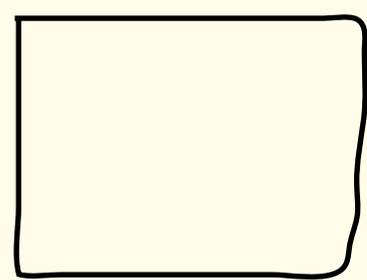
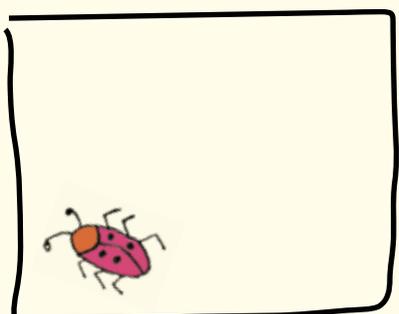
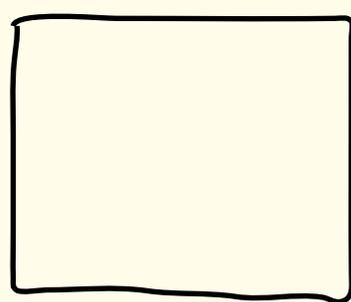


# Data Protection

in Child Day Care Facilities



for Protecting Children



Baden-Württemberg

MINISTERIUM FÜR KULTUS, JUGEND UND SPORT



# Legal notice

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Title image from the film: »Magic Moments – Baden-Württemberg's Orientation Plan in Practice«.

The film can be obtained from the Ministry of Education, Youth and Sports of Baden-Württemberg, Unit 33, Postfach 10 34 42, 70029 Stuttgart

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Cathrin Gehle, Büro Petit, Stuttgart

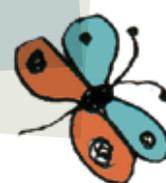
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»RESPECT FOR THE PRESENT MOMENT, FOR TODAY. HOW WILL A CHILD MANAGE TOMORROW, IF WE DO NOT ALLOW HIM A CONSCIOUS, RESPONSIBLE LIFE TODAY? (...) RESPECT FOR EVERY SINGLE INSTANT, FOR IT PASSES NEVER TO RETURN, AND ALWAYS TAKE IT SERIOUSLY; HURT, IT WILL BLEED, SLAIN, IT WILL HAUNT WITH HARSH MEMORIES. (...) WHEN I PLAY OR TALK WITH A CHILD, TWO EQUALLY MATURE MOMENTS – MINE AND THE CHILD'S – HAVE INTERMINGLED. (...)«

JANUSZ KORCZAK: THE CHILD'S RIGHT TO RESPECT (ORIGINAL POLISH VERSION ENTITLED 'PRAWO DZIECKA DO SZACUNKU' 1928)



# Preface



There is often uncertainty on the part of both the child day care facility and parents when it comes to the subject of data protection: which data is allowed to be collected? When do I require parental consent? What must be always observed in respect of data protection?

Understanding data protection as an educational task is a remit that should be self-evident. Therefore, we have included this in the coalition agreement. With the brochure entitled »Data Protection in Child Day Care Facilities – for Protecting Children«, we want to raise awareness and provide piece of mind in the context of the many questions surrounding data protection. We want to thus heighten consciousness of data protection and help to avoid insecurities in dealing with data. It is important to us to view data protection and education not as a pair of opposites, but as guidelines that complement one another.

With this brochure, we aim to take this approach into account and will make this publication available to all child day care facilities. It is connected to the »Orientation Plan for Education and Upbringing in Nursery Schools and further Child Day Care Facilities in Baden-Württemberg« ([www.kindergarten-bw.de](http://www.kindergarten-bw.de)) that contains general information on data protection. The Orientation Plan makes reference to this brochure, which contains relevant points on data protection. The objective is for the responsibility of the respective institutions or facilities to be strengthened to create and implement an appropriate data protection concept.

The basis and starting point of this brochure was the joint paper entitled »Data Protection in Church Child Day Care Facilities« created by the Rottenburg-Stuttgart diocese, Freiburg archdiocese and evangelical state churches that has been available to all church child day care facilities since November 2009.

The Ministry of Education, Youth and Sports of Baden-Württemberg would like to extend its thanks to the churches for their willingness to develop this paper further together with the Ministry of Education, independent associations of institutions, the state Data Protection Commissioner of Baden-Württemberg and the church Data Protection Commissioner to create a joint brochure of the state of Baden-Württemberg. This demonstrates that all of those involved take data protection in child day care facilities very seriously.

Our objective is for all of those involved in early years education and upbringing to deal with data protection in an equally sensitive and self-evident manner. We aim to support this with this brochure because: data protection protects the fundamental rights. Data protection protects children.

**DR. FRANK MENTRUP MdL (member of the state parliament)**  
State Secretary in the Ministry of Education, Youth and Sports  
of Baden-Württemberg



## STATE DATA PROTECTION ACT

### Section one

#### General Provisions

#### § 1 Purpose of the Act

»The purpose of this Act is to protect individuals against infringement of their right to privacy as the result of the processing of their personal data by public bodies.«

Act for the Protection of Personal Data  
(State Data Protection Act - LDSG) in the version promulgated 18 September 2000  
(Law Gazette, page 648)1, most recently amended by the Act of 7 February 2011  
(Law Gazette, page 43)

When the following explanations refer to »parents«, this refers to guardians.  
When reference is made to 'childcare workers', this refers to the entire specialist educational staff or early years workers, as is the case in the Orientation Plan.



# Subject Matter

Child day care facilities support families and children by supporting them professionally in respect of education, upbringing and care. This work is based on a partnership between the specialist childcare workers, parents and institutions behind the child day care facilities, not to mention the local authorities, churches and independent institutions. Child day care facilities hereby perform an important social contribution within the legal development mandate. In the process, the data of a child and his or her family is collected, processed and used.

This brochure provides a helping hand to specialist childcare workers on the subject of data protection. Parents also receive information on correct data protection procedures in their child day care facility. Data protection issues are explained with the help of various case studies, e.g. on the subject of photography and films. Proposed wordings for declarations of consent are also presented in order to place data protection on a solid footing, e.g. in the context of child day care facility documentation. Irrespective of this, the institution must take technical and organisational measures in respect of data protection.

If personal data is processed, the company must be organised in such a manner that it fulfils the particular requirements of data protection. The fundamental right to self-determination over personal data means that everyone is able to determine themselves which of his or her personal data is allowed to be used in which manner. The fundamental right to self-determination over personal data is justified in the dignity of people and the right to privacy guaranteed in the Basic Law. The right of data processing can arise from an Act, declaration of consent or based on contractual relationships.

The Acts permitting personal data to be collected, processed or used have been passed due to reasons of overwhelming general interest.

Child day care facilities must deal with personal data in order to perform their work proficiently. However, it must be made transparent to the parents why this data is handled and how this tangibly takes place. This brochure assists all of those involved to deal with this subject in a responsible and considerate manner.

Since various institutions operate child day care facilities (local authorities, churches, private institutions), situations will arise that this brochure illustrates only in an approximate manner; for example, collecting personal data must not always be based on consent. If there are outstanding questions or if an element of doubt surrounds certain issues, it is appropriate to contact the responsible Data Protection Commissioner.

Adherence to data protection and its implementation fundamentally relates to respecting the right to privacy of childcare workers, parents and children. Children are bearers of their own rights, as laid down in the UN Convention on the Rights of the Child. Data protection is protection for the child; data protection is protection for the family, data protection is protection for the institution and the facility: This means that data protection is not only a legal concern, but also an educational concern.

**THE EDITORIAL TEAM**



# Information for Parents and Guardians

## Why is data collected anyway?

A child day care facility must decide about enrolling children. The facility has the task of promoting children commensurate with their social, emotional and intellectual development. When raising, educating and caring for children, the childcare workers base their provision on age, level of development, linguistic and other

capabilities, living situation, ethnic background, and interests and requirements of the individual children. To be able to fulfil this task, the employees in the child day care facilities require information about the child, parents, and other family members if necessary (personal data).

## Why is data allowed to be collected?

Data protection law permits the child day care facility to collect data from you, your child or your family for specific purposes. Data collection is to be restricted to the data required for implementing the relationship of care.

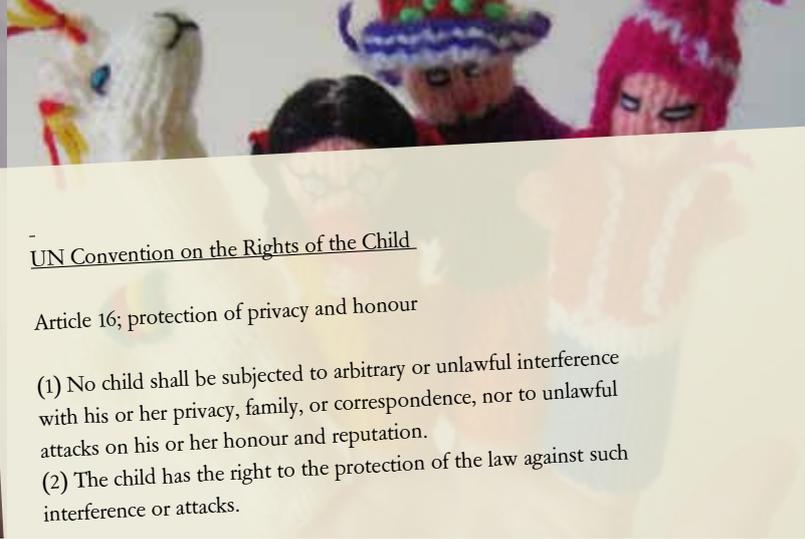
Insofar as a requirement for personal data exists above and beyond this extent (e.g. for implementing specific educational concepts), this data may be collected only if consent has been given (insofar as data collection is permissible based on such consent).

## What happens with the data?

This personal data is saved in folders or files. In the process, it is ensured that only authorised persons have access to this data.

After your child has left the facility, this data is deleted or destroyed. Data may be stored or forwarded for a longer period

only if legal interests must be taken into account (e.g. in the case of applied support measures), when there is a legal basis for doing so, or the parents have given their consent.



### UN Convention on the Rights of the Child

Article 16; protection of privacy and honour

- (1) No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, or correspondence, nor to unlawful attacks on his or her honour and reputation.
- (2) The child has the right to the protection of the law against such interference or attacks.

Official translation of 20 November 1989

Signed by the Federal Republic of Germany on 6 March 1992  
(approval by the Bundestag and Bundesrat through the Act of  
17 February 1992 - BGBl. II page 121)

The ratification certificate was deposited with the General Secretary  
of the United Nations on 5 April 1992 and took effect for Germany  
(announcement of 10 July 1992 - BGBl. II page 990).

## Do you have a right to information?

You are always allowed to know what is happening with your data. You have the right to information about the data that has been saved in respect of your person, and your child if you are a custodial person. The institution is duty bound to adhere to the relevant regulations.

The specialist childcare workers will be pleased to provide you with this information. They will inform you at regular parents' events about the outcomes and findings, interests and stage of development of your child.

If information is due to be forwarded to other bodies (e.g. as part of co-operation with a primary school or as part of a study in respect of children starting school), the specialist childcare workers will inform you immediately about the data in question, who is to receive the data, and the nature of the decisions due to be taken based on this data. For the purpose of this data transfer, your written consent will be required, insofar as there is no Act that requires this data transfer.

## To whom can you speak about data protection?

The management of the child day care facility is responsible for dealing with personal data. If you have questions about how

your data or the data of your child is handled, you can speak to the management at any time.

## Why are you also occasionally asked to give consent?

Occasionally, the specialist childcare workers will approach you with the question of whether you want to provide further personal data, e.g. to implement specific educational concepts. More precise information in this regard is explained in the declaration of consent that you receive. Upon your signature of the declaration of

consent, you agree to this procedure. In the process, you may revoke at any time a declaration of consent that you have given (ideally, place this revocation in writing to the management of the child day care facility or the institution).





# Code of Practice

## for Childcare Workers on Data Protection in Child Day Care Facilities

### What is the subject matter?

Parents entrust the child day care facility with their child voluntarily. Parents hereby place a significant amount of trust in the specialist childcare workers and the institutions too. The specialist childcare workers find out a huge amount about the child and his or her family environment through the workers' day-to-day observations, childlike blind confidence, expressing themselves with the children, and through questions and conversations. However, parents also entrust the specialist childcare workers with further information about themselves and their child or children. Successful education and upbringing can be realised only if the strengths and weaknesses of children and their family environment can be jointly discussed.

In the process, parents must be able to count upon the discretion of the childcare workers.

Legislators have made provision for this. Data used in the context of personal or educational assistance enjoys a particular protection of confidence that must be observed by the specialist childcare workers. Legislators have granted all persons the authorisation for the latter to determine how the latter's data is used; this applies not only to educational issues, but as a matter of principle. Data must not be processed without a legal basis. This Code of Practice lists what child day care facilities must observe in this regard.

### What is personal data?

»Personal data« refers to all information that can be attributed to persons – that is, children, parents, employees. This includes not only the address, but also observations that have been recorded

by the specialist childcare workers in reports. Judgemental remarks (e.g. on school readiness and capability) or video recordings are also »personal data«.



Basic Law for the Federal Republic of Germany

I. Basic rights

Art. 2 paragraph 1 GG

(1) Every person shall have the right to free development of his personality insofar as he does not violate the rights of others or offend against the constitutional order or the moral law.

Art. 1 paragraph 1 GG

(1) Human dignity shall be inviolable. To respect and protect it shall be the duty of all state authority.

Date of issue: 23 May 1949

»Basic Law for the Federal Republic of Germany in the revised version published in the Federal Law Gazette Part III, classification number 100-1, as last amended by the Act of 21 July 2010 (Federal Law Gazette I p. 944).«.

## What may be requested in the enrolment or care contract?

The enrolment contract, also referred to as the care contract, may request the following information:

- :: Name, date of birth and address of the child
- :: Date of the child's (currently) relevant tetanus vaccinations
- :: Address and telephone number of the child's general practitioner
- :: Name and address of the parents, and the telephone numbers on which they can be contacted in an emergency
- :: Name and dates of birth of brothers and sisters if the fee levied by the child day care facility is dependent on the amount and age of brothers and sisters
- :: Religious denomination (in an evangelical or catholic day care facility)
- :: Illnesses that must be known to the child day care facility in order to be able to react appropriately and correctly if necessary (e.g. diabetes, asthma, epileptic fits).

The institution must use forms that have been inspected for their legal conformity for the enrolment or care contract.

All of this information is required for smooth running of the facility and may be collected in the context of the enrolment or care contract.

Collection of additional data in the enrolment or care contract (e.g. parents' health insurance company, nationality of children and their parents, level of education, profession or employment of parents) is strictly regulated. If such additional data is collected, the institution behind the child day care facility must justify in the enrolment or care contract the purpose this data is due to serve, and why it is necessary for precisely this additional data to be collected. For example, nature of employment can be a criterion for a child to receive full-day care. In this case, evidence of such may be requested.

## What is particularly sensitive data?

Data Protection Acts list particularly sensitive data that – if at all – may be collected and saved only after additional inspection and justification (e.g. health data).



## **What is the situation with the observation forms, and the education and development documentation that childcare workers want to create on the child?**

Childcare workers must document their work due to the relationship of care. Insofar as education and development documentation is created above and beyond this, this must be contained in the enrolment or care contract. The education and development documentation can provide information about recognised interests of the child, but also about particular strengths and talents or educational assistance, and thus also be in the interest of the parents.

The child day care facility explains to the parents in a tangible manner the use and importance of education and development

documentation for accompanying and promoting development of their child and the co-operation in the spirit of partnership with them.

The education and development documentation is based on the free will of the parents. This free-will decision must also not be restricted by the child day care facility stipulating that such documentation is a pre-requisite of enrolment. If parents do not want such education and development documentation to be created, the child day care facility must respect this.

## **What is the situation with information in the context of observation forms, and with education and development documentation?**

The parents have the right to information about all data saved about them or their children, irrespective of whether this is electronic or file-based storage. Observation forms in particular cannot be excluded from this right to information. This also requires objective documentation, for which training must be provided if necessary. The contents of observation forms, and education and

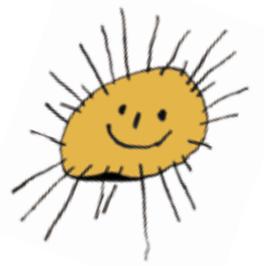
development documentation must only be known to childcare workers and the parents in question. This information may be divulged to further persons or bodies only if and insofar as the parents agree to this in writing. This also applies to specialist consultations of the child day care facility and for the co-operating school.

## **What is the situation with written planning of educational work?**

Written drafts compiled by the specialist workers for planning the educational work, e.g. preparations for specific role plays, a scientific experiment with a group of children, a visit to a retirement home, organising a parents' evening or a read-aloud morning are internal work documents of the specialist childcare worker and the child day care facility. Personal notes for aid to memory are also permissible and may be used to prepare for talks with parents on the child's progress if necessary. The

parents do not have the right to information here. These documents must also be protected against being viewed by employees or other persons. They particularly must not be left lying open.

As a whole, the subject of »filing« – including reference files and electronic files – must be regulated between the institution and facility, and be commensurate with data protection.



## Who finds out how much parents earn?

In the case of income-dependent contributions, the institution behind the child day care facility must implement technical and organisational measures to ensure that only persons with a job

description that includes billing of nursery school fees gain information on contribution levels.

## To whom does the obligation to data secrecy apply?

The obligation to data secrecy must be upheld by all persons handling or with access to personal data. The institution behind the child day care facility will obligate these people in writing to

uphold data secrecy. This also applies to interns and parents sitting in on the facility's operations.

## What must be observed as part of the declaration of consent?

Declarations of consent must be related to the specific case in as tangible a manner as possible. The consent of the affected person is effective only if this person is able to make a free-will decision.

Consent may be gained only on legally approved forms provided by the institution. Declarations of consent are appropriate only if the child day care facility is also in a position to accept a rejection.





## Is data forwarding permissible to recognise multiple enrolment?

Institutions and facilities frequently wish to recognise multiple enrolment as part of local authority requirement planning, and compare the enrolment data of individual children. This may take

place only with the express consent of the parents. If consent has been given, the exchange of information must be restricted to a list with date of birth and street name.

## What is the procedure when the well-being of a child appears to be in danger?

If a childcare worker of a child day care facility sees serious indications that a child's well-being is in danger, he or she must consult with a minimum of one further specialist worker who must have experience in cases of risk to a child's well-being and perform a child risk assessment. The parents and the child must be involved here, insofar as no further risk to the child is posed. If the parents or the child are not involved, the case must be described to the further specialist workers only anonymously or by using a pseudonym.

If the risk assessment reaches the conclusion that a risk is posed and this cannot be averted in another manner (e.g. by efforts of the parents themselves), the child day care facility must act on the parents to access the appropriate support. If possible, binding agreements should be made here.

If the parents reject the support, or if in the opinion of the child day care facility the parents are not accessing the support to the appropriate extent, or if it is not known whether this support is sufficient, the child day care facility must inform the Youth Welfare Office of this situation, provide information about the risk assessment and steps taken up until now, in order to enable the Youth Welfare Office to introduce further steps if necessary. This results from § 8a SGB (German Social Security Code) VIII.

An aid in German language for implementing the duty of protection compliant with § 8a SGB VIII is maintained by 'Der Paritätische' Baden-Württemberg on its Internet pages ([www.paritaet-bw.de](http://www.paritaet-bw.de)) and can be downloaded or ordered by entering into the Search ('Suche') box the following file name: »Arbeitshilfe\_Kinderschutz.pdf«.



## What is the situation with sound and video recordings?

Sound and video recordings represent significant intervention into the child's right to privacy and do not necessarily represent a component of the education and development documentation (also refer to the explanation in the Orientation Plan for Education and Upbringing).

The necessity of sound and video recordings must be justified exactly; in particular, the reasons why observations and written documentation of them are insufficient. Recordings can admittedly assist in recognising specific patterns of behaviour in a more optimum manner, thus enabling certain support and encouragement measures to be implemented. Nevertheless, the voluntary consent of the parents is always required; please observe here that parents may revoke at any time a declaration of consent that they have given. The declaration of consent to this effect must answer the following questions:

*On which occasion and for which period of time are sound and video recordings to be made?*

*To whom will the recordings be played?*

*For how long will the recordings be saved?*

Only forms from the institution that have been inspected for their legal conformity may be used.

If possible, the recordings are to be made in such a manner that other children are not included in the recording. If this is not possible, consent of the parents in question must be obtained. Recordings must be played to the parents upon request.

Recordings of the day-to-day operations of a child day care facility, e.g. as part of projects, also require timely notice and consent. This also applies if the sound and video recordings are due to be played. In this case, an inspection must take place in advance to ensure that children were not recorded in an unfortunate manner. Sequences to that effect must be deleted.





## What is the situation with photographs?

Photographs may always be taken only with the written consent of the parents. This also applies if the photographs are intended to provide insight into the day-to-day operations of the child day care facility. Photographs may be displayed in the child day care facility only and not in an external location (public display case) under any circumstances. The enrolment or care contract must make reference to the display practice in the child day care facility (e.g. entrance). Naming the children depicted in the photographs should be generally avoided.

If group photographs are due to be forwarded to parents, the consent of the parents of the children depicted in the photographs is required.

If a photographer attends the child day care facility for a photograph day, parents must also be informed in advance. The child-care workers will ensure that only the children are photographed for whom the parents have given consent. The photographer must be informed in writing before the photograph day that any use of the photographs (advertising, exhibition, presentations, etc.) is permitted only with parental consent.

At parents' evenings or other information events, the issue of photography and filming should be addressed, and particular attention should be drawn to the problems of publishing photographs on the Internet. Photographs of other children, even

if they are depicted with the parents' own child, must not be placed on the Internet. This can lead to civil and criminal consequences. It is also helpful if parents pass on this information to grandparents, other relatives and friends.

Prior to a nursery school fête or other event, the visitors (e.g. parents, grandparents, relatives, friends) must be expressly informed that the right to privacy of third parties must be maintained. In particular, attention must be drawn to the following in this context: If a photograph is placed on the Internet or otherwise published without the consent of the person depicted, the person's own image rights are violated.

At fêtes and events of the child day care facility, the organiser of the fête holds the domiciliary rights and may – over and above the aforementioned notice – determine the sequence of events and also determine whether photographs or films are allowed to be made. If the organiser (institution behind the child day care facility) declares restrictions in respect of photographs and films, this must be made known to the visitors, particularly to the parents too, in a timely manner prior to the event. If parents or other visitors do not want to observe such restrictions or do not do so, the institution behind the child day care facility can ensure these restrictions are enforced on account of domiciliary rights, e.g. it can demand that digital photographs are deleted.



## May child day care facilities publish photographs on the Internet?

Child day care facilities may place photographs on the Internet only after obtaining the written consent of the parents. The parents must be able to view the photograph in question in advance and have their attention drawn to the consequences of its publication on the Internet. In particular, attention must be drawn in

writing to the risk that photographs posted on the Internet can be downloaded, copied and linked to other data by third parties. Only forms from the institution that have been inspected for their legal conformity may be used for the declaration of consent.

## What is exchanged between the child day care facility and school?

The co-operation between child day care facility and primary school aids the child in transitioning between the two education institutions. For example, a study in respect of children starting school establishes to what extent school readiness and primary school capability are in existence, or which support should be considered. Insofar as data is exchanged, written consent of the parents is required. The consent of the affected person is effective only if this person is able to make a free-will decision.

The written consent must state:

*:: the type of data that the schools will save electronically or in files,*

*:: the purpose of saving the data,*

*:: the scope of access to the observation forms, and education and development documentation (e.g. parents may exclude certain passages of this documentation),*

*:: the notice that refusing consent does not have negative consequences.*

The dates and times on which teachers or school management will observe children in the child day care facility must be communicated to the parents in advance. The parents must be informed in advance if their child in particular is due to be the subject of consultations based on the observations with regard to additional support measures.

The parents must be given the opportunity to participate personally in the consultations.

The parents are informed that they are able to request information from the primary school at any time concerning which data the primary school has saved on their children, and where this data comes from.

## What is the procedure for parents that sit-in?

Parents that sit-in must be communicated to all parents in a timely manner. Parents that sit-in must be obligated in writing to uphold data secrecy. It must be ensured that parents that sit-in

do not gain access to documents about the children (e.g. observation forms, development reports, card index).



## What is the procedure for co-operation with other bodies?

If multiple persons or institutions (specialist services, doctors, therapists, round tables) co-operate with the child day care facility, this means that the child day care facility has an increased organisational and co-ordination effort, not least in respect of data protection. If the co-operation is already in place upon enrolment of a child, the organisational and administration-related matters can be regulated in the enrolment and care contract,

providing consent for a direct exchange of information. If this is not the case, data transfer may take place only with the express consent of the parents.

In the case of co-operations, the parents also have the right to obtain information about the data saved there at all times.

## Which data may the parents' association obtain?

The members of the parents' association support the child day care facility and the institution. The parents' association must be able to make direct contact to the parents. Therefore, lists with

parents' names and addresses may be forwarded to the parents' association.

## Which data may friends' associations obtain?

Personal data of children, their parents, or employees may be forwarded to friends' associations only if those affected have given their consent.

## What is the situation with »Lists of Parents«?

Parents would often like to receive a list with names and addresses of other parents. This wish can be realised, for example, by passing round a list at parents' evenings, enabling those present to enter their details. Parents can hereby decide for themselves

whether they wish to make entries, and the extent of these entries. The purpose of use (forwarding of the list to the persons that have entered their details) and the voluntary nature of entries must be stated exactly in the list's header.

## What happens with the data arising from health examinations?

The children receive medical examinations based on legal regulations. The parents must be informed of this in a timely manner, and be made aware of the legal regulations.

In the process, all bodies involved here (particularly the public health department) observe data protection and confidentiality provisions.





## Are there legal obligations to report?

There are legal obligations to report for the institution behind child day care facilities concerning the facility's operation (e.g. notification of qualifications).

In respect of parents and children, there are legal obligations to report within the context of the Infection Protection Act.

## What is the situation with verbal or telephone information provided to authorities and other persons?

No verbal or telephone information may be communicated to persons that are unknown or if their identity cannot be verified. This also does not apply if the persons in question make reference to their titles, positions, or particular professions (e.g.

lawyer of one of the parents, judge in family court case). In the case of doubt, the identity of the authority or person must be established by returning the telephone call. Data must not be forwarded for business or commercial reasons.

## What is the situation with the non-custodial parent?

Data about the child or custodial parent must not be divulged to the non-custodial parent. In the case of joint custody, both custodial parents have the right to information about all of the

child's data and all data about their own person – however, they do not have the right to information about data of the other custodial parent.



## May data be forwarded for statistical purposes?

If personal data is required for statistics under exceptional circumstances, there must be a legal basis to underpin this. The institution behind the child day care facility must inspect whether such a request is legal. In the case of doubt, the responsible Data

Protection Commissioner must be consulted. Data collection as part of child and youth welfare statistics is legal (refer to §§ 98 to 103 SGB VIII).

## For how long is data retained?

In principle, the following applies: Personal data that is no longer required must be deleted or destroyed. This also applies to data of children (and their parents) that no longer attend the facility.

If data is due to be retained for a longer duration, there must be a legal basis for doing so, or the parents must have given their consent. This applies irrespective of the type of data carrier (paper, hard disk, network).

If court proceedings or administration process still have not been completed, it can be the case that data must be stored for a longer duration. This also applies if a specific event means that claims for compensation cannot be excluded, or duties of retention apply. The duration of the duty of retention is based on the

professional necessity and other legal regulations. Legal requirements relating to archiving must be observed.

In all of these cases – which must also be inspected – only the types of data relevant in this context may be further retained, and under no circumstances all data. In particular, the necessity of retaining observation forms, and education and development documentation, must be inspected. It is permissible to offer to the parents for them to take away documentation, drawings and other works of the children when the children are no longer to attend the facility; in the case of sound and video recordings, this applies only to the parts in which their child can be heard or seen.



## Where can I find further fundamental information on data protection?

Visit [www.baden-wuerttemberg.datenschutz.de](http://www.baden-wuerttemberg.datenschutz.de) to view in German language the tasks of the state Data Protection Commissioner, an explanation of the state Data Protection Act with notices, and the Federal Data Protection Act and EU Data Protection Directives.

Further information can be found at [www.datenschutz.de](http://www.datenschutz.de)

### State Data Protection Commissioner Baden-Württemberg

»The State Data Protection Commissioner is elected by the majority of members of the state parliament on the proposal of the state government. He or she is independent in fulfilling his or her tasks, not bound to any type of instructions, and is not subject to any legal or specialist supervision.«

([www.baden-wuerttemberg.datenschutz.de](http://www.baden-wuerttemberg.datenschutz.de))

Jörg Klingbeil · Königstraße 10a · 70173 Stuttgart

### Church Data Protection Commissioner in Baden-Württemberg

The church Data Protection Commissioners are responsible for data protection issues with regard to church matters.

#### Evangelical Church in Württemberg

Commissioner for Data Protection of the Evangelical State Church in Württemberg

Dr. Axel Gutenkunst · Gänsheidestr. 4 · 70184 Stuttgart

#### Evangelical Church in Baden

Commissioner for Data Protection of the Evangelical State Church in Baden

Prof. Dr. Thomas Klie · Evangelische Hochschule Freiburg · Bugginger Str. 38 · 79114 Freiburg

#### Catholic Church

The Data Protection Commissioner for the dioceses in Baden-Württemberg

Dr. Siegfried Fachet · Staffenbergstr. 14 · 70184 Stuttgart





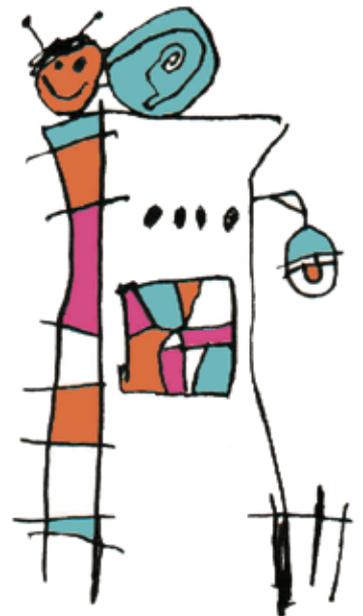
## RIGHT TO SELF-DETERMINATION OVER PERSONAL DATA

German Census Judgment 1983

»Whoever cannot survey with sufficient assurance the information concerning himself known in certain areas of his social surroundings, and whoever is not in a position to assess more or less the knowledge of possible partners in communication, can be essentially obstructed in his freedom to make plans or decisions on the basis of his own self-determination. With the right to self-determination over personal data, a social system and this enabling legal system would not be commensurate with one another in which the citizen is not able to know who knows what when about him at which opportunity. Whoever is unsure about whether deviant manners of behaviour are noted at all times and permanently saved, used or forwarded as information, will attempt not to draw attention to himself through such manners of behaviour. [...] This would not only impair the specific development opportunities of the individual, but also the common welfare because co-determination is an elementary functional condition of a peaceful democratic society based on its citizens ability to act and contribute. Resulting from this: Free development of the personality has as a pre-requisite, under the modern conditions of data protection, protection of the individual against unlimited collection, storage, use and forwarding of his personal data. This protection is contained in the basic right Art. 2 paragraph 1 GG in connection with Art. 1 paragraph 1 GG. The basic right guarantees to this extent the authorisation of the individual to fundamentally decide himself about the provision and use of his personal data.«

Federal Constitutional Court, BVerfGE 65, 1, judgment of 15 December 1983, Az. 1 BvR 209, 269, 362, 420, 440, 484/83, link: <http://tlmd.in/u/88>

The responsible citizen must know »who knows what when about him at which opportunity«, the judgment stated.





# Code of Practice for Institutions

Institutions behind child day care facilities must take technical and organisational measures in respect of data protection.

If personal data is processed, the company must be organised in such a manner that it fulfils the particular requirements of data protection.

## How can the parents be granted their right to information on saved data?

The so-called public procedure register – register of automated procedures with which personal data is processed contains general information in this regard.

## What must be taken into account in the enrolment or care contract?

The institution must use forms that have been inspected for their legal conformity for the enrolment or care contract. The enrolment or care contract typically lists the identity of the responsible

body, the contents of the enrolment and care contract, fees and master data. Declarations of consent are annexes to the enrolment or care contract.

# Declaration of Consent:

## INTERNAL PUBLICATIONS, PHOTOGRAPHS, PRINT MEDIA, PUBLICATION OF PRINT MEDIA ON THE INTERNET

Consent may be refused.

This form does not have to be returned (with signature) if consent is not given.

**01)** To provide me/us and other guardians with an insight into the day-to-day happenings and activities of the child day care facility, I/we give consent that the following photographs\* taken for this purpose in which my/our child is depicted alone or with other children

\* if appropriate: state the no., describe the specific content or provide a print-out

may be laid out or displayed in the facility:

YES     NO

**02)** I/we give consent that the following (digital) photographs\*

of my/our child are ceded to other guardians:

YES     NO

I have been informed that publication of images of other persons without their consent can lead to claims for compensation. In particular, publication on the Internet is not permissible.

### NOTICE:

Newspapers, and other print media mentioned hereinafter, can also be sometimes viewed on the Internet and be downloaded from there. Information and images published on the Internet can be accessed worldwide and downloaded, saved, and merged with other data by the general public. Information published on the Internet once can be scarcely removed at a later date.

**03)** I/we give consent that in connection with the following events of the child day care facility (fêtes, campaigns, projects) in the following print media:

- |   |  |
|---|--|
| <input type="checkbox"/> Local authority newsletter | <input type="checkbox"/> Local and regional section of a newspaper |
| <input type="checkbox"/> Church newsletter          | <input type="checkbox"/> Other .....                               |

the following photographs\* of my/our child

may be published. In the process, the photographs must not be published on the Internet.

**04)** I/we give consent to publication in the aforementioned print media, even in cases where publication on the Internet is involved.

YES     NO

You may revoke at any time a declaration of consent that you have given (ideally, place this revocation in writing to the management of the child day care facility or the institution).

Date | Signatures<sup>1</sup>

<sup>1</sup> Signature must be provided by all custodial persons, unless the custodial parents are not co-habiting and the child is usually resident with one parent with the consent of the other parent or as a result of a court judgment. In this case, the signature of the parent where the child is resident is sufficient.

# Declaration of Consent:



## EVENTS (PRINT MEDIA, WEBSITE)

Consent may be refused.

This form does not have to be returned (with signature) if consent is not given.

I/we give consent that in connection with the following event

..... on .....

**FOLLOWING DATA:** first name .....

family name .....

age .....

the following group photograph\* .....

the following single photograph\* .....

of my/our child or my/our children .....

may be published in the following print media:

- Local authority newsletter
- Church newsletter
- Local and regional section of a newspaper
- Other .....

### NOTICE:

Newspapers, and other print media mentioned hereinafter, can also be sometimes viewed on the Internet and be downloaded from there. Information and images published on the Internet can be accessed worldwide and downloaded, saved, and merged with other data by the general public. Information published on the Internet once can be scarcely removed at a later date.

I/we give consent that the following photographs\*

.....  
.....

\* if appropriate: state the no., describe the specific content or provide a print-out

are published on the following website:

- Local authority website
- Website of the child day care facility
- Church website
- Website .....

I/we also give consent that the following data is published:

First name .....  Family name .....  Age .....

You may revoke at any time a declaration of consent that you have given (ideally, place this revocation in writing to the management of the child day care facility or the institution).

Date | Signatures<sup>1</sup>

<sup>1</sup> Signature must be provided by all custodial persons, unless the custodial parents are not co-habiting and the child is usually resident with one parent with the consent of the other parent or as a result of a court judgment. In this case, the signature of the parent where the child is resident is sufficient.

# Declaration of Consent:

## COLLECTING DATA FOR EDUCATIONAL AND DEVELOPMENT DOCUMENTATION

Education and development documentation is maintained in order to accompany and promote every child in his or her development as optimally as possible. We thus consider our educational work and are able to provide you with substantiated feedback on the state of education and development of your child from our point of view.

In education and development documentation, particular capabilities, statements of interest, talents, states of development and development progress are documented by the childcare workers. Furthermore, indications of appropriate support in one shape or another are also contained. We require your consent to maintain education and development documentation. With your consent, we will also take appropriate photographs. In the case of talks with parents on the child's progress or other such situations, education and development documentation form an important basis to represent the development of your child and compare it with your experiences.

Forwarding of this data may take place only after you have been consulted and you have given your written consent. This also applies to photographs insofar as you give consent upon enrolment to photographs in the education and development documentation (see question 2 below). After the child no longer attends the facility, or after you have revoked your consent to maintain such development documentation, the data created up until that point is deleted or destroyed. However, this obligation to delete or destroy data does not refer to the personal data that we must collect, process and/or use on account of legal or contractual determinations.

Consent may be refused. This form does not have to be returned (with signature) if consent is not given.

### Consent:

I/we give consent that for my/our child

education and development documentation (a portfolio) is created:

YES     NO

I/we give consent that for the education and development documentation, photographs depicting our child may be taken and used:

YES     NO

I/we give consent that photographs in which my/our child is depicted among others may be used in the education and development documentation of another child:

YES     NO

If you give consent for photographs in which your child is depicted among others to be used in the education and development documentation of another child, such photographs will not be ceded to the parents of the other child.

You may revoke at any time a declaration of consent that you have given (ideally, place this revocation in writing to the management of the child day care facility or the institution).

Date | Signatures<sup>1</sup>

<sup>1</sup> Signature must be provided by all custodial persons, unless the custodial parents are not co-habiting and the child is usually resident with one parent with the consent of the other parent or as a result of a court judgment. In this case, the signature of the parent where the child is resident is sufficient.

# Declaration of Consent:

## SOUND AND VIDEO RECORDINGS

Sound and video recordings used within education and development documentation are used only for the purpose of demonstrating the interests, capabilities and development progress of your child / your children, and thus to gain indications for his/her custom support. This information is used for consultations in talks on the child's progress with you and the childcare workers only.

The sound and video recordings are securely protected against unauthorized access. Forwarding of sound or video recordings to third parties may take place only after you have been consulted and you have given your written consent.

Upon your request, on the parts of sound or video recordings may be ceded to you in which solely your child can be heard or seen.

The sound and video recordings are immediately deleted when the purpose for which they were made has been fulfilled. If this has not already happened, recordings made up until the point that your child no longer attends the facility or you revoke the consent to sound and video recordings are deleted, unless legal obligations apply to retain these recordings for longer.

Consent may be refused. This form does not have to be returned (with signature) if consent is not given.

### Consent:

I/we give consent that for my/our child or my/our children

for the following duration

for the following purpose

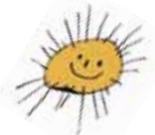
sound recordings are made:

YES     NO

video recordings are made:

YES     NO

You may revoke at any time a declaration of consent that you have given (ideally, place this revocation in writing to the management of the child day care facility or the institution).



Date | Signatures<sup>1</sup>

<sup>1</sup>) Signature must be provided by all custodial persons, unless the custodial parents are not co-habiting and the child is usually resident with one parent with the consent of the other parent or as a result of a court judgment. In this case, the signature of the parent where the child is resident is sufficient.



Joint brochure of the Ministry of Education, Youth and Sports of Baden-Württemberg, the state local authority associations, church and other independent associations of institutions, churches and their Data Protection Commissioners, and the state Data Protection Commissioner of Baden-Württemberg.



**Baden-Württemberg**

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