

An individual can exercise their right of access to personal data at any time and ongoing complaints/ staff disciplinary matters do not have any effect on the ability to exercise that right.

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 / disciplinary (“complaint”) file.

Controllers should have a policy and procedures in place to handle requests and take a clear and consistent approach.

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

The short answer is ‘no’.

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.

Complaint files can be complex, often consisting of a mixture of information that is “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, good information management, for example, reliable indexes, contents pages, descriptions of documents and metadata, will make it easier to deal with requests.

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.

In most cases, the majority of the personal data in a complaint file will relate to the person complained about; there will usually be very little personal data about the complainant.

Complaint files will often contain opinions; the data subject is generally entitled to those opinions, but not to details of who may have expressed such opinions. This may, of course, already be known.

Information about other people

The right of access is not an entitlement to information about other people.

However, there may be circumstances where information about the data subject and other people is mixed up and cannot be easily separated. This does not mean that the data subject cannot be supplied with their personal data. Other guidance is available about handling subject access requests and third party information.

What should be provided to the data subject?

The data subject must be provided with a copy of all their “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.

There is no law that overrides the right of access and the only exemptions that can be applied are those 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 specific personal data, together with the justification for applying the exemption.

Data subjects must also be provided with further information about the processing of their personal data. See the full guidance on complying with subject access requests.

'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.

A suite of guidance on complying with subject access requests is available on the website <https://inforights.im/document-library/subject-access-request-guidance/>

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