

DATA PROTECTION PROCEDURES

1. How to deal with a request from an individual for access to their personal data (Referred to as a 'Subject Access Request')

What is a Subject Access Request?

Section 7 of the DPA provides a legal gateway for an individual to seek access to his or her personal data. This is a fundamental right and is routinely referred to as a subject access request. This gives individuals the right to be told what personal data BCC is holding about them and to have that data communicated to them in intelligible form, which is subject to any exemptions to the rights of access.

Who may make a Subject Access Request?

A request can either be made by a member of the public or by an member of Council staff.

How does someone make a Subject Access Request?

A subject access request (SAR) can be made directly to an internal BCC Department or to the Information Governance Unit (RMU). Each request for access must be submitted in writing and can either be via email, fax and letter or on a dedicated BCC subject access form which can be found on our website. Please find copy form at **Template 1** of this procedure.

BCC does not charge a fee for a subject access request.

In certain circumstances, BCC may require the individual making the request to supply two copy forms of identification to satisfy the Data Controller that it is dealing with the correct person. BCC must be content as to the identity of the requestor to avoid personal data about one individual being sent to another, either accidentally or as a result of deception. Sample ID is listed below:

- Passport
- UK Driving Licence
- Medical card
- Birth Certificate
- Marriage Certificate
- HM Forces ID card (UK)
- Utility Bill (electricity, gas, telephone)
- Child Benefit book

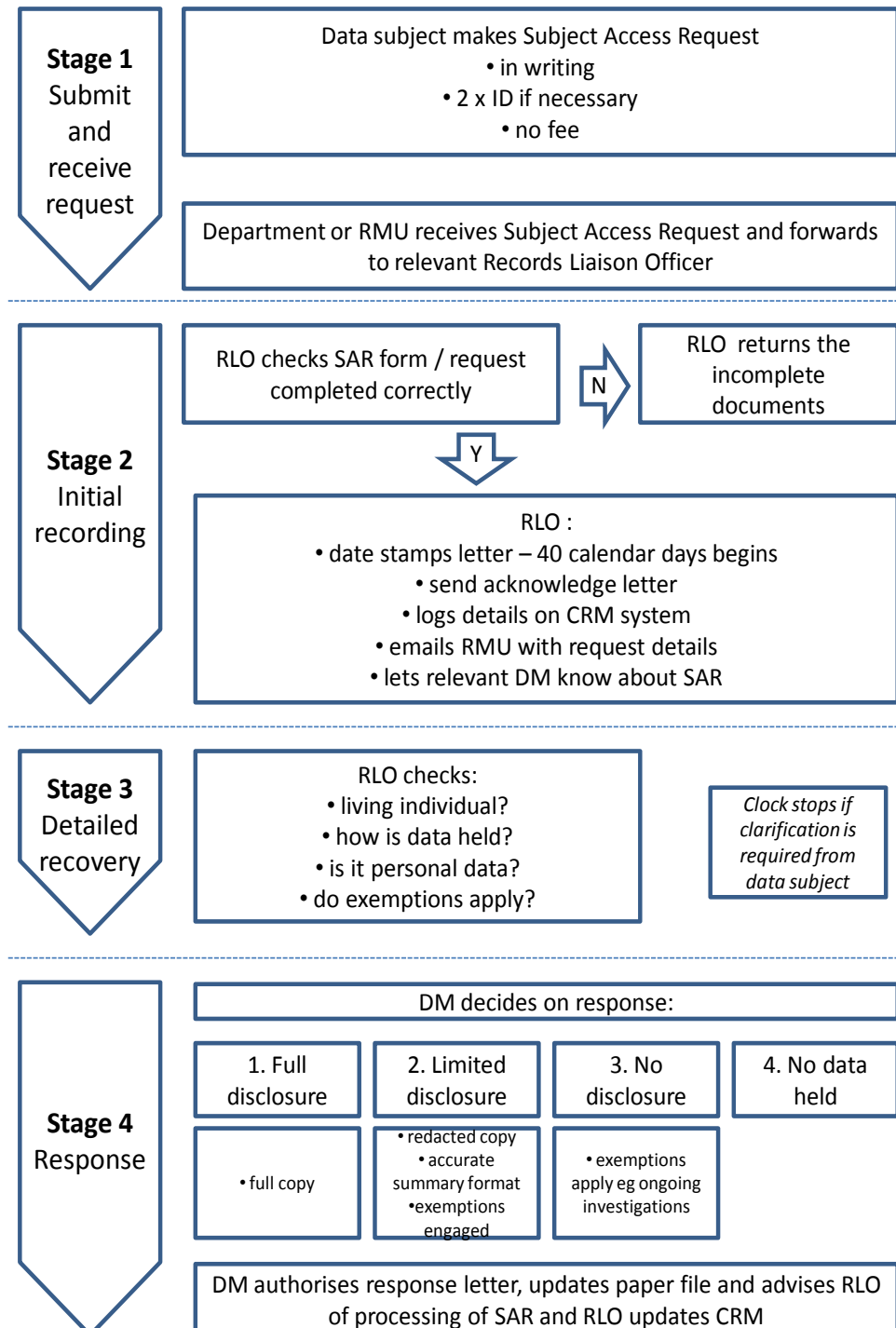
(The above documents must be current. Documents may not be required from serving BCC staff to prove identity).

BCC will also require the data subject to provide such information as is reasonably required to locate the information requested. In essence, this means the requestor must describe the data they are seeking and, if possible, identify the particular department in which it is held.

Another person acting on data subject's behalf

The DPA permits a data subject to use another person to act on their behalf when making a SAR. This could be performed by a solicitor or insurance company etc. If this type of request is received, the data subject may be required to provide written and signed authority for the named person to act on their behalf. The named person may also be required to provide proof of identification that will satisfy BCC.

Review of the SAR process



Introduction

The contents of this procedure set out the process that must be followed by Belfast City Council (BCC) when it receives a subject access request (SAR) made under Section 7 of the Data Protection Act 1998, Rights of Access. A request can either be made by a member of the public or by a member of staff.

Section 7 (1) of the Data Protection Act 1998 provides a right of access to personal data processed by the BCC. It firstly, places certain legal obligations on the individual making the request (data subject) and secondly, on the Data Controller (Belfast City Council) who must process the request.

The Act also provides a number of exemptions to the rights of access, which may be relevant to personal data processed by the council.

Stage 1 – Submit and Receive Request

Once a SAR is received, the RLO will check the details to establish if all the elements have been fully completed by the data subject and it should be date stamped on the day it arrives. An acknowledgement email or letter should be sent to the data subject.

If all the elements have not been provided by the data subject, the SAR should not be processed. The RLO will return all submitted details to the data subject for his / her attention along with an explanation as to why.

The date the request was received and stamped is the commencement of the 40 day legal time period. BCC has a lawful duty to process the SAR promptly and no later than 40 calendar days from the date received.

If the SAR is made directly to the Information Governance Unit, it will be date stamped on the day it arrives. The request will be forwarded immediately to the RLO within the relevant department who has the responsibility to log it on CRM.

Stage 2 – Initial Recording

If the SAR is made directly to the department, the RLO must log full details onto CRM and open a paper file. Details should be forwarded immediately by email to the Information Governance Unit for information and monitoring. CRM and the paper file will be used for processing, monitoring and review purposes. This will provide a full and accurate record of how the SAR was dealt with from submission to final completion.

The RLO must inform the departmental decision maker (DM) of the SAR by email as soon as possible after receipt of the request and record on CRM and paper file when this was completed.

The RLO will liaise with the DM throughout the period of the SAR and provide administrative assistance. The RLO will also ensure that CRM and paper file is regularly and accurately updated during all stages of the SAR.

Stage 3 – Detailed Recovery

The DM will be accountable for the processing of the SAR. He or she must take immediate steps to recover any data for initial review and this will confirm if the data is actually held and is personal as defined within the Act. This process may involve searching electronic and manual information systems to establish exactly what personal data is held. The RLO will assist with this process.

How is the data held?

For personal data to fall within the provisions of the Act it must be held in a certain manner listed within Section 1 (1) DPA and listed below. This is the first test the DM must consider e.g. how is the data held?

- a) Processed electronically (held on a computer)
- b) Recorded with the intention that it should be processed electronically, (held on a tape, disk, pen drive or similar device)
- c) Recorded as part of a relevant filing system, which must be highly structured
- d) Is an accessible record and it does not matter how the data is held if it relates to health, education and accessible public record
- e) All other recorded manual personal data held in an unstructured manner.

Explanatory Note if the data is held in the format of category (e), the following advice must be considered.

Electronic records can routinely be searched by the use of automatic search tools, but searching for manually held records can be time consuming and not as straight forward. There is an onus on the requestor to provide Belfast City Council with as much detail as possible indicating where they believe the information sought maybe held. If paper records can be located and are held in an unstructured fashion, there will be a level of searching and examination required.

Therefore, the fees regulations found within the Freedom of Information Act 2000 can be applied to Cat 'e' data, which includes the cost of locating and reviewing the information. The figure is set at £450, which equates to 18 hours work. If this is exceeded, then the request will sit outside the right of access.

Is it personal data?

The DM must then consider whether the data held is actually the personal data of the applicant. The DM must only focus on personal data of the applicant and any other information contained within documents that is not the applicant's personal data should not be released. The following points are not definitive but can be used as a general rule of thumb when making a decision on this matter:

- Does the data relate and focus on the person or is the person just named within a document;
- Is it biographical in its content and obviously about the person;
- When you read the data held, will you learn something about the person and does it inform you about that individual;
- Will it have some impact on them in a personal, family, private or professional capacity;
- Is the data used, or is it to be used, to inform or influence actions or decisions affecting an individual;
- Consider if any personal data is included about another person(3rd party) other than the requestor; and
- Is there any personal data held, which relates to the physical or mental health of a person.

The DM must carry out a full review of the personal data held to confirm the exact amount that can be released or withheld. The overall thrust of the Act is to provide as much data as possible.

Do exemptions apply?

It is essential at this stage to establish and consider any ongoing matters that may have an impact on release. The DM should liaise with other internal departments to address this aspect, e.g. H.R etc. If none is identified, then it can be assumed there is nothing prejudicial or detrimental that will impact on release and the DM can therefore make a lawful and informed decision.

The DM can only withhold personal data if an exemption to the rights of access applies. The Act provides a number of exemptions to the rights of access (set out below), which are relevant to BCC purposes. Exemptions cannot be used in a blanket fashion to withhold personal data and each SAR must be dealt with on a case by case basis and judged on its merits.

Main relevant Rights of Access Exemptions

- Section 28 (1) - Crime & Taxation (prevention and detection of crime / apprehension & prosecution of offenders the assessment or collection of any tax or duty etc.

Main relevant Schedule 7, Miscellaneous Relevant Rights of Access Exemptions

- No 1 - Confidential references given by the Data controller regarding employment.
- No 5 – Management Forecasting and planning. To assist the Data Controller in the conduct of any business, but only applies while the forecasting / planning are ongoing.
- No 7 – Negotiations. Consisting of records of the intentions of the Data Controller in relation to any negotiations with the data subject to which these may be prejudiced. (Useful in personnel related requests as BCC maybe in detailed negotiations with a data subject in employment / personnel issues).
- No 8 – Examination Marks. To ensure that exam marks are not released via subject access before they are officially announced.
- No 9 – Examination Scripts. No test of prejudice. (although it does not exempt comments recorded by the examiner in the margins of the scripts).
- No 10 – Legal Professional Privilege. Exempt if the data consists of information between client (BCC) and professional legal adviser.

The Freedom of Information Act 2000 contains a criminal offence under Section 77 FOIA – which is relevant to the Data Protection Act as follows:

It is an offence to:- Alter, Deface, Block, Erase, Destroy or Conceal any record held by a public authority with the intention of preventing the disclosure by that authority of all, or any part, of the information to which an applicant would have been entitled under the FOIA or the DPA is an offence.

Note - Do not destroy or conceal any data relevant to a subject access request!

Stage 4 – Response

The DM must send a closure response to the requestor enclosing a full copy, a partial disclosure, advising that no disclosure can be made or that no information is held. There are four main closure formats to be used:

1. **Full disclosure** is made - where the Data Controller has decided that all the personal data relevant to the request can be released;
2. **Partial - disclosure** is made - where the Data Controller has decided to release some personal data relevant to the request and to withhold other personal data by virtue of an exemption/s. (redaction or summary);

3. **No disclosure** is made - where the Data Controller has decided to withhold all the personal data relevant to the request by virtue of an exemption(s);
4. **No personal data held.** After a full review it was established that no personal data is actually held by the Data Controller.

Note – If an exemption to withhold personal data is applied, there is **No** obligation to provide an explanation or reference to the exemption within a closure response. This is different from the FOI response whereby the exemption must be stated.

Personal data can be provided to the applicant either by way of a –

- a) full copy;
- b) redacted; copy or
- c) accurate summary format.

The Act does not place an obligation on the Data Controller to disclose actual documents but it does place an obligation to have personal data communicated to the applicant in intelligible form. In some instances it is safe and appropriate to release copies of documents, but in other instances it may not and an extract or summary can be provided. If this method is to be adopted, it is vital that any extract or summary is an accurate account of what is held.

Documents can be redacted to remove third party data and other non-personal information before release. Any redactions must be securely performed and to a standard that cannot be manually or electronically undone.

The content, confidentiality and sensitivity of the personal data to be released will dictate the method by which it should be sent to the applicant. The DM should consider following options:-

- Recorded delivery mail
- Email (only with the consent of the applicant)
- Collected or delivered by hand.

The DM must judge each request on a case by case basis and if there is any doubt as to the correct process to follow, then further advice can be obtained from the Information Governance Unit.

The DM must retain a full and detailed audit log of how they dealt with each element of the SAR in the event of a request being made to the Information Commissioner (ICO) for an assessment under Section 42 of the Act. The ICO has the power to examine how BCC dealt with all aspects from submission to final completion including the decisions made and reasons behind them.

Note - If the 40 day time limit cannot be met by the failure of an internal department to recover and copy personal data in response to a SAR, it will be held responsible if a complaint is made by the data subject and any subsequent follow up action taken by the ICO. If the 40 day time period cannot be met, the DM should advise the applicant.

Complaints

If the applicant advises the Council that he / she is dissatisfied with the Council's response or if the Information Commissioner's office contacts the department directly about the handling of a request, you should contact immediately the Information Governance Unit.

Retention and Disposal

Once the request has been closed, the DM must date mark for retention and weeding in line with Belfast City Councils retention and disposal schedule.

DRAFT



**Belfast
City Council**

Belfast City Council Data Protection Subject Access Request Form

Form SAR / 1 – Application for access to your personal data processed on Belfast City Council Information systems.

Section 7(1)(a) & 7(1)(b)(i) & 7(1)(c)(i) of the Data Protection Act 1998

Data Subjects / Data Controllers Rights

You have a right to be told whether any information is held about you and a right to a copy of that information, unless certain exemptions apply. This form should help you to provide the Council with all of the details needed to seek the information you are looking for.

The Data Controller does not have to give you any information identifying someone else, unless that person agrees.

Fee

No fee is required

Proof of identity

Belfast City Council must be satisfied as to your identity and may require you to provide at least two copies of identification. These must be official documents:

- Passport
- UK Driving Licence
- Medical card
- Birth Certificate
- Marriage Certificate
- HM Forces ID card (UK)
- Utility Bill (electricity, gas, telephone)
- Child Benefit book

The above documents must be current

Returning Form

The completed form, together with proof of identity, date of birth and address documents if required should be returned to Belfast City Council, Information Governance Unit, Legal Services Section, Belfast City Hall, Belfast BT1 5GS.

The information requested below is to help the Data Controller, (a) satisfy him as to your identity and (b) find any data held about you.

If you have lived at the above address for less than 10 years please give your previous address for that period below. Continue on another piece of paper needed.

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☐ No

If "No" you **must** provide **written** evidence that you have the Data Subject's authority to ask for the information on their behalf, e.g. a letter written by them, evidence of Power of Attorney, etc.

If you are not the person about whom the council is holding the data, please give your:-

Full Name:.....

Date of Birth:.....

Current Address:.....
.....

Postcode:.....

Tel No:.....

Email:.....

What is your relationship to the data subject:-.....
.....

Please provide evidence of your identity and the identity of the data subject.

Please describe below the information you are seeking together with any relevant information.

If you are seeking personal data from CCTV footage you need to provide the following:

- the exact location of where you were and your direction of travel
- the approximate time (to the nearest 15 minutes)☐
- a description of what you were wearing any distinctive/colourful clothing☐
- whether the images of any other people are likely to appear in the same footage
- In addition to other proofs of ID, you may need to supply a recent photo of yourself

BCC staff only: please provide:

Your current job title (and any previous positions with Belfast City Council)

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Your staff number.....

Your current location (and any previous locations where you have worked)

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How long have you been employed by Belfast City Council

Declaration - To be signed by all applicants.

Please note any attempt to mislead may result in prosecution.

I.....

Certify that the information I have given on this form to Belfast City Council is true. I understand the council needs to be satisfied about my identity. I also understand the council might need to ask me for more details in order to locate the information I am seeking.

Signed :.....

Date :.....

Note - the council must respond to your request within 40 days. However, this period does not start until the council is satisfied about your identity, and has enough detail to locate the information you are seeking.

Return this completed form to the Belfast City Council, Information Governance Unit, Legal Services Section, Belfast City Hall, Belfast BT1 5GS.

For Official Use Only

To be completed by the Belfast City Council staff member on receipt.

Date fully received in Belfast City Council

Check evidence of applicant's identity (if required)..... Yes / No

Name of documents submitted	Serial numbers	Current within the last 12 months

Take photocopies of ID material..... Yes / No

Written authority supplied (if not the Data Subject)..... Yes / No

Signature of receiving staff member

Date received

Council Department