



GDPR Subject Access Requests - Guidelines

Title	GDPR The Data Protection Act 1998 & The General Data Protection Regulations Subject Access Requests - Guidelines
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The Data Protection Act 1998
and
The General Data Protection Regulations

Subject Access Requests - Guidelines

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1.0 Introduction

A person has the right under Data Protection Legislation to request information held about them by an organisation. This right is also enshrined in the European Convention on Human Rights which safeguards an individual's right to a private life and respect for personal data under Article 8 and the right to access information under Article 10. This right is known as a Subject Access Request (SAR) and must be made in writing. However, if the request is made verbally there is an expectation for advice and assistance to be provided to the individual to enable them to make a valid request. The Act stipulates that requests must be responded to within one month.

It is important to note that the request does not need to state that it is a subject access request or mention the Data Protection Act. It may even cite other legislation like the Freedom of Information Act. It is the responsibility of the organisation to recognise the request as a SAR and respond appropriately. There is no requirement for the individual to explain why he or she is making the request.

A request can be made for an individual's personal data by a third party - most commonly this will be a solicitor acting on behalf of a client. In this case a signed mandate by the individual is required before the request can be validated.

Any request received should be passed to either the Head of Valuation Services or the Assessor & ERO for validating; logging; and response purposes.

The Data Protection Act is regulated by the UK Information Commissioner (ICO) and should not be confused with the Scottish Information Commissioner (SIC) who regulates the Freedom of Information Act 2002 and the Environmental Information (Scotland) Regulations 2004.

There is advice and guidance available on the [Information Commissioner's website](#)

Documents that may be of particular help are:

[The ICO Subject Access Code of Practice](#)

[The ICO determining what is personal data](#)

2.0 Finding Information

A subject access request is a request for the personal data of a living individual. All electronic records must be searched, and all paper (or other media) records in which the requester's personal data is accessible (i.e. that are searchable or indexed) must be searched. Searches carried out should be recorded in the Corporate Control Document under the SAR tab.

The applicant cannot be forced to narrow the scope of their request but can be asked for additional information to help clarify and identify the information being requested. However, if the individual specifies that they would like all information held then a search for this must be made. If clarification is required, this must be recorded at the earliest opportunity.

The tables below describe the different formats of information covered by the Act:

Recorded Format	Held in any location
Emails	Stored at work
Letters	Stored by a third party or contractor e.g.
Minutes	Stored at home but recorded work purposes
Reports	Archived/deleted with IT journal
Data bases	Portable Devices
Microfiche	
Forms	
Notes	
Photographs	
CCTV	
Voicemail	

As described above you are expected to make all information available even if it is considered difficult to access. This includes requesting access to archived correspondence retained by IT. The various documents that have been deleted have a number of timescales that allow recovery by South Ayrshire Council as AVJBs IT provider. Accordingly advice should be sought from SAC regarding possible retrieval. SAC will request you obtain authorisation from the Assessor & ERO before carrying out any search.

Please note it is an offence to amend or delete data to prevent its disclosure.

2.0 Is it personal data?

Personal data is defined as any information relating to a living individual who can be identified from that information. It may not be obvious that the information is personal data and the key things to consider are:

- Does it identify a living individual?
- Does it record an individual's:
 - Characteristics?
 - Appearance?
 - Possessions?
 - Location?
 - Activities?
- Is it being used to learn or record something about an individual?
- Will it inform or influence decisions about the individual?
- Is it an expression of opinion about the individual?
- Does it give any indication of intention in respect of the individual?

It is important to note that personal data is not required to be factual.

3.0 What information should be released?

When you are identifying information which should be released in response to an applicant's subject access request, you are looking for the applicant's personal data. A straightforward approach may be to release entire documents containing the applicant's personal data providing none of the information in the documents is particularly sensitive or confidential. However there may also be occasions where it would be more appropriate to identify the applicant's personal data and redact the surrounding information. It is worth remembering that you are not required to release information wholly unconnected to the individual making the request.

4.0 Third party personal data

It is possible that there will be references to other people in the course of any information retrieved about the applicant. Other people's personal data may require to be redacted, depending on the circumstances:

4.1 Ayrshire Valuation Joint Board employees

Please note that AVJB as employer owes a duty of confidence to its employees. However if the employee is part of front-line services it may be reasonable to release their name, provided the information is generally known or already known to the applicant, and/or it relates to the employee acting in their professional capacity i.e. a Valuer working with a non-domestic rate or Council Tax payer. Any sensitive information about the employee (such as information about their health or family circumstances) should not be released. If the employee does not regularly deal with members of the public please consider redacting their details. If the employee has corresponded with the individual making the subject access request and the correspondence forms part of the individual's personal data, the employee's name should in this particular context be released.

If you feel that in the particular circumstances of the case it would not be appropriate to release the names of employees to the applicant, please note this in the Corporate Control Document under the SAR tab.

4.2 Third Party Individuals other than AVJB employees

If in doubt, redact this information. If practicable, seek the consent of the third party in question to release their information and take into account their views. It may be reasonable in some circumstances to release third party information such as references to members of the applicant's family, but it is advised that you exercise care and consider the circumstances of the case. If the information recorded is known to the applicant it may also be reasonable to release this, but again please consider the particular circumstances of the case.

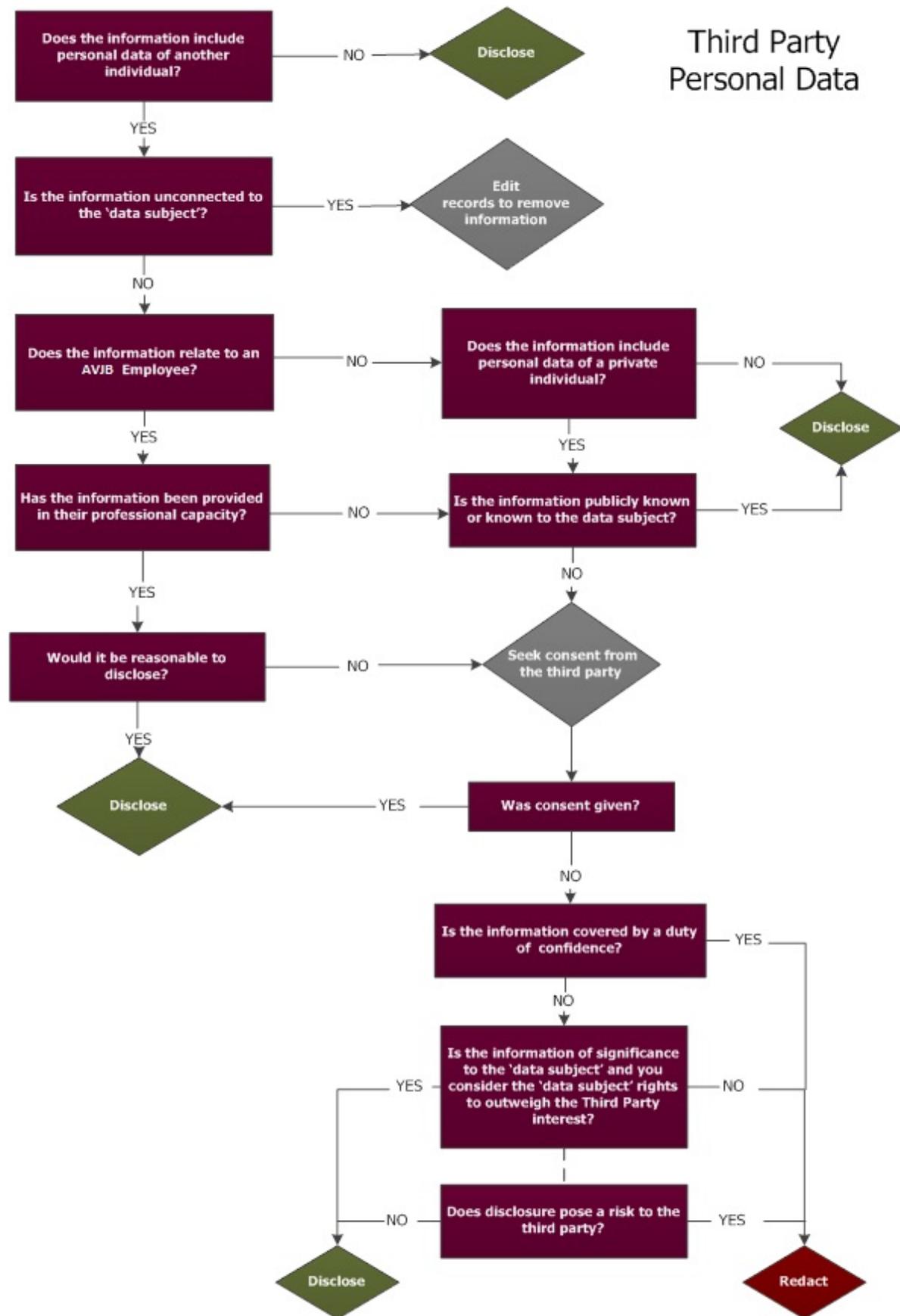
The final decision on whether to disclose third party information is yours and there are factors that you should consider when deciding to withhold or disclose third party personal data without consent:

- Does the request require the disclosure of third party personal data or can the information be edited to remove the data as it is unconnected to the individual?
- Is the third party information already known to the individual?
- Is there an expectation of confidence by the third party?
- Has the third party provided a well-reasoned argument for refusing consent?
- How significant is the information to the applicant?
- Does the individual's right to access information about their life outweigh the right of the third party to confidence?

The flowchart on the next page below may help you identify third party information that should be redacted or disclosed.

Please note that there are only very limited circumstances in which we can withhold a person's personal data from them, even if it results in the disclosure of embarrassing comments or inaccurate information about the individual.

Figure 1



5.0 Exempted from disclosure

There is very little information that it is exempt from the right of subject access. One example of exempt information is AVJB references for an individual's employment, training or education. However, a reference provided by a third party is not exempt and should be dealt with as described previously. Information that is publicly available is also exempt i.e. personal information within a public register.

There are exemptions within the Act that can be applied to withhold information. A brief description of the main exemptions is provided below.

Confidentiality

This can be applied to information that has been provided by a third party with the expectation that it will remain confidential. This usually applies to information processed during a relationship with a duty of confidence, for example doctor and patient; employer and employee; solicitor and client etc. Confidentiality should not be assumed but where a duty of confidence does exist it is usually acceptable to withhold the information.

Management Information

This exemption relates to information surrounding management forecasting and planning, if by disclosing would prejudice the effectiveness of the Board's activities. This would most likely be applied to requests that would pre-empt announcements of restructures and/or redundancies.

Legal advice and proceedings

Information that can be considered as advice provided by a legal professional to a client is exempt from disclosure as well as any information that has been specifically recorded for legal proceedings.

6.0 Responding to Subject Access Requests

The information must be provided in a permanent form unless the applicant agrees to meet and view the information. If a visit is arranged, the applicant is entitled to request copies of information and these should be provided.

The response must provide an explanation of the information held and the purpose for which it is held. It should also inform the applicant if the information is being shared with any other organisation or individual and for what purpose.

Withheld information should be properly redacted using a redaction tool or by using a black marker pen and photocopying the documents.

An explanation must be provided for any redacted information which should include the exemption being relied on to withhold it.

If there is a failure to provide a response within one calendar month, the applicant can go directly to the ICO to request that they investigate. From time to time we may receive a voluminous and complex request that may prove challenging to respond to within the time frame. You should advise the applicant as quickly as possible if there is likely to be a delay and keep them up to date with progress.

It is also worth noting that the ICO has powers to fine organisations that are found to have an ongoing pattern of failure to respond within the set timeframe.

7.0 Possible actions/issues from disclosure

The applicant may raise concerns or issues after receiving a response to their SAR and this is an opportunity for the SAR to be revisited and rectified if required before the applicant contacts the ICO.

It is worth bearing in mind the rights of the applicant under data protection. Individuals have the right to have inaccurate information rectified, erased or destroyed and to request that the processing of their data is stopped. However, these rights are limited and the individual must be able to demonstrate that it has caused harm and distress. It is important that the applicant is assured that any queries are given full consideration and we respond promptly. To achieve this, the HOVS will arrange a meeting with you along with a solicitor from SAC to review and discuss the response provided and the issues raised.