

Data Subject Rights Procedure

At a glance ...

- Individuals have rights in respect of their personal data under data protection legislation and the Council must fulfil its obligations in respect of those rights.
- Data subjects have a right to:
 - to be told why the Council has their data and what it is doing with it;
 - access their data;
 - have their data corrected
 - have their data erased;
 - object or restrict to the use of their data;
 - take their data to another service provider;
 - not to be subject to an automated decision (i.e. one made by computer alone).
- These rights are not absolute, a number of conditions and exemptions apply.
- Rights requests can be made verbally or in writing and all staff must recognise and know how to deal with such requests.
- The Council's Complaints and Information Team advises on / coordinates the process for all information rights, other than those requests made by employees / ex-employees which are dealt with by HR.
- All information rights requests, apart from straightforward requests (e.g. data corrections and limited Subject access Requests) which can be made locally, should be forwarded to the Complaints and Information Team or HR without delay.
- The Council must respond to rights requests within one month, or three months for complex requests.

Background

1. As a data controller, the Council must ensure that it meets its obligations under data protection legislation. This procedure focuses on how the Council will meet its obligations in respect of data subject rights.
2. The Data Protection Act 2018 (DPA) and the UK General Data Protection Regulation (UK GDPR) increases the rights of individuals in respect of their personal information.

3. The extent to which rights can be exercised by individuals typically depends on the reason why the Council collects, uses and stores the data (i.e. this is known as the legal basis for processing).
4. Data subject rights are:
 - a) The right to be informed
 - b) The right of access to personal information
 - c) The right to rectification
 - d) The right to erasure
 - e) The right to restrict processing
 - f) The right to object to processing
 - g) The right to data portability
 - h) Rights in respect of automated decision making and profiling
5. In addition to these rights, if the legal basis for processing personal information is 'consent', a request may be made to 'withdraw consent'.
6. Appendix A provides a table which outlines the rights which apply to each individual legal basis for processing personal data.

Purpose

7. The purpose of this document is to specify the procedure that should be used when a data subject exercises one or more of their rights under The Data Protection Act 2018 and/or the UK General Data Protection Regulation.

Key Considerations

8. When seeking to understand more about a specific right, readers are advised to refer to the section on Data Subject Right Requests and Timescales which are common to all rights, and then to the specific right they are interested in the Data Subject Rights Overview.
9. The Council's Complaints and Information Team advises on / coordinates the process for all information rights, other than those requests made by employees / ex-employees which are dealt with by HR.
10. All information rights requests, apart from straightforward requests (e.g. data corrections and limited Subject access Requests) which can be made locally, should be forwarded to the Complaints and Information Team or HR without delay.

Definitions and Scope

11. A data controller is a person or organisation that determines why and how personal data is being processed.
12. A data processor processes data under instruction from the data controller as set out in a contract.

13. A joint controller is where two or more persons or organisations jointly determine why and how the same personal data is being processed.
14. Processing of data is anything that may be done with data including collection, analysis, sharing, storing, archiving, destruction etc.
15. Personal data is any data or combinations of data which can identify a living person and can be in any format including paper, electronic, digital images, voice recordings etc.
16. A data subject is defined as an identified or identifiable living individual to whom personal data relates.
17. This procedure applies to all staff and elected members including: employees, councillors, agency staff, contractors, volunteers or any other persons who have access to, or use the Council's information.
18. It applies to all personal information for which NCC acts as data controller, or joint Data Controller.

Principles and commitments

19. The Council recognises the rights that data subjects have over the use of their personal data and is committed to enable those rights to be effectively exercised in a timely manner.
20. The Council will examine each request by a data subject to exercise their rights against the conditions and exemptions set out in the relevant legislation.
21. In supporting individuals to exercise their rights as a data subject, care will be taken to ensure that the data protection rights of other data subjects are not infringed. Personally identifiable data relating to other parties will therefore be redacted or otherwise removed unless there is a lawful reason not to do so.
22. The relevant Council Information Asset Owner and / or Information Asset Manager, in conjunction with the Complaints and Information Team/HR, will ensure that where a data subject's data has been shared with third party organisation(s), those third parties will be advised of the rights request(s) that the Council deems necessitating action by the third recipients of the data.
23. The Council will develop detailed step-by-step guides on the process for dealing with each of these rights

Data Subject Rights Requests

24. The following paragraphs apply in all situations (unless otherwise stated) where a data subject seeks to exercise a right in respect of their personal data.

25. Requests can be made via a third party. This is often a solicitor acting on behalf of a client, or simply that an individual wants someone else to act on their behalf. In the event of a parent requesting their child's records, consideration will be given to obtaining the child's consent if they are aged 12 or over and are deemed to have capacity.
26. Rights requests by, or on behalf of, an individual with regard to personal information held by the Council can be made verbally or in writing. Requests do not have to be in any particular form, nor do they have to make any reference to the relevant legislation.
27. Individuals wishing to exercise their rights as a data subject should direct their request as follows:

By telephone	0115 977 2788.
By email	accessto.records@nottscc.gov.uk
In writing	Complaints & Information Team Nottinghamshire County Council County Hall West Bridgford Nottingham NG2 7QP

28. The Council will verify the identity of the requestor in accordance with the process established under the [Access to Records / Subject Access Requests \(SARs\) Procedure](#) and, where a third party is acting for an individual, take steps to validate that the individual has asked for assistance.
29. All requests from a data subject to exercise one of their rights, which cannot be dealt with locally or which require expert advice, should be forwarded without delay to the Complaints and Information Team who will coordinate the response process (including liaison with HR where the request is from an employee / ex-employee). It is important therefore that all members of staff are able to recognise when a data subject is exercising or has exercised their rights.
30. In order to provide an efficient, effective and timely service, data subjects are encouraged to be as specific as possible about the data they wish to exercise their rights over (i.e. indicate which Council service(s) their data was processed in connection; approximate timescales for data processing etc).
31. If a request is made verbally, the requester will be contacted in writing by the relevant service if the request is being dealt with locally or by the Complaints and Information Team / HR, setting out the Council's understanding of the request and providing an opportunity for the requester to provide feedback.
32. Dialogue relating to requests will be followed up in writing to provide a clear audit trail of correspondence.

33. The Complaints & Information Team / HR will liaise with the Information Asset Owner and / or Information Asset Manager of the relevant data to determine whether a request a rights request is deemed actionable.
34. Where the rights request is deemed actionable, the Information Asset Owner and / or Information Asset Manager is required to take the necessary action without delay. The data subject will be informed that the request has been fulfilled in accordance with the timescales set out in this procedure (see next section).
35. The Council may refuse to comply with a request for access, rectification, erasure, restriction of data or not to be subject to automated decision making if it is manifestly unfounded or excessive (especially if the request is repetitive), or request a "reasonable fee" to deal with the request.
36. Where a request is refused on any grounds, the data subject will be told in writing of the refusal. They will be informed of the reason for the refusal (where telling them would not conflict with the provisions in any exemptions within the law) and their right to make a complaint to the Information Commissioner's Office.
37. Where a fee is requested, the data subject will be asked whether they still wish to proceed with the request and will be informed of their right to make a complaint to the Information Commissioner's Office.
38. With the exception of minor data rectification requests, the Council's response to the request to exercise a right will be logged and communicated by the Complaints & Information team / HR to the data subject, following dialogue with the relevant Council Information Asset Owner / Manager.

Timescales

39. The following paragraphs apply in all situations where a data subject seeks to exercise a right in respect of their personal data.
40. The Council will respond to, and act on, a request by an individual exercising their rights as a data subject without undue delay and within one month of receiving the request and the requestor's identity being confirmed.
41. In complex cases the timescales can be extended by a further two months. Any extensions to data subject rights requests will be authorised by the Complaints & Information Team / HR who will communicate with the data subject and set out the rationale for the extension. The data subject will be informed of any extension within one month of their request

Data Subject Rights Overview

Right to be informed

42. This right concerns the Council's obligation to provide current, concise, transparent, intelligible and easily accessible information to data subjects about the processing of their personal data.
43. The Council will ensure data subjects are sufficiently informed about how and why the Council is processing their personal data and that they know how to enforce their rights. This will typically be done through the use of privacy notices.
44. The Council provides information in the form of a privacy statement and privacy notices. The [Council's Privacy Statement](#) can be found on its website. This is augmented by service specific privacy notices giving more detail about data processing by individual services.
45. The Council may not provide privacy notices in respect of specific data processing in accordance with the exemptions to data subject rights as set out in the relevant Schedules [2 to 4, p 147 – 181] of the Data Protection Act 2018. See Appendix B for further details of exemptions.
46. The Council has a Privacy Notice Procedure [see Policy Library] which provides further details as to how the Council will meet its obligations to inform data subjects about the processing of their personal data.

Right of access

47. Individuals have the right to access their personal data. They are entitled to be aware of what data the Council holds about them and receive a copy of it. This is known as a Subject Access Request.
48. The Council's Complaints and Information Team is responsible for coordinating Subject Access Requests received by the Council. Subject Access Requests from the Council's past or current employees are referred to Human Resources to deal with.
49. Individuals wishing to make a request to access their personal data can find information on the Council's website: [Request personal information](#).
50. The Council may refuse a data subject request to access their personal information in accordance with the exemptions to data subject rights as set out in the relevant Schedules [2 to 4, p 147 – 181] of the Data Protection Act 2018. See Appendix B for summary details of exemptions.
51. These exemptions contain the disclosure of data prohibited or restricted by an Act of Parliament and includes:
 - a) Human fertilisation and embryology information
 - b) Adoption records and reports
 - c) Statements of special educational needs
 - d) Parental order records and reports

52. The Council will use the Subject Access Requests (SARs) Procedure [see Policy Library] to process requests.

Right of rectification

53. Where data is incorrect or incomplete, individuals are entitled to have it corrected. Requests for correction to personal data can be made verbally or in writing.
54. Routine data changes or corrections (e.g. a change of address etc) will be processed by the relevant service area in order that the change can be made as efficiently and effectively as possible. Where appropriate the relevant service area will also advise the requester that the correction has been made.
55. Where necessary to maintain the integrity of the Council's records and an appropriate audit trail, a narrative may be recorded to retain the incorrect data and any consequences that have arisen through its use.
56. Where the request for data to be rectified is more complex, it should be referred to the Complaints & Information Team (or HR for employee / ex-employee data) who will liaise with the relevant Council Information Asset Owner and / or Information Asset Manager to consider and progress the request.
57. The Council may refuse a data rectification request in accordance with the exemptions to data subject rights as set out in the relevant Schedules [2 to 4, p 147 – 181] of the Data Protection Act 2018. See Appendix B for summary details of exemptions.

Right to erasure

58. This right is also referred to as 'the right to be forgotten'. Individuals can request the deletion or removal of personal data where there is no compelling legal or business reason for its continued processing.
59. The circumstances in which data can be erased are as follows:
- the personal data is no longer necessary for the purpose for which it was originally collected or processed;
 - the Council is relying on consent as its lawful basis for processing the data, and the individual withdraws their consent;
 - the Council is relying on legitimate interests as its basis for processing, the individual objects to the processing of their data, and it cannot be demonstrated that the Council's legitimate interests override that of the individual;
 - the Council has processed the personal data unlawfully (typically this will mean without an appropriate legal basis)
 - the data must be erased to comply with a legal obligation
 - the data was provided by a child (typically aged under 12) to information society services (e.g. website providers).

60. The Council may refuse a data subject request to erase their personal data in accordance with the exemptions to data subject rights as set out in the relevant Schedules [2 to 4, p 147 – 181] of the Data Protection Act 2018. See Appendix B for summary details of exemptions.

Right to restrict processing

61. If individuals think there is a problem with the accuracy of the data that the Council holds about them, or the lawfulness of the Council using their data, they can request that any current processing is suspended until a resolution is agreed.

62. The right to restrict processing applies in the following circumstances:

- Where a data subject contests the accuracy of the data, in which case the restriction applies for a period sufficient for the Council to verify the accuracy of the data
- As an alternative to erasure in the circumstances where the processing is unlawful
- Where the data subject needs the data for legal claims, but it is no longer required by the Council (i.e. restriction to stop the Council destroying the data)
- Whilst a decision on an objection to processing is pending (see next section)

63. The Council may refuse a data subject request to restrict the processing of their personal data in accordance with the exemptions to data subject rights as set out in the relevant Schedules [2 to 4, p 147 – 181] of the Data Protection Act 2018. See Appendix B for summary details of exemptions.

64. Where a request to restrict processing is deemed appropriate and restriction measures are put in place, follow-up action will subsequently be taken depending on the original rationale for the restriction request. For instance, the restriction may be lifted once a dispute over data accuracy has been resolved.

Right to object

65. Data subjects have the right to object to the processing of their personal data where:

- The Council is processing personal data on the basis of its legitimate interests; in the performance of a task in the public interest or in the exercise of its official authority.
- The processing is for direct marketing
- The processing is for purposes of scientific/historical research and statistics.

66. The Council will restrict the processing of the data subject's personal data upon receipt of an objection, pending a decision on the objection and subject to any exemptions that exist in law.

67. The Council may refuse an objection request where:
- a) It is processing data based on legitimate interests; the performance of a task in the public interest or the exercise of official authority, and it can demonstrate a compelling case as to why the processing of data is justified and overrides the interests, rights and freedoms of the data subject.
 - b) the processing is necessary for the establishment, exercise or defence of legal claims.
 - c) It is in accordance with the exemptions to data subject rights as set out in the relevant Schedules [2 to 4, p 147 – 181] of the Data Protection Act 2018. See Appendix B for summary details of exemptions.

Right to data portability

68. Individuals can request a copy of their data for their own purposes. It allows individuals to obtain and reuse their personal data across different services and allows them to move, copy or transfer personal data easily from one IT environment to another in a safe and secure way, without hindrance to usability.
69. The right to data portability applies where:
- a) The data was provided by the data subject to the Council;
 - b) The data is held electronically in a structured form, such as in a database
 - c) The data is processed by automated means
 - d) The Council's legal basis for processing the information is consent or the performance of a contract.
70. Given the above and the nature of the Council's business, it is envisaged that there will be very few instances where the right to data portability will apply to personal data held by the Council.
71. The Council may refuse a data subject request to data portability in accordance with the exemptions to data subject rights as set out in the relevant Schedules [2 to 4, p 147 – 181] of the Data Protection Act 2018. See Appendix B for summary details of exemptions.

Rights related to automated decisions making including profiling

72. The Council may exceptionally use computer-based systems or applications to make decisions about data subjects without human involvement. Data subjects have the right not to be subject to a decision based solely on automated data processing where the decision produces a legal or similarly significant effect. In essence, this right provides a safeguard against a potentially damaging automated decision being made about a data subject without human intervention.
73. Automated decision making may extend to profiling which is defined in the law as *'any form of automated processing of personal data consisting of the use of personal data to evaluate certain personal aspects relating to a living person. In particular to analyse or predict aspects concerning the living person's*

performance at work, economic situation, health, personal preferences, interests, reliability, behaviour location or movements. Profiling would include processing such as shortlisting purely on the basis of a computer evaluation of job applications.

74. The right not to be subject to automated decision making cannot be invoked if the processing:
- a) is necessary for entering into, or performance of, a contract between the data subject and the Council;
 - b) is authorised under a law to which the Council is subject and which also lays down suitable measures to safeguard the data subject’s rights and freedoms and legitimate interests; or
 - c) is based on the data subject’s explicit consent
75. Given the above and the nature of its business, the Council has very few instances of purely automated decision making as it typically builds in the right to have decisions reviewed by a human into any automated decision making processes.

Compliance with this Procedure

76. Wilful or negligent disregard for information governance policies and procedures will be investigated and may be treated as a disciplinary matter which could lead to dismissal or the termination of work agreement or service contracts.

Monitoring & Review

77. This procedure will be regularly monitored and reviewed no less frequently than every two years in line with legislation and codes of good practice.

Advice, Support & Further Information

78. If you have any issues over the clarity of this procedure, how it should be applied in practice, require advice about exemptions from the requirements or have any suggestions for amendments, please contact:

The Complaints and Information Team
 Email: complaints@nottscc.gov.uk
 Telephone: 0115 9772788

Document Control

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Version	Date	Changes
1.0	05/03/19	Original document approved by Information Governance Board
1.1	11/07/19	Minor changes to align references to child's data to SARs procedure and to document control table format.
1.2	26/11/24	General review and minor amends – reference to IICSA removed

Data Subject Rights as they relate to the legal basis for processing personal data

Data Subject Rights	Legal Basis for processing					
	Consent	Contractual	Legal Obligation	Vital Interests	Task in the Public Interest	Legitimate Interest
Be informed	✓	✓	✓	✓	✓	✓
Access	✓	✓	✓	✓	✓	✓
Rectification	✓	✓	✓	✓	✓	✓
Erasure	✓	X	X	X	X	✓
Restrict processing	✓	✓	✓	✓	✓	✓
Data portability	✓	✓	X	X	X	X
Object	N/A	X	X	X	✓	✓
Automated decision making / profiling	N/A	X	X	✓	✓	✓

Exemptions to Data Subject Rights

As referenced throughout this procedure, Schedules 2 to 4 [p 147 – 181] of the Data Protection Act 2018 outline a number of exemptions which apply to some or all data subject rights.

These exemptions can apply in the following functional and other areas:

- Crime & Taxation – general
- Crime & Taxation – risk assessment
- Immigration
- Disclosures in law / legal proceedings
- Functions designed to protect the public
- Audit functions
- Regulatory functions relating to legal, health or children's services
- Legal Professional Privilege
- Self-incrimination
- Corporate Finance
- Management Forecasts
- Controller / data subject negotiations
- Exam scripts / marks
- Research & statistics
- Archiving in the public interest
- Data processed by a court
- Data subject's expectations and wishes
- Serious harm
- Prior opinion of appropriate health professional / principal reporter

For most exemptions, a prejudice test applies as to whether the exercising of the data subject rights would be likely to prejudice the proper discharge of the functions

In supporting the Council to discharge its duties in respect of data subject rights, the Complaints and Information Team will provide advice and guidance on the use of exemptions.