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L09-17 | GENERAL DATA PROCESSING REGULATION AND SUBJECT ACCESS REQUESTS

Introduction

The advent of the General Data Protection Regulation (GDPR) in May 2018 will affect councils (parish and town councils in England and community councils in Wales) and parish meetings because they are data controllers. The duties on all data controllers involve providing certain rights to individuals in respect of information held and processed by the data controller. One such right permits an individual to request and see what information is held about them ("a subject access request"). This briefing explains the issues for data controllers when dealing with a subject access request.

The basic position in respect of a subject access request is that individuals having the right to:

- confirmation that their data is being processed;
- access to their personal data and details of:
- the purposes of the processing;
- the categories of personal data concerned;
- to whom the personal data have been or will be disclosed (in particular recipients in third countries or international organisations);
- the period for which the personal data will be stored, or, if no set period, the criteria used to decide when to destroy the data;
- the existence of the right to request from the controller rectification or erasure of personal data or restriction of processing of personal data concerning the data subject or to object to such processing;
- the right to lodge a complaint with a supervisory authority (ICO);
- where the personal data are not collected from the data subject, any available information as to their source;
- the existence of any automated decision-making, including profiling and information about the logic involved, as well as the significance and the expected consequences of such processing for the data subject.

(This information is the same as for a privacy notice).

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The information must be available to allow individuals to be aware of the processing of their personal data and so that they can check that the data is used lawfully.

Responding to a subject access request

Where the subject access request is made electronically, the information should be provided by electronic means where possible, unless otherwise requested by the data subject. In any event, the information given to the data subject must be communicated in a concise, transparent, intelligible and easily accessible form, using clear and plain language, in particular for any information addressed specifically to a child.

However, the right to obtain a copy of information (or to access personal data through a remotely accessed secure system such as a website) should not adversely affect the rights and freedoms of others. As a result personal information about a third party must be redacted (obliterated or removed) from any information provided unless that person has agreed to it being included. Note that the extent of this exemption from disclosure still needs to be defined by the UK Parliament and could extend to intellectual property rights and trade secrets (e.g. in respect of suppliers) and items covered by legal privilege (e.g. legal advice).

Fees

The information must be given free of charge under the GDPR. The exception to this is if the request from a data subject is “manifestly unfounded or excessive” (see below for more information) in which case a reasonable fee can be charged A reasonable fee can also be charged for supplying further copies of the same information (but not for subsequent requests for different information). The fee must be based on the actual administrative cost of providing the information. Administrative cost is not defined but it is anticipated that it will not include staff time.

Timescale

The information requested must be provided without delay and at the latest within one month of receipt of the request. That timescale can be extended up to three months if the information requested is complex or numerous but in that case the individual must be told, within one month, how much extra time is required and why it is necessary.

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Large amounts of data

The ICO website says "Where you process a large quantity of information about an individual, the GDPR permits you to ask the individual to specify the information the request relates to (Recital 63). The GDPR does not introduce an exemption for requests that relate to large amounts of data, but you may be able to consider whether the request is manifestly unfounded or excessive."

Subject access requests which are "manifestly unfounded or excessive"

If the data controller believes that the request is "manifestly unfounded or excessive", in particular because of its repetitive character, it can charge a reasonable fee or it can refuse to provide the information requested. In either case, the data controller will need to be able to provide evidence of how it reached the conclusion that the request was "manifestly unfounded or excessive". If the data controller cannot justify that conclusion then it risks a substantial fine. If a data controller refuses to provide the requested information on the basis that the request is "manifestly unfounded or excessive" it must, without undue delay and at the latest within one month of receipt of the request, explain to the individual:

- why it believes the request is unfounded or excessive;
- that the requester has a right to complain to the Information Commissioner's Office; and
- that they have a right to apply to the courts to force disclosure and for compensation.

Identifying the requester

It is important that personal data is only disclosed to the relevant person so if a data controller has reasonable doubts concerning the identity of the individual making a subject access request, it may request additional information necessary to confirm their identity. A data controller must use no more than reasonable means to verify the identity of the person making the request. This might include such things as checking the electoral roll or requiring photo ID.