

## **Data Protection Act 1998**

### **Subject Access Requests in Schools**

People have several rights under the Data Protection Act, one of which is the right to access their personal data held by an organisation. This is known as a **Subject Access Request**.

#### ***The request***

Applicants must put their request in writing asking for the information they want. Identification should be provided in order to satisfy the school of the applicant's identity (where required).

#### ***What information are they entitled to?***

Individuals (members of the public and staff) are entitled to a copy of any information the school holds about them, where they are the focus of the information and the information says something significant about them. This type of information is known as 'personal data'.

If a school has engaged with Devon County Council's Service Providers e.g. Schools' Personnel Service, Wellbeing@Work, Safeguarding Manager etc and the applicant has requested this kind of information, the school must contact the service providers who may hold the information on their behalf, and request a copy of it. This is to ensure that the School meets its obligation to collate all information held, relating to the individual making the request.

#### ***Parents requesting information about their child***

Parents do not have an automatic right to see information held about their child (other than educational records, requested under the Education (Pupil Information) (England) Regulations 2005). If a child is over 12 years old and is considered by the school to be mature, the child should be asked to request the information themselves. Alternatively, the parent can provide the school with written permission from their child, to release the child's records to them.

Schools should also consider the legal entitlement and appropriateness of the parent to receive the information, for example in cases where a parent does not have parental responsibility for the child. Where necessary legal advice should be sought.

### *Time scales*

If the information requested forms part of an educational record, the school must make their disclosure within 15 pupil days. For all other types of information, the school must make their disclosure as quickly as possible and in any case within 40 calendar days.

### *Can I charge for this information?*

Yes. The Subject Access Fees Regulations 2000 sets out a sliding scale of fees that can be charged (see Appendix One). This sliding scale only applies to **educational records** which are held in paper form.

### *Consult authors*

If your school is in possession of any letters, emails, documents, handwritten notes etc which have been written by staff, members of the public or other organisations, for example, Devon Primary Care Trust, Devon County Council's Children and Young People's Service, Devon and Cornwall Police etc, the school must contact the authors and consult with them over the release of this information. There are some occasions when an unreasonable refusal of consent to release the information, may be overridden. In determining whether it is reasonable to disclose a document without consent from the author, the school should consider the following:

- Is there a duty of confidentiality owed to the individual (i.e. the author)?
- What steps have been taken with a view to seeking consent?
- Is the author capable of giving consent?
- Has the author refused consent and if so, is it reasonable to override the refusal?

### *Are there any exemptions?*

Yes. A list of the main exemptions can be found in Appendix Two. Please note the list is not exhaustive.

### *How do I redact/obscure information?*

Any information which you are applying an exemption to e.g. third party data, must be completely obscured. One way of doing this is to cover the unwanted text with a black marker pen (do this on a copy not the original document). You will then need to

photocopy this copy and check that you cannot see the text through the black. If necessary, repeat the process again.

If an exemption has been applied and text has been removed from a document, to the extent that the remaining text does not make sense, it may be appropriate to withhold the entire document.

### ***Do I need to keep a copy of the information I disclose?***

Yes, it is good practice to keep an accurate copy of the information disclosed, for two years in case the contents are disputed.

### ***Criminal offence***

It is a criminal offence to deliberately withhold (without lawful justification) or destroy personal data, when a Subject Access request has been made.

<b>Contact Us</b>
Devon County Council's Data Protection Office
<b>Email:</b> <a href="mailto:www.dpoffice@devon.gov.uk">www.dpoffice@devon.gov.uk</a> <b>Telephone:</b> 01392 384682

## Appendix One

### Data Protection Subject Access Fees Regulations 2000 Subject Access Fees Table

Maximum subject access fees where a copy of information contained in an **Educational Record**, is supplied in permanent form.

Number of Pages	Maximum Fee
Fewer than 20	£1
20-29	£2
30-39	£3
40-49	£4
50-59	£5
60-69	£6
70-79	£7
80-89	£8
90-99	£9
100-149	£10
150-199	£15
200-249	£20
250-299	£25
300-349	£30
350-399	£35
400-449	£40
450-499	£45
500 or more	£50

**The maximum fee for all other types of personal information held by a school is £10.00**

**Data Protection Act  
Exemptions from Subject Access**

Exemption	Summary
Prevention or detection of crime or the apprehension or prosecution of offenders, or assessment or collection of any tax or duty	This can only be applied if there is a real likelihood that the disclosure would prejudice those purposes.
Disclosure would result in serious harm to the physical or mental health or condition of the individual or some other person	<p>This can only be applied where a 'health professional' has made this prognosis and there needs to be a real likelihood that the disclosure would cause serious harm to the individual.</p> <p>This applies to information held for education welfare, social work and health purposes only.</p>
Third Party Data / Information about 'other individuals'	<p>Data subjects are only entitled to information held about them. Schools are not obliged to comply with a request if it would identify someone else, unless the other individual has consented to the disclosure of the information, or it is reasonable in all the circumstances to comply with the request without the consent of the other individual.</p> <p>Advice can be sought from Devon County Council's Data Protection Office regarding 'what is reasonable?'</p>
Legal Professional Privilege	This relates to the confidentiality between a client and their legal adviser. Any advice which comes from a legal advisor may be exempt from disclosure and should not be disclosed without the legal advisor's permission.
Confidential references given by the data controller	Schools are not obliged to disclose references which they have provided. However, they are obliged to disclose references which they have received. Any information which would identify the referee must be removed unless the referee consents to the release their information.
Cost of complying exceeds the appropriate limit	Unstructured, paper held documents and records are exempt from disclosure if it would take longer than 18hrs to locate and extract the information the data subject is entitled to, from within those documents and records.

	This exemption cannot be applied to educational records, social services records, health records or any other information held electronically.
<b>Self-incrimination</b>	If by complying with any subject access request the school would reveal evidence of the commission of any offence, other than an offence under the Data Protection Act, exposing them to proceedings for that offence, the school need not comply with the subject access request.
<b>Prohibited or restricted by law</b>	Where an act of law or an order from a court prohibits the disclosure.
<b>Negotiations</b>	Where the information contains the intentions of the school in relation to any negotiations with the data subject, that information is exempt from disclosure, if disclosure would prejudice those negotiations.
<b>Examination Scripts</b>	Information recorded by candidates during an examination is exempt from disclosure. However any comments recorded by the examiner in the margins of the script are not exempt and as such should be provided even though they may not appear to the school to be of much value without the script itself.
<b>Examination Marks</b>	This is not an exemption as such but is rather an adaptation of the requirement to disclose personal data within 40 calendar days. If a Subject Access request is received for examination marks, the school can extend the 40 day timescale to be either 5 months from the day on which the school received the request or 40 calendar days from the announcement of the examination results, whichever is earlier.

**This is not an exhaustive list**