



Data Protection (GDPR)



Your guide to how we deal with requests for access to personal information held by us (subject access requests)

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Introduction

We have produced this leaflet to help you understand how we deal with requests, either from you or others, for access to information and/or personal information we hold about you.

Throughout this leaflet we will refer to Data Protection 'Subject access requests' (SARs).

The use of 'you' applies to all of our occupiers whether you are a tenant, leaseholder or a shared owner. It also applies to our housing waiting list applicants.

The use of 'us' or 'we' refers to Sandbourne Housing Association.

What is meant by 'Resident or others request for access to personal information held about them - referred to as Data Protection 'Subject access requests' (SARs)

This right, commonly referred to as subject access, is created by Section 7 of the Data Protection Act. It is most often used by individuals who want to see a copy of the information an organisation holds about them. However, the right of access goes further than this and an individual who makes a written request is entitled to be:

- told whether any personal data is being processed;
- given a description of the personal data, the reasons it is being processed, and whether it will be given to any other organisations or people;

- given a copy of the information comprising the data; and given details of the source of the data (where this is available).

We will respond to a subject access request promptly and in any event within one calendar month of receiving it.

However, some types of personal data are exempt from the right of subject access and so cannot be obtained by making a subject access request. For more information, please see Exemptions.

What is an individual entitled to?

Under the right of subject access, an individual is entitled only to their own personal data, and not to information relating to other people (unless they are acting on behalf of that person). Neither are you entitled to information simply because you may be interested in it. It is important to establish whether the information requested falls within the definition of personal data. In most cases, it will be obvious whether the information being requested is personal data.

Subject access provides a right to see the information contained in personal data, rather than a right to see the documents that include that information.

What is a valid subject access request?

For a subject access request to be valid, it should be made in writing. You should also note the following points when considering validity:

- A request sent by email is as valid as one sent in hard copy.

- We do not need to respond to a request made verbally but, depending on the circumstances, it might be reasonable to do so (as long as we are satisfied about the person's identity), and it is good practice to at least explain to the individual how to make a valid request, rather than ignoring them.
- If a disabled person finds it impossible or unreasonably difficult to make a subject access request in writing, we may have to make a reasonable adjustment for them under the Equality Act 2010. This could include treating a verbal request for information as though it were a valid subject access request. We might also have to respond in a particular format which is accessible to the disabled person, such as Braille, large print, email or audio formats. If an individual thinks we have failed to make a reasonable adjustment, they may make a claim under the Equality Act. Information about making a claim is available from the Equality and Human Rights Commission.
- If a request does not mention the Act specifically or even say that it is a subject access request, it is nevertheless valid and should be treated as such if it is clear that the individual is asking for their own personal data.

A request is valid even if the individual has not sent it directly to the person who normally deals with such requests.

Can I require individuals to use a specially designed form when making subject access requests?

No. Many organisations produce subject access request forms but we do not invite individuals to use such a form.

However, any request in writing must be considered as a valid request, whatever the format.

We have received a request but need to amend the data before sending out the response. Should we send out the “old” version?

The Act specifies that a subject access request relates to the data held at the time the request was received.

However, in many cases, routine use of the data may result in it being amended or even deleted while you are dealing with the request. So it would be reasonable for us to supply information we hold when we send out a response, even if this is different to that held when we received the request.

However, it is not acceptable to amend or delete the data if we would not otherwise have done so.

Do we have to explain the contents of the information we send to the individual?

The Act requires that the information we provide to the individual is in “intelligible form”. At its most basic, this means that the information we provide should be capable of being understood by the average person. However, the Act does not require us to ensure that the information is provided in a form that is intelligible to the particular individual making the request.

Can we charge a fee for dealing with a subject access request?

No, unless we consider the amount of information to be excessive, in which case we can charge a 'reasonable' fee. Each case will be treated individually.

Can we ask for more information before responding to a subject access request?

The Act allows us to confirm two things before we are obliged to respond to a request.

- We can ask for enough information to judge whether the person making the request is the individual to whom the personal data relates. This is to avoid personal data about one individual being sent to another, accidentally or as a result of deception.
- We are reasonable about what you ask for. We should not request lots more information if the identity of the person making the request is obvious to us. This is particularly the case, for example, when we have an ongoing relationship with the individual.

What about subject access requests made on behalf of others?

The Act does not prevent an individual making a subject access request via a third party. Often, this will be a solicitor acting on behalf of a client, but it could simply be that an individual feels comfortable allowing someone else to act for them. In these cases, we need to be satisfied that the third party making the request is entitled to act on behalf

of the individual, but it is the third party's responsibility to provide evidence of this entitlement. This might be a written authority to make the request or it might be a more general power of attorney.

There are cases where an individual does not have the mental capacity to manage their own affairs. Although there are no specific provisions in the Data Protection Act, the Mental Capacity Act 2005 enabling a third party to exercise subject access rights on behalf of such an individual, it is reasonable to assume that an attorney with authority to manage the property and affairs of an individual will have the appropriate authority. The same applies to a person appointed to make decisions about such matters:

- in England and Wales, by the Court of Protection.

What about requests for information about children?

Even if a child is too young to understand the implications of subject access rights, data about them is still their personal data and does not belong, for example, to a parent or guardian. So it is the child who has a right of access to the information held about them, even though in the case of young children these rights are likely to be exercised by those with parental responsibility for them.

Before responding to a subject access request for information held about a child, we should consider whether the child is mature enough to understand their rights. If we are confident that the child can understand their rights, then we should respond to the child rather than a parent. What matters is that the child is able to understand (in broad terms) what it means to make a subject access request and how to interpret the information they receive as a result of doing so. When considering borderline cases, we should take into account, among other things:

- the child's level of maturity and their ability to make decisions like this;
- the nature of the personal data;
- any court orders relating to parental access or responsibility that may apply;
- any duty of confidence owed to the child or young person;
- any consequences of allowing those with parental responsibility access to the child's or young person's information. This is particularly important if there have been allegations of abuse or ill treatment;
- any detriment to the child or young person if individuals with parental responsibility cannot access this information; and
- any views the child or young person has on whether their parents should have access to information about them.

What should we do if the data includes information about other people?

Responding to a subject access request may involve providing information that relates both to the individual making the request and to another individual. The Act says we do not have to comply with the request if to do so would mean disclosing information about another individual who can be identified from that information, except where:

- the other individual has consented to the disclosure; or
- it is reasonable in all the circumstances to comply with the request without that individual's consent.

So, although we may sometimes be able to disclose information relating to a third party, we need to decide whether it is appropriate to do so in each case. This decision will involve balancing the data subject's right of access against the other individual's rights in respect of their own personal data. If the other person consents to us disclosing the information about them, then it would be unreasonable not to do so. However, if there is no such consent, we must decide whether to disclose the information anyway.

For the avoidance of doubt, we cannot refuse to provide subject access to personal data about an individual simply because we obtained that data from a third party. The rules about third party data apply only to personal data which includes both information about the individual who is the subject of the request and information about someone else.

What if sending out copies of information will be expensive or time consuming?

In some cases, dealing with a subject access request will be an onerous task. This might be because of the nature of the request, because of the amount of personal data involved, or because of the way in which certain information is held.

Under section 8(2) of the Act we are not obliged to supply a copy of the information in permanent form if it would involve disproportionate effort to do so. We must decide whether supplying a copy of the information would involve disproportionate effort. Even if we do not have to supply a copy of the information in permanent form, the individual still has the other basic rights described above.

The Act does not define “disproportionate effort” but it is clear that there is some (albeit limited) scope for assessing whether complying with a request would result in so much work or expense as to outweigh the individual’s right of access to their personal data. However, it should be noted that this qualification to the right of subject access only applies in respect of “supplying” a copy of the relevant information in permanent form. We cannot refuse to deal with a subject access request just because we think that locating the information in the first place would involve disproportionate effort.

We will only rely on this provision in the most exceptional of cases. Even if we believe that supplying a copy of information in permanent form would involve disproportionate effort, we will still try to comply with the request in some other way.

Example

We decide that to supply copies of an individual’s records in permanent form would involve disproportionate effort. Rather than refuse the individual access, we may offer for the person to visit our offices and view the original documents. We may also agree that if there are documents that they wish to take away with them we can arrange to provide copies.

What about repeated or unreasonable requests?

The Data Protection Act does not limit the number of subject access requests an individual can make to any organisation. However, it does allow some discretion when dealing with requests that are made at unreasonable intervals. The Act says that we are not obliged to comply with an identical or similar request to one we have already

dealt with, unless a reasonable interval has elapsed between the first request and any subsequent ones.

If there has been a previous request or requests, and the information has been added to or amended since then, we might consider whether we will need only provide the new or updated information to the requester. However, section 8(6) of the Act states that “information to be supplied pursuant to a request... must be supplied by reference to the data in question at the time when the request is received...”. This means that, when answering a subject access request, we are required by the Act to provide a full response to the request: not merely providing information that is new or has been amended since the last request.

In practice the Information Commissioner would accept that we may attempt to negotiate with the requester to get them to restrict the scope of their subject access request to the new or updated information; however, if the requester insists upon a full response then we would need to supply all the information.

Need more information?

More detailed information is available from the registered office or can be downloaded from the ‘Information & Downloads’ page of our website, under ‘Policies & Procedures’.

This information includes:

1. Data Protection Policy (GDPR)
2. Data Protection Statement
3. Privacy Notice, which includes how we use your personal information
4. Procedure for Access to Information
5. Subject Access Request form

You can also write to us at our registered office:

Beech House, 28-30 Wimborne Road, Poole, BH15 2BU

Email us on: info@sandbourne.org.uk

Telephone us on: 01202 671222

Please note that telephone calls to the registered office number above may be recorded for information and training purposes.

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