

CHECKLIST – DEALING WITH SUBJECT ACCESS REQUESTS

Procedure	Yes/N/A
1. If the request is made by phone ask the person to put it in writing. Never give out personal information over the phone. You need to verify the person's identity. An email or letter is sufficient for a request.	
2. Does the organisation have a Data Protection Officer to which the request should be forwarded to?	
3. Does the organisation have a specific policy or procedure for dealing with data/subject access requests? This may be dealt with under the organisation's data protection policy.	
4. Is there any basis on which you can refuse a subject access request? Under the General Data Protection Regulation (GDPR) there are some grounds for refusing to grant an access request such as where it is manifestly unfounded or excessive. To be able to rely on these an organisation must have clear refusal policies and procedures in place and be able to show how this request meet those refusal criteria. This is likely to be a very high bar.	
5. If you receive a request and you are not satisfied as to the person's identity, you can request evidence of identity from the requestor. This should be done where it is deemed necessary and there is a risk of disclosing personal data to a third party	
6. Under GDPR you can no longer charge an individual for processing their data access request (unless you can demonstrate the cost will be excessive – this is likely to be a very high bar and even then it must be a 'reasonable fee'). Make sure a fee/charge is not referenced in the correspondence with the data subject as it may still be referenced in old templates and policies.	
7. You must respond without undue delay and the access request must be concluded within 1 month. Extensions to 3 months can occur where the requests are complex or numerous but this must be fully explained within the 1 month deadline. Have you diary managed a reminder as to when the 1 month time limit expires in which to comply with the request?	
8. If the request is extremely broad do you need to seek clarification from the individual on the exact scope of data they require? Seeking this clarification may reduce the administrative time spent searching for data.	
9. Once you are clear on the scope of the request you should decide what systems and files should be searched for the relevant personal data – you should keep a note of the efforts made by the organisation in searching for data in case there is a complaint made by the individual to the Data Protection Commissioner	
10. Once you have gathered all the data that you think is relevant the next step is to decide if all of the data needs to be disclosed or whether an exemption applies. Under the current data protection legislation, the exemptions are extremely narrow and only apply in very limited circumstances. The following exemptions may be available: <ul style="list-style-type: none"> a. An opinion given in confidence (this would not apply to manager comments on a staff member) b. Third party data within the data (this data should just be redacted and the rest supplied) c. Multiple requests from the same person (the organisation can wait a reasonable interval 	

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<p>before having to respond to the exact same data access request)</p> <ol style="list-style-type: none"> d. Data relating to the investigation of a criminal offence (where it would prejudice the investigation) e. Where legal professional privilege applies to the data (e.g. communications between the organisation and its legal advisors for the purposes of obtaining legal advice) f. Certain health data (where its disclosure is likely to cause serious mental or physical harm to the person) g. A disproportionate effort would be involved (this is an extremely high threshold to reach) <p>Under GDPR these exemptions may change and the Irish government is likely to implement local legislation. It is likely that this will include legal advice and litigation privilege along with expressions of opinion given in confidence.</p>	
<ol style="list-style-type: none"> 11. The data should then be separated into 2 bundles: <ol style="list-style-type: none"> a. the data you have to disclose; and b. the data to which an exemption applies 	
<ol style="list-style-type: none"> 12. A copy of the data should be forwarded to the requestor – you should send this by registered post or email with a delivery receipt so you can prove it was sent. Generally under GDPR it should be provided by soft copy where requested by soft copy or at least in a ‘commonly used file format’. 	
<ol style="list-style-type: none"> 13. A cover letter should be sent with the data setting out the following: <ol style="list-style-type: none"> a. The categories of their personal data being processed by the organisation (e.g. salary) b. The purposes for which the processing happens (e.g. payroll) c. To whom the data may be disclosed (e.g. payroll provider, Revenue Commissioner) d. Details of the source of the data (e.g. pay slips, contract of employment) e. How long the data is retained for by the organisation f. The right to have inaccurate data corrected g. The right to make a complaint to the Data Protection Commissioner h. if automated decision making applies, you need to give meaningful information about how these decisions are made; i. 	
<ol style="list-style-type: none"> 14. If the organisation is refusing to comply with the data access request then you must send the person a letter or email setting out why and advising them they may complain to the Data Protection Commissioner. 	
<ol style="list-style-type: none"> 15. Keep a record of all efforts made, the data provided and any correspondence in case the Data Protection Commissioner does need to investigate. 	

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