

7 ACCESS TO INFORMATION



FOR INDIVIDUALS

1. Purpose

The provisions of the General Data Protection Regulation, any living person has the right of access to their information that is held/used by an organisation, and the right to request certain information relating to the processing of their information including:

- the purposes of the processing;
- the categories of personal data concerned;
- the recipients or categories of recipient to whom the personal data have been or will be disclosed, in particular recipients in third countries or international organisations;
- where possible, the envisaged period for which the personal data will be stored, or, if not possible, the criteria used to determine that period;
- the existence of the right to request from the controller rectification or erasure of personal data or restriction of processing of personal data concerning the data subject or to object to such processing;
- the right to lodge a complaint with a supervisory authority;
- where the personal data are not collected from the data subject, any available information as to their source;
- the existence of automated decision-making, including profiling, and, at least in those cases, meaningful information about the logic involved, as well as the significance and the envisaged consequences of such processing for the data subject.

This is known as a Subject Access Request (SAR). This guidance note provides detailed information on how to comply with a SAR.

2. Definitions

Applications to access personal identifiable information are made under two Acts:

- Article 15 of the General Data Protection Regulation 016 (GDPR) for living individuals;
- Access to Health Records Act 1990 (AHR) for deceased individuals

An individual does 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.

The requestor is not required to give a reason as to why they are applying for access but they do need to provide sufficient information to enable the correct 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.

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3. Processing of subject access requests

A SAR should be made in writing. This should ideally be by hard copy, or email, Some people with learning disabilities may find it difficult to communicate in writing and may have difficulty in making a SAR in which case organisations should make reasonable adjustments for such a person which could include accepting a verbal request and responding to the request in a format which is accessible to the individual.

A request can be made by:

- an individual (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;
- person appointed by the court when an individual does not have capacity to manage their own affairs;

Organisations may also consider requests made by a deceased individual's personal representative or any person having a claim out of the estate. This is subject to the recorded wishes of the deceased person.

4. Individuals living abroad

The GDPR gives individuals the right to apply for access to their personal information which is processed in the UK. 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 receive securely by e-mail or in hard copy. Alternatively, personal information may be extracted and collated into a single document for disclosure.

5. Denying access

There are limited circumstances in which information cannot be provided to an individual who has made a SAR, such as when the information would be likely to cause serious harm to the physical or mental health of the applicant or another, or where the record relates to, or otherwise identifies an identifiable third party (unless the third party has consented to disclosure).

Your Data Protection Officer should be able to advise you further.

6. Consent

If the request is not made by the data subject themselves, then in most cases the consent to access personal information will be provided either directly, or to the individual making the request on their behalf, however, there may be cases where the individual is unable to consent, or the individual is a child.

A request received from an individual's representative must be authorised by the individual. If an individual 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 individual. Such a person should be asked to produce evidence that they hold a lasting power of attorney, or court of protection order.

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

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 individual, 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.

Further information on consent can be found in resource note 5 – ‘Consent’.

7. Access to children’s records

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 is generally considered mature enough to understand what a subject access request 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.

Parental access must not be given, unless it is in the child’s best interests to do so.

It should not be given where:

- 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 the capacity of a child to make and understand the implications of a request for access is in doubt, careful checks should be made to determine the most appropriate way forward. Consideration should be given to child-friendly explanations and instructions to applicants.

8. Access to an individual’s record by other agencies

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 this will provide a legal basis to gain access.
- Coroner’s office – information may be disclosed to the Coroner about the deceased and anything relevant to their judicial role.
- Police – the police do not have automatic right of access to personal identifiable information. However, information may be released to the police without an individual’s consent when it is required for the purposes of
 - (a) the prevention or detection of crime,
 - (b) the apprehension or prosecution of offenders, or
 - (c) the assessment or collection of a tax or duty or an imposition of a similar nature,
- Other agencies with a legal obligation - your Data Protection Officer should be able to advise you in these circumstances.

9. Access to information of a deceased person

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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 information.

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 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.

10. Mental Capacity Act 2005

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.

11. Fees

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.

Requesters should be advised of the estimated cost of reproducing the records before any work is carried out.

12. Timescales

The GDPR requires requests to be complied with within a calendar month and in exceptional circumstances, if it is not possible to comply within this period, then the applicant should be informed, the period is being extended by a maximum of a further two months. 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.

13. Recording the request

All requests to access an individual's record should be logged in accordance with your Data Protection procedures.

14. Confirming identity

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.

To avoid personal data about one individual being sent to another, either accidentally or as a result of deception, the organisation needs to be satisfied as to the identity of the requester.

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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.

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.

15. Electronic records

In most cases, information stored in electronic format can easily be retrieved: 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.

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.

16. Sending information

Copies of the requested information should be sent securely in accordance with your own organisation's policy. Where the data subject makes the request by electronic means, and unless otherwise requested by the data subject, the information shall be provided in a commonly used electronic form.