



Intellectual Property Information Sheet

Responding to a Data Subject Access Request

Individuals are entitled under the Data Protection Act 1998 ("DPA") to ask a Data Controller (as defined in the DPA) certain information about the personal data that that Data Controller holds about that individual. Requesting such information is known as a Data Subject Access Request ("DSA Request"). This Information Sheet provides practical guidance for Data Controllers in dealing with DSA Requests.

What are Data Subjects entitled to ask Data Controllers for?

Section 7(1) of the DPA specifies which information Data Subjects (i.e. an individual who is the subject of personal data) are entitled to ask for. A Data Subject is entitled, by submitting a written DSA Request:

- a) to be informed by the Data Controller whether that individual's personal data is being processed by or on behalf of that Data Controller. If that is the case, the Data Controller must provide the individual with a description of:
 - i. the personal data of which that individual is the Data Subject,
 - ii. the purposes for which the individual's data are being or are to be processed, and
 - iii. the recipients or classes of recipients to whom the individual's data are or may be disclosed;
- b) to have communicated in an intelligible form-
 - i. the information constituting any personal data of which that individual is the Data Subject, and
 - ii. any information available to that Data Controller as to the source of such personal data, and
- c) where the processing by automatic means of that individual's personal data for the purposes of evaluating matters relating to him or her (such as e.g. his or her performance at work, his or her credit worthiness, his or her reliability or his or her conduct), has constituted or is likely to constitute the sole basis for any decision significantly affecting him or her, to be informed by the Data Controller of the logic involved in that decision-taking, except where the information constitutes a trade secret.

Seven Steps in Dealing with DSA Requests

1. Is it actually a DSA Request?

Firstly, a DSA Request must be in writing. Secondly, identify whether the request for information is actually a formal DSA Request under the DPA. If the request for information is one which you would normally deal with within the normal course of your business, you may not require to deal with it in accordance with the DPA. Otherwise, the DPA should be adhered to. If ever in doubt, it is recommended to err on the side of caution and adhere to the DPA.

If you decide it is a formal DSA Request, please bear in mind that you have 40 days to comply from the latter of, the date you receive the DSA Request, or the date you have received the fee and additional information (please see step 4).

2. Do you hold the requested data?

Data Controllers are only obliged to supply information held at the time of the DSA Request. If you do not hold the requested information you should inform the applicant within the specified timeframe. If you do hold the information, see step 3.

3. Have you received a similar request in the past?

Consider whether you have complied with a DSA Request from the same applicant previously, which is identical or similar to this DSA Request. Data Controllers are not obliged to comply with repeated DSA Requests unless a reasonable interval has elapsed between compliance with the previous DSA Request and the making of the current DSA Request.

In deciding whether a reasonable interval has elapsed, regard should be had to the nature of the data, the purposes for which the data are processed and the frequency with which the data are altered. If you have recently complied with an identical or similar DSA Request and you decide not to comply this time, you should notify the applicant within the timeframe. Otherwise, see step 4.

4. Do you need more information to comply and want to charge a fee?

A Data Controller is entitled to ask for a maximum of £10 fee (unless the request relates to medical or educational records) to deal with the DSA Request.

Where appropriate, the Data Controller is also entitled to revert to the individual asking for further information in order to satisfy the Data Controller that the person making the request is in fact the Data Subject. In addition, the Data Controller is also entitled to ask the individual for further information to enable it to locate the information which that person seeks.

If you intend to charge a fee, need more information to either satisfy yourself as to the identity of the person making the DSA Request or to locate the information, you should write to the applicant accordingly and within the time frame. You are not obliged to comply with the request until you have this additional information and you have received payment of the fee.

5. Does the requested information reveal the identity of a third party?

Once Step 4 (if appropriate) has been satisfied, you must consider whether the requested information reveals the identity of a third party. The DPA states that another individual can be identified from information being disclosed if he or she can be identified from that information, or from that and any other information, which in the reasonable belief of the Data Controller, is likely to be in, or to come into, the possession of the Data Subject making the request.

If the requested information does not reveal the identity of a third party, please go to Step 6. If the requested information reveals the identity of a third party, you are not obliged to comply with the DSA Request unless (a) the third party has consented to the disclosure of the information to the person making the request or (b) it is reasonable in all the circumstances to comply with the request without the consent of the third party.

If consent can be obtained then the information must be disclosed to the Data Subject including the third party's information. Where consent is not obtainable, you will have to consider whether disclosure would be reasonable in all the circumstances. This will involve you taking into account any duty of confidentiality owed to the third party, any attempts to receive the consent of

the third party, whether the third party is actually capable of giving consent, and any express refusal of consent by the other party. Unfortunately it is not clear cut and each case will turn on its own facts.

If consent cannot or is not received by a third party and you conclude that it would not be reasonable to disclose the information as requested without consent, you should still attempt to deal with the request as far as possible e.g. by blanking out or separating information which is to be withheld. If this is not possible, you should inform the applicant within the timeframe that you have decided not to disclose for this reason. Otherwise, see step 6.

6. Do any exemptions apply?

Once the above has been dealt with, you should consider whether any exemptions apply to the requested information: these are listed in Part IV of the DPA. The exemptions covered under DPA are very detailed and are outwith the scope of this information sheet. It should be noted however that the Information Commissioner is always in favour of disclosure wherever possible. Therefore, you must ensure that you have good standing for applying any exemptions. Obviously, you do not have to comply with the DSA Request as far as an exemption applies, in which case you should inform the applicant accordingly within the specified timeframe. Sometimes an exemption will only apply to some of the requested information, in which case you would be obliged to disclose the remainder of the information.

7. Complying with the DSA Request

If no exemptions are applicable, you should comply with the DSA Request and disclose the information within the 40 day time period. Failure to comply with a DSA Request within the 40 day period (i) may give rise to investigation by the Information Commissioner and result in an enforcement notice being issued compelling you to comply with the DSA Request; and/or (ii) be deemed a breach of the Sixth Data Protection Principle (i.e. personal data shall be processed in accordance with the rights of data subject). Any person affected by the breach may bring an action for damages provided they can prove loss and any associated distress which may be difficult to do.

The DPA does not specify the format of the majority of the information requested should be disclosed in and you should discuss a format suitable to both parties – in a permanent and intelligent form would be best and would be in the spirit of the DPA.

The DPA does however, specify that when disclosing information which the applicant is the Data Subject of under Section 7 (1)(c)(i) of the DPA, you should provide the information in a permanent and intelligible form (i.e. hard copy) unless supplying such a copy is not possible or would involve a disproportionate effort or the data subject agrees otherwise. Explanatory notes should be given for information which is expressed in terms which are not intelligible and without explanation.



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