

## Dealing with Subject Access Requests

Under the GDPR, individuals have a right to obtain:

- Confirmation that their data is being processed;
- Access to their personal data; and
- Other supplementary information – this largely corresponds to the information that should be provided in a privacy notice

The regulation is silent with regards to whether or not the request should be made in writing.

Data subjects should be encouraged to complete the subject access request form which is available on the website and can be found at <https://www3.rgu.ac.uk/about/planning-and-policy/information-governance/data-protection> . Or by emailing the university at [dp@rgu.ac.uk](mailto:dp@rgu.ac.uk) alternatively contacting the Data Protection Officer at the address contained at the end of the document.

Below are the main points that you need to be aware of in responding to a subject access request:

### Key questions to remember:

#### 1. Is this a Subject Access Request (SAR)?

Any written enquiry that asks for information that the University holds about the person making the request can be construed as a SAR.

Often a data subject is looking for specific information that the University holds. If it is from a single source and will not involve the disclosure of information relating to a third part (see below for more information) this should be treated as a simple request. This should usually be handled by the relevant department however care must be taken not to release any third party information without their consent.

A subject access request may be considered complex when:

- The request involves locating information from multiple sources
- The request involves the release of contentious or sensitive information
- The request is one in a series of requests from the same individual
- The request involves the release of third party data for which consent has been refused or cannot be obtained.
- The data subject does not wish to ask the School or Department that holds their data.
- The request involves a large amount of data.

The Information Governance Officer **must be consulted** where the request is considered complex and will co-ordinate the response whilst working with Schools and Departments.

#### 2. Do you have enough information to be sure of the requester's identity?

Often you will have no reason to doubt an individual's identity e.g. the request comes from an official University e-mail account. However, it is important that before divulging personal data the **identity of the requester has been confirmed**. This can be done by the requester producing evidence of identity which may include documents such as driver's license or passport etc.

### 3. Do you have enough information from the requester to fulfil the request?

If you require further information from the requester you will need to request this promptly.

You may wish to ask them to narrow down their request or to be more specific over what document it is they are looking for. This is not only of great benefit to the university but will ultimately assist the requester obtain exactly what they have requested.

### 4. How long do I have to respond?

Information must be provided without delay and at the latest within one month of receipt. If a request is complex or numerous this can be extended by a further two months. You must still respond to the individual within one month and explain the reason for the extension. If an extension is required for the SAR, you must liaise with the Information Governance Officer on this decision.

### 5. Can I charge a fee?

Information should be provided free of charge usually. If a request is found to be manifestly unfounded or excessive or if it is a request for further copies of information already provided then a reasonable fee may be charged, which must be based on the administrative cost of providing the information.

### 6. What if the University has no personal information about the requester?

If you do not hold any personal information at all about the individual you must respond, within one month, to let them know this. If the University outsources data processing, subject access requests may be sent to a third party. Always ensure that third parties are aware of their obligations under GDPR.

### 7. Will the information be changed between receiving the request and sending the response?

You can still make routine amendments and deletions to personal information after receiving a request, providing this would have occurred normally in the absence of the request. However, you must **not** make any changes to the records as a result of receiving the request, even if you find inaccurate or embarrassing information on the record.

## 8. Does it include any information about other people?

It may be the case that a full response to a SAR may lead to incidental disclosure of third party data (for example, a referee or another student). This data should **not normally** be disclosed unless the third party has given consent.

If consent cannot be obtained through refusal or lack of response, then the Information Governance officer be consulted and will consider the following:

- The duty of confidentiality owed to the third party
- The steps taken to seek consent
- Whether the third party is capable of giving consent
- Any express refusal of consent
- Legal obligation placed on the university to do so

It is normal to release the data with third party personal data redacted or anonymised. This should be done using Adobe Acrobat Pro and not merely scored through with a pen. The Information Governance Officer can advise appropriately. Where possible, it should be made clear to the data subject who has made the request that some information has been withheld and explain why.

Third parties who regularly supply information on students/staff in a professional capacity (such as external examiners, referees) should be aware that anything they submit may become available to the data subject through a SAR. Departments are advised to seek consent to disclose at the collection stage (e.g when requesting references/appointing external examiners) to avoid delay upon receipt of a SAR. Where third parties in these circumstances request that information supplied by them be kept confidential, they must supply details of the exceptional reasons for making the request. The Information Governance Officer will consider these for validity.

## 9. Are you obliged to supply the information?

It is RGU policy to be an open and transparent organisation and you should therefore provide the information unless:

- The request is found to be “manifestly unfounded or excessive”. In these cases, you may charge a reasonable fee or refuse to respond. However, these decisions must be taken in liaison with the Information Governance officer. If this is the case, you must explain why to the individual, informing them of their right to complain to the ICO and always at the latest, within one month.
- Information can be withheld if it reveals third party personal data and the individual involved has not given consent for the release of their personal data.

Otherwise the university must provide this data and you must always provide it within one month, unless there is exceptional circumstances to allow for an extension to this time frame.

10. Does the information include any complex terms or codes?

You must ensure that the individual can understand the information that you have provided. If there are abbreviations, codes or technical terms you must ensure that these are properly explained.

11. How should the information be provided?

If the request has been made electronically, it is best practice to provide the information in a commonly used electronic format. Otherwise, the information should be sent to the individual in hard copy by recorded post. Best practice is to liaise with the data subject around the format.

12. What if the request is made by someone other than the data subject? (Third party request)

Third parties may make requests of the University to provide personal data to them. Third parties may include family members, local authorities, government bodies (UK and International), Solicitors and the police. It is important that personal data is not disclosed to unauthorised third parties, however there are certain exemptions under the GDPR where disclosure is permitted. This would include:

1. The individual has given their consent (obtain this in writing and confirm the identity of the person supplying consent);
2. There are statutory or other legal obligations. For example, disclosure to the police under a court order, disclosure to HESA under the 1992 Further and Higher Education Act, disclosure to the Child Support Agency under section 14 of the Child Support Act 1991 as amended by the Child Support, Pensions & Social Security Act 2000;
3. It is in the legitimate interests of the University or in the legitimate interests pursued by a third party. For example, the police investigating a crime or the HMRC collecting tax or duty when disclosure is at the discretion of the data protection officer;
4. The third party is named in the notification to the Information Commissioner and in the privacy notice;
5. Data is required for the performance of a contract e.g. if a student has a contract with a sponsor and the sponsor requires details of the student's progress.
6. Necessary to protect the vital interests of the data subject or another person

You must verify the identity of the individual making the request in order to avoid unauthorised disclosure.

**Requests for References**

Under the Data Protection Act, references are only liable for disclosure if the University has received them. This includes references written by its

own members of staff for other Schools and Departments within the University.

However, references are exempt from disclosure under the Data Protection Act if they have been written by the University.

References are considered to be third party information. It is therefore vital to balance the interests of the data subject and the third party when deciding whether or not to disclose references.

The referee should be consulted when the subject access request is received and if they give consent, the reference should be disclosed.

A reference contains the personal data of both the data subject and the referee. It may be impossible to disclose the personal data of only the data subject without that of the referee therefore caution should be taken where consent is not available. Contact the Information Governance Officer for guidance.

If the referee does not want the reference disclosed or if you are unable to contact them, the following factors should be considered when deciding whether or not to disclose a reference:

1. Balance the referee's reservations against the rights of the data subject. You may try to anonymise the reference ( see above).
2. If a member of University staff, acting in their official capacity, wrote the reference then that reference would normally be disclosed, unless there are strong reasons not to do so. For example, if it is likely the individual will harass the referee.
3. If the release of the reference would cause substantial distress or endangerment to the referee, try to anonymise the reference so that the data subject cannot identify the person who supplied the reference. If the reference cannot be anonymised, do not disclose the reference.
4. If the referee refuses consent to disclose the reference and that reference was supplied as a confidential reference, do not disclose the reference. If the University was committed to keeping the reference confidential at the time the reference was written, the University is obliged to try to honour that commitment. Please note however that the data subject may challenge this refusal. Therefore the University cannot guarantee to referees that it will not release references.

### **Contact Details**

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