Data Protection Technical Guidance Note

Subject access requests and social services records

This guidance is aimed at practitioners dealing specifically with subject access requests (SAR) for information in social services records. In Scotland these are referred to as social work records. This includes both electronic and paper records and both open or closed records.

The Information Commissioner has already issued general guidance on Subject Access Requests for data subjects and on dealing with information in records which relates to professional opinions.

Section 7 of the Data Protection Act 1998 (the Act) gives individuals the statutory right, subject to some exemptions, to see information which organisations hold about them. SARs must be made in writing and accompanied by the statutory fee, if charged, currently set at a maximum of £10. There is a 40-day statutory maximum period allowed for responding to a SAR.

Organisations should have procedures for handling SARs; staff should be trained to recognise them and to deal with them promptly, and in any case within 40 days. It is good practice to record all incoming SARs and track them through to completion. They should be acknowledged and the individual should be advised when they can expect a response. Some organisations use electronic systems or require the individual to fill in a form to track SARs. It is acceptable to ask an individual to fill in a form to make a SAR, but it is not a legal requirement and you cannot make responding to a SAR dependant on filling in a form.

Verifying identity
You should always satisfy yourself as to the identity of a person making a SAR. Where the record is open and there is an ongoing relationship between professionals and the person making the SAR then you should consult with the lead practitioner about the identity of the person.

It is particularly important to confirm their identity if the request is for old information from closed records and there is no ongoing relationship which can be relied on to help with identification. In these circumstances personal documents, for example, a passport, a photographic driving licence, or a bus pass can be used to establish identity and the electoral roll can be used to confirm postal addresses. Some local authorities will accept a copy of a utility bill which shows a current address.

SARs made by a representative
Anyone can authorise a representative to help them with a SAR. In some cases it will be enough to have a letter from the person nominating the individual as their representative.

However, many people who have accessed social services need representatives because they have physical, mental or emotional difficulties. Sometimes this can
make them vulnerable. If you have reason to believe that someone is falsely claiming to act on behalf of a person making a SAR, you should investigate this before you disclose any information.

When considering if someone is acting as a legitimate representative you should consider asking for any legal documents which may be relevant, such as a power of attorney or a parental responsibility order. If the social services record is open, consult the lead practitioner.

If the person is no longer receiving social services then you should consider asking for a history of the relationship between the person and their nominated representative. For example, is the representative a member of the person’s family or from an organisation offering advocacy services, or a member of staff from a supported living organisation? If the representative claims a professional relationship of this nature, you should make checks with the relevant organisation before responding to the SAR.

Parents will often exercise subject access rights on behalf of their children. If a practitioner believes the child is mature enough to understand the nature of the request and the nature of the information which may be disclosed, then careful consideration must be given to any instructions received from the child. For example, has the child given some information to a practitioner and specifically asked for this to be withheld from a parent? The child’s wellbeing should also be taken into account if information disclosed to the parent might have a detrimental affect on this, or might undermine the ability of a practitioner to work with that child. This is particularly important if the file contains details of a child’s concerns or allegations about parental abuse.

In all cases where a practitioner believes that a child is mature enough to exercise their rights, the parent should be asked to provide proof that they are acting with the child’s consent.

**Finding the information**

An individual may have spent many years receiving social services especially if they have been a 'looked after child' or if they have ever been 'in care'. The relevant records are likely to be both extensive and complex. The Act allows you to ask the person making the SAR for any further information you might reasonably require to locate the information they are looking for. This information should be requested promptly. You are not under an obligation to deal with the SAR until the person has responded to your request.

In some cases the information given to you by the person will not be enough for you to locate the records. Where this is the case you are not obliged to respond to the SAR and should inform the person as soon as possible.

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1 Commissioner’s Legal Guidance 4.1.3

However, if the person has been able to supply some information then every effort should be made to locate as many records as possible to make as full a response as possible to the SAR with the information you have.

The 40-day response period
This begins when you have:
- confirmed that you are dealing with the person making the SAR or their representative;
- received the relevant fee (if charged); and
- received any necessary information to assist you in finding the information requested.

The 40 day response period is a statutory requirement and there are no exemptions from this.

The content of the records
Social services records will often contain information from a wide range of sources, for example, from schools, doctors, the police or the probation service. The practitioners who supply this type of information are usually referred to as ‘relevant professionals’. Records will often contain information about these relevant professionals, such as their names and business addresses. Records are also likely to contain information about other individuals, for example, the person's parents, siblings or other family members. In the context of social services these individuals are often referred to as ‘third parties’. Information about relevant professionals and third parties, as described above, is their personal information and should be treated as such.

Relevant professionals
Information about the person which has been received from a relevant professional may often represent that professional's opinion. It is likely to contain their name and business address. It is good practice to have a policy for dealing with this type of information. If the record is recent you may wish to check with other named relevant professionals about what information from their contribution to your records could be disclosed and which information they would not wish to be disclosed. If you do check you should record this. You should also explain clearly that while you will consider their views, the final decision about disclosure rests with you as the data controller.

A professional opinion about the data subject is their personal information and must be released except where any exemptions apply. In most cases professionals are likely to expect their name and business contact details to be disclosed. However, you should carefully consider any objections a professional makes to the disclosure of these details. This is especially important if there is a real risk that disclosure of this information would be likely to cause them, or any other individual, harm.

Other individuals
If you cannot respond to a SAR without disclosing information about another individual (a third party) who could then be identified from that information, you are not obliged to disclose it, unless the other individual consents, or if you think it is reasonable in all the circumstances to disclose it without consent.
Many data controllers are unsure whether they can release information about other individuals without consent. Decisions about whether to disclose information about third parties will always rest with the data controller. These decisions should always be taken on a case-by-case basis, after careful consideration and in the light of all of the relevant circumstances surrounding each case.

When making this decision, you should refer to section 7 (6) of the Act which gives a brief list of some of the things you should consider when deciding whether to disclose.

You should also consider what the person making the SAR is already likely to know. It may be helpful to meet with them or their representative to determine whether they are in contact with any siblings, other relatives or family friends who are mentioned in their records. For example, if they are an older person who has already established contact with some family members, then it may not be necessary to redact (remove) all the information about family members which is contained in the records. You might also be able to get contact details for some individuals in this way and this may help you to get consent to disclose. It is better to carry out interviews of this kind at the beginning of the SAR process, if possible, as this will save time.

Older, closed records present particular difficulties. Third parties may have changed their names or contact details or they may have died. You should consider the age of the records in these cases. If an individual is dead then their personal information is no longer covered by the Act, however, you might wish to consider whether any duty of confidence requires you to keep any of their personal information confidential.

You should make reasonable efforts where appropriate to get consent. It would be good practice to have a procedure for this which covers possible sources of information to be used for tracing third parties and a means of recording the efforts made to do this in particular cases.

It may not be possible to make the same enquiries in all cases. For example, if information in a record relates to a sibling who is known to have moved to another area in the UK, then it might be reasonable to check the most likely electoral rolls for an address. However if it is known that the sibling emigrated then it is less likely to be reasonable to attempt to trace them in another country.

Some individuals may not consent to the disclosure of their personal information. However this does not mean that this information cannot be disclosed. The Act makes it clear that information about a third party must be disclosed if “it is reasonable in all the circumstances” to do this without their consent. You should consider the impact that disclosure will have on the third party and weigh this against the impact that non-disclosure will have on the person making the SAR.

Before you make the final decision about what information about other individuals should be disclosed, you should review all the matters you have considered and all of the efforts you have made to get consent. You should also record your decisions on whether to disclose or not and the reasons behind them.
Medical or health information
Medical or health information contained within social services records is particularly difficult to deal with. In some cases this is because the information relates to both the person making the SAR and another individual. For example, a file may contain information about a parent which indicates that a child may inherit an illness or medical condition. In these cases the information is joint personal information for both the parent and the child. In these cases the rights of each individual must be balanced when determining what information to disclose.

Determining when to disclose medical or health information
Medical or health information is the only type of information in social services records where the decision to disclose will not always rest entirely with the data controller. Statutory Instrument 413/2000, the Data Protection (Subject Access Modification) (Health) Order 2000 sets out additional requirements in respect of SARs for medical information.

It defines medical or health information as “consisting of information relating to the physical or mental health or condition of the data subject”. This will include any medical or health information which is contained within social services records.

It exempts from disclosure any information of this nature which has been included in reports made to courts dealing with children and young people. It also exempts from disclosure any information of this nature where disclosure “would be likely to cause serious harm to the physical or mental health or condition of the data subject or any other person.”

The statutory instrument prohibits a data controller who is not a health professional from withholding this information under this exemption unless they have first consulted with the “appropriate health professional” to determine whether the exemption applies. This exemption will only apply in the most serious cases. For example, it is unlikely that information about a record of childhood inoculations, or the usual childhood illnesses such as measles or mumps, could be withheld under this exemption.

The statutory instrument also allows the disclosure of medical information that the person making the SAR is likely to be aware of.

In open or recent records it is likely to be possible for you to identify the relevant health professional and get their opinion on the possibility of harm as a result of disclosure. Where records are closed the relevant practitioner may not be available because they have moved to a new post or retired. In these cases it may be possible to get an opinion from the person's general practitioner, or from another practitioner known to you as a specialist in a particular medical discipline.

Where it is not possible to consult with a medical practitioner without disclosing some information about the person, the information should, as far as is practicable, be anonymised. It will not be necessary to get the person's consent to consult in this way as the consultation is necessary for you to fulfil your legal obligation to respond to the SAR. However, depending on the circumstances of a particular case or your relationship with the person, you may wish to discuss this with them.
Disclosing distressing information
Some social services records will contain information which may be so complex that it requires explanation, or so serious that disclosure may well be a difficult, even traumatic, experience for the person. This is particularly likely if they have any mental health problems, for example, if they suffer from depression. It is good practice in these cases to offer the person the opportunity to view their file during a supportive interview with a trained social worker or counsellor.

Disclosure of category “e” data as defined by the Act
Section 68 of the Freedom of Information Act 2000 amends the definition of ‘data’ in the Data Protection Act 1998. The amendment creates a new category of data: category ‘e’. This covers any recorded information held by a public authority which is not already covered by the categories defined in section 1 (1) (a) to (d).

This means that you must make sure that any personal information which is in the possession of the authority, but which has not been entered into the records, is considered for disclosure. This might include, for example, information held by social or care workers on laptops or paper reports which have been received but are not yet filed.

Recording SAR handling
It is good practice to keep a record of exactly what information you have sent in response to a SAR, together with a note of information you have withheld and redactions made. It is also good practice to make notes relating to how you reached these decisions and notes on any exemptions in the Act you relied on. These notes should also be kept with this record.

Keeping records on SAR handling will allow you to determine what information should be disclosed if a further SAR is received in the future and it will also help you in the event that you need to explain or justify the decisions made in respect of any SAR.

More information:
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