of managing and handling personal data are regularly assessed and evaluated
- performance of managing and handling personal data is regularly assessed and evaluated.

16. Review of Policy

This policy will be reviewed every three years from the date of approval.

17. Contact Information

East Lothian Council's Data Protection & Freedom of Information Compliance Officer can be contacted at:

Data Protection and Freedom of Information Compliance Officer
Law & Licensing
John Muir House
Haddington
foi@eastlothian.gov.uk
Tel. 01620 82 7993

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APPENDIX 1

The Data Protection Principles

- 1 Personal data shall be processed fairly and lawfully
- 2 Personal data shall be obtained only for one or more specified and lawful purposes, and shall not be further processed in any manner incompatible with that purpose or those purposes.
- 3 Personal data shall be adequate, relevant and not excessive in relation to the purpose or purposes for which they are processed.
- 4 Personal data shall be accurate and, where necessary, kept up to date.
- 5 Personal data processed for any purpose or purposes shall not be kept for longer than is necessary for that purpose or those purposes.
- 6 Personal data shall be processed in accordance with the rights of data subjects under the Data Protection Act.
- 7 Appropriate technical and organisational measures shall be taken against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data.
- 8 Personal data shall not be transferred to a country or territory outside the European Economic Area unless that country or territory ensures an adequate level of protection for the rights and freedoms of data subjects in relation to the processing of personal data.

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APPENDIX 2

The Rights of Individuals

The DPA gives rights to individuals in respect of personal data held about them by others. These rights are:

1. Right of subject access
2. Right to prevent processing likely to cause damage or distress
3. Right to prevent direct marketing
4. Right in relation to automated decision-making
5. Right to take action for compensation if an individual suffers damage by any contravention of the DPA by the data controller
6. Right to take action to rectify, block, erase or destroy inaccurate data

Please contact the Data Protection & Freedom of Information Compliance Officer for more information on an individual's rights under the DPA.

APPENDIX 3

Criminal Offences under the DPA

1. Processing without notification
2. Failure to notify the Information Commissioner of changes to the notification register entry
3. Failure to comply with an Enforcement or Information Notice served by the Information Commissioner
4. Knowingly and recklessly making a false statement in compliance with an Information Notice
5. Unlawful obtaining, disclosing or procuring the disclosure of personal data
6. Unlawful selling of personal data
7. Enforced subject access.

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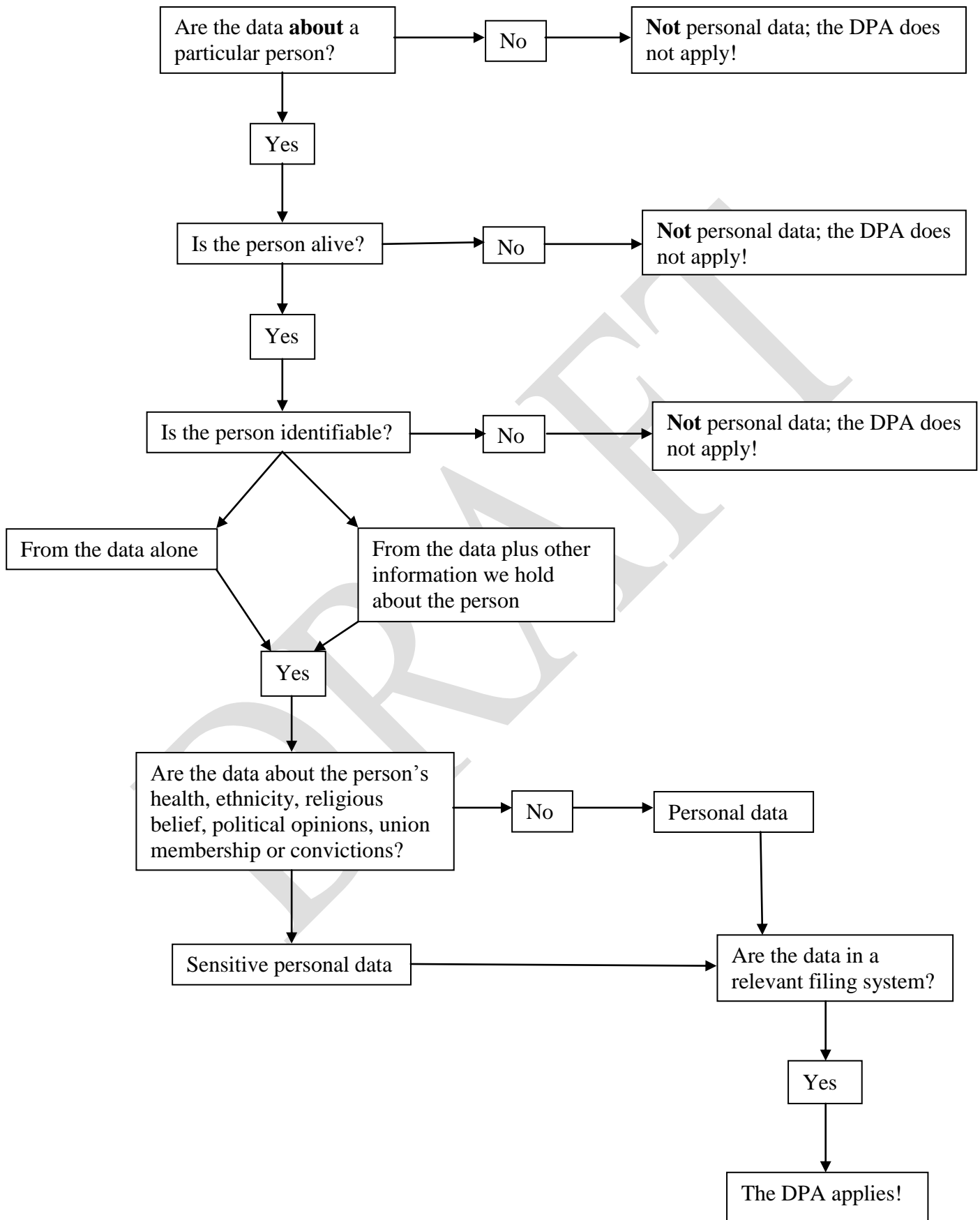
APPENDIX 4

Data Protection Procedures

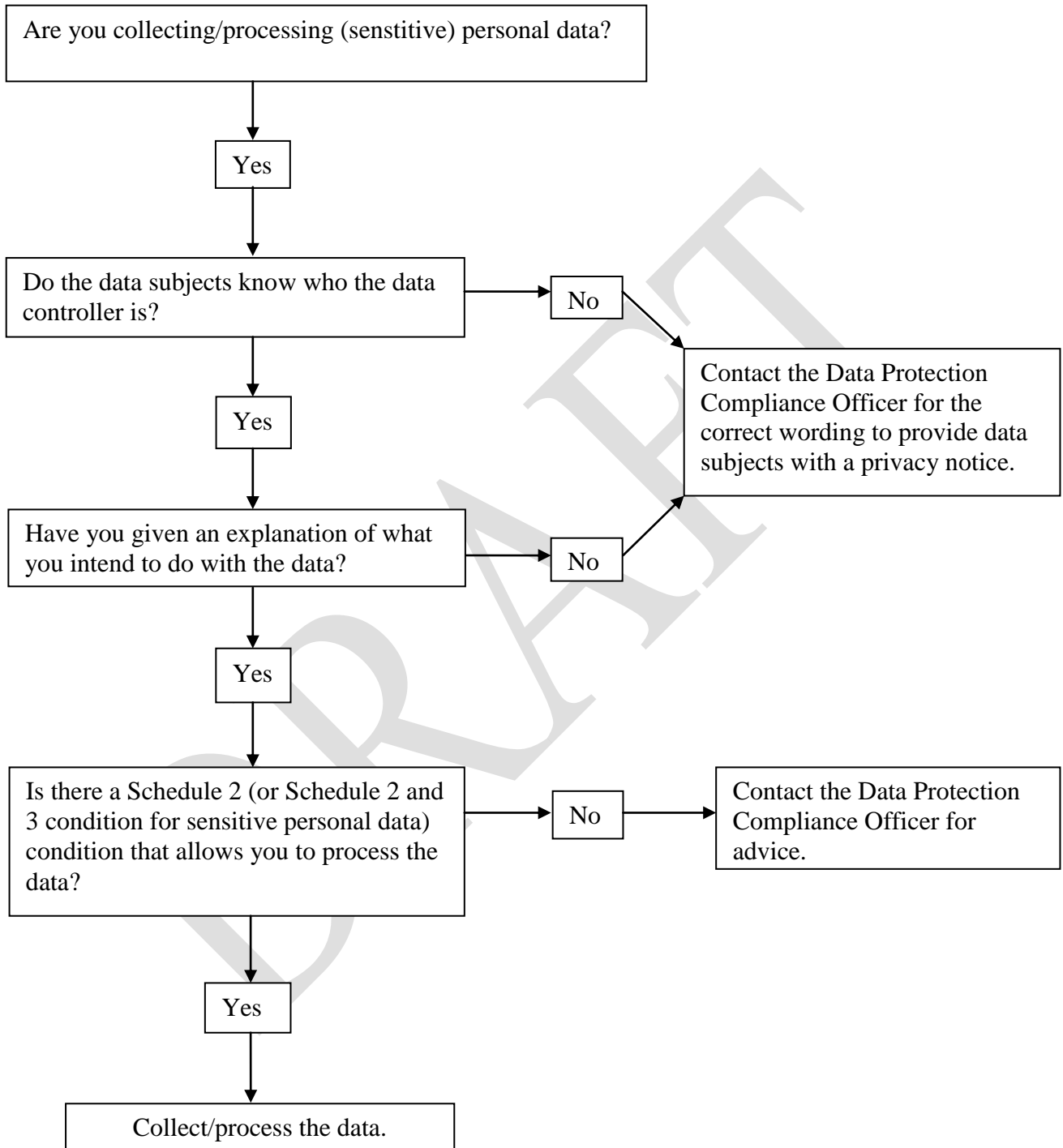
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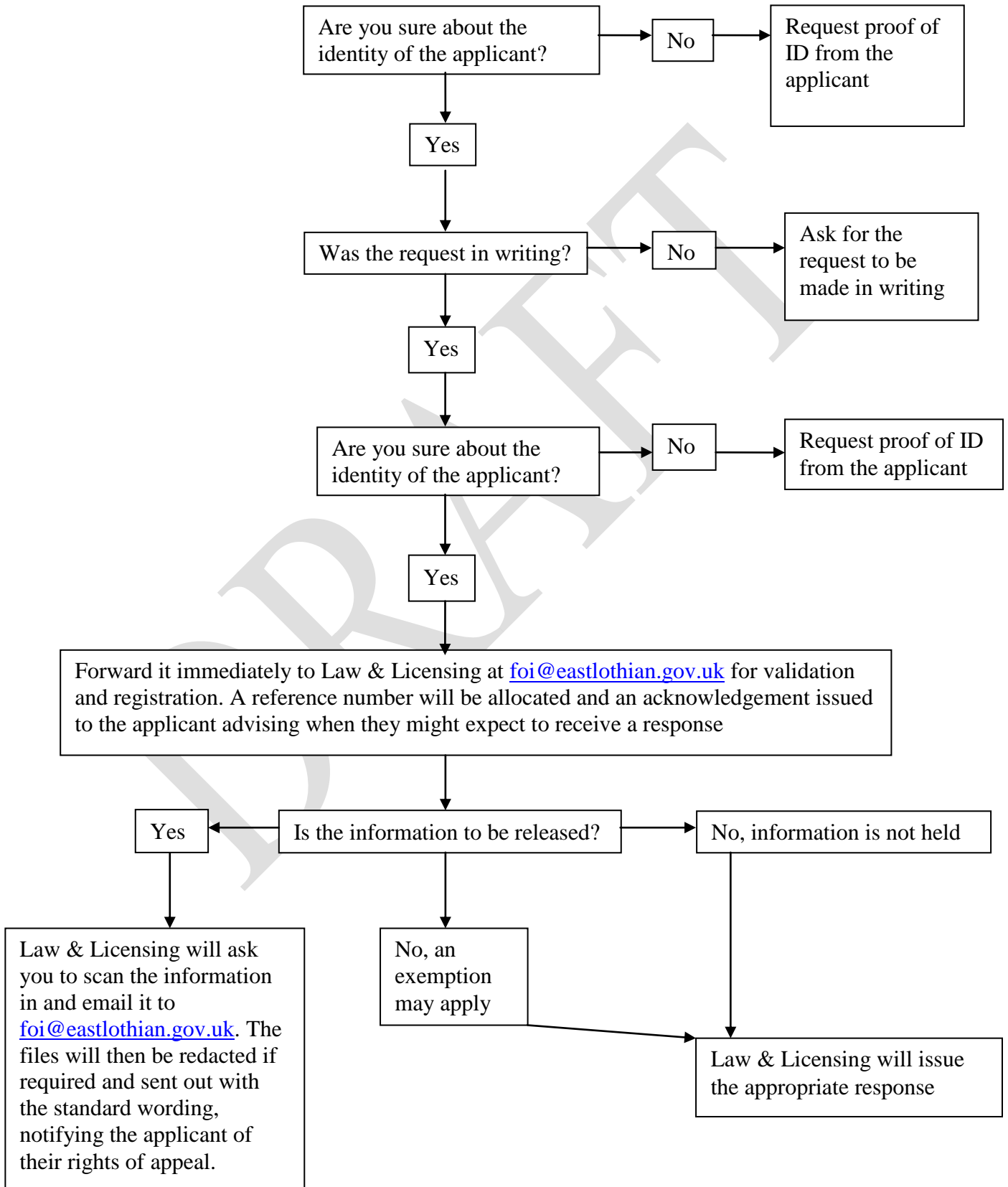
Is it personal/sensitive personal data?



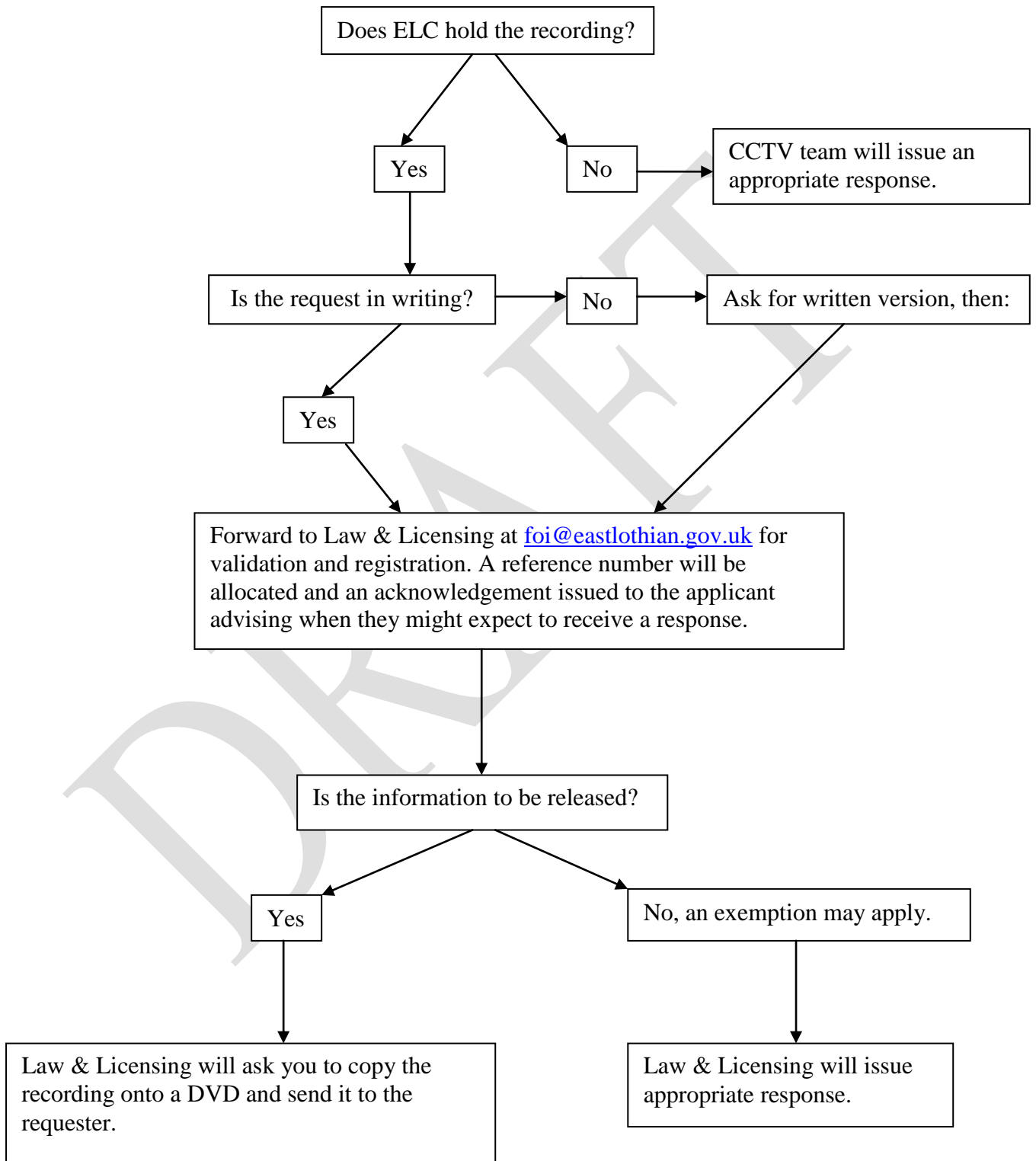
Collecting/processing (sensitive) personal data



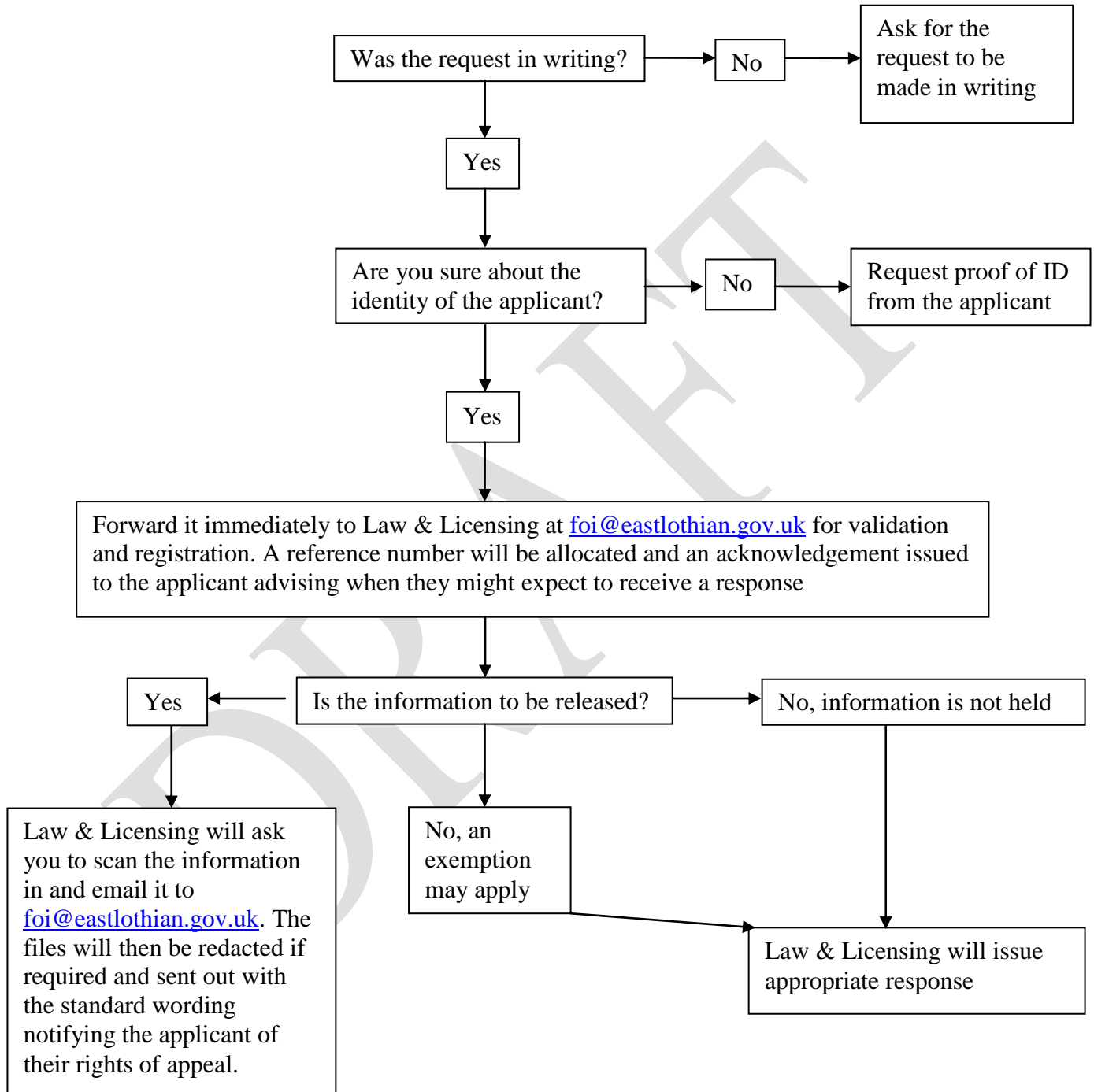
Subject Access Request (SAR)



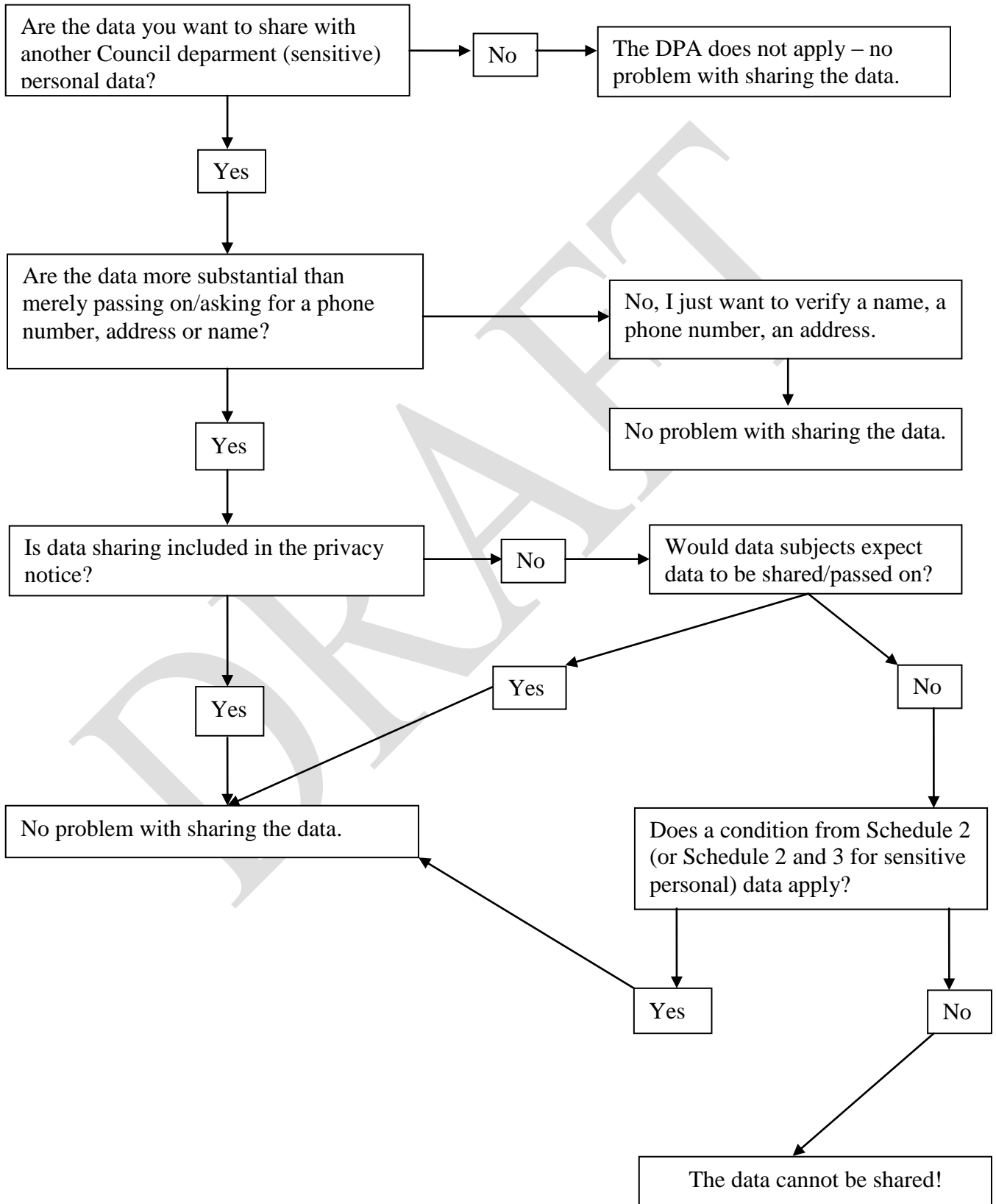
CCTV – Request for recording



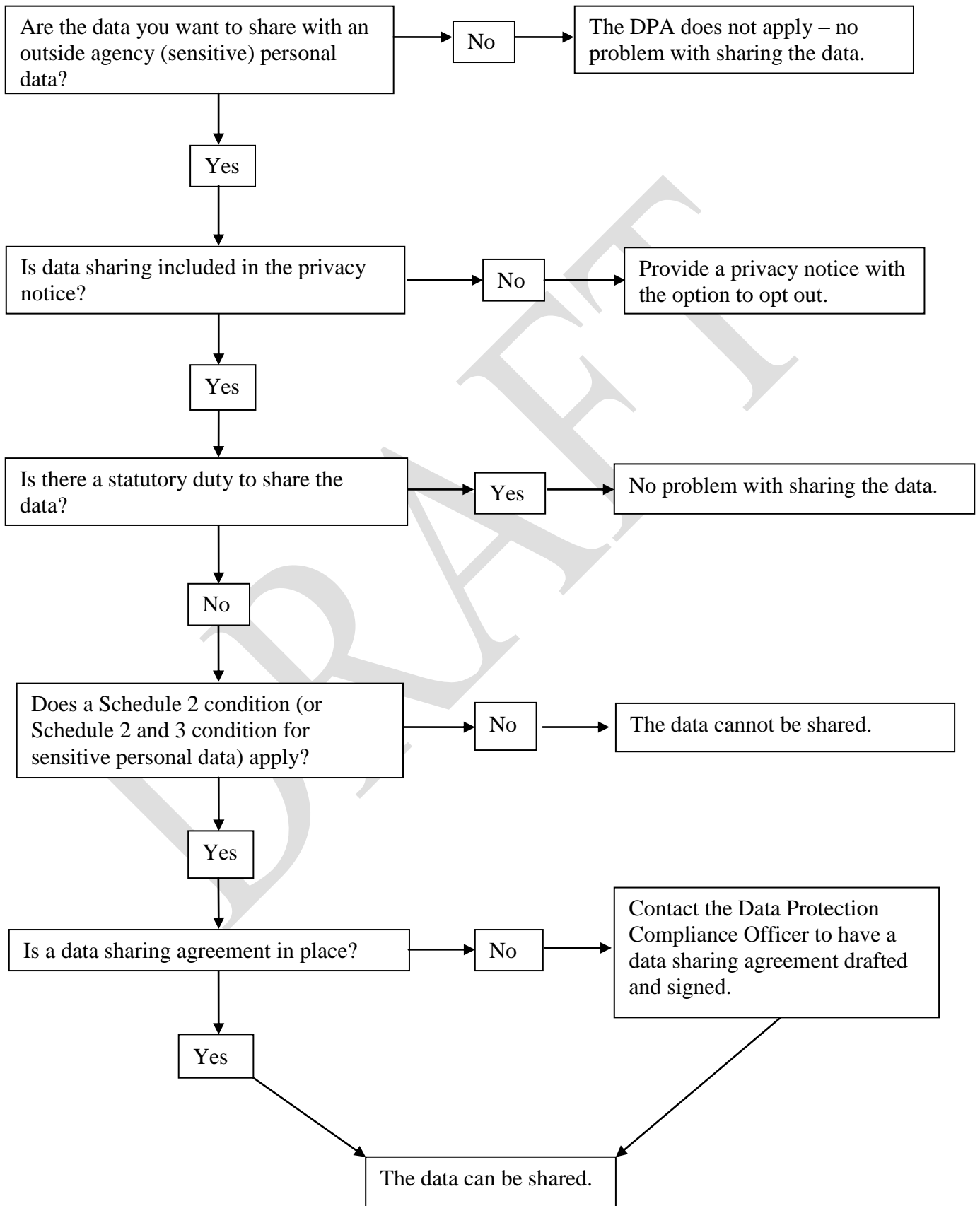
Application for record amendment



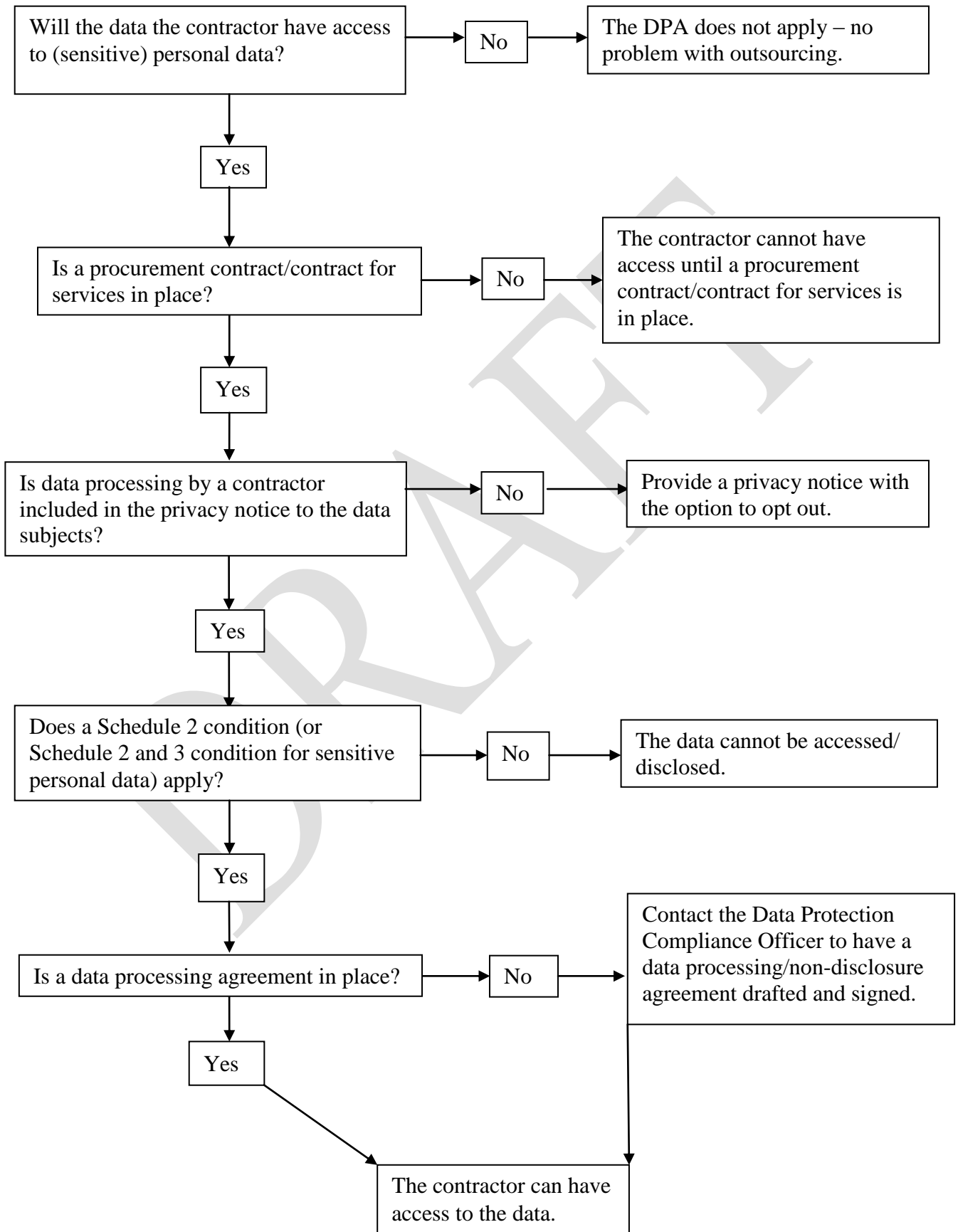
Council-internal data sharing



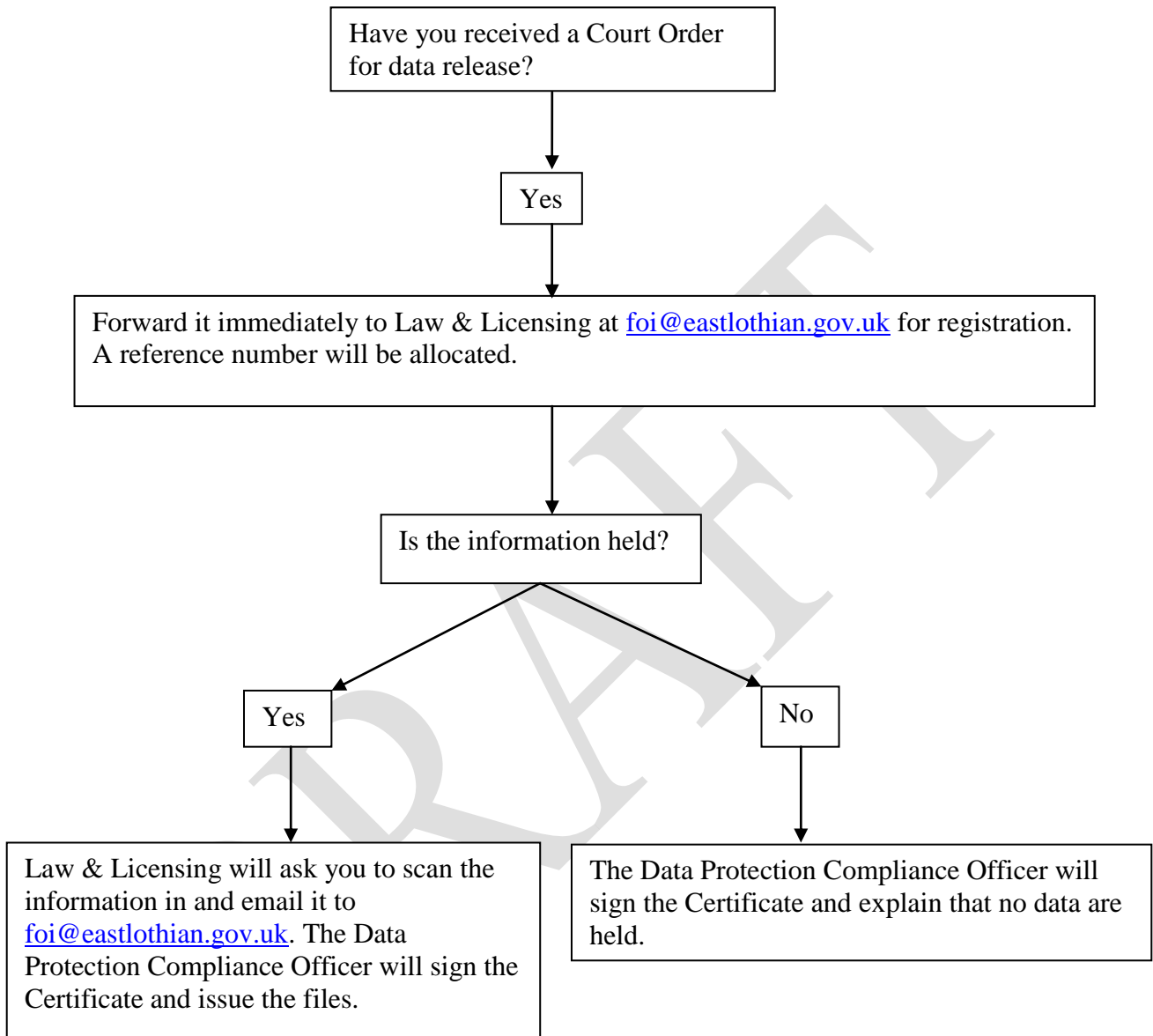
Council-external data sharing



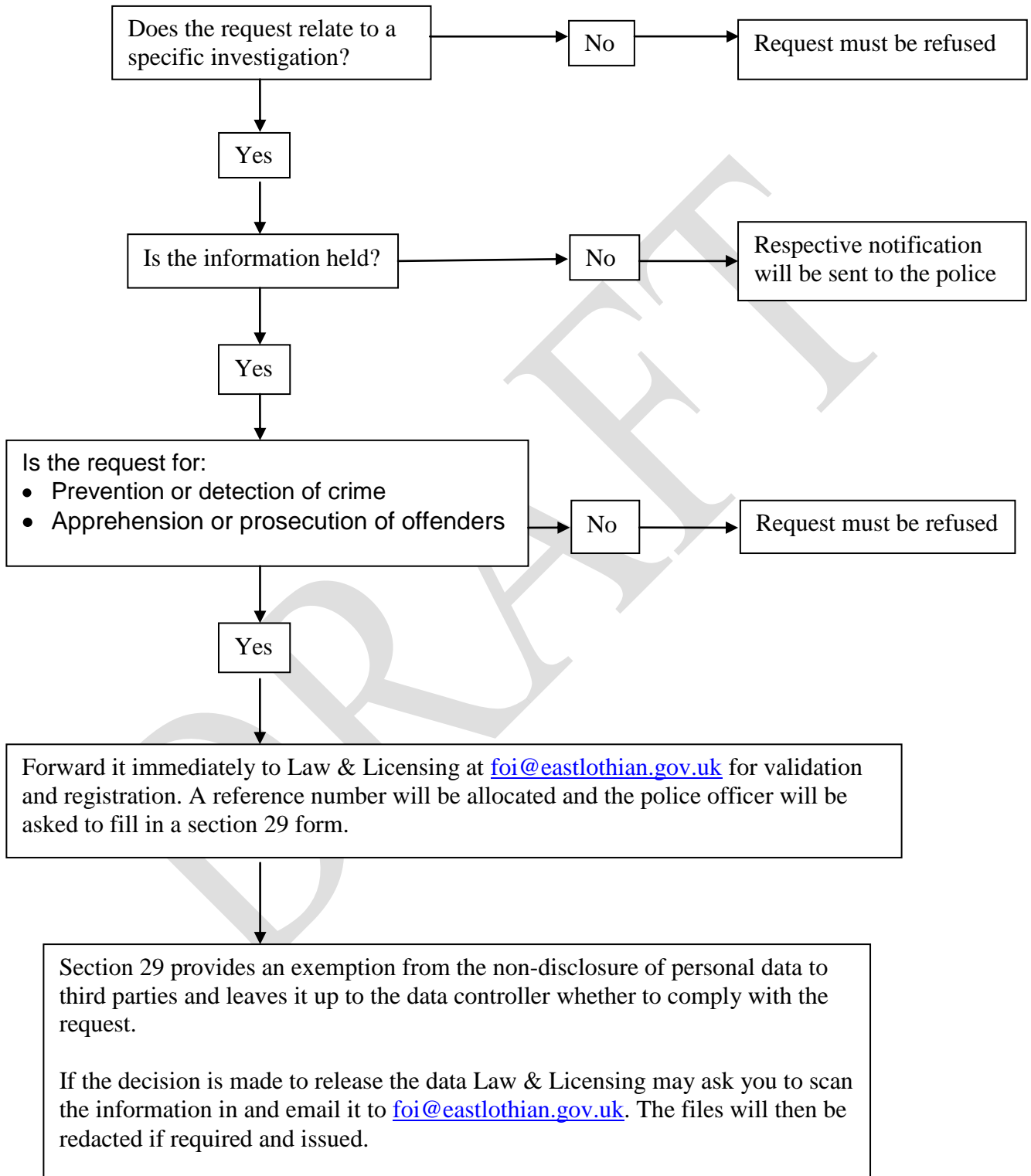
Outsourcing



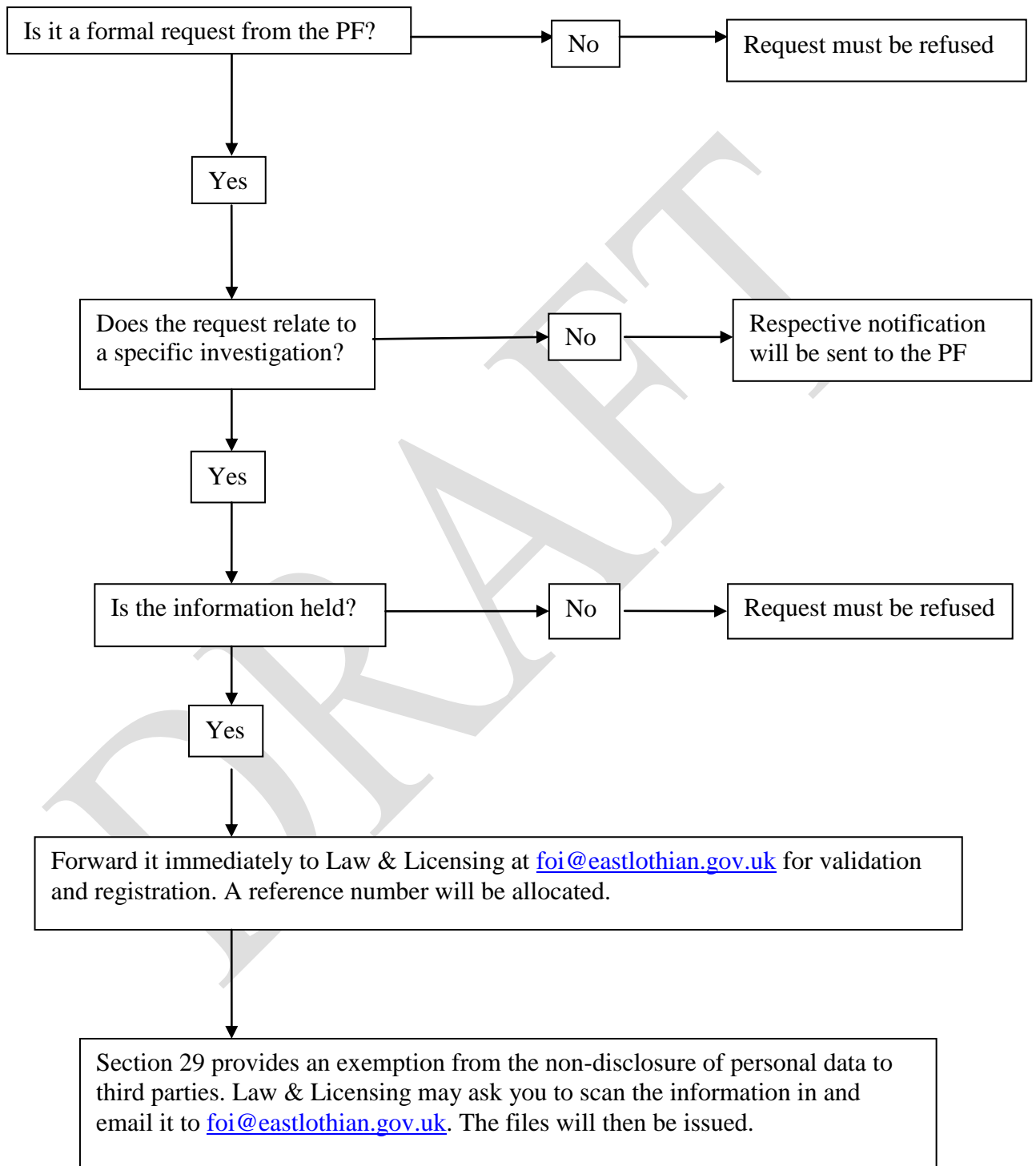
Court Order for data release



Police request for personal data



Request from the Procurator Fiscal



Data Protection Breach

