Data Protection Rights Procedure

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1. Introduction

This procedure is intended to support the organisation when processing requests from Data Subjects to exercise their data protection rights.

2. Quick Guide

- Ensure that your privacy notice references the data protection rights data subjects have when you process their personal data
- Log all requests to exercise rights on your B1 reporting tool
- Acknowledge receipt of the request advising you will respond within one calendar month, see appendix A
- Identify the legal basis that processing activity is based on and determine whether the right they wish to exercise applies to that processing
- If the right applies to the processing, you must take the appropriate action and confirm to the requester the actions taken to resolve their request
- If the right does not apply to your processing you must advise the requester and explain why this is the case
- Update your B1 reporting tool entry noting the outcome and adding any relevant notes

3. Policy References

This procedure is a requirement of the Data Protection Policy and Statutory Requests Policy.

4. The Data Protection Rights

The UK GDPR provide in law a range of rights to data subjects. These include the following:

- The right to be informed
- The right of access
- The right to rectification
- The right to erasure
- The right to restrict processing
- The right to data portability
- The right to object
- Rights in relation to automated decision making and profiling.

The right of access and to be informed are universal, meaning they apply to all processing; however the other rights may only apply according to the legal basis you are relying on to use the personal data. If you are unsure which legal basis you are relying on, please check the D2 Privacy Notice Procedure which contains a range of template privacy notices covering the processing generally carried out by schools.

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Once you have established the legal basis you are relying on you can use the handy chart below to determine if the right the data subject wishes to exercise is applicable to your processing. The ticks indicate the right is exercisable, and the crosses mean it is not applicable. Requests can be made in writing or verbally.

Legal basis and applicable subject rights – Personal Data	Inform	Access	Rectify	Erase	Rest-rict	Object	Auto/ Profile – where applica ble	Port-ability
Consent	✓	✓	✓	✓	✓	✓	✓	✓
Contract	✓	✓	✓	✓	✓	✗	✓	✓
Vital Interests	✓	✓	✓	✗	✓	✗	✗	✗
Legal Obligation	✓	✓	✓	✗	✓	✗	✓	✗
Public Task	✓	✓	✓	✗	✓	✓	✓	✗
Legitimate Interests	✓	✓	✓	✓	✓	✓	✓	✗
Legal basis and applicable subject rights – Special Category Personal Data	**Inform**	**Access**	**Rectify**	**Erase**	**Rest-rict**	**Object**	**Auto/ Profile – where applica ble**	**Port-ability**
Explicit Consent	✓	✓	✓	✓	✓	✓	✓	✓
Employment, social Security/protection	✓	✓	✓	✓	✓	✗	✓	✗
Vital Interests	✓	✓	✓	✗	✓	✗	✗	✗
Not for profit	✓	✓	✓	✓	✓	✓	✓	✗
Public Domain	✓	✓	✓	✓	✓	✓	✓	✓
Legal Defence/claims	✓	✓	✓	✗	✓	✗	✓	✗
Substantial Public Interest	✓	✓	✓	✗	✓	✗	✗	✗
Health & Social Care	✓	✓	✓	✗	✓	✗	✓	✗
Public Interest in Public Health	✓	✓	✓	✗	✓	✗	✓	✗
Scientific/historical Research, Statistics or Public Archiving	✓	✓	✗	✗	✓	✓	✓	✗

The right to be informed

Data subjects, which includes staff, parent/carers, pupils and suppliers, have the right to be informed about the collection and use of their personal data. This is a key transparency requirement under the UK GDPR.

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We use privacy notices to make the required information easily available to data subjects. More detailed information about the right to be informed can be found in our D2. Privacy Notice Procedure.

Fully complying with the right to be informed can help you to comply with other aspects of the GDPR and build trust with people.

The right of access

Those whose personal data you are processing have the right to receive a copy of that personal data and other supplementary information. This right is often referred to as Data Subject Access Request (SAR).

SARs can be made verbally or in writing, by the data subject themselves or on their behalf (for example by a parent or solicitor).

You must provide the requested information within one calendar month, unless you can evidence that the information requested meets the threshold for complexity, in which case the timeframe can be extended to three months.

Full guidance is provided in our F3. SAR Procedure, which contains template letters and forms to support the end-to-end process.

The right to rectification

Individuals have the right to have inaccurate data corrected or incomplete data completed in some circumstances. This right applies to all processing with the exception of processing for scientific or historical research, statistics or public archiving.

If you receive a request for rectification, you must take appropriate steps to satisfy yourself that the data is accurate, rectifying the data where appropriate. You must advise the data subject what steps were taken (if any) to rectify the data. Please note that in the view of the ICO a professional opinion will always, by its very nature, be accurate, and therefore cannot be subject to a request for rectification. If you are asked to rectify the opinion of a professional within a record you hold, you should advise the requester you are not required to do so as it is a professional opinion; but you should offer to annotate the record with their view on the matter so that their opinion is also recorded.

The right to erasure

This right always applies to data used for direct marketing. It is not applicable to processing under vital interests, legal obligation or public task. This is because decisions which may place legal effects on individuals may have been made using that data, and it must be maintained. Where this is the case it may be appropriate to rectify inaccurate factual data, but the record cannot be erased.

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The right of erasure applies to the other legal basis. You should erase the personal data without undue delay, and within one month where:

- the personal data is no longer necessary for the purpose which you originally collected or processed it for
- you are relying on consent as your lawful basis for holding the data, and the individual withdraws their consent
- you are relying on legitimate interests as your basis for processing, the individual objects to the processing of their data, and there is no overriding legitimate interest to continue this processing
- you are processing the personal data for direct marketing purposes and the individual objects to that processing
- you have processed the personal data unlawfully
- you have to do it to comply with a legal obligation
- you have processed the personal data to offer information society services to a child

Right to restrict processing

Individuals have the right to request the restriction (limitation) or suppression of their personal data where;

- they contest the accuracy of the data
- the data is being processed unlawfully and the individual does not want the data erased whilst an investigation takes place
- you no longer need the data, but the individual requests you keep it solely in order to exercise or defend a legal claim
- the individual has objected to your use of their personal data, and you are considering whether your legitimate grounds override theirs

Restriction of data is usually timebound whilst a complaint is resolved. When you wish to lift the restriction, you must advise the individual before you lift the restriction. Whilst data is restricted you must not process it in any way other than to store it unless you have the individual's consent, for a legal claim, to protect the rights of others or other reasons of important public interest.

Right to data portability

This right is designed to move, copy or transfer personal data easily from one IT environment to another. It only applies where processing is based on consent or contract, and then only where the data is processed by fully automated means. It is unlikely that a school would receive a data portability request.

Right to object

The right to object always applies to direct marketing. Individuals also have the right to object to processing based on consent, public task or legitimate interests. The individual must provide the specific reason for their objection.

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If processing is based on their consent, they are able to withdraw their consent through exercising this right. If processing is based on legitimate interests or public task (as most processing by schools does) you will need to demonstrate you have compelling legitimate grounds for the processing which override their interests. Schools often rely on public task rather than legal obligation as statute rarely expressly sets out how personal data must be processed, rather it provides a general power. This means schools make their own decisions about the means by which they will process the data, and for this reason individuals have the right to object to you processing their data in that way. In reality, it is unlikely an objection would ever override processing based on public task, unless of course you were choosing to process it insecurely. Processing based on legitimate interest should already have a legitimate interests assessment completed and available alongside the relevant privacy notice (see D2 – Privacy Notices Procedure appendices). This means your argument is already documented and should be used as a basis for any response to a request to exercise this right.

If you are satisfied that you do not need to comply with the request, you should let the individual know. You should explain your decision and inform them of their right to make a complaint to the ICO.

Rights related to automated decision-making including profiling

"Automated decision making" means processing that is carried out solely by automated means without any human involvement. It is unlikely schools will carry out this kind of processing. Similarly, whilst schools may carry out profiling such as academic assessments and predicted grades, again these would always have some human involvement before acting on them.

It is worth noting that this right may apply if your recruitment process involves aptitude tests prior to short-listing, and before any human involvement if the process occurs. This type of profiling would place a legal effect on the individual, e.g., they would potentially be denied the chance to be shortlisted for interview for the job. If this applies to you, you must ensure that should a request to exercise this right be received, you are able to provide meaningful information about the logic involved in the decision-making process.

5. Record Keeping

All requests to exercise rights must be logged on your B1 reporting tool. You must note which right is being exercised and acknowledge the request (see template letter at Appendix 1).

You must respond to the request within one month clearly advising the actions you have taken and, where no action is taken, clearly explaining your rationale.

Ensure the B1 reporting tool is updated with notes on the actions you have taken in relation to each request, and the date the request was closed.

6. Advice and Support

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If you have any issues over the clarity of these procedures, how they should be applied in practice, require advice about exemptions from the requirements or have any suggestions for amendments, please email IGS@essex.gov.uk.

7. Breach Statement

A breach of this procedure is a breach of Information Policy. Breaches will be investigated and may result in disciplinary action. Serious breaches of Policy may be considered gross misconduct and result in dismissal without notice, or legal action being taken against you.

8. Appendix 1

Template acknowledgement letter for rights requests OTHER than Subject Access Requests

Data Subject Rights - request acknowledger

Template letter to explain that the right to erasure does not apply to your processing

Right to Erasure refusal letter

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