

Subject Access Requests

Under Data Protection legislation, individuals have rights of access to their personal information. This is commonly known as a 'Subject Access Request'. An individual can request confirmation that you are processing their data, and ask for a copy of all the information which you hold about them. It allows an individual to see how and why you are using their data, and to check that you are doing so lawfully.

The right to access personal information existed under the Data Protection Act 1998, but the procedure for dealing with such requests under GDPR has changed slightly.

Important Note

In maintained schools, parents have a separate right to access their child's educational record under the Education (Pupil Information) (England) Regulations 2005. Therefore any request from a parent for a child's educational record to such a school should be regarded as a request under the Pupil Information Regulations and not a subject access request. More information on these requests is included at the end of this note.

What is personal data?

As explained in previous bulletins, personal data is information in relation to a person which allows them to be identified, either directly from the information in question or from that information in combination with other information. A person is identified or identifiable if you can distinguish them from other individuals.

Examples of personal data include name, address, contact details, date of birth, National Insurance number, opinions held about a person, details of their personal life, and indeed almost anything which tells you something about a person who can be distinguished as an individual.

How should an individual make a subject access request?

Unlike under the Data Protection Act 1998, there are no set requirements in GDPR as to how to make a valid subject access request. Therefore the request can be made verbally or in writing and does not have to be made to a specific person. As

long as it is clear that the individual is asking for their own personal details, then you have a legal responsibility to identify that request and to handle it accordingly.

In order to be able to identify a request, it is good practice for data controllers to ask for requests to be submitted in writing, and for the individual to set out what information they require. You should therefore have an established procedure to ensure that such requests can be identified and that you are complying with your obligations, but you cannot insist that individuals make requests in this way. Please note that individuals don't even have to say that they are submitting a subject access request, or refer to the correct legislation. Make sure that you are able to identify when a request is being made for personal information.

If you have implemented the model Data Protection Policy and the Privacy Notice provided by the School DPO Service, each of these provide a clear procedure for how request should be submitted and these should be publicised. We have recommended that the first point of contact for making such request should be the School DPO Service; however this does not relieve the school / academy trust of its obligations should a request be made directly to the school / academy trust.

It is recommended that you keep a log of any subject access requests received and to also check that you have understood the request, particularly those that have been made verbally.

How long do I have to respond to a subject access request?

You must act upon a request without undue delay. GDPR has amended the timeframe in which you have to respond to a request from 40 calendar days to 1 month. The timeframe begins on the day after you receive the request (whether that is a working or school day or not) until the corresponding calendar date in the month. For example, if a request is received on 3 November then the one month time frame will begin the next day, 4 November, and you therefore have until 4 December to comply with the request.

This may not always be possible due to there not being a corresponding date within the next month, for requests received right at the end of a month. The Information

Commissioner's Officer therefore recommends that it may be helpful to adopt a 28 day period to ensure compliance is always within a calendar month.

It is possible in certain circumstances to be able extend this time by up to two months, for example where one person has made multiple requests or the request is complex. In such situations, you are required to contact the individual and explain the reasons for the necessary extension. We consider that requests that cannot be complied with inside a month as a result of school summer holidays would also justify an extension but, again, notification and an explanation should be given to the requestor.

How can I ensure that I am complying with our duties in relation to a subject access request?

The information you send out in response to the request should be the information you hold at the time of the request and only information in relation to the individual concerned can be provided.

The GDPR requires that the information you are sending out should be concise, transparent, intelligible and in an easily accessible form, using clear and plain language.

If the request has been received electronically, then you should try and send the information to the individual using an electronic format (unless the individual has requested otherwise). Alternatively you can ask the requester for their preferred format.

Can the school / academy trust charge a fee for complying with a subject access request?

A school / academy trust cannot charge a fee to comply with a subject access request under GDPR, unless the request is "manifestly unfounded or excessive". In which cases you may charge a reasonable administration fee for complying with the request, but we would recommend that you seek advice from the School DPO Service before doing so.

If a fee is to be charged, you should notify the individual of the reasons for the charge and their right to complain to the ICO.

Can a third party make a request on behalf of an individual?

The majority of information requests that a school / academy trust will receive are likely to be from individuals known to the organisation, for example members of staff, a parent or a pupil.

Requests may not always be received directly from the individual but a person acting on their behalf. This may include a Solicitor or a Trade Union representative acting on behalf of the individual or simply a person which the individual feels comfortable with them making the request on their behalf.

You should ensure that the applicant can satisfy you they have entitlement to another person's personal information; the onus is up on them to satisfy this. It is good practice to ask for the individual's signed authority for that person to act on the behalf of the individual concerned.

If you have any doubt the individual is who they say they are, you can ask them for information to confirm their identity. However, proportionality is the key and you can only request the information necessary to confirm their identity.

What information can an individual have access to?

Any requests for information that do not relate to the personal information of the individual (or individual who they are acting on behalf of) should be dealt with under the Freedom of Information Act 2000.

In the main, schools / academy trusts are likely to receive requests from staff members for access to their employment / HR records and parents/pupils requesting access to their educational record. A parent could also request access to information held about themselves.

The legal definition of 'educational record' is wide and includes, regardless of its form, any information about current and past pupils that is processed by or for a

school or academy. It includes the 'curricular record', defined as a formal record of a pupils academic achievements, other skills and abilities and progress in school, and will also include any other information held by a school or academy concerning the child's education or welfare, which has been produced by a member of staff of either the school / academy or local authority, the pupil themselves, or a parent of the pupil.

Where the school is an academy, a pupil, or someone acting on their behalf, may make a subject access request in respect of personal information held about the pupil by the school. This will include but is not limited to, the educational record. Any correspondence or documents generated by school / Academy trust that makes reference to an individual could be disclosed as part of the request.

Any internal email correspondence can fall into the scope of a subject access request and therefore we recommend that staff at all levels within the school are mindful about what they commit to writing about an individual as it could be subject to disclosure.

If the subject access request is in relation to a child's personal information, under GDPR even if a child is too young to understand the implications of subject access rights, it is still the right of the child rather than of anyone else such as a parent or guardian. However, you may allow a person with parental responsibility to exercise the rights of the child on their behalf (see below for when dealing with requests to maintained schools for educational records).

When dealing with requests in relation to children, you should assess the following:

- the child's level of maturity and their ability to make decisions like this – for a child aged 13 or over, with the ability to understand the consequence of the release of such information, we would expect them to consent to any such request made on their behalf by parents;
- the nature of the personal data;
- any court orders relating to parental access or responsibility that may apply;
- any duty of confidence owed to the child or young person;

- any consequences of allowing those with parental responsibility access to the child's or young person's information. This is particularly important if there have been allegations of abuse or ill treatment;
- any detriment to the child or young person if individuals with parental responsibility cannot access this information; and
- any views the child or young person has on whether their parents should have access to information about them

Requests for pupil information made to maintained schools

As stated above, the Pupil Information Regulations give a parent their own independent right to have a copy of or to view their child's educational records, and the definition of what is included in an educational record is also set out above.

As stated, communications about a particular child from head teachers and teachers at a school and other employees at an education authority will therefore form part of that child's official educational record. It may also include information from the child and their parents, such as information about the health of the child. Information kept by a teacher solely for their own use does not form part of the official educational record (for example lesson plans).

Generally any information that could not be disclosed under GDPR to a child should not be disclosed to a parent exercising the independent right of access under the Regulations.

Requests for information from pupils or parents for information that contains, wholly or partly, an educational record must receive a response within 15 school days.

A maintained school can charge for complying with such a request under these Regulations but the cost should not exceed the amount that it takes to produce it. You cannot charge a fee for the parent to view the records.

Any requests for a pupil's personal information by a parent that does not fall into the definition of the educational record, should be dealt with under the provisions of GDPR.

Are there any circumstances in which I can withhold the requested information?

Schools / Academy Trusts can withhold personal data if disclosing it would 'adversely affect the rights and freedoms of others'.

The exemptions that are most likely to apply to schools / Academy Trusts are where the disclosure of personal information:

- Might cause serious harm to the physical or mental health of the pupil or another individual
- Would reveal that the child is at risk of abuse, where the disclosure of that information would not be in the child's best interests
- Is contained in adoption or parental order records
- Is given to a court in proceedings concerning the child
- Mentions a third party or has a third party at its focus.

You do not have to comply with the request if it would mean disclosing information about another individual who can be identified from that information, except if:

- the other individual has consented to the disclosure; or
- it is reasonable to comply with the request without that individual's consent.

Careful consideration should be given to all of the personal information that has been requested in determining whether an exemption applies. For schools / academy trusts, we would suggest that the first two bullet-points may be applicable to some information about safeguarding concerns and therefore further advice may need to be sought in relation to this.

Information relating to a third party can be redacted from the documents prior to disclosure, where it is appropriate to do so.

What is the role of the School DPO Service in relation to Subject Access Requests?

We have named the School DPO Service within our model Privacy Notice as the first point of contact for any individual wishing to make a subject access request. The service will forward the request onto the nominated contact within the school / academy trust. It remains the responsibility of the school / academy trust to process (identify and collate the requested information) and comply with the subject access request. The School DPO Service can carry out a 'sense' check to ensure requests are being processed correctly and within the relevant timeframe, and can also issue the response to the individual if the School / academy trust wish it do so.

The School DPO Service can advise in general terms about what information should be released, but we would recommend that in relation to any particularly contentious matters you should make contact with your legal advisors.

What information should we provide to an individual if we are refuse to comply with a request?

You can refuse to comply with a subject access request if one of the exemptions above applies or where the request is manifestly unfounded or excessive, taking into account whether the request is repetitive in nature.

You must inform the individual without undue delay and within one month of receipt of the request.

You should inform the individual about:

- the reasons you are not taking action;
- if any personal information has not been disclosed as part of the request (as an exemption applies)
- their right to make a complaint to the ICO supervisory authority; and
- their ability to seek to enforce this right through a judicial remedy.