



Kent Health Needs Education Service Data Subject Access Request Procedures

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- A KHNES Data Subject Access Application Form**

1. INTRODUCTION

The General Data Protection Regulations (GDPR) and the Data Protection Act 2018 gives all individuals a general right of access to the personal information that is held about them by an organisation. Requests for access to personal information are known as 'subject access requests'.

2. SCOPE

This procedure has been produced to assist all staff who have a responsibility for dealing with requests for personal information from staff, service users, their representatives and/or carers. It explains the rights of access to personal information and the procedures that must be followed to ensure compliance with the Data Protection legislation. This procedure applies to all information whether manual, electronic, audio or visual.

3. INFORMAL OPEN ACCESS POLICY

It is anticipated that on occasion individuals will verbally request access to their personal information during contact with our services. In these circumstances, provided there is nothing contained within the local file that should not be disclosed or which could be damaging or cause distress to the applicant or another person, the manager/professional responsible for that contact may choose to supervise the applicant's inspection of their records. This request will not require completion of a formal application form, but the request and details of the disclosure should be recorded and shared with the individual in line with the provisions of the Data Protection legislation.

However, in the absence of such local arrangements, or if the manager/professional is not prepared to allow informal access for any number of reasons (including the possible sensitive nature or legal context of the content, or that the applicant is an ex-service user or ex-member of staff) the applicant should be encouraged to exercise his/her formal right of access under the Data Protection legislation. This application should be made in writing by completing the form shown at **Appendix A**. The process to be followed when responding to formal requests for access to personal information is described in Section 4.

The formal application process applies when:

- The applicant wishes to access several large or complex files
- Several elements of the record are not held locally
- The applicant is no longer a current service user or member of staff
- The applicant is not the data subject
- There are legal or other sensitive issues involved
- Or if the applicant makes a formal application

4. FORMAL PROCESS FOR ACCESS TO PERSONAL INFORMATION

Under current legislation individuals (data subjects) have a right to request access to the personal information we hold about them. When a formal request is made under data protection legislation; we are required to locate the information we hold and make it available to the data subject **within one month** of receipt of a written request (this can be email or fax). The timeframe does not begin until we have received all the information necessary to comply with the request.

You will be able to extend the timeframe by a further two months where requests are complex or numerous. If this is the case, you must inform the individual within one month of the receipt of the request and explain why the extension is necessary.

The 'rule' we are working to at the moment is informed by the KCC working practice of:

A file or files of approx. 2 inches thick or 500 pages (equivalent to 1 ream of photocopier paper) = should be completed in the usual statutory timescales i.e. one month.

Up to 2500 pages or approx. 10 inches thick in ex number of files (equivalent to 1 photocopier paper box) = One-month extension on top of usual one-month statutory timescale, total two months.

Over 2500 pages (more than 1 photocopier paper box) = Two-month extension, total three months.

We must provide a copy of the information **free of charge**. However, you can charge a 'reasonable fee' when a request is manifestly unfounded or excessive, particularly if it is repetitive.

You may also charge a reasonable fee to comply with requests for further copies of the same information. This does not mean that you can charge for all subsequent access requests. The fee must be based on the administrative cost of providing the information.

If a request for access to personal information is received by anyone in KCC, it should be referred, as soon as possible, to the Information Resilience & Transparency Team (IR&T Team) who will liaise with the data subject on behalf of the council to ensure a coordinated approach is applied where appropriate. You should not respond directly to the data subject without consulting with the IR&T Team first.

Data subjects have a right to a copy of their personal information, with support if appropriate if the information would cause them distress or require explanation.

We should also ask for any information that we need to verify the identity of the person making the request, for example a copy of a birth certificate, passport, or driving licence together with a copy of a current utility bill or bank statement as proof of residency.

If the request is being made on-behalf of the data subject then valid consent from them is required or evidence that they have a legitimate right of access will be required i.e. Power of Attorney, litigation friend. We can also ask for additional information to enable us to locate the data (for instance names of relevant staff, dates of contact with the Council.) The time frame begins from the day that sufficient information to enable a search are received.

We may hold the information electronically, including e-mail and CCTV footage, and in our manual filing systems anywhere in the county and several files may exist for the same applicant – all of which makes compliance within the timeframe a very complex task.

It should be stressed that **the responsibility for reviewing information must be with those who compile the records, know the individual making the request, and have the professional expertise to handle access sensitively.** If records are requested by or on behalf of former service users or staff, these may be reviewed by the last known worker or by an appropriate manager/professional with expertise in the relevant service area, or centrally at HQ if this is supported with local assistance and advice as required.

5. PROCESSING A SUBJECT ACCESS REQUEST

- Upon receipt of a formal application for access to an individual's personal information the identity of the data subject (or the individual making the request on their behalf) will be confirmed to ensure that enough information has been received to begin a search.
- At this point a search will be undertaken to identify what information is held about the data subject and where manual records may be located. Having identified the appropriate practitioner or manager who has knowledge of the individual the request is forwarded to them using an email referral form (a copy of which is shown at **Appendix C**). It is the responsibility of the local practitioner or manager to ensure an explanation is provided with the disclosure as to why any information has been withheld.
- Upon receipt of the request for retrieval of information, the information should be located and reviewed. In principle individuals have a right to be given a copy of all the information held about them. There are, however, times when the Act allows KHNES to withhold some information. The main exemptions are explained in the next section and care should be taken to ensure compliance with these.
- Data subjects are entitled to be told if we are processing their personal information, obtain a copy of that information and other supplementary information – see below.
- In addition to a copy of their personal data, you also have to provide individuals with the following information:
 - the purposes of your processing;
 - the categories of personal data concerned;
 - the recipients or categories of recipient you disclose the personal data to;
 - your retention period for storing the personal data or, where this is not possible, your criteria for determining how long you will store it;
 - the existence of their right to request rectification, erasure or restriction or to object to such processing;
 - the right to lodge a complaint with the ICO or another supervisory authority;

- information about the source of the data, where it was not obtained directly from the individual;
- the existence of automated decision-making (including profiling); and
- the safeguards you provide if you transfer personal data to a third country or international organisation.

Much of this information will already be included in your privacy notice.

- Data subjects are entitled to be told if the information contains any technical terms or abbreviations and these should be explained. If any information is being withheld advice should be sought on whether or not the data subject should be told. The fact that information is being withheld is potentially as harmful to an individual as the information itself, and the reasoning leading to non-disclosure must be capable of withstanding legal challenge.

It is important to note that personal information needs to be reviewed and a copy of the information prepared for disclosure. The prepared information must be sent to the IR&T Team with enough time allowed for legal advice to be sought if necessary and for disclosure to the applicant to take place within **one month**.

6. INFORMATION RELATING TO CHILDREN

Children have the same rights of access to their own personal information as adults, and the same rights of privacy. There is no minimum age in English law, however current practice accepts that, provided a child is mature enough to understand their rights, a child of or over the age of 13 years shall be considered capable of giving consent. This does not rule out receipt of a valid request from a child of a younger age, as each request should be considered on its merits on an individual basis.

When a subject access request is received from a child it will need to be judged whether the child has the capacity to understand the implications of their request and of the information provided as a result of that request. If the child does understand then their request will be dealt with in the same way as that of an adult.

If a parent or legal guardian makes a request on behalf of a child age 13 and over the request will only be complied with when assurances are received that the child has authorised the request and that their consent was not obtained under duress or on the basis of misleading information. If the child does not understand, then a request from a parent or legal guardian for the child's information will only be complied with when assurances are received that they are acting in the best interests of the child.

7. EXEMPTIONS

In principle, individuals have a right to be given a copy of all the information we hold about them. However, the Secretary of State has the power to exempt us from providing data subjects with access to their information in certain circumstances. There are numerous exemptions within the Data Protection legislation, so this is not an exhaustive list; only those with relevance to the Authority or of a general nature are included below.

Third Party information: If the information held identifies other people, then it will sometimes be right to remove or edit that information so as not to reveal the identity of the third parties, unless the third parties have agreed to the disclosure. (This is less likely to apply to information identifying social workers or other professionals unless to disclose it would cause them serious harm.) Reasonable steps must be taken to obtain third party consent to disclosure. If the third parties cannot be located or do not respond it may still be reasonable to consider disclosure if the information is of importance to the data subject.

For further guidance please refer to the 'Third Party Personal Information and Redaction Guidance' <http://knet/ourcouncil/Documents/Third-Party-Information-and-Redaction-Guidance.doc>

Information likely to cause serious harm or distress: If the disclosure of the information would prejudice the carrying out of social work because it would be likely to cause serious harm to the physical or mental health or emotional condition of the data subject or any other person; it should not be disclosed without the written consent of an appropriate social care or health professional.

Disclosure prevented by the data subject: If, in the case of requests made on behalf of the data subject by a person able to exercise their legal rights, the data subject has expressly asked that some or all the information should not be disclosed, or if they have provided the council with information on the assumption that it will not be disclosed, then it should not be disclosed.

Absence of or invalid consent to disclosure: If the data subject is considered incapable of giving valid consent to disclosure (i.e. they do not have the capacity to understand the nature/implications of the access request), or if it is suspected that the consent was obtained under duress by someone acting on their behalf, or based on misleading information, then access should be refused.

Crime and Disorder: If the disclosure of the information is likely to hinder the prevention or detection of a crime, the prosecution or apprehension of offenders, or the assessment or collection of any tax or duty, the information should be withheld.

Legal professional privilege: If the information is general legal advice or advice which relates to anticipated or pending legal proceedings it is subject to 'legal professional privilege'. The disclosure of any communication to or from a legal advisor to another person (including the data subject) should not take place unless this has first been discussed with the legal advisor concerned.

Records of deceased clients: A request for access to the records of deceased individual will be handled under the provisions of the Freedom of Information Act 2000, as the Data Protection legislation only applies to living individuals. However, the same level of respect for confidentiality should be afforded to the records of those who are deceased as is given to those who are living. If the information is contained within the records of a person who has died, access should not be given to any part of the record which would disclose information that is not relevant to any claim which may legitimately arise out of the person's death or to any information that would breach the confidentiality of a living

individual. Evidence required should be either proof that they are the executor or a copy of the Letters of Administration (that provide detail of the personal representative). Requests must be forwarded to the IR&T Team to log as an FOI request and refer onto the relevant service unit.

References: If the information contains confidential references about the data subject *given* by a staff member to a prospective employer they are exempt from disclosure. (Confidential references *received* by a data controller are not covered by the exemption – but ‘third party’ rules still apply to their disclosure.)

Adoption Records: Access to adoption records falls outside of the Data Protection legislation but access is provided via the Adoption and Children Act 2002. On receipt of a request for access to adoption records refer them to CAFISKent@barnardos.org.uk

Negotiations: Information that consists of records of the intentions of the controller in relation to any negotiations with the data subject to the extent that the application of those provisions would be likely to prejudice those negotiations are exempt from disclosure.

Education Records: The Education (Pupil Information) (England) Regulations 2005, provides parents with their own right of access to their child’s educational record. Parent should apply directly to the school for access to this information.

8. LEAD RESPONSIBILITY

The process as outlined in section 5 of this document and shown as a flowchart at **Appendix B** shows that once the appropriate practitioner or manager is identified to review the information a request to do so will be forwarded to them (see **Appendix C**). At the same time a copy of the request will be forwarded to the appropriate Senior Manager or Team Leader. The Senior Manager or Team Leader will then have a responsibility to ensure that the necessary information is located and prepared in accordance with these procedures and, if required, to assist and support the practitioner or manager in their task of reviewing the information.

Where more than one Senior Manager/Team leader is involved, the Executive Headteacher will decide who will take lead responsibility based on either the length of involvement in the case or the most recent contact with the data subject.

9. COMPLAINTS PROCEDURE

If an applicant receives no response or a late response to a subject access request or if a data subject thinks that there is information to which they are entitled which has been withheld, they have the right to complain to the management committee of KHNES. If they remain dissatisfied, they may either apply to a court for release of their information or contact the Information Commissioner.

The Information Commissioner's Office is the UK's independent public body set up to protect personal information and promote public access to official information. The Information Commissioner will investigate the complaint and has the power to impose fines or enforcement action on the council.



General Data Protection Regulations Request for Access to Personal Information held by Kent Health Needs Education Service

Application No..... (office use only) Due Date.....(office use only)

PLEASE READ THE ACCOMPANYING NOTES BEFORE COMPLETING THIS APPLICATION FORM.

SECTION 1	Data Subject's details *	PLEASE USE BLOCK CAPITALS
Mr/Mrs/Ms/Miss/Dr/Sir/Other		Forenames
Surname		Date of Birth
Previous surname or also known as (if applicable)		Date of any change of name
Address		Previous addresses in the last 5 years
Post code.....		
Telephone Number (optional)		Names and date of birth of parents (if known – if deceased, date of death)

** If you are not the Data Subject and are applying on behalf of someone else, please insert their details above and not your own. Please also complete Section 2*

Continued overleaf

Please give any other details to help us with our search; for example: any dates which may be relevant, reference numbers on correspondence or applications, names of officers, signatories on letters.

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Please read these notes carefully before completing the details on the form

- 1. Who may apply for information?** Only the individual who the personal information is about (*the Data Subject*). This means that you can only apply for your own personal information (*referred to as a Subject Access Request*). You can not apply for information about anyone else; neither can anyone else apply for information about you. You may wish to nominate someone to be your authorised representative and the information can then be released to them with your consent. Please see paragraph 6 below for access to your child's personal information.
- 2. What does it cost?** There is no "flat fee" payable under the General Data Protection Regulations. However, KHNES is entitled to charge a reasonable fee to consider the administration costs of providing the information to you. We will advise you if any costs are payable.
- 3. How soon will I get an answer?** Within one month of KHNES receiving sufficient information and/or evidence to progress your request (i.e.: your written request, proof of ID and address, consent if applying on someone else's behalf). It is important to be as specific as possible when requesting your personal information. If we do not have enough information to begin our search, we will write to you and ask you for more details. We can also extend the time to deal with your request for up to three months, depending on the complexity of your request.
- 4. Will I be able to understand the information I receive?** Yes. We must provide the personal information we hold in a form that you can understand, explaining any abbreviations.
- 5. Identification.** We must not knowingly give personal information to the wrong person and we must do our best to ensure that the personal information we have been asked for is given only to the person to whom this information refers, or their authorised representative. Therefore, we will be asking you for proof of both your identity and address before we hand any information over to you. If we are posting information, we will send it to the person that the information is about, or their authorised representative. Your signature at the bottom of the form declares that you are that person requesting your own information, or you have authorised someone else to act on your behalf.
- 6. Children.** Children aged 13 or over have the same rights of access to their own personal information as adults, and the same rights of privacy. When a subject access request is received from any child under 18, we will assess whether the child has the capacity to understand the implications of their request and of the information provided because of that request. If the child does understand, then their request will be dealt with in the same way as that of an adult. If a parent or legal guardian makes a request on behalf of a child aged 13 or over, the request will only be complied with when we receive assurances that the child has authorised the request and that their consent was not obtained under duress or based on misleading information. If the child does not understand, then a request from a parent or legal guardian for the child's information will only be complied with when assurances are received that they are acting in the best interests of the child.
- 7. What do I need to do?** Please complete and return this form to the address below, together with proof of identity (e.g. copy of passport or photo driving licence), proof of current address

(e.g. copy of recent utility bill or the address section of your last bank statement) and if you are applying on someone else's behalf, proof that they are happy for you to be doing this, such as a letter of consent from them or a Power of Attorney.

Send to: Subject Access Requests, Kent Health Needs Education Service, 40 Teddington Drive, West Malling, Kent ME19 5FF