

# GUIDANCE NOTE

## **Subject Access Requests**

Data Protection (Jersey) Law 2018

Article 27-28 of the Data Protection (Jersey) Law 2018



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# INTRODUCTION

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This right, commonly referred to as subject access, is created by article 28 of the Law. It's most often used by individuals who want to see what information an organisation holds about them. However, the right of access goes further than this, and an individual who makes a written request is entitled to be:

- told whether any personal data is being processed;
- given a description of the personal data, the reasons it's being processed, and whether it will be given to any other organisations or people;
- given the information contained in personal data; and the details of the source of the data (where available).

An individual can also request information about the reasoning behind any automated decisions, such as a computer-generated decision to grant or deny credit, or an assessment of performance at work (except where this information is a trade secret).

Under the right of subject access, an individual is entitled only to their own personal data, and not to information:

- relating to other people (unless they're acting on behalf of that person and with appropriate authority);
- simply because they may be interested in it;
- contained in the whole document that includes their data

It's important to establish whether the information requested falls within the definition of personal data.

You must respond promptly and no more than 4 weeks from receiving the request.

See the flowchart in Appendix 1 which shows the subject access process in full.

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# OVERVIEW

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- The Data Protection (Jersey) Law 2018 provides individuals with a number of rights. The one most commonly used is the right of subject access.
- This guidance note will help those processing subject access requests to meet the requirements of the Law including areas often misunderstood.

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# WHAT IS A VALID SUBJECT ACCESS REQUEST?

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For a subject access request to be valid, it should be made in writing. The following should also be noted:

- A request sent by email or fax is as valid as one sent in hard copy (as long as you're satisfied as to the person's identity).
- You don't need to respond to a request made verbally but, depending on the circumstances, it might be reasonable to do so (as long as you are satisfied about the person's identity). It's good practice to at least explain to the individual how to make a valid request, rather than ignoring them.
- If a disabled person finds it impossible or unreasonably difficult to make a subject access request in writing, you may wish to make a reasonable adjustment for them. This could include treating a verbal request for information as a valid subject access request.
- If a request doesn't mention the Law or say that it's a subject access request, it should still be treated as valid if it's clear the individual is asking for their own personal data.
- A request is valid even if the individual hasn't sent it directly to the person who normally deals with such requests. Therefore, It's important to ensure all staff in your organisation can recognise a subject access request and treat it appropriately.

## **Can we require an individual to use a specially designed form when making a subject access request?**

Many organisations produce subject access request forms for individuals to fill in. This is fine but make it clear that this isn't compulsory. Don't use this as a way of extending the time limit for responding. Standard forms can make it easier for you to recognise a subject access request and for the individual to include all the details you might need to locate the information they want.

## **Can we ask for identification from the applicant?**

Ask for enough information to establish whether the person making the request is the individual to whom the personal data relates. This is to avoid personal data about one individual being sent to another, accidentally or as a result of deception.

The key is to be reasonable about what you ask for. You shouldn't request lots of information if the identity of the person making the request is obvious to you - for example, when you have an ongoing relationship with the individual.



#### Example 1

*You've received a written subject access request from a current employee. You know this employee personally and have even had a phone conversation with them about the request. Although your organisation's policy is to verify identity by asking for a copy of photographic ID, it would be unreasonable to do so in this case since you know the person making the request.*

However, you shouldn't assume that, on every occasion, the person making a request is who they say they are. In some cases, it will be reasonable to ask the person making the request to verify their identity before responding to the request.



#### Example 2

*An online retailer receives a subject access request by email from a customer. The customer hasn't used the site for some time and although the email address matches the company's records, the postal address given by the customer doesn't. In this situation, it would be reasonable to gather further verifying information, which could be as simple as asking the customer to confirm other account details such as a customer reference number, before responding to the request.*

The level of checks you should make may be risk-based and depend on the possible harm or distress which inappropriate disclosure of the information could cause to the individual concerned.



#### Example 3

*A GP practice receives a subject access request from someone claiming to be a former patient. The name on the request matches a record held by the practice, but there's nothing else in the request to enable the practice to be confident that the requestor is the patient to whom the record relates. In this situation, it would be reasonable for the practice to ask for further verifying information before responding to the request. The potential risk to the former patient of sending their health records to the wrong person means the practice is right to be cautious. They could ask the requestor to provide more information, such as a date of birth, a passport or a birth certificate.*

## What about a subject access request made on behalf of someone else?

The Law doesn't prevent an individual making a subject access request via a third party. This may be a legal adviser 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, and it's the third party's responsibility to provide sufficient 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 you think an individual may not understand what information would be disclosed to a third party, who made a subject access request on their behalf, you can 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.

## What about requests for information about children?

The Law provides no definition or clarification about children. In the case of young children these rights are likely to be exercised by those with parental responsibility for them.

Before responding to a subject access request for information held about a child, you should consider whether the child is able to understand their rights. If you're confident the child can understand their rights, then you should respond to the child rather than a parent or guardian. What matters is that the child is able to understand (in broad terms) what it means to make a subject access request and how to interpret the information they receive. When considering borderline cases take into account, among other things:

- the child's level of maturity and their ability to make decisions like this;
- the nature of the personal data;
- any court orders relating to parental access or responsibility that may apply;
- any duty of confidence owed to the child or young person;
- any consequences of allowing those with parental responsibility access to the child's or young person's information. This is particularly important if there have been allegations of abuse or ill treatment;
- any detriment to the child or young person if individuals with parental responsibility cannot access this information;
- any views the child or young person has on whether their parents should have access to information about them; and
- any views of the professionals from your organisation that have had dealings with the child.

## Can we ask for more information before responding to a subject access request?

Before responding to a subject access request you're entitled to ask for information to find the personal data covered by the request. Again, you needn't comply with the subject access request until you've received this information. In some cases, personal data may be difficult to retrieve and collate. However, it's not acceptable to delay responding to a subject access request unless you reasonably require more information to help you find the data.



#### Example 4

*A chain of shops is dealing with a general subject access request from a member of staff at one of their branches. The person dealing with the request is satisfied that the staff member has been sent all information held in personnel files and in files held by his line manager. However, the member of staff complains that not all information about him was included in the response. The employer shouldn't ignore this complaint, but it would be reasonable to ask the member of staff for further details. For example, some of the information may be in emails, and the employer could reasonably ask for the dates when the emails were sent, and who sent them, to help find the information requested.*

You shouldn't ignore a request simply because you need more information from the person who made it. Tell the individual what details you need. Provided you have done so, the period for responding to the request doesn't begin until you've received any additional information that's necessary.

## Can we charge a fee for dealing with a subject access request?

Where requests from a data subject are manifestly vexatious, unfounded or excessive, in particular because of their repetitive character, the burden of proving which is on the controller, the controller may either –

- (a) charge a reasonable fee taking into account the administrative costs of providing the information or communication or taking the other action requested; or
- (b) refuse to act on the request

## Data is due a routine update before it will be disclosed. Can we do this?

The Law specifies that a 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're dealing with the request. 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 received the request.

However, it's not acceptable to amend or delete the data if you wouldn't otherwise have done so or to delay responding to ensure the data are amended or deleted.

## What should we do if the data includes information about other people?

Data you hold about the individual making the request may also involve information that relates to another individual(s). The Law says you don't have to comply with the request if this means disclosing information that identifies another individual, except where:

- the other individual has consented to the disclosure; or
- it's reasonable in all the circumstances to comply with the request without that individual's consent.



So, although you may sometimes be able to disclose information relating to a third party, you need to decide whether it's appropriate to do so in each case. This decision will involve balancing the data subject's right of access against the other individual's rights in respect of their own personal data. If the other person consents to you disclosing the information about them, then it would be unreasonable not to do so. However, if there's no such consent, you must decide whether to disclose the information anyway. If disclosure is made you should inform the third party and clarify the basis for the decision.

For the avoidance of doubt, you can't refuse to provide subject access to personal data about an individual simply because you obtained that data from a third party. The rules about third party data apply only to personal data which includes both information about the individual who's the subject of the request and information about someone else.

## **Disclosure of the data now will interfere with our activities. Can it be withheld?**

The Law recognises that in some circumstances disclosing information as part of the subject access process would impede the purposes for which the information is intended. For such circumstances there are a number of exemptions that organisations may apply.

These are outlined in detail in the Exemptions guidance note, found on our website. It's important to remember that the exemptions aren't blanket conditions to prevent disclosure; they should be applied on a case-by-case basis after careful consideration. Given that to withhold information is restricting an individual in exercising their rights you're advised to make sure you document why it's felt the exemption applies, in order to defend that decision if needed.

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

The Law requires that the information you provide to the individual is in "intelligible form". At its most basic, this means that the information you provide should be capable of being easily understood. However, the Law doesn't require you to ensure that the information is provided in a form that is intelligible to the particular individual making the request.



### **Example 5**

*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 the organisation's key or index to explain this information, it would be impossible for anyone outside the organisation to understand. In this case, the Law requires you to explain the meaning of the coded information. However, although it would be good practice to do so, the Law doesn't require you to decipher the poorly written notes, since the meaning of "intelligible form" doesn't extend to "make legible".*



#### Example 6

*You receive a subject access request from someone whose English comprehension skills are poor. You send a response and they ask you to translate the information you sent them. The Law doesn't require you to do this since the information is in intelligible form, even if the person who receives it can't understand all of it. However, it would be good practice for you to help them understand the information you hold about them.*

## What if sending out copies of information will be expensive or time consuming?

In some cases, dealing with a subject access request will be an onerous task. This might be because of the nature of the request due to the amount of personal data involved, or the way in which certain information is held.

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Under article 12(6)(a) of the Law you aren't obliged to supply a copy of the information in permanent form if it would involve disproportionate effort to do so. The controller must decide whether supplying a copy of the information would involve disproportionate effort. Even if you don't have to supply a copy of the information in permanent form, the individual still has the other basic rights described above.

The Law doesn't define "disproportionate effort" but it's clear that there is some (albeit limited) scope for assessing whether complying with a request would result in so much work or expense as to outweigh the individual's right of access to their personal data. This only applies in respect of "supplying" a copy of the relevant information in permanent form. You can't refuse to deal with a subject access request just because you think that locating the information in the first place would involve disproportionate effort.

You should rely on this provision only in the most exceptional of cases. The right of subject access is central to data protection law and we rarely hear of instances where an organisation could legitimately use disproportionate effort as a reason for not allowing an individual to access their personal data. Even if you can show that supplying a copy of information in permanent form would involve disproportionate effort, you should still try to comply with the request in some other way.



#### Example 7

*An organisation has decided that to supply copies of an individual's records in permanent form would involve disproportionate effort. Rather than refuse the individual access, they speak to her and agree that it would be preferable if she visited their premises and viewed the original documents. They also agree that if there are particular documents that she would like to take away with her, they can arrange to provide copies.*



## How do we handle repeated or unreasonable requests?

The Law doesn't limit the number of subject access requests an individual can make to any organisation. However, it does allow some discretion when dealing with requests that are made at unreasonable intervals. The Law says that you aren't obliged to comply with an identical or similar request to one you've already dealt with, unless a reasonable interval has elapsed between the first request and any subsequent ones.

The Law gives you some help in deciding whether requests are made at reasonable intervals. It says that you should consider the following:

- the nature of the data – this could include considering whether it's particularly sensitive;
- the purposes of the processing – this could include whether the processing is likely to cause detriment to the individual; and
- how often the data is altered – if information is unlikely to have changed between requests, you may decide that you aren't obliged to respond to the same request twice.

If there has been a previous request or requests, and the information has been added to or amended since then, you might consider whether you need only provide the new or updated information to the requester. However article 28(6) of the Law states that "information to be supplied pursuant to a request...must be supplied by reference to the data in question at the time when the request is received...". This means that, when answering a subject access request, you're required by the Law to provide a full response to the request: not merely providing information that is new or has been amended since the last request.

In practice we would accept that you may attempt to negotiate with the requester in order to restrict the scope of their subject access request to the new or updated information; however, if the requester insists upon a full response then you would need to supply all the information.



### Example 8

*A library receives a subject access request from an individual who made a similar request one month earlier. The information relates to when the individual joined the library and the items borrowed. None of the information has changed since the previous request. With this in mind, along with the fact that the individual is unlikely to suffer if no personal data is sent in response to the request, the library needn't comply with this request. However, it would be good practice to respond explaining why they've not provided the information again.*



#### Example 9

*A therapist who offers non-medical counselling receives a subject access request from a client. She had responded to a similar request from the same client three weeks earlier. When considering whether the requests have been made at unreasonable intervals, the therapist should take into account the fact that the client has attended five sessions between requests, so there's a lot of new information in the file. She should respond to this request (and she could ask the client to agree that she only needs to send any "new" information). If the client doesn't agree, the therapist should provide a copy of all the information on the file. But it would also be good practice to discuss with the client a different way of allowing the client access to the notes about the sessions.*

## **We use a data processor. Does this mean they have to deal with any subject access request we receive?**

Responsibility for complying with a subject access request lies with you as the data controller. The Law doesn't allow any extension to the time limit in cases where you rely on a data processor to provide the information that you need to respond.



#### Example 10

*An employer is reviewing staffing and pay, which involves collecting information from and about a representative sample of staff. A third-party data processor is analysing the information.*

*The employer receives a subject access request from a member of staff. To respond, the employer needs information held by the data processor. The employer is the data controller for this information and should instruct the data processor to retrieve any personal data that relates to the member of staff.*

If you use a data processor, then you need to make sure that you have contractual arrangements in place to guarantee that subject access requests are dealt with properly, irrespective of whether they're sent to you or to the data processor.

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# CONTACT THE COMMISSIONER

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# APPENDIX 1 - SUBJECT ACCESS PROCESS FLOWCHART

