

A Guide to your Data Subject Rights

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1. Introduction to Data Protection Legislation

The Data Protection Act 2018 and the UK GDPR

The Data Protection Act 2018 (DPA) gives individuals greater rights over their personal information and imposes greater data protection obligations on organisations.

The council has created this guide to explain your data subject rights and to provide details on how you can make requests in relation to information which we hold about you.

This guide also explains how we will process your requests and provides guidance on commonly asked questions which you may have.

Data Subject Access Rights

The DPA gives individuals a specific number of rights which include: -

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

The rights are not absolute and are subject to a number of conditions and exemptions. We may apply these conditions and exemptions to any request which we receive from you.

Some of the rights will only apply if the processing activity is undertaken on specific legal grounds and/or in particular circumstances.

The Information Commissioner's Office (ICO)

The Information Commissioner's Office (ICO) is the UK's independent authority for all Information matters. The ICO upholds information rights in the public interest.

The ICO deals with a wide range of information matters ranging from data protection requests to statutory requests to local authorities i.e., Freedom of Information requests and Environmental Information Regulation requests.

This aim of this guide is to provide you with more detailed information on your rights. If you want more information about our obligations and your rights, please visit the Information Commissioners Office (ICO) website.

2. Your Data Subject Access Rights Explained

• The Right to be Informed

We must tell you how we collect and use your personal information to fulfil our obligations of fair and transparent processing and we will do this by way of a Privacy Notice.

We must inform you why we need to process your personal information, how we propose to use it and who we intend to share your information with, including if we need to share your information with third parties or if we received information about you from someone else. There may be occasions where we do not inform you, this might be when we are aware you already have this information or where the law permits the sharing of information, for example where there is an ongoing law enforcement or criminal investigation.

We will regularly review and, where necessary, update our privacy information. If we plan to use personal data for a new purpose, we will update our privacy notices and communicate the changes to you before we start any new processing.

• The Right of Access

You have the right to find out if we hold any of your personal information and, if we do, to ask for a copy of that information. You can make a request for a copy of your personal information by making a subject access request (SAR).

When responding to a subject access request you are also entitled to receive the following information:

- The reasons why we are using your information
- The types of personal information we process and what we use it for
- the recipients or categories of recipient who we share your information with
- the length of time which we will store your data
- the rights to challenge the accuracy of the information we hold such as erasure and objection to use of your information
- the right to complain to the Information Commissioner's Office
- the source of any personal information we hold
- whether or not decisions are made about you solely using automated means and our processes of doing this
- whether we have transferred your information to a third country or an international organisation and any security measures which we have taken

Most of this information is available as part of our privacy notice.

In making a subject access request you have the right to access your own personal information. Personal information is information which relates to or identifies you as an individual. You do not have a right to access anyone else's personal information.

Where we process a large amount of information about you, we can ask you to clarify your request, but we will only do this for information that we reasonably need to locate the information covered by your request.

If you make a joint subject access request with another person, we will need to see sufficient evidence from that person that they consent to their personal information being released to you.

In responding to your subject access request, we will inform you if we have applied an exemption or redacted any information from disclosure and the reasons for this, where it is possible for us to do so.

We may in some circumstances refuse to respond to your subject access request, if this is the case, we will let you know the reasons for our refusal.

• **The right of rectification**

You have the right to challenge the accuracy of personal information which we hold. You can ask for incorrect information to be corrected or you may ask for it to be deleted. If your information is incomplete or not up to date, you can also ask us to update it. For more information about deleting your personal information, please see the right of erasure.

Upon receiving a rectification request, we will investigate whether the information held, is accurate. We will consider your supporting evidence and arguments when making our decision about whether to correct the information.

We will let you know the outcome of your request and inform you of the steps taken. If we decide to refuse your request for rectification or to not correct the information we hold, we will let you know the reasons for doing this, where we are able to do so.

We will record that you have made a challenge to the accuracy of the personal information which we hold and the reasons why you believe the information is incorrect and the decision we make regarding that data.

If we have shared your personal information with other organisations, then we will inform them that your information has been corrected or updated, as far as we are able to do so. We will inform you who has received your personal information, if you ask us. Please see Right to be Informed for further information.

• **The right to erasure**

The right to erasure is sometimes known 'as the right to be forgotten'. In certain circumstances you have the right to make a request for the erasure of your personal information.

In some circumstances, or where the council has no compelling reason to retain your personal information, you can request deletion of that information, for example:

- We are storing your information for longer than is necessary for the purpose it was collected for and where there is no legal obligation for us to continue to store, publish or process it
- You have withdrawn consent for us to process your information (this will only apply where the only reason we are able to process your information is with your consent)
- You have objected to the use of your information and you have later decided to make a further request to delete it
- We have collected or used your information unlawfully
- We have a legal obligation to erase your information
- We collected information from you when you were a child and you now wish to have this erased

In our response we will carefully consider whether your information should be erased. If we refuse your request, we will explain the reasons for our decision and your rights to complain to the ICO if you are not satisfied.

Please note that we can refuse an erasure request if it is necessary for us to retain your information for:

- our public task purposes
- public health reasons
- exercising the right of freedom of expression and journalism
- archiving purposes in the public interest or historical, scientific or statistical purposes
- establishment, exercise or defense of legal claims
- compliance with legal obligations

If we decide to delete your information, we will inform other organisations whom we have shared your information with about the erasure, where it is possible for us to do so. We will inform you who has received your information, if you ask us. Please see Right to be Informed for further details.

• **The right to restrict processing**

You can ask us to restrict the processing of your personal data. This means that you can limit the way we use your data. This right, where it applies, also allows you to ask us to retain your personal information but not to use it.

This right is not an absolute right and only applies in certain circumstances. You have the right to restrict the processing where you have a particular reason for wanting the restriction, for example, if you are concerned about the content of the information we hold or how it is processed.

You have the right to ask us to restrict what we use your personal information for if:

- You have identified inaccurate information, and have told us of it
- We have no legal reason to use that information, but you want us to restrict what we use it for rather than erase the information altogether

When information is restricted it can't be used other than to securely store the data unless: -

- we have your consent,
- it is to handle legal claims,
- to protect others,
- or where it's for important public interests.

Where possible we'll seek to comply with your request, but we may need to hold or use information because we are required to by law. Where restriction of use has been granted, we'll inform you before we carry on using your personal information.

If we have shared the information with others we will in most circumstances (and if we can't we will let you know and our reasons why not), contact each of them and inform them of the restriction of the personal data.

You have the right to ask us to stop using your personal information for any council service. However, if this request is approved this may cause delays or prevent us delivering that service.

• **The right to object**

The right to object to the processing of your personal information only applies in certain circumstances and depends on the reasons (lawful basis) that we are processing your information. The lawful basis will be detailed in your privacy notice.

You can object if the processing is for: -

- direct marketing
- profiling in connection to direct marketing or for other purposes
- performing our statutory functions i.e., tasks carried out in the public interest or when exercising our official authority
- our legitimate interests (or those of a third party)
- scientific, historical, or statistical research unless it is in the public interest to process your data.

If you object to us using your information for direct marketing or profiling in connection to direct marketing, we will stop processing your information for these purposes.

If you object to us processing your information in connection to scientific, historical or statistical research, you should set out your reasons for objecting to this use. We will carefully consider whether the processing of your information is necessary and in the public interest. If it is in the public interest to process your information, then we may refuse your request.

If you object to us processing your information for any other purpose, we will consider if there are any compelling legitimate reasons for us to continue processing it. We will also consider whether these legitimate reasons are sufficiently compelling to override your privacy rights.

We can continue processing if: -

- we can demonstrate compelling legitimate grounds for the processing, which override the interests, rights and freedoms of you, or,
- the processing is to handle a legal claim.

• **The right to data portability**

You have a right to receive personal information in a format which is accessible and machine readable. You also have the right to request that we transfer your information to another organisation, where it is technically feasible for us to do so.

Your right to receive information in a portable form applies to your information which is held electronically and which you have provided to us. This right also only applies to automated data processing that is either based on your consent or which is necessary to perform a contract between you and the Council.

When making a request for us to transfer your information or to provide it to you in an accessible format, please state clearly the information that you require.

In most cases this right will apply when changing provider for things such as utilities or mobile phones. There are unlikely to be many circumstances where information held by the council will be subject to this right.

• **Rights in relation to automated decision making and profiling**

Automated decisions are those made without human involvement. These types of decisions may also be referred to as automated processing or automated profiling. You have the right to prevent the ways in which automated decisions are made about you. You specifically have the right not to be subject to an automated decision if it affects your legal rights or other equally important matters. You have the right to understand the reasons behind automated decisions and to object to them in certain situations.

We may make automated decisions in very limited circumstances such as where we are authorised to do so by the law, where it is necessary for us to do so as part of a contract with you and where we have your explicit consent.

Where an automated decision is made, you are entitled to be informed that our processing activity involves an automated decision and to be informed about the logic behind the decision and the likely consequences for you. We can also let you know about the safeguarding measures which we have in place to protect your privacy.

You can contest an automated decision which has been made about you or request that an automated decision be reconsidered. If you would like us to stop making automated decisions about you, or if you would like us to explain any automated decisions which have been made, you can submit a request to us.

3. Notification of personal data breaches

We must inform you if there has been a data breach which is likely to result in a high risk to your rights and freedoms. We must report the breach to the ICO where the breach is likely to result in a risk to your rights and freedoms.

A data breach is a breach of security which results in accidental or unlawful destruction, loss, alteration, unauthorised disclosure of or access to your personal information.

We must assess data breaches on a case-by-case basis. Breaches which are likely to have a detrimental effect on individuals are those which involve:

- discrimination
- financial loss
- damage to reputation
- loss of confidentiality or any other economic or social disadvantage.

There will be certain circumstances where we will not have to inform you about a breach such as:

- where we have implemented technical and organisational measures to protect the personal data affected by the breach, for example by encrypting laptops or other portable devices
- where we have taken steps, which will minimise any high risk to your rights and freedoms
- where it would involve disproportionate effort to inform you

We may inform you via a public announcement if it would be disproportionate to inform you individually.

4. Who do we share your information with?

We use a range of organisations to either store personal information or help deliver our services to you. Where we have these arrangements, there is always an agreement in place to make sure that the organisation complies with data protection legislation.

We'll often complete a data protection impact assessment before we share personal information to make sure we protect your privacy and comply with the law.

Sometimes we have a legal duty to provide personal information to other organisations such as the courts or regulatory bodies.

We may also share your personal information when we feel there's a good reason, that's more important than protecting your privacy. This doesn't happen often, but we may share your information:

- In order to find and stop crime and/or fraud; or if there are serious risks to the public, our staff or to other professionals;
- To protect a child or adult who is thought to be at risk, for example if they are frail, confused or we believe there could be a safeguarding issue.

For all of these reasons the risk must be serious before we can override your right to privacy. If we're worried about your physical safety or feel we need to take action to protect you from being harmed in other ways, we'll discuss this with you and, if possible, get your permission to tell others about your situation before doing so.

We may still share your information if we believe the risk to others is serious enough to do so. There may also be rare occasions when the risk to others is so great that we need to share information straight away.

If this is the case, we'll make sure that we record what information we share and our reasons for doing so. We'll let you know what we've done and why if we think it is safe to do so.

5. How do we protect your information?

We'll do what we can to make sure we hold records about you (in paper form and electronically) in a secure way, and we'll only make them available to those who have a right to see them. Examples of our security include:

- Controlling access to systems and networks allows us to stop people who are not allowed to view your personal information from getting access to it
- Training for our staff allows us to make them aware of how to handle information and how and when to report when something goes wrong
- Regular testing of our technology and ways of working including keeping up to date on the latest security updates (commonly called patches)
- Encryption, meaning that information is hidden so that it cannot be read without special knowledge (such as a password). This is done with a secret code or what's called a 'cypher'. The hidden information is said to then be 'encrypted'
- Pseudonymisation, meaning that we'll use a different name, so we can hide parts of your personal information from view. This means that someone outside of the council could work on your information for us without ever knowing it was yours.

6. Where in the world is your information?

The majority of personal information is stored on systems in the UK. But there are some occasions where your information may leave the UK either in order to get to another organisation or if it's stored in a system outside of the EU.

We have additional protections on your information if it leaves the UK ranging from secure ways of transferring data to ensuring we have a robust contract in place with that third party.

We'll take all practical steps to make sure your personal information is not sent to a country that is not seen as 'safe' either by the UK or EU Governments. If we need to send your information to an 'unsafe' location, we'll always seek advice from the Information Commissioner first.

7. How long do we keep your personal information?

We either have a legal or business reason for keeping your personal information for a set period of time, we try to include all of these in our retention schedule. For each service, the schedule lists how long your information may be kept for. This ranges from months for some records and longer for others.

8. Exercising Your Rights

• Making a Request

All requests should be made to the Information Governance Team and addressed to the Data Protection Officer so that your request can be dealt with as quickly as possible.

You can make a request verbally or in writing using the contact details below:

By email to dpa@easthants.gov.uk

By telephone to: 07809 310896

Your request should state what you want us to do, for example provide a copy of your personal information or if you are objecting to our processing your personal information.

If you are making a request for a copy of your information, you can complete our SAR form, which can be found online, or if not, you should clearly state the specific information which you require, this will greatly assist us in processing your request.

Please provide us with the following information:

- Your name and contact details
- Any reference numbers and details of council departments and officers who are likely to hold your data
- Any details and relevant dates that will enable us to identify the information requested
- Your preferred format that you would like to receive your information, either electronic or hard copy.

- **Our Response**

Upon receipt of your request, we will formally log it and provide you with an Acknowledgement.

In our acknowledgement we will confirm what you have requested and provide you with a timescale for our response. We will also let you know if we need any further information from you before we can process your request.

In order to ensure the security of your personal information we need to be able to verify your identity.

We have one calendar month to respond to your request, once we have all the information we need from you. We may extend this time limit by a further two months if your request is complex or involves a lot of information. We will let you know if this is the case. In our acknowledgement we will inform you of the time limit we have to respond to your request.

In our response we will confirm the action we have undertaken or provide you with a copy of the information you have requested if it is possible for us to do so. If we are not able to fulfil your request, we will let you know the reasons for this and inform you of your right to appeal our decision.

We can refuse your request if it is manifestly unfounded or excessive. We may withhold information where the relevant legislation in force at the time allows us to do so.

If you request a copy of your personal information, we will be unable to provide the personal information of any third party. In cases such as this we may withhold or redact the personal information of anyone else. We have an obligation to balance your right to access your information against the rights of other individuals regarding their information.

9. Frequently Asked Questions (FAQs)

- **When is identification required?**

In order to process your request, we need to be able to verify your identity.

We need to be sure that none of your personal information is accessed or interfered with by anyone falsely claiming to be you. We also need to guarantee that we are locating your personal information and not that of someone who has the same name.

We will let you know as soon as possible if we need you to provide us with identification. If we request identification, we will require copies of documents such as a driving licence or passport and a recent utility bill dated within the past 3 months.

The time limit to process your request will not commence until we have verified your identity.

- **Can someone else make a request for me?**

A third party may make a request on your behalf, this may be a friend, relative or a solicitor. Anyone making a request on your behalf must supply us with written authority from you to confirm that they are acting on your behalf. Additionally, we may still require identification from you, and we may contact you to confirm that we have received a request on your behalf.

There may be some circumstances where we will release the information requested directly to you rather than to your representative. This will usually only be the case, where we think you may wish to view the information provided before disclosing it to your representative. It is your decision whether you then chose to share this with your representative.

- **Is there a charge?**

We will not usually charge you when you make a request, however this may vary subject to the legislation in force at the time.

Currently we will only charge you a reasonable fee for administration costs where your request is manifestly unfounded or excessive or where you make a request for further copies of the information we have already provided to you.

Any costs charged will be based on the administrative costs of complying with your request.

Where we charge a fee for dealing with your request, we do not have to comply with the request until we received the fee from you.

- **When can we refuse a request?**

We can refuse to comply with your request if it is manifestly unfounded or excessive.

When refusing your request, we will also consider whether it is repetitive in nature. If we refuse your request, we will let you know the reasons where it is possible for us to do so.

We may refuse your request where we are permitted to do so, by the legislation currently in force. The Data Protection Act 2018, contains a number of exemptions which we may rely upon, when responding to your request. These exemptions may either lead to a refusal of your request or we may redact or withhold information from our response.

If we refuse whole or part of your request, we will let you know the reasons for this, where it is possible for us to do so.

- **What if a requester lacks mental capacity?**

Where a requester lacks mental capacity, a person with a lasting power of attorney, may exercise the requester's data protection rights on their behalf.

- **What about children's' personal data?**

Children have a right to their own personal information, irrespective of their age, the right to their data belongs to them and not a parent or guardian. Parents or guardians may commonly exercise the child's rights in the cases of younger children. When responding to requests which concern a child's information, we will consider the child's ability to understand their rights and whether we should be releasing their information to them directly.

In Scotland it is presumed that children aged 12 years or over are a sufficient age and maturity to exercise their data subject rights. In England there is no presumption so, we will therefore consider each request on a case by case basis. We may allow a parent or guardian to exercise the child's rights on their behalf where the child provides consent for doing so or where it is evident that it is in the child's best interests for someone to exercise their rights for them.

As we are a district local authority and we don't have responsibility for education or children's' services, it is unlikely that we will hold a lot of information regarding children.

- **What is the time limit to respond?**

We aim to respond to your request without undue delay. Under the current legislation we have one calendar month to respond to your request.

Should we require identification or clarification from you, the time limit will not start until we are satisfied with your identification documents and/ or we have received clarification.

If your request is complex, we may need to extend the time limit to respond to you, and this could be by a further two calendar months. If we need to extend the deadline, then we will let you know as soon as possible.

We will let you know the date which we aim to respond by when we acknowledge receipt of your request.

- **Can I choose the format in which my information is supplied?**

We will usually respond to you in the same format which you used to make your request. For example, where you submit a request electronically via email, we will usually respond in the same way where it is possible for us to do so. If you ask us to respond in a particular format we will try to accommodate your request.

When you make a verbal request, we will contact you to check the exact information which you have requested and to confirm the format which you would like to receive the information.

Where you ask for multiple copies of the information provided to you under a request, we may charge fee for the administrative costs.

- **Will I receive all the information that I have requested?**

We will try to provide you with all the information, which you have requested. However, in some circumstances we will not be able to do this. If we are not able to release all the information, we will let you know the reasons for this where it is possible for us to do so.

It is your right to access your own information, and this right does not extend to information about other people. In processing your request, we have an obligation not to adversely affect the rights and freedoms of others.

In light of this obligation we may therefore redact information which relates to other individuals and third parties, where we are satisfied that it is reasonable in the circumstances to do so. There may be some circumstances where the information we hold is interlinked to the extent that we cannot fulfil your request without breaching another person's privacy rights.

In some circumstances we may be able to release other individuals' and third parties' information, where they provide consent for us to do so.

The law recognises that there are occasions when it is appropriate to withhold certain information. There are a number of exemptions which can be applied in specified circumstances.

We will try to let you know the reasons for not fulfilling your request and which exemptions we are relying upon, where it is possible for us to do so.

- **What can I do if I am not satisfied with your response?**

If you do not hear from us by the latest due date, you should contact us to check the progress of your request.

If you are not satisfied with the response to a request for access to your own personal information or your exercise of another right under data protection legislation, whilst you have the right to contact the Information Commissioner directly, we ask that you contact the Council first. In practice the Information Commissioner will expect all complaints about subject access requests or the exercise of another right under data protection legislation to be raised with the Council before involving the Commissioner.

For further information in making a complaint to the ICO please see their website: <https://ico.org.uk/make-a-complaint/>

The ICO can be contacted:

Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire SK9 5AF

Tel: 0303 123 1113 (local rate) or 01625 545 745 if you prefer to use a national rate number.

Email casework@ico.org.uk