

# Whitby Heath Primary School

**Excellence in a Caring Community**

**All**

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<b>Rights of Access Policy</b>
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<b>Policy Written</b>	<b>September 2020 Reviewed: October 2022</b>
<b>Reviewed &amp; Agreed by Governors</b>	<b>November 2022</b>
<b>Next Review</b>	<b>October 2024</b>

## Dealing with Subject Access Requests

### General Summary

Under GDPR individuals have the right to obtain:

- confirmation that their data is being processed;
- access to their personal data; and
- other supplementary information, such as why you are processing their data, who you have shared the data with and where you gathered the data from.

We will provide a copy of information free of charge, although a 'reasonable fee' may be charged if a request is deemed unfounded, excessive or particularly repetitive. This fee can only be based on the administrative cost of providing the information.

We have 1 month from the receipt of the request to comply (when a request is received on the 3<sup>rd</sup> of a month, we have until the 3<sup>rd</sup> of the following month to comply. This may be extended by up to 2 months if the request is complex but the individual must be advised of this extension within 1 month of their request).

The ICO have reiterated that a school's holiday period is not an appropriate reason for an automatic exemption of timescales and that SARs must be serviced even when submitted during a holiday period. It is the school's responsibility to ensure they have appropriate processes in place to allow for requests to be serviced during this period.

Where a request is manifestly unfounded or excessive, then we can charge a reasonable fee but we could also refuse to respond. If we choose not to comply with the request, we must explain to the individual why we have decided not to comply and inform them that they can challenge this by contacting the ICO.

We must verify the identity of the person making the request, using 'reasonable means'.

If the request is made electronically, we should provide the information in a commonly used electronic format.

If the request is for a large amount of information, we can ask the individual to specify the information they are after in order to narrow our search.

Requests do not have to be made in writing.

## **SARS and Educational Records Requests**

A member of staff, an individual whose information may be held by the school (such as a former pupil), a parent or pupil, or someone acting on their behalf, may make a SAR in respect of personal data held about them by a school.

What Is Personal Data?

- Personal data is any data that can be used either on its own, or in conjunction with other data, to identify a living individual.
- This means personal can be (but isn't limited to) - names, addresses, dates of birth, car registration details, photos, video clips.
- Personal data can also be people's opinions. For example - *"Phil thinks that this case has been a waste of time."* Would be Phil's personal data.

What is Sensitive Personal Data?

- Sensitive personal data is information about a person that falls into the following categories: - Race, Religion, Trade Union Membership, any information about Physical or Mental Health conditions, Sexuality (Sexual Orientation), political opinions, Criminal Record and information associated with that (alleged offences etc.).

When information is requested about a pupil there are two distinct rights to information to consider.

They are:

- the pupil's right of subject access (including the parent's right to act on the pupils' behalf);
- and the parent's right of access to their child's 'educational record' (this right of access is only relevant to maintained schools - not independent schools, English academies or free schools.)

There is a clear overlap as to what may be requested as a result of a Subject Access Request under GDPR and what may be requested under the Education (Pupil Information) (England) Regulations 2005 as the timescale for dealing with the latter is noticeably shorter (15 days) and a fee may be charged (detailed below).

A request for an Educational Record includes most information about current and past pupils that is processed by or on behalf of a school. However, information kept by a teacher solely for their own use does not form part of the educational record, this information may however form part of a SAR.

It is likely that most of the personal information a school holds about a particular pupil will form part of the pupil's educational record. However, it is possible that some of the information could fall outside the educational record;

eg, information about the pupil provided by the parent of another child is not part of the educational record.

The *Pupil Information Regulations* give specific rights to **parents** to access their child's educational record. By comparison, parents accessing their child's personal data under the *GDPR* are exercising the **child's** right of subject access on the child's behalf. Therefore, the pupil cannot prevent a parent from accessing their educational record under the *Pupil Information Regulations*, but they could object to their parent exercising this right under the *GDPR*, assuming the child in question is sufficiently mature to make such a decision. A parent or guardian does not have an automatic right to all information held about their child. The right belongs to the child and the parent(s) acts on their behalf, where they have parental responsibility for the child. In England, the age at which a child reaches sufficient maturity to exercise their own right to access their information is normally 12, but this may vary amongst individuals. Once a child reaches sufficient maturity, the parent may only act with their child's consent.

Where a child is over 12 and a request is made on their behalf, we may contact them separately to seek their signed consent for someone to access their records on their behalf (this would include their parent). When deciding whether information about a child can be released, consideration is also given to the best interests of the child.

If it is not clear whether a requester has parental responsibility for the child or is acting on their behalf, we will clarify this before responding to the SAR. In deciding what information to supply in response to a SAR, we need to have regard to the general principles about exemptions from subject access.

Examples of information which (depending on the circumstances) it might be appropriate to withhold include:

- information that might cause serious harm to the physical or mental health of the pupil or another individual;
- information that would reveal that the child is at risk of abuse, where disclosure of that information would not be in the child's best interests;
- information contained in adoption and parental order records; and
- certain information given to a court in proceedings concerning the child.

	<b>Subject Access Request</b>	<b>Educational Record Request</b>
<b>Who can request?</b>	<ul style="list-style-type: none"> <li>• Parent (with pupil permission) - child's information</li> <li>• Parent - own information</li> <li>• Pupil - own information</li> <li>• Staff - own information</li> <li>• Other - own information</li> </ul>	Parent or individual with parental/ guardianship responsibility
<b>What is included?</b>	All personal data about the individual held by the school held in a 'relevant filing system' - this includes paper and electronic format including email and CCTV.	Child's Educational Record
<b>Time to respond</b>	1 month	15 days
<b>Cost</b>	0	from £1 for 1-19 pages up to £50 for 500 + pages
<b>Where does it apply</b>	All schools	Maintained schools only

## **Requests**

1. Under the General Data Protection Regulation you have the right to request access to information we hold about you.
2. Under this right you can request:
  - Confirmation that we hold personal information about you and why we do so
  - A copy of any information we may hold about you.
3. An individual is entitled to make a request for the information we hold about them. In certain circumstances they may be able to make a request for information we hold on someone else.
4. If you have parental responsibility for a child at this school, you may wish to make a request to identify what personal data we hold on that child, as well to request a copy of that information

5. The applicant must effectively communicate their request to the school. While there is no requirement for this request to be made in writing, the school will make available a SAR Request form to help facilitate this process -

Appendix 1.

Please note: you are not obliged to complete this form to make a request, but doing so will make it easier for us to process your request quickly. Should an individual not want to complete the form then details should be recorded manually.

Whether a form is used or not, a tracking form, (Appendix 2) is provided for recording the current position of all requests.

**Note:** It is important to confirm whether the request being made is a Right of Access/Subject Access Request or whether it is a request for an Educational Record as made under the Education (Pupil Information) (England) Regulations 2005.

## **Proof of Identity**

If we have any cause to doubt your identity we will ask you to provide any evidence we reasonably need to confirm your identity. This may be done by requesting a recognised form of identification. Items requested may be:

- 1) Proof of Identity Passport, photo driving licence, national identity card, birth certificate.
- 2) Proof of Address Utility bill, bank statement, credit card statement (no more than 3 months old); current driving licence; current TV licence; local authority tax bill, HMRC tax document (no more than 1 year old).

It is important not to make the proof of identity process into a barrier to the request, if it is difficult for some individual's to provide certain information, what else can be done for you to identify the individual.

Where requesting details of information held about a pupil, we will confirm your right to this information. In order to do this we may request a copy of the child's birth certificate or other official documentation confirming parental/guardianship rights.

Where requesting information on behalf of another individual, we will request a copy of the written authority of the individual involved confirming both their and your identity and clearly stating you are acting on their behalf and with their full knowledge.

It is up to the school to determine what level of identification we are happy with but we must ensure we are taking appropriate steps to satisfy ourselves as to the identity of the requestor.

The 30 day time limit will not start until we have adequately confirmed the identity of the individual.

### **How we process Subject Access Requests**

- The school will clarify the nature of the request and determine whether the request relates to information belonging to a child or whether the request has been made in relation to information belonging to the requestor.
- In the event that a large quantity of information is being processed about an individual, the school may ask the individual to specify the information the request is in relation to.
- If we identify information that relates to third parties we will take all reasonable steps to establish whether this information can be disclosed. In some cases, we may contact the 3<sup>rd</sup> party to seek consent for the release of this information.
- We are not required to disclose information relating to third parties, unless they have provided their consent or it is reasonable to do so without their consent. If the third party objects to the information being disclosed we may seek legal advice on what action we should take.
- Before sharing any information that relates to third parties, we will where possible anonymise information that identifies individuals not already known to the applicant. We will also edit information that may affect another party's privacy, and if necessary summarise the information provided (rather than provide a full copy of the document).
- Once we have confirmed identification, resolved any queries around the applicant's request, and gathered the relevant information, we will issue

our response electronically via a secure email service, or if requested, via hard copy. Hard copy responses will be sent by Royal Mail recorded delivery in an envelope or package marked 'Private and Confidential' and 'Addressee Only'.

- Where requests relate to information in the form of video images captured by our CCTV security cameras, we may ask whether the requester would be satisfied with viewing these images at our premises.

### **Timescales**

As noted, the timeframe for responding to a SAR is one month (accepted to be 1 month) with a 2 month extension allowable for complex requests. This is not 30 working days. If a request is received and we have adequately confirmed the individual's identity, where required, on the 15<sup>th</sup> of June, for example, we should have completed the request by the 15<sup>th</sup> July.

The clock starts ticking the day after a request is made (or the day after additional information or identification where required, has been obtained) regardless of whether this is a working day or not. There is no exemption for schools to extend the process simply because it would fall into a holiday period. Whilst we will action SARs normally during the year, this may prove more difficult during holiday periods. We should take appropriate measures to ensure SARs are serviced during holiday periods.

### **Redacting Information**

The Right of Access only extends to an individual's own data, which means that we must redact (remove) the personal information of other people who have not consented to their information being released. These individuals are referred to as "third parties".

It is the school's responsibility to ensure that when we release data we have correctly redacted it and ensured that the redaction cannot be removed.

#### **Identifying Personal Data**

- When removing personal data from a document, it is important to remove not only names and addresses but also associated information about the third party.

For example: - The applicant, Jane has made a request for her own information. The document we are looking at also contains information about her brother John. Jane should only see information about herself.

If the sentence reads

*Jane's brother John has been arrested for shoplifting.*

It would not be enough to remove the brother's name (as below).



*Jane's brother [REDACTED] has been arrested for shoplifting.* - This redaction would not be sufficient to protect John's privacy and information as leaving in "Jane's brother" would still reveal his identity.

The whole sentence is John's personal data. Although Jane is mentioned, it is only in the context of talking about John. In cases like this - the whole sentence should be removed.

#### Key Points

- Is the data personal? If the data is discussing setting up meetings or procedures, this is unlikely to be personal data and does not need to be disclosed.
- Who is the "focus" of the data? Who is the data about? If the requestor is the focus of the data and the data is about them, then it can be considered for release.
- Always consider the context of the information, third parties might not be named directly but watch for references to them within the text, where they are referred to as siblings, friends or relatives - terms that can still identify them without naming them.
- Think about whether the applicant will already know the information that they are requesting. For example, if someone was taken into care at 15 with their siblings and request their information when they are 17, it is likely they will know that their siblings were taken into care as well so there is no need to remove mentions of their siblings in relation to being taken into care.
- Always take note of who has provided the information. The names of sources or witnesses are always to be protected under our duty of confidence responsibilities.
- If the information has been provided by another organisation, you still own that information and has to consider whether it is appropriate to be released. It may be good practise to get advice from the organisation that provided it about how to redact it but they cannot tell you what decision to make. That decision must be your own.

#### Deciding Whose Data Is Whose

##### **Right to Information**

- Parents accessing their child's personal data under the *GDPR* are exercising the **child's** right of subject access on the child's behalf.

- A parent or guardian does not have an automatic right to information held about their child. The right belongs to the child and the parent(s) acts on their behalf, where they have parental responsibility for the child.
- In England the age at which a child reaches sufficient maturity to exercise their own right to access their information is normally 12, but this may vary amongst individuals. Once a child reaches sufficient maturity, the parent may only act with their child's consent.
- The school will not service a Subject Access Request for information held on a child if the child, having been deemed capable of understanding the nature of the request and the consequences of their actions, refuses to consent to this information being disclosed.
- When redacting information for a SAR, it can often be difficult to decide which data the applicant is entitled to see and which information they are not.
- In certain situations, it will be extremely difficult, if not impossible to separate the personal data of two different people. In these situations, a decision must be made as to whose rights take precedence.

Example: -

If a document contains the following sentence. Stephen is the applicant and James is a third party.

*"James told me that he thinks Stephen is an idiot."*

There are numerous different types of personal data involved.

- Stephen is mentioned as the focus of the sentence so this is his personal data.
- The sentence is James' opinion about Stephen and is therefore James' personal data.

A decision has to be made, what is greater - Stephen's right to know what data is held about him or James' right to privacy? We will always consider the consequences of releasing the information we are reviewing, weigh up the decision and try to see both sides of the argument. We will be fair, but cautious as well.

Each case will be different, we will judge each case on its merits and always record your decision.

## **Exemptions**

The DPA sets out a number of exemptions which allow information to be withheld from data subjects in circumstances in which it would otherwise need to be disclosed. There are a range of exemptions that relate to such issues as: legal professional privilege, confidential references, child abuse data etc. but you must ensure they are applied appropriately.

Where we identify information we believe should not or may not be disclosed to the individual, we will refer the details to the DPO to allow them to assess whether an exemption may apply.

The application of any exemption must be clearly recorded for future reference.

## **Grounds for not complying with Subject Access Requests**

Where a request is manifestly unfounded or excessive, the school holds the right to refuse to respond to the request. The individual will be informed of this decision and the reasoning behind it, as well as their right to complain to the supervisory authority and to a judicial remedy, within one month of the refusal.

If you have made a previous subject access we must respond only if a reasonable interval has elapsed since this previous request was made. We will define a reasonable interval by reviewing the elapsed time, nature of information, and changes that have occurred since the last request was made.

## **Right of Appeal**

If an individual believes we have not provided all of the required information or if we do not comply with the necessary timescales they can appeal to the Information Commissioner's Office so it is important to ensure we provide all of the relevant information.

If you identify an error in the information we hold please notify us as soon as possible. If we agree that the information is inaccurate we will take all reasonable steps to correct the information or if relevant and practically possible, remove the inaccurate information by deletion or destruction.

If we believe the information is accurate, or we are unable to make a decision as to the accuracy of the information, we will keep a note of the alleged error on the file.

## **Dealing with a Subject Access Request**

We will follow the same process for each request that we get in order to ensure staff are comfortable with the process.

## **What to do if you want us to stop processing your data**

You have the right to ask us to delete or completely stop processing some or all of your data, or stop processing this data in relation to a particular purpose or

in a particular way. The right to prevent processing applies in certain limited circumstances.

We will respond to an objection within 30 days of receipt, and in writing, advising that we have either complied with your request, intend to comply with it, or state the extent to which we will comply with it and why.

Where we will not or cannot comply with a request to delete or stop processing data we will clearly communicate those reasons to you.

## Appendix 1

### **School Subject Access Request Form**

Please complete this form if you want us to supply you with a copy of any personal data we hold about you or your child

You are currently entitled to receive this information under the General Data Protection Regulation (GDPR).

We will endeavour to respond promptly and in within one month of the latest of the following:

- Our receipt of your request; or
- Our receipt of any further information we may ask you to provide to enable us to comply with your request.

**Please Note:** The information you supply in this form will only be used for the purposes of identifying the personal data you are requesting and responding to your request. You are not obliged to complete this form to make a request, but doing so will make it easier for us to process your request quickly.

#### **1. Details of the person requesting the information:**

Full Name:	
Address:	
Contact Telephone:	
Email Address:	

#### **2. Are you the subject of the information you are requesting?**

Please tick the appropriate box and read the instructions which follow it.

[ ] **YES:** I am the data subject.

[ ] **NO:** I am acting on behalf of the data subject in a parental capacity.

[ ] **NO:** I am acting on behalf of the data subject and have enclosed written authority and proof of the data subject's identity and my own identity (see below).

#### **Proof of Identity**

To ensure we are releasing data to the right person we require you to provide us with proof of your identity and of your address. Please supply us with a photocopy or scanned image (do not send the originals) of one of both of the following:

1) Proof of Identity Passport, photo driving licence, national identity card, birth certificate.

2) Proof of Address Utility bill, bank statement, credit card statement (no more than 3 months old); current driving licence; current TV licence; local authority tax bill, HMRC tax document (no more than 1 year old).

Where requesting details of information held about a pupil, we need to confirm your right to this information. In order to do this we need a copy of the child's birth certificate or other official documentation confirming your parental/guardianship rights.

Where requesting information on behalf of another individual, we need a copy of the written authority of the individual involved confirming both their and your identity and clearly stating you are acting on their behalf and with their full knowledge.

If we are not satisfied you are who you claim to be, we reserve the right to refuse to grant your request.

**Note:** where requests are made in person and we can identify an individual due to a current or prior relationship with the school, for example if you are a parent known to us, we may wave the right of identification at our discretion.

### 3. Details of the Data Subject (if different to 1 above)

Full Name:	
Address:	

Please tick the box which applies to (this information may help to speed up your request):

	Student <input type="checkbox"/>	Former Student <input type="checkbox"/>	Parent/ Guardian of student/ former student <input type="checkbox"/>	Current Staff <input type="checkbox"/>	Former Staff <input type="checkbox"/>
Age:					

Year group/class:					
Insert Year of leaving:					
Insert Years From/To:					

**Please Note:** A parent or guardian does not have an automatic right to information held about their child. The right belongs to the child and the parent(s) acts on their behalf, where they have parental responsibility for the child. In England the age at which a child reaches sufficient maturity to exercise their own right to access their information is normally 13, but this may vary amongst individuals. Once a child reaches sufficient maturity, the parent may only act with their child's consent.

Where a child is over 13 and a request is made on their behalf, we may contact them separately to seek their signed consent for someone to access their records on their behalf. When deciding whether information about a child can be released, consideration is also given to the best interests of the child. Please refer to the school's Information Rights Policy for further information.

#### 4. What information are you seeking?

Please describe the information you are seeking. Please provide any relevant details you think will help us to identify the information you require.

**Please note:** that if the information you request reveals details directly or indirectly about another person we will have to seek the consent of that person before we can let you see that information. In certain circumstances, where disclosure would adversely affect the rights and freedoms of others, we may not be able to disclose the information to you, in which case you will be informed promptly and given full reasons for that decision.

While in most cases we will be happy to provide you with copies of the information you request, we nevertheless reserve the right, not to provide you with copies of information requested if to do so would take "disproportionate effort", or may charge a fee or refuse the request if it is considered to be "manifestly unfounded or excessive".

However we will make every effort to provide you with a satisfactory form of access or summary of information if suitable.

## **5. Information about the collection and processing of data**

If you want information about any of the following, please tick the boxes:

- ☐ Why we are processing your personal data
- ☐ To whom your personal data are disclosed
- ☐ The source of your personal data

## **6: Disclosure of CCTV images**

If the information you seek is in the form of video images captured by our CCTV security cameras, would you be satisfied with viewing these images at our premises?

- ☐ YES
- ☐ NO

## **7. Declaration**

Please note that any attempt to mislead may result in prosecution.



I confirm that I have read and understood the terms of this subject access form and certify that the information given in this application to Whitby Heath Primary School is true. I understand that it is necessary for Whitby Heath Primary School to confirm my / the data subject's identity and it may be necessary to obtain more detailed information in order to locate the correct personal data.

I further understand that, in line with the School's Subject Access Request Policy, if I am requesting information in relation to my child the school reserves the right to request the consent of my child in relation to the releasing of information. If consent is not forthcoming, the school are unable to comply with my request.

Signed..... Date .....

Documents which must accompany this application:

- Evidence of your identity (see section 2)
- Evidence of the data subject's identity (if different from above)
- Authorisation from the data subject to act on their behalf (if applicable)

Please return the completed form to: Emma Williams, Head Teacher  
[head@whitbyheath.cheshire.sch.uk](mailto:head@whitbyheath.cheshire.sch.uk)

**Additional Rights:** If after you have received the information you have requested you believe that:

- the information is inaccurate or out of date; or
- we should no longer be holding that information; or
- we are using your information for a purpose of which you were unaware;
- we may have passed inaccurate information about you to someone else;

then you should notify our Data Protection Officer at once.



## Appendix 2

### Subject Access Request Record

**Refer to the school's Right of Access Policy for further information as to the correct procedure in confirming data subject and in relation to the issue of parental rights and student consent (where applicable)**

Name of data subject:.....

Name of person who made request: .....

(when request is made for child data)

Date request received: .....

Date acknowledgement Sent: .....

Date identity was confirmed: .....

Required completion date (within 1 month): .....

Prompts	Notes: (write over with own comments)
Identified as a SAR?	Has this request been identified as a SAR or an Educational Record Request?
Is the individual entitled to the data?	If no reply and state the reasons for refusal (for example, not SAR)
Do you understand what data they are asking for?	What are the data sources, where are they kept? Do you require the individual to clarify the request?
Do you have access to the data?	You may need to ask others, class teachers etc, for data relating to individual. Set a deadline for them to respond.
Can you release all of the data?	If exempting information be clear as to the reason why and log the reason.
Are redactions required?	Do you need to redact any third party data?
Are there any foreseen delays in responding to the request?	Record delays and reasons. Communicate with requestor stating why there may be a delay. Give an approximate timescale as to when the request will be fully completed but

	ask if they would like the information collected so far.
Create pack	Ensure the data is in an easily accessible format. Ensure all appropriate redactions have been carried out.
DP Lead/Officer Sign off	DPO to verify appropriate redactions have been made and to sign off information for release
Issue information	Date pack was issued.

**Note: Requests on behalf of children - A parent or guardian does not have an automatic right to information held about their child. The right belongs to the child and the parent(s) acts on their behalf, where they have parental responsibility for the child. In England the age at which a child reaches sufficient maturity to exercise their own right to access their information is normally 13, but this may vary amongst individuals. Once a child reaches sufficient maturity, the parent may only act with their child's consent.**

**Where a child is over 13 and a request is made on their behalf, we may write to them separately to seek their signed consent for someone to access their records on their behalf. When deciding whether information about a child can be released, consideration is also given to the best interests of the child.**

**Refer to the school's Data Protection Policy for further information.**

Date request was completed and issued : .....

I confirm all appropriate documentation has been identified and supplied:

Signed by (issuer): .....

Date: .....

I can confirm appropriate third party information has been removed and necessary redactions have been carried out correctly.

Signed by (Data Protection Lead/Officer): .....

Date: .....