

This guidance deals with the issues that arise when an individual makes a subject access request, for their own personal data, some of which may be in a complaint file.

This guidance will help your organisation:

- to decide whether the complaint file is “data”,
- if so, whether it contains “personal data”,
- whose personal data it is, and
- to work out who gets access to which data if one of the parties whose personal data is contained in a complaint file makes a subject access request.

Is the complaint file “data”?

When you receive a subject access request, you must first decide if the file is “data”.

Is the file -

- processed electronically?
- held in manual format in a relevant filing system?
- an “accessible record” ?

If the answer to all these questions is “no”, then the file is not “data”. The information within the file cannot be “personal data” and the right of access does not apply.

The complaint file is “data” – what next?

A complaint file will typically start off at the more ‘personal’ end of the spectrum – an exchange of personal views about an issue or something that has happened. As an investigation progresses, more general information may be included in the file, for example, an organisation’s policies and procedures or geographical information about the place where an accident took place.

Complaint files can therefore be complex, often consisting of a mixture of information that is the complainant’s personal data, is third party personal data and information that isn’t personal data at all. You may need to consider the content of each document within the complaint file separately to assess the status of the information they contain.

However, a more high-level approach might be possible, using a file’s index and by using your experience to make an informed decision as to the sort of information a file, section of a file or document or is likely to contain. In some cases, this could make it possible to make an informed decision about disclosure without looking at every line of every document.

If organisations have good information management procedures in place, this will make it easier for them to deal with subject access requests. For example, reliable indexes, contents pages, descriptions of documents and metadata can make it easier for those dealing with requests to locate personal data, decide whose personal data it is and to make a decision about its disclosure.

Does the right of access apply to everything in the complaint file?

The short answer is ‘no’.

The right of access is only to the “personal data” of the individual making the request, or the person on whose behalf the request has been made. You therefore need to determine what information within the complaint file is the “personal data” of the person who has made the subject access request.

For information to be “personal data” the information must *relate to* an individual and allow an individual to be *identified* from it – not all the information in a file will do this. The context in which information is held, and the way it is used, can have a bearing on whether it *relates* to an individual and therefore on whether it can be the individual’s personal data.

Even if information is used to inform a decision about someone, this does not necessarily mean that the information is personal data. For example, a company’s corporate policy might be used to inform a decision about whether to continue an individual’s employment, but this does not mean the policy is, or becomes, the employee’s personal data.

What if there is information about other people?

Sometimes the file may include information which is the personal data of, or identifies, a third party (i.e. NOT the person who made the request). This may be a name, email address, details of the timings of a meeting etc.

The Data Protection Act requires that information that identifies the third party, for example the name of the person who has made the complaint, or which is the third party’s own personal data should be not be disclosed, unless it is reasonable in all the circumstances to do so.

However, the obligation remains to supply “so much of the information sought by the request as can be communicated without disclosing the identity of the other individual concerned, whether by the omission of names or other identifying particulars or otherwise”.

Other information in the complaint file

The complaint file may include other types of information, such as copies of an organisation’s policies, disciplinary codes etc. This type of information is not, and will never be, personal data.

What should be supplied?

All information which has been identified as the “personal data” of the individual making the request must be supplied, unless one of the exemptions from doing so is applied.

However, it is good practice for data controllers to be as helpful as possible to individuals who make subject access requests.

In addition to being helpful, it can often be easier, rather than to look at every document in a file to decide whether or not it is his personal data, to give an individual a mixture of all the personal data and ordinary information relevant to his request.

This is a feasible way to progress a case where none of the information is particularly sensitive or contentious. For example, a file relating to a customer’s complaint about a routine consumer protection issue might fall into this category.

However, organisations should be clear about the approach they are taking to dealing with subject access requests. In particular, they should be clear that they are recommending that the information be provided to the applicant on a discretionary basis and that their organisation is under no legal obligation to provide it. Providing the information on a discretionary basis does not mean that it becomes the individual’s personal data.

Of course individuals have no right of appeal to the Information Commissioner in respect of information that is not their personal data and to which they have no legal right of access under the Data Protection Act.

Further guidance on complying with subject access requests is available on the website.