

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

A complaint file will typically start 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, a controller’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 information” 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.

Where a complaint is not particularly sensitive or contentious, it can often be easier for controllers to give the data subject a mixture of all the personal data relevant to the request and ‘other information’, rather than review every document to decide whether it contains “personal data”.

However, controllers should be clear and consistent in the approach taken to respond to requests and, as far as practicable, have a policy and procedures in place.

Good information management, for example, reliable indexes, contents pages, descriptions of documents and metadata, will make it easier to deal with requests.

### **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 (the data subject). The data subject may be the person the complaint is about or the complainant.

### **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. This will often be information about the other party to the complaint.

Often, the parties to a complaint know, or know of, each other. However, there is an exemption from the right of access for “third party information”, if necessary.

If that exemption is applied, the controller must record what personal data the exemption has been applied to and the justification for applying the exemption. Please see the guidance about “third party information” on the website.

### **What should be provided to the data subject?**

The data subject must be provided with a copy of all “personal data” undergoing processing at the time the request was received, unless it is necessary to apply one of the exemptions to some of that personal data (only as specified in Schedule 9 to the GDPR and LED Implementing Regulations 2018).

If an exemption is applied, the controller must record which exemption is being applied to what personal data and the justification for applying the exemption.

### **‘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.

The controller can provide such information to any person, including the data subject, at any time, although there is no requirement to do so when responding to a request and it will not form part of the personal data provided in response to a request.

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

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