

# KENMORE PARK INFANT & NURSERY SCHOOL

## SCHOOLS AND DATA PROTECTION

### A GUIDANCE DOCUMENT ON SARS

#### An overview of Subject Access Requests

Under UK General Data Protection Regulation (UK GDPR), Data Protection Act 2018 (DPA2018), and EU General Data Protection Regulation (EU GDPR), data subjects have a number of rights available to them. A data subject will be a parent/guardian, a pupil, a member of staff, a governor or anyone else that might come into contact with your school and about whom you have data. Arguably the most important right of data subjects is the right of access to their data via a 'Subject Access Request' (SAR).

#### How to recognise a SAR

A SAR request can be made in any number of ways because the UK GDPR, EU GDPR and the DPA '18 do not specify how a SAR should be made. It can be made verbally or in writing, via a letter, email, text message or via a school social media account, such as a Facebook page or Twitter feed.

A SAR can be specific, or it can be a broad request. For example, a parent might ask for any data held in their child's pupil file, thereby narrowing down the request. However, they are entitled to ask, more broadly, for everything that the school holds about their child

#### What data is included in a Subject Access Request?

All data that you hold about someone will be considered 'personal data' and may have to be disclosed as part of a SAR. This includes, but it is not limited to:

- Central database (i.e. SIMS)
- Emails
- Paper pupil files
- HR files
- Documents stored within the computer network (local network or cloud-based)
- Safeguarding files (not in all circumstances as restrictions apply)
- Reports
- SEN files
- HR/Pensions/Payroll systems
- Electronic learning-based software (2Build a Profile.)
- Library booking systems
- ParentPay
- Parent/School communications software
- CCTV images

## Are there any restrictions?

There are restrictions that apply to subject access requests, however. They can be refused for a number of reasons under Art 23 of GDPR. The restrictions include, but are not limited to:

- 'national security',
- 'public security',
- 'prevention, investigation, detection or prosecution of criminal offences',
- 'prevention, investigation, detection and prosecution of breaches of ethics for regulated professions'
- 'the enforcement of civil law claims'

The only way in which you might be able to refuse to respond to the SAR would be to avail yourself of one of these restrictions.

## Time limits

The GDPR requires a **1-month** responds to SARs, with the clock starting on the day that the request is received.

If the data subject hasn't provided enough information for you to identify the data they are requesting, then you can go back and ask them to clarify their request. In that case the 1-month clock will only start running on the day they supply you with the additional details you need to process the request.

You should calculate the time limit from the day you receive the request (whether it is a working day or not) until the corresponding calendar date in the next month.

If this is not possible because the following month is shorter (and there is no corresponding calendar date), the date for response is the last day of the following month.

If the corresponding date falls on a weekend or a public holiday, you have until the next working day to respond.

This means that the exact number of days you have to comply with a request varies, depending on the month in which the request was made.

If a consistent number of days is required (e.g. for operational or system purposes), you should **consider adopting a 28-day period to ensure compliance is always within a calendar month.**

## Extension

According to the ICO, there is no exemption for schools during the summer break. As such, you will need to comply with the request.

GDPR requires a 1-month response to SARs except where:

- The request is complex
- The individual has made a number of requests

either of these two exemptions are relevant or available and if you feel unable to deal with the matter in the next month, the school can invoke a further two-month extension.

Whatever decision is reached, it is vitally important to document it along with the reasoning. This demonstrates that you have considered the SAR appropriately and not immediately jumped into relying on the two-month extension. If the extension is used, it must be communicated to the subject within the one-month period following the request and as soon as possible upon making the decision. The school cannot wait until the last day to use the extension – once the decision has been made to extend, it must be communicated to the subject. From that point, the school will have two months regardless of how many of the original 1 month is left.

In this context 'complex' means the complexity of the request made by the data subject, not how difficult it would be for the school to access and supply the information.

The Data Protection Act does not provide any guidelines as to what might qualify as a complex request. This being the case it will be for the school to make a judgement call taking into account all the facts of the case.

Any decision to claim an extension on these grounds should only be taken after consulting the Data Protection Officer.

Bearing all of this in mind and taking as pragmatic a view as possible, the DPO Centre advice would be along the following lines:

- If the school is physically closed and no operational staff are on-site, opening mail or accessing mails, then you will have a stronger, but not watertight, argument to be able to deal with the SAR until the school re-opens.
- If emails are being read and mail opened during the holiday, or if certain staff such as a Business Manager or CFO of a MAT is contracted to be working through the summer, we do not believe that the SAR can be ignored. Once the correspondence has been opened and identity has been established of the data subject, then the clock starts ticking and a decision needs to be made regarding whether or not to invoke the extension.

## Children's data

It is important to be aware of the ICO guidance regarding children's personal data. The full guidance can be found on the [ICO website](#).

However, to quote from the guidance:

*"Even if a child is too young to understand the implications of subject access rights, it is still the right of the child rather than of anyone else such as 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."*

As such, careful consideration must be given before releasing a child's data to the parent or guardian.

## Children's data – the age issue

By virtue of the UK GDPR/DPA '18, the age of consent is 13. This means that children above the age of 13 are able to provide their own consent.

When making a 'Subject Access Request', the request should still be made in conjunction with the parents but be aware that a person aged 13 or over can make such a request.

When the request is made by a parent or guardian and the child is aged over 13, then consent should be sought from the young person and, where possible, the data be provided directly to them. The exception to this is if the child does not have the capacity to understand the concept of consent. In which case, the data is passed to the parent/guardian, taking into consideration the advice in the 'Children's data' section above.

For parents/guardians with children under the age of 13, consent of the child is not required.

## Requests made on behalf of others

The Data Protection Act does not prohibit third parties, such as a relatives or solicitors, from making subject access requests on someone else's behalf. However, if you receive such a request you should not disclose any information to that third party unless they can provide evidence, they are authorised to act for the data subject (for example a signed letter from the data subject or proof of power of attorney).

## Redaction

In certain circumstances, you are entitled to redact parts of a document, such as a report, meeting minutes or an email. You are entitled to redact information relating to third parties if they have not given their consent for their information to be disclosed and if, in so doing, it could affect their rights and freedoms. This right to redact is not a blanket right and, if it is feasible to obtain the consent of a third party, then consent should be sought, or attempted, before redaction takes place.

However, redaction is not something that should be applied on an arbitrary basis and thought should be given before redacting information from documents. It may also be the case that a document should not be disclosed at all, rather than just be redacted. This is especially important to consider when dealing with safeguarding documentation or requests for data pursuant to a legal case.

Further advice on redaction can be obtained via the following ICO guidance document:

<https://ico.org.uk/media/2013958/how-to-disclose-information-safely.pdf>

## Paper-based Filing Systems

Much of the personal data held by a school will inevitably be in paper form. As such, it is important to provide information that has come from the High Court in terms of paper files and the searches that must be conducted through these upon receipt of a Subject Access Request.

The judge considered that as the files were arranged chronologically the personal data could be 'easily retrieved' and that a page turning exercise through those files looking for personal data was not unduly onerous.

The judge also concluded that a company had not discharged the burden of showing that a search would be disproportionate because it had not served evidence setting out the time and cost involved in conducting a search for the Subject's personal data.

## Contacting your Data Protection Officer

The DPO Centre are available throughout the year to offer advice and assistance in relation to SARs, including over the summer holiday period. However, the DPO Centre cannot field all requests on behalf of schools during the summer holiday and invoke the two-month extension arbitrarily.

For any SAR-related queries please contact the DPO Centre at: [advice@dpocentre.com](mailto:advice@dpocentre.com)

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