

## **GDPR - Right of access**

The right of access, commonly referred to as subject access, gives individuals the right to obtain a copy of their personal data as well as other supplementary information. It helps individuals to understand how and why we are using their data, and check we are doing it lawfully.

### **What is an individual entitled to?**

Individuals have the right to obtain the following:

confirmation that we are processing their personal data;

a copy of their personal data; and

other supplementary information

### **Personal data of the individual**

An individual is only entitled to their own personal data, and not to information relating to other people (unless the information is also about them or they are acting on behalf of someone).

### **Other information**

In addition to a copy of your personal data, we also have to provide individuals with the following information:

the purposes of our processing;

the categories of personal data concerned;

the recipients or categories of recipient we disclose the personal data to;

our retention period for storing the personal data

the existence of your right to request rectification, erasure or restriction or to object to such processing;

the right to lodge a complaint with the ICO or another supervisory authority;

information about the source of the data, where it was not obtained directly from the individual;

the existence of automated decision-making (including profiling); and

the safeguards you provide if you transfer personal data to a third country or international organisation.

### **How do we recognise a request?**

The GDPR does not specify how to make a valid request. Therefore, an individual can make a subject access request to you verbally or in writing. It can also be made to any part of Good Companions organisation (including by social media) and does not have to be to a specific person or contact point.

A request does not have to include the phrase 'subject access request' or Article 15 of the GDPR, as long as it is clear that the individual is asking for their own personal data.

We have a legal responsibility to identify that an individual has made a request to you and handle it accordingly.

***Recital 59 of the GDPR recommends that organisations 'provide means for requests to be made electronically, especially where personal data are processed by electronic means'.***

### **How we will provide the data to individuals**

If an individual makes a request electronically, we will provide the information in a commonly used electronic format, unless the individual requests otherwise.

However, providing remote access should not adversely affect the rights and freedoms of others – including trade secrets or intellectual property.

### **Do we have to explain the contents of the information we send to the individual?**

The GDPR requires that the information you provide to an individual is in a concise, transparent, intelligible and easily accessible form, using clear and plain language. This will be particularly important where the information is addressed to a child.

The additional information you provide in response to a request should be capable of being understood by the average person (or child). However, we are not required to ensure that that the information is provided in a form that can be understood by the particular individual making the request.

#### **Example**

An individual makes a request for their personal data. When preparing the response, you notice that a lot of it is in coded form. For example, attendance at a particular training session is logged as "A", while non-attendance at a similar event is logged as "M". Also, some of the information is in the form of handwritten notes that are difficult to read. Without access to your key or index to explain this information, it would be impossible for anyone outside your organisation to understand. In this case, you are required to explain

the meaning of the coded information. However, although it is good practice to do so, we are not required to decipher the poorly written notes, as the GDPR does not require us to make information legible.

#### Example

We receive a subject access request from someone whose English comprehension skills are quite poor. We send a response and they ask you to translate the information you sent them. We are not required to do this even if the person who receives it cannot understand all of it because it can be understood by the average person.

Can we charge a fee?

In most cases we cannot charge a fee to comply with a subject access request.

We can also charge a reasonable fee if an individual requests further copies of their data following a request. We must base the fee on the administrative costs of providing further copies.

#### **How long do we have to comply?**

You must act on the subject access request without undue delay and at the latest within one month of receipt.

We will calculate the time limit from the day after we receive the request (whether the day after is a working day or not) until the corresponding calendar date in the next month.

#### Example

We receive a request on 3 September. The time limit will start from the next day (4 September). This gives us until 4 October to comply with the request.

If this is not possible because the following month is shorter (and there is no corresponding calendar date), the date for response is the last day of the following month.

If the corresponding date falls on a weekend or a public holiday, you have until the next working day to respond.

This means that the exact number of days you have to comply with a request varies, depending on the month in which the request was made.

#### Example

We receive a request on 30 March. The time limit starts from the next day (31 March). As there is no equivalent date in April, the organisation has until 30 April to comply with the request.

If 30 April falls on a weekend, or is a public holiday, the organisation has until the end of the next working day to comply.

For practical purposes, if a consistent number of days is required (eg for operational or system purposes), it may be helpful to adopt a 28-day period to ensure compliance is always within a calendar month.

### **Can you extend the time for a response?**

We can extend the time to respond by a further two months if the request is complex or we have received a number of requests from the individual. We must let the individual know within one month of receiving their request and explain why the extension is necessary.

However, it is the ICO's view that it is unlikely to be reasonable to extend the time limit if:

it is manifestly unfounded or excessive;

an exemption applies; or

you are requesting proof of identity before considering the request.

### **Can you ask an individual for ID?**

If we have doubts about the identity of the person making the request we can ask for more information. However, it is important that we only request information that is necessary to confirm who you are. The key to this is proportionality.

We need to let the individual know as soon as possible that we need more information from them to confirm their identity before responding to their request. The period for responding to the request begins when you receive the additional information.

### **What about requests for large amounts of personal data?**

We do not keep or process large amounts of personal data.

### **What about requests made on behalf of others?**

The GDPR does not prevent an individual making a subject access request via a third party. Often, this will be a solicitor acting on behalf of a client, but it could simply be that an individual feels comfortable allowing someone else to act for them. In these cases, we need to be satisfied that the third party making the request is entitled to act on behalf of the individual, but it is the third party's responsibility to provide evidence of this entitlement. This might be a written authority to make the request or it might be a more general power of attorney.

If we think an individual may not understand what information would be disclosed to a third party who has made a subject access request on their behalf, we may send the response directly to the individual rather than to the third party. The individual may then choose to share the information with the third party after having had a chance to review it.

There are cases where an individual does not have the mental capacity to manage their own affairs. Although there are no specific provisions in the GDPR, the Mental Capacity Act 2005 or in the Adults with Incapacity (Scotland) Act 2000 enabling a third party to exercise subject access rights on behalf of such an individual, it is reasonable to assume that an attorney with authority to manage the property and affairs of an individual will have the appropriate authority. The same applies to a person appointed to make decisions about such matters:

in England and Wales, by the Court of Protection;

in Scotland, by the Sheriff Court; and

in Northern Ireland, by the High Court (Office of Care and Protection).

### **What about requests for information about children?**

We do not hold any information about children

### **What we will do if the data includes information about other people**

Responding to a subject access request may involve providing information that relates both to the individual making the request and to another individual.

The DP Bill says that we 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.

In determining whether it is reasonable to disclose the information, we must take into account all of the relevant circumstances, including:

the type of information that we would disclose;

any duty of confidentiality we owe to the other individual;

any steps we have taken to seek consent from the other individual;

whether the other individual is capable of giving consent; and

any express refusal of consent by the other individual.

### **Can you refuse to comply with a request?**

We can refuse to comply with a subject access request if it is manifestly unfounded or excessive, taking into account whether the request is repetitive in nature.

If we consider that a request is manifestly unfounded or excessive we can:

request a "reasonable fee" to deal with the request; or

refuse to deal with the request.