



# **Data Subject Access Requests (SAR): Code of Practice**

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## **Data Subject Access Requests (SAR):**

### **Code of Practice**

This code of practice is aimed at Individuals within the organisation who are responsible for Subject Access Requests from employees and former employees on a day-to-day basis. However, Senior Managers & Line Managers should familiarise themselves with this Code of Practice.

#### **What are Data Subject Access Requests?**

Under the Data Protection Act 1998, employees can, as "data subjects", make data subject access requests in relation to information that is held about them.

Data subject access requests are relatively easy to make, but can be problematic and time-consuming. The main purpose for the request is to enable the individual to check that his or her data is processed lawfully in accordance with the Data Protection Act, many employees use requests as fishing exercises prior to legal action.

From 25 May 2018, the General Data Protection Regulation (GDPR) will give employees (as data subjects) the right to access the personal data that you process on them.

The GDPR will also make some changes to the data subject access request process.

If an employee makes a data subject access request, the employer will have to provide a copy of his or her personal data free of charge (but may charge a fee if additional copies are requested).

A "reasonable" fee will be chargeable if the request is excessive or unfounded. This is to cover the administrative costs of complying with the request.

If the data subject access request has been made electronically, the information will have to be provided electronically.

#### **What is personal data?**

"Personal data" is data that relates to a living person who can be identified from the data (or from the data and other information in our possession, including any expression or opinion about the individual or indications of our intentions in respect of the individual).

It is information that relates to a person in his or her personal, family, business or professional life where the individual is the focus or central theme of the information, rather than on some other person or event.

### **What constitutes a valid data subject access request?**

A valid data subject access request will be in writing, but there is otherwise no prescribed form.

The Organisation should be satisfied as to the identity of the data subject and not assume that individuals making the request are whom they say they are.

You should ask for a copy of the subject's passport or driving license. Asking for confirmation of identity has to be reasonable.

A request may come through a third party, such as a solicitor. This is about providing personal data, so the Organisation will need to be satisfied that the request has been authorised by the individual and we may request a written authority from the employee to supply their personal data to the person making the request.

### **What can the employee request?**

In general terms an employee can request all information that is held about them. However, the employee should provide sufficient information on the data requested so that the Organisation understands what is requested to be able to find it. If the request is not sufficiently clear, we can ask for more details to help to locate the requested data.

### **Is there any information that employers do not have to disclose?**

There are some documents that the Organisation may legitimately exclude.

Exemptions apply in certain circumstances in relation to the nature of the personal data, or where the disclosure may cause prejudice to a part or function of the Organisation.

### **Are there circumstances in which employers can refuse employees' data subject access requests?**

Possible exemptions relevant to employees' data subject access requests are:

- **Management forecasting/planning:** If a reorganisation is planned and there are documents that identify the employee, but these also outline the likelihood of certain other employees being made redundant, there may be a substantial risk of prejudice.

A historic process may not fall within the exemption, but you can redact personal information relating to other employees.

- **Confidential references:** A reference, given confidentially, in relation to an employee's employment is exempt from a data subject access request.

However, if the reference is in the hands of the recipient, it is not exempt and so the employee may make a data subject access request to his or her new/prospective employer.

Likewise, the employee can also use a data subject access request to see references that you have received about him or her from a previous employer.

- **Settlement negotiations:** Records of our intentions in respect of settlement negotiations that have taken place (or are taking place) between ourselves and an employee are exempt to the extent that the disclosure would be likely to prejudice those negotiations.

This would cover, for example, a document prepared by the senior management that sets out the highest amount that we would be willing to pay to settle a claim.

- **Legal advice/proceedings:** We do not have to disclose data over which there is legal professional privilege.

This includes confidential communications between client and professional legal adviser and communications between client and professional legal adviser where litigation is contemplated or commenced. If we rely on an exemption, we will explain that information has been withheld and the reasons why.

**What is the timeframe for responding to a data subject access request?**

We will respond promptly to a valid request and within one month of receiving the data subject request. Should we require an extension (up to two additional months) we will inform the employee within one month of the request of the need for the extension, and the reasons why. If we have requested a fee, or other reasonably required information, we will respond once this is received.

**What is the scope of the search?**

We will not exclude data on the basis that it is difficult to access.

The search will be "reasonable and proportionate".

### **Subject access request: Employer checklist**

1. Is the request a valid data subject access request?
  - a. Do you have sufficient evidence of identity?
  - b. Do you need more information to locate the data requested?
  - c. Do you require a £10 fee? This should only be in exceptional circumstances
  - d. Is the information requested "personal data" relating to the employee?
2. If not, respond to the individual requesting a fee/clarification.
3. Note your one-month response deadline.
4. Examine the information and remove duplicates and irrelevant information.
5. Does the data contain third party information?
  - a. Can you redact the information?
  - b. Can you seek third party consent?
  - c. If not, is it reasonable in all the circumstances to disclose the information?
  - d. Notify the employee if dealing with third party information and consents is likely to delay part of the information that you are able to provide.
6. Consider whether or not there is any exempt data.
  - a. Explain your refusal to provide any information.
  - b. Keep a record of withheld data and the reasons for withholding the data.
7. Check whether or not the employee wants hard copies or an electronic copy of the information.
8. Provide all information in an intelligible and permanent form with a brief description of the scope of the search.
9. Finally, make a copy of what you send