

# Subject Access Requests



Your right of access,  
from an individual and business point of view.

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# At a glance

- Individuals have the right to access their personal data.
- This is commonly referred to as subject access.
- Individuals can make a subject access request verbally or in writing.
- Organisations have 4 weeks to respond to a request (this can be extended in certain circumstances).
- Organisations cannot charge a fee to deal with a request in most circumstances.



# Individuals

To exercise your right of access, follow these steps:

## Step 1

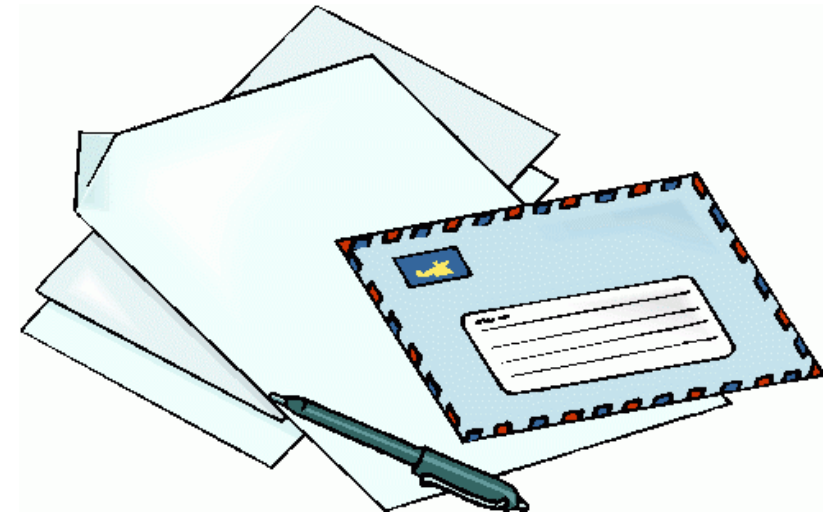
- Identify where to send your request.
- Think about what personal data you want to access.

## Step 2

- Make your request directly to the organisation.
- State clearly what you want.

## Step 3

- Keep a copy of your request.
- Keep any proof of postage or delivery



# Individuals



When making a subject access request(SAR), include the following information:

- Your name and contact details.
- Any information used by the organisation to identify or distinguish you from other people with the same name.
- Any details or relevant dates that will help it identify what you want.

You might want to use a SAR template letter, these are available online.

# Organisations



## What is an individual entitled to?

Individuals have the right to obtain the following from you:

- a confirmation that you are processing their personal data;
- a copy of their personal data;
- other supplementary information (Privacy Notice).

# Organisations



## How to recognise a request?

- The GDPR and Data Protection (Jersey) Law, 2018 (DPJL), do not specify how to make a valid request. Therefore, an individual can make a subject access request to any part of the 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”, as long as it is clear that the individual is asking for their own personal data.
- It is good practice to have a policy for recording details of the requests you receive.
- Train your staff so they are able recognise a subject access request.

# Organisations

## How should the data be provided to individuals?

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



# Organisations



**We have received a request but need to amend the data before sending out the response. Should we send out the “old” version?**

- It is our view that subject access request relates to the data held at the time the request was received. However in many cases, routine use of the data may result in it being amended or even deleted, while you are dealing with the request. So it would be reasonable for you to supply information you hold when you send out a response, even if this is different to that held when you receive the request.
- It is not acceptable to amend or delete the data if you would not otherwise have done so. It is a **criminal offence** to make any amendment with the intention of preventing its disclosure.



# Organisations



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

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

# Organisations

## Can a fee be charged?



- In most cases a fee cannot be charged to comply with a subject access request.
- However, where the request is manifestly unfounded or excessive you may charge a “reasonable fee” for the administrative costs of complying with the request.
- You can also charge a “reasonable fee” if an individual requests further copies of their data following a request. You must base the fee on the administrative cost of providing further copies.

# Organisations

## How long do we have to comply?



- You must act on the subject access request without undue delay and at the latest within **4 weeks** of receipt.
- You should calculate the time limit from the day you receive the request (whether the day after is a working day or not) until the corresponding calendar date in the next month.
- It may be helpful to adopt a 28-day period to ensure compliance is within a calendar month.

# Organisations

## Can we extend the time for a response?



- You can extend the time to respond by a further **8 weeks** if the request is complex or you have received a number of requests from the individual.
- You must let the individual know within **4 weeks** of receiving their request and explain why the extension is necessary.

# Organisations



## Can we ask an individual for ID?

- If you have doubts about the identity making the request you can ask for more information. However, it is important that you only request information that is necessary to confirm who they are.
- You need to let the individual know as soon as possible that you need more information from them to confirm their identity before responding to their request. The period for responding begins when you receive the additional information.

# Organisations

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



- If you process a large amount of information about an individual you can ask them for more information to clarify their request.
- You need to let the individual know as soon as possible that you need more information from them before responding to their request. The period for responding to the request begins when you receive the additional information.
- However, if an individual refuses to provide any additional information, you must still endeavour to comply with their request i.e. by making reasonable searches for the information covered by the request.

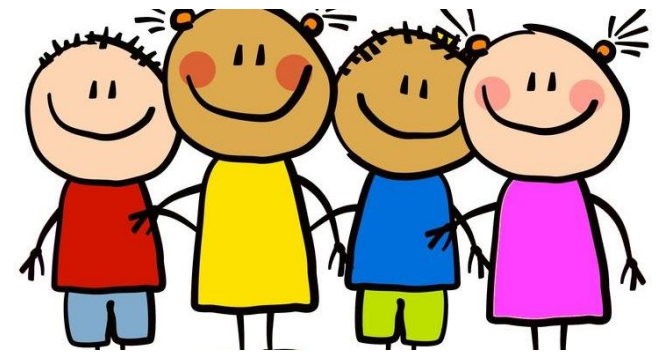
# Organisations



## What about requests made on behalf of other?

- The GDPR and DPJL do 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 you 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.

# Organisations



## What about requests for Information about children?

- Even if a child is too young to understand the implications of subject access rights, **it is still the right of the child** rather than of anyone else such as a parent or guardian.
- In the case of young children these rights are likely to be exercised by those with parental responsibility for them.
- If you are confident that the child can understand their rights, then you should usually respond directly to the child. However, you may allow the parent to exercise the child's right on their behalf if the child authorises this, or if it is evident that this is in the best interests of the child.
- In Jersey, a person aged 13 years or over is presumed to be of a sufficient age and maturity to be able to exercise their rights of access.



# Organisations



## What should we 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.
- You can either:
  - redact the personal data relating to the other individual.
  - obtain consent from the other individual for the release of their data.
  - determine whether it is reasonable to comply with the request without the other individual's consent.

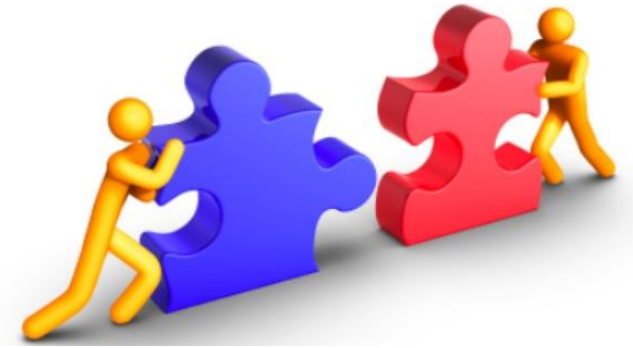
# Organisations



## Confidential References given by the controller

- Personal data are exempt from the transparency and subject rights provisions if they consist of a reference given in confidence by the controller for the purposes of:
  - the education, training or employment, or prospective education, training or employment, of the data subject;
  - the appointment, or prospective appointment, of the data subject to any office; or
  - the provision, or prospective provision, by the data subject of any service.

# Organisations



**If we use a processor, does this mean they would have to deal with any subject access requests we receive?**

- Responsibility for complying with a subject access request lies with you as the controller.
- You need to ensure you have contractual arrangements in place to guarantee that subject access requests are dealt with properly, irrespective of whether they are sent to you or the processor.
- You are not able to extend the **4 week** time limit on the basis that you have to rely on a processor to provide the information that you need to respond.

# Organisations



## Can we refuse to comply with a request?

- You 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 you consider that a request is manifestly unfounded or excessive you can:
  - request a “reasonable fee” to deal with the request”; or
  - refuse to deal with the request.
- In either case you need to justify your decision.

# Organisations



## What should we do if we refuse to comply with a request?

- You must inform the individual without undue delay and within **4 weeks** of receipt of the request.
- You should inform the individual about:
  - the reason you are not taking action;
  - their right to make a complaint to the OIC; and
  - their ability to seek to enforce this right through a judicial remedy.

# Organisations

## Can I require an individual to make a subject access request?

- It is a **criminal offence**, in certain circumstances and in relation to certain information , to require an individual to make a subject access request.



# QUESTION TIME

