



Subject access policy supporting procedures

Note: These procedures underpin the Subject Access Policy
<http://www.gloucestershire.gov.uk/extra/index.aspx?articleid=108939>

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1. Who has a right of access?

Every individual has the right of access to personal information held about them.

This includes a person who the Council holds a file about (e.g. a service user), or any other individual who is referred to directly in that file.

Someone asking to access information about another person is not usually entitled to know what is recorded about that person without their consent.

Another person (a third party) may act on behalf of the data subject in the circumstances below.

The following types of third party request may occur:

- An adult acting on behalf of a child (see 2.3 Requests on behalf of children)
e.g. a parent or carer with parental responsibility
- An adult acting on behalf of an adult without capacity (see 2.4 Requests on behalf of adults)
e.g. a carer or advocate
- An adult acting on behalf of another adult who has capacity and has provided them with consent (see 2.4 Requests on behalf of adults)
e.g. a solicitor or carer

In some circumstances a combination of types may occur e.g. a solicitor acting on behalf of a parent, who is acting on behalf of their child.

Other types of third party requests that are not made on behalf of the data subject are dealt with under the [Data Protection Policy](#). This includes data sharing between organisations and requests from the police.

2. Procedures for dealing with a request for personal information

2.1 Responsibilities and processes

Subject Access Requests (SARs) are processed by the Information Management Service (IMS).

Requests received directly by service areas must be forwarded to IMS within 3 working days.

IMS will log and monitor all requests and acknowledge requests within 5 working days of receipt within GCC. IMS will assign requests to the relevant Information Champion(s).

Information Champions will cascade the request to the relevant contacts within their business area(s), ensure that all relevant databases are checked, and ensure that all information held is provided to IMS within the deadline provided.

Team managers, on being asked to locate information in response to a request, will provide a single-sided photocopy or print out all information held. This will include, but is not limited to, paper records, all database records, emails, information on any personal or shared drives (e.g. P: and S: Drives) and handwritten notes.

Teams must not filter the information before providing it to IMS.

IMS will provide support and advice in applying these procedures and on related issues. IMS will also liaise with teams where appropriate to determine what can and cannot be released. In complex cases the redacting officer (usually IMS staff) will arrange for a Senior Manager to review the information before release.

In addition, the Data Protection Act requires local authorities to consider whether providing information would also release the personal data of other parties. In other words, the Council is not able to disclose information that would contravene someone else's rights under the Data Protection Act. Additionally, information will be withheld if disclosure is likely to prejudice the Council's ability to provide a service should disclosure be considered to cause harm to any individual.

IMS will report to the Information Board and Standards Committee as appropriate.

The timescale within which requests must be resolved is 40 calendar days from receipt (as defined in sections 2.2 to 2.4).

2.2 Procedures on first receiving a request

The '[Access to Personal Information \(Subject Access\) Application Form](#)' can be used to obtain all the necessary information described in this section. This can be found in Appendix A of the Application Form.

Under section 8 of the Data Protection Act, the Council can refuse to respond to requests unless a reasonable period has elapsed since responding to the last request; the Council has defined that period as being 12 months.

On receiving a request for information, IMS will establish whether the individual making the request is the data subject or a third party.

If the request is from the data subject, the following must be received before the request is processed:

- the request in writing (this includes email)
- proof of identity of the requester proof of change of name (where appropriate)
- sufficient details to locate the information
- fee

The 40 calendar day timescale does not start until these are received by the Council.

Photocopies of one or more of the following are acceptable as proof of identity:

- Passport
- Driving Licence
- Two different utility bills and/or bank statements, from within the past 3 months
- Verification by a Council Officer who has been working with that individual. This verification should be recorded on the individual's file.

If someone is making the request on behalf of another individual, the Council may undertake checks with schools, other agencies and other adults (e.g. legal guardian or parents) to determine the right of access to the information.

The Council requires a £10 fee per individual to process requests for access to personal information, and £50 for access to Occupational Health records.

The person making the request can be required to detail the information they are seeking access to. The requester can be asked for more details if needed for clarification.

The 40 calendar day timescale will stop until clarification is received by the Council.

2.3 Requests on behalf of children

A parent does not have an automatic right to information held about their child. The right belongs to the child, and the parent acts on their behalf providing the parent has Parental Responsibility. Once the child reaches sufficient maturity, the child can exercise their own right and the parent must act with the child's consent.

Where parents have separated, consideration should be given to the 'best interests' of the child in releasing information to the requesting parent.

In England and Wales the age at which the child reaches sufficient maturity is judged to be the age of 12. However, this may vary according to factors particular to that child.

For a child insufficiently mature, the following is required:

- the request in writing
- proof of identity of the requester (adult)
- proof of the requestor's responsibility for the child
- proof of identity of the data subject (child)
- sufficient details to locate the information
- a fee

For a child sufficiently mature, the following is required:

- the request in writing
- proof of identity of the requester (adult)
- proof of child's consent for the requester to access their information
- proof of identity of the data subject (child)
- sufficient details to locate the information
- a fee

2.4 Requests on behalf of adults

For an adult acting on behalf of an adult without capacity, the following is required:

- the request in writing
- proof of identity of the requester (adult)
- proof that the requester may act on behalf of the data subject
- proof of identity of the data subject
- sufficient details to locate the information
- a fee

Please see the [Gloucestershire Mental Capacity Act 2005 Multi Agency Policy, Procedures & Guidance](#) for more information on assessing capacity and who may act on behalf of an individual who lacks capacity.

For an agent acting on behalf of an adult with capacity, the following is required:

- the request in writing
- proof of identity of the requester - a letter on headed paper will normally be sufficient if the requester is a solicitor
- written consent of the data subject
- proof of identity of the data subject
- sufficient details to locate the information
- a fee

Important note

Where a third party is asking for information on behalf of the data subject, the best interests of the data subject should be paramount when considering the information for release.

2.5 Procedures for providing information

Team managers must ensure that a member of staff in the service responsible for the information examines the information for anything that they consider should be withheld before sending the copy to IMS. They should then consult IMS if anything of concern is identified. IMS will take their views into account when assessing the information for release.

Any information falling under an exemption will be either removed or redacted by IMS. This will be by either blanking out or blocking out the information. The minimum of information will be removed.

If information is withheld the requester will be provided with a letter; in most cases this will explain what has been withheld and why. The letter will also include details of how to complain and/or challenge the decision made.

In some circumstances, confirming or denying that a particular piece of information is held may result in release of information that should be withheld (for example, explaining that information is being withheld because it relates to a criminal investigation would reveal that an investigation has taken place or is underway, perhaps prejudicing that investigation). On occasions where no data is held, to confirm this may help limit searches for an individual. In these and other circumstances it may be necessary to refuse to confirm or deny that the information is held. A 'neither confirm nor deny' response should not be taken as an indication that the information requested is or is not held by the Council.

Where the information cannot be easily understood without explanation, supporting information should also be provided.

A record of what has been provided and withheld, with reasons, will be kept by IMS.

The Data Protection Act gives a right to a copy of the information in permanent form. A copy of the information will be provided unless the requester agrees otherwise, or it would involve disproportionate effort.

The requester may be offered the opportunity to view the information on Council premises in the presence of a relevant Council officer who is able to give appropriate support. Where this occurs, it is the responsibility of the relevant service to provide the member of staff to make the arrangements and supervise the viewing.

If the amount of information is large, the Council will consider whether it would involve disproportionate effort to provide copies. If so, the requester will be offered an appointment to view only but be given the facility to copy information

when they attend. An alternative is to ask the requester to refine the request further.

If the personal data is unstructured, i.e. not filed by reference to the data subject, the council will refuse requests where it would exceed the appropriate limit, e.g. 18 hours of work, to locate, retrieve and extract the information.

The Council will consider the needs of the requester when providing the information, including facilities for translation or providing the information in another format.

The information should be transferred to the requester in a secure manner, for example by recorded or special delivery or delivered/collected in person.

2.6 Using the information while a request for access is being processed

Personal information may be used as normal while a subject access request is being processed. Routine amendments may be made. More detail is contained within the [Recording Policy](#) for Social Care staff.

It is a criminal offence to alter, deface, block, erase, destroy or conceal information with the intention of preventing disclosure of information when a request has been made. This offence can be committed by the Council or any member of staff, and is punishable on summary conviction by a fine.

3. What personal information should be released and what withheld?

3.1 Information about third parties

Information about members of staff or others acting in a professional capacity

The information requested will normally include references to members of staff or other professionals involved with the individual. This may include records of attendance at meetings, email exchanges, reports written and decisions taken. The names of the professionals involved will normally be released. The exceptions are:

- Where the member of staff may be endangered by release of the information
- Where the information relates to the private life of the member of staff (rather than their professional life), such as home addresses and telephone numbers.

If there is any doubt, you must advise IMS of any concerns you have.

Information about all other third party individuals (including relatives or carers)

Information about non-professionals will normally be withheld, unless there is reason to believe that the other person would be content for it to be released.

The following will be considered:

- Any views the third party has given about sharing their information, including any consents or refusal of consents
- The expectations of the third party about what might happen to their information
- Whether the third party is capable of granting consent
- Any duty of confidentiality owed to the third party

A professional's judgement may be sought, as it will be based on recent contact with the data subject and third party.

Where there is no recent professional involvement with the data subject, the decision will be taken based on the content of the information held.

In certain cases, it may be appropriate to write to the third party asking for their consent. This will normally be undertaken by IMS.

Deceased individuals are still owed a duty of confidentiality. Information about third parties who are deceased may therefore be withheld if releasing it would be a breach of confidentiality.

3.2 Requests made on behalf of the data subject by third parties - best interests of the data subject

The best interests of the data subject should be paramount when considering releasing information to a third party acting on their behalf.

Information may be withheld if releasing it would prejudice the relationship between the data subject and the third party.

If the data subject has previously expressed any wish with respect to the confidentiality of any particular part of the information, this wish should be respected.

3.3 Information received from other organisations

If a file contains information received from other organisations, this information will still be considered for release.

This information will normally be released, subject to other issues. However, if there are any concerns about releasing the information, the other organisation may be consulted to ascertain their views on releasing or withholding information.

If an information sharing protocol exists between the Council and the other organisation, it should be consulted for further guidance.

The final decision about whether information provided by another organisation should be released or withheld rests with the Council, as the data controller for that information.

3.4 Legal advice

This includes legal advice from the Council's Legal Services or any other legal professional acting on the Council's behalf. This is based upon the principle that any communication with a client's professional legal adviser will be treated in confidence and not revealed without the client's consent, to ensure that a client's confidence will be protected and there is the greatest chance that justice is administered to the client.

There are two categories of legal professional privilege (LPP):

1. [Advice privilege](#) – where litigation is not contemplated or pending
2. [Litigation privilege](#) – where litigation is contemplated or pending.

Litigation is the taking of a legal action by one party against another in which an issue is being taken to a court of law for a judge or magistrate to decide.

If a file contains legal advice and clarity is required, the client concerned should be consulted by the redacting officer to find out whether they consider legal professional privilege applies to the information.

If legal professional privilege does apply to the information, this information can only be released if the client agrees to waive the privilege.

3.5 Information contained in social care records - serious harm arising from releasing

Information contained in Social Care Records may be withheld if releasing it would 'be likely to prejudice the carrying out of social work by reason of the fact that serious harm to the physical or mental health or condition of the data subject or any other person would be likely to be caused.'

3.6 Criminal investigations

Information may be withheld if releasing it would be likely to prejudice the prevention or detection of crime, or apprehension or prosecution of offenders.

In particular, any information obtained from the police who are using it for this purpose, will be withheld.

The police will be consulted if there is any doubt over a particular piece of information.

4. Implementation

This procedure is effective immediately.

5. Monitoring and review

This procedure will be monitored by the Information Management Service.

6. Useful contacts

The Information Management Service 01452 426837 or foi@gloucestershire.gov.uk

7. Definitions

Personal data is defined as data relating to a living individual who can be identified from the data, and other information, which is in the possession of, or is likely to come into the possession of the data controller. This includes an expression of opinion about the individual and any indication of the intentions of the data controller, or any other person in respect of the individual.

A **Data Subject** is an individual who is the subject of the data.

A **Data Controller** is an organisation, such as Gloucestershire County Council, or person that determines the purposes for which and the manner in which any personal data are to be processed.

A **Data Processor** is any person (other than an employee of the Data Controller, but including a legal person such as a limited company) who processes personal data on behalf of the Data Controller e.g. out-sourced work.

Processing means obtaining, recording, viewing, holding or carrying out any operation on data and includes organisation, alteration, retrieval, disclosure and destruction of the data.

A **Third Party** is any individual who is not the data subject.

Subject access right

An individual is entitled to

- be informed of what information a data controller holds about them
- have access to the personal information held
- be informed of the reasons for processing
- be informed of who it is disclosed to

An individual is entitled to receive a copy of the information held, in a permanent format, unless the effort involved is disproportionate or the individual agrees otherwise.

Redaction means removing or blanking out information from a document in order to withhold a piece of information. The redacting officer is normally a member of staff from IMS who is tasked with removing exempt information.

Legal professional privilege is defined as the right of the individual or entity to consult lawyers about their legal position and to have the privacy of those consultations respected. Such information is privileged from disclosure in most circumstances.

The **Caldicott Guardian** is a senior manager with responsibility for overseeing the arrangements for the use and sharing of service user personal and sensitive information.

Proof of **parental responsibility** (for a child under 12) includes:

- birth certificate
- parental responsibility agreement
- enduring power of attorney for them

If a requester is asking to have access to information about a person **over 12**, they must **also** provide a copy of the person's **full consent** for them to have access to the person's information or a copy of an **enduring power of attorney** for that person.

Fathers' rights also apply:

- If the child was born on or after December 1st 2003 and the father is named on the Birth Certificate as the child's birth father
- If a Parental Responsibility Agreement is signed
- If the birth certificate for the child held no father's name but was later renewed to show the father's
- If a Magistrate or Justice of the Peace (JP) at the Family Court has granted the father parental responsibility or an Order Of Residency

A **summary conviction** is an offence that has been tried in a magistrates' court.