

Table of Contents

| | |
|--|----------|
| 1.Version Control | 2 |
| 2. Points of contact for this Guidance..... | 2 |
| 3. Introduction | 3 |
| 4. Time Period Allowed Under Subject Access | 3 |
| 5. Responding to a Request for Information | 3 |
| 6. Important Points relating to a Subject Access Request | 4 |
| 7. Exemptions from the Subject Access Provisions..... | 6 |
| 8. The 'Durant' Case and it's Interpretation of the DPA 1998..... | 6 |
| 9. Appropriate Limit and Fees | 6 |
| 10. Disproportionate Effort | 7 |
| 11. Additional Information Required..... | 7 |
| 12. Third Party Information | 7 |
| 13. Offences..... | 8 |
| 14. Advice and Assistance..... | 8 |

1. Version Control

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| 1.0 | | Sent out to DP Contacts for comments |
| 1.1 | 26 th July 2006 | Updated following comments received |
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2. Points of contact for this Guidance

Corporate Information Governance Team

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3. Introduction

3.1 What is a Subject Access Request?

A written request received by a Data Controller (Birmingham City Council) from an individual wishing to access their rights under the provisions of the Data Protection Act 1998 is known as a Subject Access Request. Sections 7 to 9 of the Act gives an individual the rights to request access to any 'personal data' that they believe may be held about them.

Upon making a request in writing (including transmission by electronic means) and upon paying the appropriate fee, the data subject is entitled to be told by the data controller whether they or someone else on their behalf is processing their personal data and if so be given a description of: -

- The personal data
- The purposes for which the data are being processed
- Those to whom the data are or may be disclosed

The source of the information (exemptions may apply)

3.2 Oral Requests for Information

Under Section 7(2) of the Data Protection Act 1998 a data controller is not obliged to respond to a request unless the request is made in writing. There is nothing preventing a data controller from responding to an oral request but this may breach the data security of the organisation as well as breaching the legislation itself. It is therefore imperative that no response to a subject access request is given until the verification of the data subjects identity has been satisfactorily completed.

4. Time Period Allowed Under Subject Access

4.1 Time Period for Responding

A data controller must comply with a subject access request promptly, in other words as quickly as he can, and in any event within 40 calendar days of receipt of the request or, if later within 40 calendar days of receipt of:

- (a) the information required to satisfy himself as to the identity of the person making the request to enable him to locate the information which that person seeks; and
- (b) the fee.

5. Responding to a Request for Information

5.1 Directorate Requests

If you receive a request and it relates to your department, you should inform your Departmental Data Protection Contact Officer in the first instance and take advice from them.

The contact officer will then be able to assess whether the request is a "subject access request" under the provisions of the Act.

If the information requested will require a search to be undertaken within other directorates you should inform your Departmental Data Protection Contact Officer but send the request immediately to the Corporate Information Governance Team.

5.2 Corporate Requests

All corporate subject access requests will be co-ordinated via the DP Contacts mailbox and the corporate subject access request database. An e-mail will generated from the database and be sent to all assigned contact officers for them to initiate a search within their directorate. A deadline date for responses will automatically be generated within the database so it is imperative that all responses are sent back directly to the DP Contacts mailbox by this date. This will then give the Corporate Team enough time to collate all of the information being sought and advise the data subject accordingly.

6. Important Points relating to a Subject Access Request

6.1 The Following will need To Be Remembered

- A Data Subject has the right to see all of **their** personal data (unless covered by an exemption)
- A copy of all information sent to the data subject should be kept in line with the retention period set for subject access requests.
- A request log should be kept for assurance purposes
- All codes will need to be explained to the data subject
- The data subject should receive all of the information to which they are entitled within 40 calendar days of receipt of their request, provided that enough information to identify the data subject is provided
- If a fee is charged, then payment can be requested before the 40 days commence (*Birmingham City Council do not currently charge a fee for subject access requests*)
- Third party details should not be included without the written consent of the third party concerned unless it is reasonable in all circumstances to comply with the request without the consent of the other individual.
- If dealing with a joint application the parties must only be given their own information and not their partners unless written permission is received from the other party.
- At all times whilst dealing with a 'cross directorate' Subject Access Request you will need to keep the Corporate Information Governance Team informed of the progress.
- Once you have received all the information to which the data subject is entitled you will need to send this directly to the data subject by recorded delivery (unless an alternative arrangement has been arranged).
- Information for 'Cross directorate' requests will need to be sent to the Corporate Information Governance Team.

6.2 Receiving a request on behalf of an adult

- There is no reason the data subject cannot make a request through an agent. If the data controller who receives such a request is satisfied that the individual has authorised the agent to make the request on their behalf. This might for example, consist of a written authority signed by the individual or a general power of attorney given by the individual. It will be the agent's responsibility to produce satisfactory evidence that they have this authority.

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6.3 Receiving a request on behalf of Mentally Incapacitated Adults

Where an adult is, or is likely to become, incapable of making decisions on his own behalf, the law provides that another adult may be appointed to act on his behalf as his agent.

Enduring Power of Attorney

Individuals who make provision for a specific party to be appointed to act as their attorney should they become mentally incapacitated do so by way of an enduring power of attorney. The data subject may confer general authority or specific authority on an attorney. The scope of the general powers is limited to the management of their property and affairs.

Court Order

Where a person loses mental capacity or, indeed, never had mental capacity, the management of his property and affairs falls to the Court of Protection.

It is the view of the Commissioner that an application to exercise a statutory right to obtain information, such as the subject access rights under section 7 of the Act, is a legal process which might, in an appropriate case, form part of the affairs of the mentally disordered adult. Therefore, an attorney or agent appointed by the Court with general authority to manage the property and affairs of the adult would, in such a case, have, under their general powers, appropriate authority to make a subject access request on the adults behalf

7. Exemptions from the Subject Access Provisions

7.1 Exemptions

Certain information is exempt from the subject access provisions. If this is the case then the data subject will have no right to this information and must be informed that "I do not hold any personal data, which I am required to reveal to you".

The exemptions are: -

- National Security
 - Crime and taxation purposes
 - Health, Education and Social Work
 - Regulatory Activity
 - Processing for the Special Purposes
1. Journalism 2. Artistic purposes 3. Literary purposes
- Research, History & Statistics

Other categories

- Information which is publicly available
- Information used in legal proceedings
- Information only used for domestic purposes
- Confidential references
- Information relating to the armed forces
- Judicial appointments and Honours
- Management forecasts/management planning
- Negotiations
- Examination marks
- Examination scripts

- Legal professional privilege
- Self Incrimination

Please refer to (Guidance Note 3 - Exemptions) and (Guidance Note 4 - Disclosures) for further detailed information.

7.2 Withholding Information

If you need to withhold information from a data subject e.g. using one of the exemptions in the Data Protection Act, make a note on the relevant paperwork of the reasons for withholding the information.

Please Note before considering the application of an exemption it will be necessary to liaise with your Departmental Data Protection contact or the Corporate Information Governance Team. If you do intend to rely on an exemption in order to withhold information from a subject access request you will need to ensure that the exemption being relied upon can be justified if required at a later date.

8. The 'Durant' Case and its Interpretation of the DPA 1998

8.1 The Court of Appeal Judgement

The Court of Appeal judgement in the case of Durant v Financial Services Authority has wide reaching implications in relation to Data Protection. The appeal considered four important issues of law concerning the right of access to personal data.

The Information Commissioner has produced guidance on two key areas of the Data Protection Act 1998 (DPA) following this ruling and the judgement had provided helpful guidance and greater clarity regarding the definition of "personal data" and "relevant filing system".

However the definition of "relevant filing system" *no longer applies* to public authorities since the introduction of the Freedom of Information Act 2000 (FOIA).

Section 70 of the FOIA amends the DPA by inserting paragraph 33A which is applicable to certain manual data held by public authorities. This data is known as category e) data and there are certain exemptions that apply within the DPA, which make it exempt from many of the provisions within the Act but not from [section 7 - rights of subject access](#).

All individuals have a right under section 7(1), subject to sections 8 and 9, to request access to any personal data held by a public authority whether it is held in electronic or manual format. This amendment to the DPA will mean a change in the way subject access requests are dealt with. Searches that previously were no longer required since the introduction of the 'Durant' ruling, will now form part of every subject access request regarding searches undertaken within unstructured manual data. Please be aware that any searches required within unstructured data will be subject to the sections regarding

disproportionate effort and the amendment brought in by schedule 6 of the FOIA requiring additional information from the data subject.

9. Appropriate Limit and Fees

9.1 Costs for Responding to Requests

The maximum amount we can charge for dealing with a subject access request is £10, although special rules still apply for access to manual health records (maximum £50) and education records (sliding scale from £1 to £50). If the request is for unstructured manual

data and the cost of finding and collating it exceeds £450 we can refuse the request. Although this may be applied, the application of the Disproportionate Effort exemption may be the preferred option rather than refusing the request on cost grounds alone.

"The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 affect the Data Protection Act only insofar as authorities can refuse subject access requests for unstructured personal data where the cost is estimated to exceed the appropriate limit. The same appropriate limit applies both to subject access requests for unstructured personal data and FOI requests."

10. Disproportionate Effort

10.1 Unnecessary Burden on the Data Controller

Searches undertaken within 'unstructured manual files' for information that constitutes 'personal data' may now take a considerable amount of effort in order to locate the information as part of a subject access request. However, this amount of searching may place unnecessary burden "disproportionate effort" on the data controller and therefore a decision in these cases will need to be made on whether or not to comply with the request. In these cases you will need to contact the Corporate Data Protection and Freedom of Information Team for advice prior to the application of this exemption.

11. Additional Information Required

11.1 Additional Details

An amendment to Section 7 of the Data Protection Act 1998 has been brought in by paragraph 1 of Schedule 6 to the Freedom of Information Act 2000 which provides that where a data controller:

- (a) reasonably requires further information in order to satisfy himself as to the identity of the person making a subject access request and to locate the information which that person seeks; and
- (b) has informed him of that requirement;
- (c) the data controller is not obliged to comply with the request unless he is supplied with that further information.

This amendment will undoubtedly help deal with 'open ended' subject access requests made by data subjects. The application of this will allow us to write to the data subject asking them to be more specific in order to help us to locate the information they are seeking.

If after applying this amendment the data subject's wishes are deemed to be 'unreasonable' the section above regarding 'Disproportionate Effort' may need to be explored and if deemed necessary, applied to the subject access request.

12. Third Party Information

12.1 Considerations

"Where a data controller cannot comply with a subject access request without disclosing information relating to another individual who can be identified from that information, he is not obliged to comply with the request unless -

- (a) The other individual has consented to the disclosure of the information to the person making the request, or

(b) It is reasonable in all circumstances to comply with the request without the consent of the other individual"

Consideration on disclosure of third party information

- Can the data be anonymised to ensure that the third party cannot be identified from the remaining information?
- If it cannot be anonymised have you got the consent from the third party in order that the information can be disclosed?
- If consent is not given to the disclosure will it still be reasonable to disclose the information without consent?

13. Offences

13.1 Enforced Subject Access

Unless one of the limited statutory exceptions apply, it is an offence for a person to ask another person to make a subject access request in order to obtain personal data about that person for specified purposes, such as a precondition to employment.

13.2 Unlawful Obtaining of Personal Data

If you believe the request received is not from the data subject or from a person acting on their behalf (with their written consent), you must notify your Data Protection Contact or the Corporate Information Governance Team immediately. If it is proved that an individual is attempting to obtain access to personal data unlawfully it will be a breach of section 55 of the Act and may lead to prosecution.

14. Advice and Assistance

14.1 The Corporate Information Governance Team

The Corporate Information Governance Team provides advice and assistance on the Data Protection Act 1998 and the Freedom of Information Act 2000 as well as other associated legislation. The Corporate Team can be contacted on 0121 303 4876 or in writing at the following address:

Corporate Information Governance Team
1st Floor, Lancaster Circus
1 Lancaster Circus
Birmingham
B4 7AB

14.2 Directorate Data Protection Contact Officers

Birmingham City Council has a Data Protection Officer within each individual Directorate in order to provide assistance on data protection issues. If you have any concerns relating specifically to your Directorate please contact your contact officer in the first instance and they will be able to advise you accordingly.

A full list of DP Contact officers is available on In-line.

14.3 The Information Commissioner

The Information Commissioner is the governing body for Data Protection and Freedom of Information and is an independent officer who is appointed by the Queen and reports directly to parliament.

The Information Commissioners duties include:

- Maintaining a register of data controllers
- Distribution of information on legislation
- Promoting compliance with the data protection principles
- Considers complaints about breaches of the principles within the Act
- Prosecutes offenders who contravene the Act

The Commissioner is there to help everyone comply with the Act. If you would like further advice on the Act you can contact the Information Commissioner's office at the address below or you can search their web-site to locate useful information on legislation matters.

Information Commissioner's Office

**Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**

Tel: 01625 545 745