

Data Protection – Quick guide

What is the Data Protection Act 1998?

The Data Protection Act is a piece of legislation that governs how data controllers (i.e. organisations – including individual schools) handle personal information. The purpose behind the Act is to ensure that an individual's right to privacy is respected and their personal information is handled in a secure manner.

The Act also provides individuals with a number of rights, the most significant one being the right of access to the personal information that the data controller holds on them.

The 8 Data Protection Principles

The 8 Data Protection Principles are the good information management standards that organisations must comply with when handling personal information. The 8 Data Protection Principles require that personal information is:

1. Fairly and lawfully used
2. Used for limited purposes
3. Adequate, relevant and not excessive
4. Accurate
5. Not kept for longer than is necessary
6. Dealt with in a transparent manner
7. Secure
8. Not transferred to other countries without adequate protection

The right of access to personal information

Every individual has a right to request access to the information that your school holds on them (this type of request is often referred to as a subject access request).

What it means for you and your school

Pupils, parents and employees will expect your school to handle their information in compliance with the 8 Data Protection Principles.

Any individual that your school holds information on can request a copy of that information and you must have adequate procedures in place to handle such requests.

How does an individual make a subject access request

A subject access request must:

- (a) be made in a permanent form (e.g. in writing, by fax or email).
- (b) Contain sufficient information to verify the identity of the person making the request
- (c) Contain sufficient information to enable the personal information that they are seeking to be located.

The legislation also allows a fee to be charged before complying with the subject access request. The maximum fee that can be requested for complying with a standard subject access request is £10.

However, where an individual is requesting access to their manual education records the fee chargeable can range from £1 to £50 depending on the number of pages to be supplied.

Requests can be open ended from individuals and they can ask for “all personal information that the school holds on me”. However, as it states in (b) above you can go back to the applicant and ask for further information so that you are able to locate the personal information that they are seeking access to.

Please note the request does not need to mention the Data Protection Act.

What should you do if you receive a subject access request

Upon receipt of a valid subject access request your school has 40 calendar days in which to provide a full response to the request (requests for access to manually held education records should receive a full response within 15 school days).

The right of access to personal information is to that held in both a manual and computerised form. Therefore you may need to undertake a search to find the information requested (particularly in relation to requests for emails).

If the request is from an employee or former employee of the school then it would be appropriate to contact Schools HR if they hold some of the information that has been requested.

Exemptions from the right of subject access

Section 30 - Information contained within an education record can be withheld where the release of that information would be likely to cause serious harm to the physical or mental health of the individual, or any other person.

Section 30 - Information that would reveal that a child is, or may, be at risk of child abuse should also be withheld.

Schedule 7, Paragraph 8 - Exam marks do not have to be disclosed following a subject access request, if they are yet to be released/published.

Schedule 7, Paragraph 9 - Information recorded by candidates in exams does not have to be provided (however, comments made by examiners should be supplied if requested).

Section 29(1) Information which if disclosed would prejudice an ongoing criminal investigation does not have to be disclosed.

Schedule 7, Paragraph 1 - References provided by the school to an individual's prospective employer do not have to be provided. If the individual wants to have access to the reference written by your school they should make the request to the organisation that received it.

Schedule 7, Paragraph 10 - Legally professionally privileged information – communications to or from lawyers for the purposes of asking for or receiving legal advice in respect to a particular individual are privileged and should not be provided.

Section 7(4) - Third party information – if the disclosure of personal information would also disclose or identify third parties you have to either

(a) get the consent of the third party for the disclosure of the information that identifies them, or

(b) if consent is not forthcoming or can not be sought, consider whether or not it is reasonable in all the circumstances to provide the information.

Even when the other person's information should not be disclosed, you should still supply as much information as possible by editing the references to other people.

Parents right of access to information about their child

Under the Data Protection Act parents do not have an automatic right to their child's information, as the right of access to information is an individual right.

Whether or not access is granted to the parent depends on the age and mental capacity of the child and whether the parent is acting in the child's best interests.

As a general rule, a child aged 12 or over is presumed to be of sufficient age and maturity to be able to make a request for their own data. Where a child is deemed able to make a subject access request, you should reply directly to the child.

If the child is not of sufficient age or maturity, then a person with parental responsibility is entitled to make a request on their behalf. You need to be satisfied that the person with parental responsibility is acting in the best interests of the child before releasing the information. Caution should be exercised where child custody or abuse cases are concerned and where the Child has given information to a teacher with the expectation of confidentiality.

Under the Education Regulations parents do have a separate right of access to their child's education record.

Guidance to staff

Staff should be mindful when creating information as it could be subject to disclosure and any comments they make on an individual's file should be professional and appropriate.

Further information

More detailed guidance on this area is going to be produced shortly by the Council's Data Protection Advisor (Ian Goodwin). Should you have any specific questions in the meantime, please contact Ian on 07852303266, or alternatively, the Information Commissioner's Office (the national regulator of the Data Protection Act) is able to provide advice and can be contacted on 01625 545745.

Useful Information Commissioner's Office guidance documents:

Checklist for handling subject access requests:

http://www.ico.gov.uk/upload/documents/library/data_protection/practical_application/checklist_for_handling_requests_for_personal_information.pdf

Dealing with requests where third party information is also contained within the personal information requested

http://www.ico.gov.uk/upload/documents/library/data_protection/detailed_specialist_guides/dealing_with_subject_access_requests_involving_other_peoples_information.pdf