



WARRINGTON

Borough Council

INFORMATION GOVERNANCE

**SUBJECT ACCESS REQUEST PROCEDURE
(DATA PROTECTION)**

Document Control Information

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0.9	08/06/17	Change from Policy to Procedure, changes throughout to reflect changes in the process within the Council
1.0	03/07/17	Minor changes made after consultation with IG Group members
2.0	16/7/2018	Reviewed to ensure compliance with the Data Protection Act 2018

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CONTENTS

	Page Number
1. INTRODUCTION	4
2. PURPOSE	4
3. SCOPE	4
4. LEGAL CONTEXT	4
5. RIGHTS OF ACCESS	5
6. SARs REPRESENTATIVES AND THEIR RESPONSIBILITIES	6
7. REQUEST MADE BY AN AGENT	6
8. REQUESTS FROM OTHER ORGANISATIONS	7
9. INFORMATION PROVIDED BY OTHER ORGANISATIONS	7
10. REQUESTS FROM THE COURTS	7
11. REQUESTS FROM THE POLICE	7
12. REDACTION	7
13. FURTHER INFORMATION AND CONTACT DETAILS	7
APPENDIX A: SUBJECT ACCESS APPLICATION FORM	8
APPENDIX B: SUBJECT ACCESS REQUEST PROCESS FLOW CHART	11

1. INTRODUCTION

- 1.1. Under the Data Protection Act 2018, an individual has the right to access personal information held about them by any organisation. This is known as the data subjects' right of access.
- 1.2. Warrington Borough Council (WBC) will ensure that individuals have access to their personal information, and are provided with a copy (where appropriate), within a month of receiving their request. The Council's Information Governance Team recommend that requests are dealt within 28 calendar days.

To process their request they need to send acceptable photo identification (e.g. copy of a Photo Driving Licence or Passport), proof of address (e.g. Bank Statement, Council Tax Bill, or Utility Bill), any other supporting information required in relation to their request. The Council are not able to charge a fee, in most cases. Under data protection legislation, there are certain circumstances in which a fee can be charged, such if a request is deemed excessive or for a duplicate request(s). If a fee will be charged, we will inform requester during the processing of their request.

2. PURPOSE

- 2.1 To provide people receiving a service and/or their representatives with access to their personal records, in accordance with the Data Protection Act.
- 2.2 To ensure council staff have a consistent approach when dealing with requests for personal information.

3. SCOPE

- 3.1 This procedure outlines how Warrington Borough Council and its staff will provide access to personal records, compliant with the Data Protection Act 2018.
- 3.2 The procedure applies to living individuals and/or their representatives, wishing to access to personal records. Access to records of individuals who are deceased will be dealt initially under the Freedom of Information Act 2000. Depending on the information or record being requested, if the record contains personal information this should be dealt with in the same way as those of individuals who are living.
- 3.3 The procedure applies to all information, regardless of when it was created.
- 3.4 Any requests for access to adoption records will be directed to the Families and Wellbeing (Children's) SAR Representatives to process accordingly.

4. LEGAL CONTEXT

- 4.1 The following legislation applies to this protocol:-

- The Data Protection Act 2018
- The Freedom of Information Act 2000
- The Caldicott Principles (for access to children & adult social care records)
- Human Rights Act 2004
- Mental Capacity Act 2005

4.2 Related Council documents:-

- Subject Access Application Form (Appendix A)
- Overview of Subject Access Request (SAR) Process flow chart (Appendix B)
- Freedom of Information guidance
- Any documents/guidance within individual Directorates

5. RIGHTS OF ACCESS

5.1 Under the terms of the Data Protection Act, every living individual has the right of access to personal information held about them unless an exemption applies. This applies to open and closed files.

5.2 All applications do not have to be in writing, so these can be received in different ways, such as verbally. These must be considered as a valid request, whatever the way the request is made to the Council.

The council can request completion of a SAR form (see Appendix A). Standard forms can make it easier for the council to recognise a subject access request and make it easier for the individual to include all the details that might be required to locate the information they are requesting.

The rights of access requests can be made through Contact Warrington, who will be able to provide a SAR form (see Appendix A) for completion. An individual can also make a request directly with a service or team to access their records with these being coordinated by the appropriate Directorate SAR Representative.

Any member of staff could receive a request for access to records under the Data Protection Act 2018. Employees should advise individuals how they can access their information. Additional advice can be obtained from the appropriate Directorate Representative, or the Council's Information Governance Team.

5.3 The Council are no longer able to charge a fee for these types of requests, in most cases.

Under data protection legislation, there are certain circumstances in which a fee can be charged. For example, if a request is deemed excessive or for a duplicate request(s). This should be assessed by the individual service or team once a search for the relevant information or records has been completed, and if we hold what is required. The relevant service or team can get further advice on this from the Information Governance Team.

If a fee will be charged, we will inform the requester during the processing of their request. No information or records should be released until this fee has been received.

5.4 The data subject must provide a copy of photo identification and proof of current address which will need to be provided with their SAR application.

5.5 Any requests for information or records made by current Council employees may not be required to provide the documentation mentioned in section 5.4.

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- 5.6 If a request for a Council member of staff's Employee records is received, then this should be forwarded to HR who will process the request. If the request is for access to Occupational Health (OH) Records, the applicant should be advised to contact our current OH provider directly who will process this as appropriate.
- 5.7 A representative (e.g. a parent, carer, solicitor or advocate) can apply for access to records on behalf of the data subject. The representative must provide consent from the data subject (if applicable). They may also need to provide a copy of photo identification, proof of current address and further evidence of their right to access the records.
- 5.8 The month (recommended 28 calendar days) timescale will begin the day after receipt of a request. Applicants need to provide identification or documentation as part of the request, if this is not received with the original request then this needs to be requested and approved. Where a disproportionate effort would be needed to provide a copy of the records required, the requestor may be asked to provide further details to identify the specific information being requested. In both of these circumstances the month (28 calendar days) timescale will be suspended until this has been provided by them.

Under data protection legislation, there are certain circumstances where this legislative timescale can be extended up to two months. This is only if a request is complex or we have received a number of requests from the individual. We must let the individual know within one month of receiving their request and explain why the extension is necessary. Please contact the Information Governance team for further advice in relation to this.

In the limited situation where a fee can be charged for processing a request for right of access, a suspension will only be lifted once the payment has been provided by the applicant.

- 5.9 Where a disproportionate effort would be needed to provide a copy of the records required, the requestor may be asked to provide further details to identify the specific information being requested. On occasion, it may be necessary to allow access to a record (if possible) without providing a permanent copy of the record. This may not be possible where third party information is present.
- 5.10 Where the record contains information about another individual, consent to release the information may be required from that individual (known as the third party).
- 5.11 Where a record contains information supplied by another organisation, this may **not** be our decision to release this. The decision needs to be made by a Service Manager. If the decision is not to release, then the requestor should be directed to apply to the other organisation to gain access to the required information.
- 5.12 On receipt of the information, the data subject has the right to have inaccurate factual information corrected, or to have comments or views added to the record. If the Council refuses, the individual may apply to the council to appeal this decision in the first instance. If they are still unhappy with the decision they may appeal to the Information Commissioner's Office (www.ico.gov.uk).

6. SARs REPRESENTATIVES AND THEIR RESPONSIBILITIES

- 6.1 Applications to access information will be completed within the month (recommended 28 calendar days) timescale. Representatives will be responsible for providing reminders in respect of approaching deadlines and will ensure any issues are reported to Senior Managers as appropriate. Each representative will be available to provide advice and guidance throughout the process.
- 6.2 Where there are large volumes of records, the SARs representative will liaise with the requestor to discuss timescales and provide regular updates.
- 6.3 The SARs representative will be responsible for identifying the appropriate Service/Team Manager who will coordinate the task of locating all of the appropriate records to obtain these for processing. Information will be provided in a permanent format, either electronically or paper, unless otherwise agreed.
- 6.4 The SARs representative will maintain a detailed log of all requests for information. This will include details of date received, details of any action taken, discussions which have taken place, and decisions which have been made regarding the processing of the request along with information in respect of compliance to the processing timescales.
- 6.5 Documentation relating to applications will be retained in compliance with the relevant Directorate retention schedules. This will include the Directorate SAR logs, all correspondence and an archive copy of the information provided to the applicant.
- 6.6 Details of the Directorate SAR representatives can be found on the IG pages on WINNIE.

7. REQUESTS MADE BY AN AGENT

- 7.1 Where a person with the capacity to make his/her own decisions has appointed an agent, such as a solicitor, the agent can make the request to access personal records. The request must be treated as if it had been made by the data subject.
- 7.2 The following information must accompany the request:
- A letter on company headed paper, which states the agent is acting on behalf of the data subject
 - Written consent for the agent to access information on the data subjects behalf. This must be signed by the data subject with the date of signature being within the last 3 months.
- 7.3 The best interest of the data subject must be considered (see section 11).

8. REQUESTS FROM OTHER ORGANISATIONS

- 8.1 SARs representatives must refer all such requests to disclose or share information to an appropriate member(s) of the Information Governance Team, for further guidance. Information may be required in connection with safeguarding vulnerable individuals or the prevention and detection of crime, and each request will be carefully considered before any information is disclosed.

9. INFORMATION PROVIDED BY OTHER ORGANISATIONS

- 9.1 There may be information within the documentation we hold about individuals that is being requested, that has been supplied by other organisations. If this is the case, Service Managers should decide if authorisation is required from the other organisation to release this information to the applicant.

10. REQUESTS FROM THE COURTS

- 10.1 All requests received from the Courts, by means of a sealed court order, must be complied with. Information must be supplied within the specified timescale, and where no timescale is specified the request should be responded to promptly and within the month (recommended 28 calendar days) timescale.

11. REQUESTS FROM THE POLICE

- 11.1 All general requests for personal information received from the Police, should be sent to the Information Governance Team who will coordinate the response to such requests.

12. REDACTION

- 12.1 The removal of certain information (e.g. third party references) may be required from the data subject's information or records. Members of staff should follow their individual Directorate guidance on redaction when reviewing information or records prior to release. Further support can be provided by Managers and each SAR Representative.

13. FURTHER INFORMATION AND CONTACT DETAILS

- 13.1 If you have any questions in relation to this procedure document, you can speak to your Line Manager, Directorate SAR representative or the IG Team. The contact details for each Directorate SAR representative and the IG Team can be found on the IG pages on WINNIE.
- 13.2 Further information on the SARs procedure and any other Information Governance policies or guidance can be found on the IG pages on WINNIE.

Declaration

I declare that information given by me is correct to the best of my knowledge and that I am entitled to apply for access to the information/record(s) referred to overleaf, under the terms of the Data Protection Act (2018).

Please select one box below.

- I am the data subject.
- I have been asked to act on behalf of the data subject and they have completed the authorisation section above.
- I am acting on behalf of the data subject who is unable to complete the authorisation section above (Provide a covering letter with further details).
- I am the parent/guardian of a data subject under 16 years old who has completed the authorisation section above.
- I am the parent/guardian of a data subject under 16 years old who is unable to understand the request (Proof of parental responsibility may be required).
- I have been appointed the Guardian for the data subject, who is over age 16 under a Guardianship order (please attach).
- I am the deceased data subject's personal representative and attach confirmation of my appointment.
- I have a claim arising from the data subject's death and wish to access information relevant to my claim (Provide a covering letter with further details).

I am aware of the costs involved with my request.

Print Name _____

Please Note:

- You are required to provide evidence of identity (i.e. copy of Driving Licence/Passport) and proof of address (e.g. copy of Council Tax, Utility Bill, Bank Statement)
- If there is any doubt about the applicant's identity or entitlement, information will not be released until further evidence is provided. You will be informed if this is the case.

Please complete and send this document together with the appropriate fee to:

Warrington Borough Council

Subject Access Requests
Contact Warrington
26-30 Horsemarket Street
Warrington
WA1 1XL

Email: contact@warrington.gov.uk (Please add 'Subject Access Request' in the subject line of the email)

Charges Payable: The Council will not charge you a fee, in most cases. Under data protection legislation, there are certain circumstances in which a fee can be charged for processing your request. If a fee will be charged, we will inform you as soon as possible.

Appendix B

SUBJECT ACCESS REQUEST – PROCESS FLOW CHART



WARRINGTON
Borough Council

