

# Education Matters Webinar Data Protection in Schools

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# Today's Webinar

1. A recap...
2. What is personal data?
3. Who can make a request?
4. How to recognise a DSAR
5. Responding to a DSAR
6. The search
7. The risks

# Poll





# A quick recap

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- The law:
  - UK General Data Protection Regulation (UK GDPR)
  - The Data Protection Act 2018
- Information Commissioner's Office (ICO)

# A quick recap

- 7 key principles under UK GDPR
  - Lawfulness, fairness and transparency
  - Purpose limitation
  - Data minimisation
  - Accuracy
  - Storage limitation
  - Integrity and confidentiality (security)
  - Accountability.

# Data subject rights

- Under UK data protection legislation, data subjects have right to:
  - Be informed (Articles 12 to 14 and Recitals 58 to 62).
  - Access their own personal data (Articles 12 and 15 and Recital 63).
  - Correct personal data (Article 16).
  - Erase personal data, also known as the right to be forgotten (Article 17 and Recitals 65 and 66).
  - Restrict data processing (Article 18).
  - Object to data processing (Article 21 and Recitals 69 and 70).
  - Receive a copy of their personal data or transfer their personal data to another controller (Article 20 and Recital 68).
  - Not be subject to automated decision-making (Article 22 and Recital 71).
  - Be notified of a data security breach (Article 34 and Recital 86).



# DSARs in the headlines

- Recent research\* suggests average individual DSAR costs a SME £20,000
- ICO – DSAR complaints increased 23% from April 2022 to March 2023

*\*Research carried out by Loch Associates*



What is personal data?

# Personal data

- “Information that relates to an identified or identifiable living individual”
- Could include:
  - Identity details (name/title/role)
  - Contact details
  - Information about pupil behaviour or attendance
  - Assessment or exam results
  - Staff recruitment information
  - Staff contracts
  - Staff appraisals
  - Staff and pupil references
  - Images of staff and pupils
  - National insurance numbers

# Identified or identifiable

- Joe Bloggs
- J. Bloggs
- JB
- Jimmy Bloggs
- Caretaker
- Lucy's dad

# Special category data

- Personal data which is more sensitive and subject to greater protection
- Could include data concerning:
  - Racial or ethnic origin
  - Political opinions
  - Religious or philosophical beliefs
  - Trade-union membership
  - Genetic information
  - Biometric information (fingerprint/facial ID)
  - Health matters (medical information)
  - Sexual matters or sexual orientation

# Whose data might be held?

- This could include:
  - Pupils
  - Former pupils
  - Parents and carers
  - Employees and non-employed staff
  - Governors
  - Trustees
  - Local-authority personnel
  - Volunteers
  - Visitors
  - Applicants

# Pupil information

- Request for access to education record is separate to a DSAR - does not fall under data protection legislation
- Request for education record covered under separate regulations – separate time scales and exemptions apply



Who can make a request?



# Who can make a request?

- Right of access = a key right under data protection law
- Individuals have the right to access and receive a copy of their personal data and other supplementary information
- Could come from:
  - Parent or carer - their data or their child
  - Pupils
  - Staff
  - Contractors
  - Former staff or former pupils
  - Solicitors

# Who can make a request?

- Requests from third parties:
  - Are you satisfied the third party is entitled to act on behalf of the individual?
  - Have you seen evidence of their authority?
- Can request information to verify identity

# Requests for child's information

- Legal right of access belongs to the child
- A parent or carer can exercise rights on behalf of a child
- Not a separate right to access that data in their own right
- Does the requestor have parental responsibility for the child?
- What about possible safeguarding concerns?

# Requests for child's information

- Consider:
  - Any court orders relating to parental responsibility
  - Any duty of confidence owed to the child
  - Any potential allegations
  - Any detriment to not dealing with the request
  - The views of the child.

# Children and consent

You should consider:

- is the child able to understand their rights?
  - Have they authorised the parent or guardian to exercise their rights?
  - Is it in the best interests of the child?
- 
- What is the child likely able to understand? (do they understand the context in which the request has been made for example, and what this means)
  - Can they make a decision without feeling pressured?
  - Can you speak to the child to confirm that they understand what they are agreeing to?

A stack of five books with colorful spines (yellow, red, white, blue) sits on a wooden desk. To the left of the books is a pencil holder containing several sharpened colored pencils in various colors (purple, yellow, red, blue, green). The background is a dark chalkboard covered in colorful, hand-drawn space-themed illustrations, including planets, stars, and galaxies.

# Recognising a DSAR

# How to recognise a request

- No formal requirements under UK GDPR
- DSAR can be made verbally or in writing
- Does not have to mention data protection legislation
- “I want all my information”
- “Send me my personnel file”
- Requests on social media
- May refer to a Freedom of Information request



# Responding to a DSAR



# Obligations

Data controller must:

- Respond within a month of receiving the request unless response time is extended
- Inform data subject within one month if response time needs to be extended, and explain the delay
- Inform data subject without delay (and no later than one month after receipt of request) if it is not acting in response to the request
- Respond via electronic means if possible (unless request for different format)
- Not charge (although limited exceptions).

# First steps

- Acknowledge the request
- Make a clear note of date received and when response due
- Look at what is being asked for – is it clear?
- Is it clear how the information is to be provided?
- Do you need to ask for ID or further information?



# Extending time limits

- Can extend time where:
  - request is complex or
  - a number of requests received from the individual.
- Extends time by a further two months
- Must respond within a month to notify of extension.

# Can you refuse to respond?

- Consider whether a request can or should be refused.
- Does an exemption apply?
- ‘Manifestly unfounded or manifestly excessive’.
- If you refuse to comply with a request, you must inform the individual of:
  - the reasons why;
  - their right to make a complaint to the ICO or another supervisory authority; and
  - their ability to seek to enforce this right through the courts.

# Exemptions

- Law recognises may be legitimate reasons for non-compliance
- Fact sensitive
- Requests involving other party data?
  - Does the request require disclosing information that identifies another individual?
  - Has the other individual provided consent?
  - Is it reasonable to disclose without consent? Taking into account all the relevant circumstances.

# Exemptions

- Schedule 2 , 3 and 4 Data Protection Act 2018
- In practice, exemptions are narrow
- Not usually blanket exemptions
- May only apply at one moment in time
- Embarrassment = not an exemption!



# The Search



# Finding data

- High expectation to provide information in response to a DSAR
- Schools should make reasonable efforts to find and retrieve the requested information.
- Unreasonable or disproportionate searches
- Make sure the request is clear so you know what to look for and where you should look.
- Cast your net wide and then narrow it down.

# Narrowing the scope

- Is it possible to narrow the scope of the request?
- Can ask for clarification
- “Stopping the clock”
- Requests for clarification should be made promptly and without undue delay
- Make a note of any decision making

# Finding data

- Typical steps include:
  - Email mailboxes – search tools to refer to individual – including name, nickname or initials or abbreviations
  - Narrow down by dates
  - Non-relevant personal data
  - Third party data
  - Does it relate to the individual?
  - Consider back up data, deleted data or data held on other systems

# Redacting Data

- May need to redact data (e.g. other students' personal data)
- Use the most effective means for your organisation
- Provision of extracts/summaries
- Look at legal rights, not the request itself.

# How to respond

- Time Limit - without undue delay, within one month.
- Large amounts of information – can ask for clarity.
- Acknowledge/respond to the request. A template letter is often useful.
- Include the date of the request and timeline (make sure this is reasonable and you can meet the timeline set).
- Manage expectations
- Keep a detailed log of your process.

# Providing the Information

- If an individual makes a request electronically, you should provide the information in a “commonly used electronic format”.
- Consider both the circumstances and whether the individual can use the format you are considering.
- You are able to provide a verbal response.
- Send the information securely.

# Supplementary information

- Individuals also have the right to receive supplementary information
- Includes amongst other information:
  - Purposes for processing
  - Categories of personal data being processed
  - Retention period for storing personal data, or criteria used to determine
  - Right to request rectification, erasure or restriction or to object to processing
  - Safeguards in place where personal data will be transferred to a third country or international organisation.
- Information will commonly be set out in your privacy policy

# Preparation

- Awareness
- Training
- Guidance
- Checklists
- Logs
- Retention and deletion policies
- Security measures.





# Breaches

# Breaches

- Compliance with UK GDPR is a legal obligation
- Complaints to the ICO
- Could result in:
  - Warning
  - Reprimand
  - Enforcement notice, or
  - Penalty notice.
- Compensation?



# Monitoring Workers

# ICO guidance

- New guidance published by ICO
- 3 October 2023
- [Employment practices and data protection – Monitoring workers | ICO](#)



Questions?