

1. Purpose

1.1 Under the Data Protection Act 2018 (DPA) and GDPR, any living person has the right of access to data an organisation holds or uses about them. They have the right to request certain information about the processing of their data including:-

- A description of the data
- The purpose and use of the data being held
- The source of the data
- A description of the data
- Who the data is shared with and why

1.2 A request for personal data is known as a Subject Access Request (SAR). This guidance note provides detailed information on how to comply with a SAR.

2. Definitions

2.1 Definitions have the same meanings as presented in current legislation. The definitions given here are for ease of use

2.2 **Subject Access Request.** A request for personal information.

2.3 **Data Subject.** The person a SAR is about.

2.4 **Applicant.** The person making a SAR. This is usually the same as a Data Subject, but may also be someone appointed to represent the Data Subject, for example a parent or a solicitor.

2.5 **Third Party.** Someone else mentioned in records

3. Applications

3.1 Applications to access personal identifiable information are made in the main under the following pieces of legislation:

- Data Protection Act 2018 (DPA) and General Data Protection Regulations (GDPR) for living individuals
- Access to Health Records Act 1990 (AHR) for deceased individuals.

3.2 People do not have the right to access information held about someone else unless they are an authorised representative, have parental responsibility or are acting on behalf of a deceased person.

3.3 The applicant does not have to give a reason why they are applying for access but they do need to provide sufficient information to enable the correct



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records to be located. If a request does not mention the DPA specifically, it is still a valid request and should be treated as such.

4. Processing of subject access requests

4.1 A SAR is usually made in writing but can also be a verbal request. It can be in the format of a letter/note, email, fax, via social media such as Facebook and Twitter or a telephone call. The individual requesting the SAR may be asked to provide appropriate proof of identification prior to the request being answered. Reasonable adjustments should be made for an individual with a disability e.g. responding to the request in a format which is accessible to the individual.

4.2 A request can be made by:

- The Data Subject (for access to information about them);
- A person authorised in writing to make an application on an individual's behalf i.e. a solicitor;
- Where the individual is a child, the person having parental responsibility for the child;
- A person appointed by the court when a data subject does not have capacity to manage their own affairs;
- a deceased individual's personal representative or any person having a claim out of the estate. This is subject to the common law duty of confidentiality and the recorded wishes of the deceased person.

5. Individuals living abroad

5.1 The DPA and GDPR gives individuals who now reside outside of the UK the right to apply for access to their former UK records. Original records should not be given to individuals to keep or take outside the UK; however, they are entitled to request a copy which they may take with them.

6. Denying access

6.1 There are limited circumstances in which information cannot be provided to an individual who has made a SAR:-

- When the information would be likely to cause serious harm to the physical or mental health of the applicant
- Where the record relates to, or has been provided by, an identifiable third party (unless the third party has consented to disclosure).



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- In the possible event of legal proceedings

6.2 The above list is not exhaustive. The Data Protection Act 2018, Schedule 3 contains exemptions for Health and Social Care. Your Data Protection Officer should be able to advise you further.

7. **Consent**

7.1 In most cases the consent to access personal information will be provided by the applicant making the request, however, there may be cases where the data subject is unable to consent, or the individual is a child.

7.2 A request received from a data subject's representative must be authorised by the data subject. If a data subject is unable to authorise the release of their information due to a lack of mental capacity then a person who has been legally appointed to act on their behalf has the right to apply for access to the information of that data subject. Such a person should be asked to produce evidence that they hold a lasting power of attorney, or court of protection order.

7.3 When a request is received from an applicant, the organisation should ensure that sufficient identity checks are carried out to confirm that the individual is entitled to the records they have requested.

7.4 There may be occasions when a representative, such as a family member, who does not have an automatic right of access to the records, seeks disclosure. Whilst there is no right for next of kin to review the records of an incapacitated data subject, there may be times when this is appropriate. Requests of this nature are usually considered on a case by case basis by your Data Protection Officer.

7.5 Further information on consent can be found in resource note 5 – 'Consent'.

8. **Access to children's records**

8.1 Parents can make subject access requests on behalf of their children who are too young to make their own request. A young person aged 13 or above (or Frazer competent for medical records) is generally considered mature enough to understand what a SAR is. They can make their own request and would need to provide their consent to allow their parents to make the request for them. Requests of this nature need to be considered on a case by case basis and staff must seek advice from the Safeguarding team.

8.2 Parental access must not be given, unless it is in the child's best interests to do so, where:



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- It conflicts with the child's best interests;
- The information that a child revealed was in the expectation that it would not be disclosed.
- Where a child has learning disability

8.3 It should not be assumed that the child is not competent to make his or her own decisions. Many children will be competent if data is presented in an appropriate way and they are supported throughout the decision making process.

9. Access to an individual's record by other agencies

9.1 There will be occasions when the organisation receives requests for access to individual records from other agencies or processes, such as:

- Court order – when a request is accompanied by a court order this should be adhered to unless there is a robust reason to challenge it.
- Coroner's office – information may be disclosed to the Coroner. If the information is in the form of original records a form must be signed to transfer responsibility for confidentiality whilst in the possession of the Coroner's office. Copies of the records must be retained by the organisation.
- Police – the police do not have automatic right of access to personal identifiable information. However, information may be released to the police without a data subject's consent when it is required regarding serious crime (murder, grievous bodily harm, rape and other defined crimes).
- Other agencies with a legal obligation - your Data Protection Officer should be able to advise you in these circumstances.

10. Access to information of a deceased person

10.1 Access to information of a deceased person is governed by the Access to Health Records Act (1990). Under this legislation when an individual has died, their personal representative, executor, administrator or anyone having a claim resulting from the death has the right to apply for access to the deceased's data.

10.2 There may be circumstances where individuals who do not have a statutory right of access request access to a deceased person's record. The duty of



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confidentiality continues beyond death, and no access should be granted to the applicant if the deceased person gave the information in the expectation that it would not be passed on to the applicant.

11. Mental Capacity Act 2005

- 11.1 In cases where a person is without capacity and does not have a relative or other non-paid carer an Independent Mental Capacity Advocate (IMCA) can be appointed to act on the person's behalf.

12. Permission to release

- 12.1 Under the Data Protection Act 2018 and GDPR, prior to any record being released, the appropriate professional must be consulted. Where records belonging to other organisations are contained within an individual's record, permission should be sought from that organisation, prior to records being released.

13. Fees

- 13.1 There are no fees for normal access to personal data
- 13.2 A 'reasonable fee' may be charged for administrative costs of complying with the request where a request is manifestly unfounded, repetitive or excessive
- 13.3 Alternatively, the data controller can refuse to act
- 13.4 In either of the above cases, the burden of proof lies with the data controller
- 13.5 Under the AHR a fee of £10 may be charged for access to the records. However, an additional fee may be charged for copying and posting the records. There is no limit on this charge, but it should not result in a profit for the record holder
- 13.6 Requesters should be advised of the estimated cost of reproducing the records before any work is carried out.

14. Timescales

- 14.1 The DPA and GDPR requires requests to be complied with within one calendar month. In exceptional circumstances, if it is not possible to comply within this period, then the applicant should be informed and the period may be extended for a further two months.
- 14.2 The Department of Health requires requests to be complied with within 21 days, where possible, up to a maximum of 40 days as stated by the DPA.



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15. Recording the request

- 15.1 All requests to access an individual's record should be logged with your Data Protection Officer.

16. Confirming identity

- 16.1 Once a request has been made (or consent has been obtained where appropriate), due consideration must be given to the information submitted to confirm the identity of the individual, such as full and previous name, date of birth, current and previous address.
- 16.2 To avoid personal data about one individual being sent to another, either accidentally or because of deception, the organisation needs to be satisfied as to the identity of the requester.
- 16.3 If the requester is applying for records on behalf of an individual they will need to provide proof of identity (as above) and must **also** include the individual's written authorisation for access to their records.
- 16.4 If the requester is applying for the records of a deceased individual they must include proof of their own identity together with proof of a court appointment as personal representative.

17. Electronic Records

- 17.1 In most cases, information stored in electronic format can easily be retrieved:
- 17.2 Archived or copied to back-up records.
If copies of electronic data have been retained in this format then the information requested in a SAR has to be located. You are entitled to ask a requestor to provide enough context about their request to enable you to conduct a targeted search.
- 17.3 Information contained in emails.
The content of emails stored on an electronic system is a form of electronic record. Contents of an email should not be regarded as deleted merely because it has been moved to a person's 'Deleted Items' folder. If the emails have been archived the right of subject access still applies. Subject to certain exemptions, access must be provided to all personal data held, even if it is difficult to find.



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18. Sending information

- 18.1 Copies of the requested information should be sent in a suitable format and securely in accordance with your own organisation's policy.

