

# Data Subject Rights Policy

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## 1. Introduction

The rights of individuals ('data subjects') in relation to the processing of their personal information are set out in the UK General Data Protection Regulation (GDPR). Further provisions relating to the data rights of individuals can be found within the Data Protection Act 2018 (DPA 2018), which include law enforcement activities and other areas not covered under the UK GDPR.

This policy provides guidance around the rights individuals have under the data protection legislation.

Information and advice can be obtained from the Policy and Compliance Team and Data Protection Officer; [ig@bury.gov.uk](mailto:ig@bury.gov.uk)

This policy is part of Bury Council's Information Governance Framework and should be read in conjunction with the other policies and procedures within the framework.

## 2. Definitions

- **"Personal information"** means any information relating to an identified or identifiable living person. An identifiable person is anyone who can be identified, directly or indirectly, by reference to an identifier, such as a name, identification number or online identifier.
- **"Special or Sensitive Personal information"** is information revealing racial or ethnic origin, political opinions, religious or similar beliefs, trade union membership, physical or mental health conditions, sexual life, sexual orientation, biometric or genetic data, and personal information relating to criminal offences and convictions.
- **"Processing"** means any activity that involves the use of personal information. It includes obtaining, recording or holding the information, or carrying out any operation or set of operations on the information including organising, amending, retrieving, using, disclosing, erasing or destroying it. Processing also includes transmitting or transferring personal information to other Recipients.
- **"Data Subject"** a living, identified or identifiable individual about whom we as the Controller hold personal information.

- **“Controller”** means the person or organisation (in this case us) that determines when, why and how to process personal information.
- **“Privacy Notices”** are notices setting out the information given to you at the time we collect information from you or within a reasonable time period after we obtain information about you from someone else. These notices may take the form of an overarching privacy statement (as available on our web site) or apply to a specific group of individuals (for example, service specific or employee privacy notices) or they may be stand-alone, one- time privacy statements covering processing related to a specific purpose.
- **“Consent”** must be freely given, specific, informed and unambiguous indication of an individual’s wishes by which they, by a statement or by a clear affirmative action, signifies agreement to the processing of personal data relating to them.
- **“Explicit Consent”** requires a very clear and specific statement, leaving no room for misinterpretation.
- **“Third Party”** is a living individual other than the person who is the data subject.
- **“Recipient”** means a person or organisation who receives your personal information from us. This may be a company with whom we have entered into a contract to provide services on our behalf or another Controller with whom we are either required or permitted to share personal information.
- **“Latest due date”** means one calendar month counted from the first working day after proof of ID and any requested information is received by us, except where this falls on a weekend or a bank holiday in which case the “latest due date” is treated as the first working day after the weekend or bank holiday. The same method is applied to calculating the “latest due date” for complex requests where an extension of time is permitted and claimed.
- **“Automated Processing”** means any processing of personal information that is automated through the use of computers and computer software.
- **“Automated Decision-Making (ADM)”** means a decision which is based solely on Automated Processing (including Profiling) which produces legal effects or significantly affects an individual. The UK GDPR generally prohibits Automated Decision-Making except in defined circumstances, subject to certain conditions and safeguards being met.
- **“Profiling”** means the recording and analysis of a person's psychological and behavioural characteristics, so as to assess or predict their capabilities in a

certain sphere or to assist in identifying categories of people.

- **“General Data Protection Regulation (GDPR)”** means the General Information Protection Regulation ((EU) 2016/679).
- **“Data Protection Act 2018”** means UK legislation that repeals the 1998 Act; implements discretions delegated to EU Member States under the GDPR; provides for the role, responsibilities and enforcement powers of the Information Commissioner and sets data protection standards for processing activities that do not fall within the purview of the GDPR.

### 3. Data subject rights

#### **Data subjects have the following rights:**

- **The right to be informed** - The right to be provided with specified information about the processing of their personal data.
- **The right of access** - The right to access their personal data and certain supplementary information.
- **The right to rectification** - The right to have their personal data rectified, if it is inaccurate or incomplete.
- **The right of erasure / right to be forgotten** - The right to have, in certain circumstances, their personal data deleted or removed.
- **The right to restriction** - The right, in certain circumstances, to restrict the processing of their personal data.
- **The right of data portability** - The right, in certain circumstances, to move personal data the individual has provided to Bury Council to another organisation.
- **The right to object** - The right, in certain circumstances, to object to the processing of their personal data and, potentially, require Bury Council to stop processing that data.
- **Rights related to automated decision making and profiling** - The right to not be subject to decision-making based solely on automated processing.

Please be aware that these rights are not absolute and are subject to conditions and exemptions. In some cases the rights described above only apply if the

processing activity is undertaken on specific legal grounds and/or in defined circumstances. Therefore, all of these rights are unlikely to be engaged in all cases.

You can also obtain full information about your rights from the Information Commissioner's Office (the ICO) via their website: <https://ico.org.uk/your-data-matters/>.

The ICO is the UK's independent regulator responsible for upholding and enforcing the rights of individuals under data protection law.

Where an individual exercises their individual rights listed above, Bury Council will respond without undue delay and in any event within one calendar month, subject to the following two exceptions:

- Further time may be necessary, taking into account the complexity and the number of the request(s) from the individual, the period for responding may be extended by up to two further calendar months. Where such an extension is required, Bury Council will notify the individual that this is the case within one calendar month of receiving that request. Individual service areas must not make decisions to extend response times without approval from the Information Governance Manager and Data Protection Officer.
- Where the request(s) from an individual is/are manifestly unfounded Bury Council may refuse the request(s). In exceptional cases, a reasonable fee may be requested that takes into account the administrative cost of complying with the request. Individual service areas must not make decisions to extend response times without approval from the Information Governance Manager and Data Protection Officer.

#### 4. Summary of your Rights – what these are and how they apply

Right to be informed

Bury Council will ensure that

- where we collect personal data from you we will provide you with, at the time the personal data is collected, specified 'fair processing' information (known as a 'privacy notice')
- where we use personal data that has not been collected directly from you to communicate with you, we will provide the privacy notice, at the latest, when the first communication takes place;
- if we plan to disclose personal data that has not been collected directly from you to another recipient, we will provide the privacy notice, at the latest, before the data are disclosed.

Each time we seek to collect information from you, we must inform you why we need to process your personal information, including how we propose to use it, who we intend to share it with and the safeguards we have put in place.

Further information relating to the use of personal data may be viewed on our Privacy Policy, which can be viewed at <https://www.bury.gov.uk/privacy>

Further to this, you also have the right to be informed of any significant data breach of your personal information. The reporting must be done without undue delay unless there are relevant reasons why you should not be informed, e.g. disclosure of the breach would cause you harm.

## Right of Access

You are entitled to ask us for copies of the personal information that we hold about you. The right of access also extends to

- Receiving confirmation from Bury Council whether or not we are processing your personal data; and, if it is
- To be given access to the personal data, including the right to a copy of the personal data;
- To be informed of the purposes of the processing of the personal data;
- To be informed of the categories of the personal data being processed;
- To be informed of the recipients or categories of recipient to whom the personal data has been or will be disclosed;



- To be informed of the period for which the personal data will be stored, or, if not possible, the criteria used to determine that period;
- To be informed of the existence of the right to request rectification or erasure of personal data or restriction of processing of personal data concerning the individual or to object to such processing;
- To be informed of the right to lodge a complaint with the ICO
- To be able to contact and make complaints directly to the Data Protection Officer
- To be provided with, where we have not collected the personal data from you, any available information as to their source;
- To be informed of the existence of automated decision-making, including profiling, and meaningful information about the logic involved, as well as the significance and the envisaged consequences of such processing for you;
- Where personal data are transferred to a third country or to an international organisation, you have the right to be informed of the appropriate safeguards under the UK GDPR relating to the transfer.

Please provide us with as much detail as you can about the information you want to access. This will allow us to undertake precise searches and locate the information at the earliest opportunity. It is possible that should we need to contact you for further information to help us find the personal data you requested you may have to wait longer for a response.

## Right to rectification

You are entitled to ask us to:

- correct inaccurate information about you;
- update the information we hold if it is incomplete

If we agree that the personal information you have identified is factually inaccurate, we will correct it.

Bury Council will:

- endeavour to inform anyone with whom we may have shared your personal

information of any correction(s) we have made so they can rectify the information they hold about you;

- tell you who the authorised recipients of your information are if you ask us to do this so you can check they if have updated the personal information they hold about you.

### Right to object to processing

You have the right to object to us using your personal information where it is being processed for:

- direct marketing;
- profiling whether linked to direct marketing or for other purposes
- performing our statutory functions, tasks carried out in the public interest or when exercising official authority;
- our legitimate interest or those of a third party;
- scientific/historical research/statistics where:
  - this is likely to cause substantial damage or substantial or distress; or
  - involves decision-making about an individual

If you object to us using your personal information for direct marketing (or profiling linked to direct marketing) we will cease processing for this purpose(s). Bury Council will only use your personal data for direct marketing if you have actively chosen to opt in to this service. If we intend to collect your personal data with the intention or expectation that we will send marketing material to you, we must tell you about this in advance and give you the chance to opt in to receiving such communications. If you have opted in and later decide that you no longer wish to receive marketing communications, we will not continue to hold your personal data for marketing purposes.

Where you make an objection in relation to processing of your personal information for public task/legitimate interests, this must be on grounds relating to your "particular situation". Bury Council must then cease the processing of the individual's personal data, unless

- we can demonstrate compelling legitimate grounds for the processing which override the interests, rights and freedoms of the individual; or

- the processing is for the purposes of the establishment, exercise or defence of legal claims.

If you object to the use of your personal data for scientific/historical research or statistical purposes on one or both of the above grounds, we will carefully consider your request and let you know the outcome. It may not always be possible to meet your objection if for example, the processing is carried out for the purpose of measures or decisions with respect to particular individuals where this is in accordance the law and is necessary for specified bodies to carry out approved medical research.

Where you object to us processing your personal information for any of the other reasons above, we will:

- consider if we have compelling legitimate grounds for continued processing; and
- whether or not these grounds are sufficiently compelling to justify overriding your privacy rights.

Where the law requires us to process your information to meet our statutory functions and public tasks, including our law enforcement functions, it is very likely that we will not be able to comply with your request.

For example, you will not be able to use this right to prevent us from:

- collecting and administering council tax or assessing benefit entitlements;
- taking measures to protect the health and safety of our staff;
- establishing, exercising or defending our legal rights;
- pursuing criminal investigations or proceedings;

The national data opt-out is a service that allows patients to opt out of their confidential patient information being used for research and planning.

Bury Council may collect health data in order to deliver specific services. The National Data Opt-out means that members of the public can decide that they do not want their information using for anything other than providing care or a

direct service to them where the law does not specifically say it can be used in this way.

There are now rules in place concerning secondary use of health and social care data. This is when personal data is used for purposes not involving direct care, for example for research and planning purposes.

All health and care organisations are now required to respect these decisions and comply with the National Data Opt Out. Bury Council may not hold any data that the opt-out would apply to but needs to assess this on a case by case basis.

For further information; <https://digital.nhs.uk/services/national-data-opt-out>

## Right to restriction of processing

This right may be exercised in circumstances where:

- we need time to consider your representations where you are:
  - contesting the accuracy of the personal information we hold about you; or
  - objecting to our processing of your information (see previous right)
- it has already been determined the processing is 'unlawful' and you ask us to retain and 'restrict' its use;
- we no longer need to retain your personal information but you ask us to retain it for the establishment, exercise or defence of own legal claims.

If you make a request we will let you know if we agree to restrict access to your information for one or more of the above reasons.

If we decide a restriction is appropriate, we will attempt to notify any recipients of your personal information of the restriction and let you know who they are if you ask us to do so.

Where processing is restricted, as well as storing your personal information, we will only process it during the period of restriction:

- with your consent; or
- if it is necessary for the establishment, exercise or defence of legal claims;
- if it is necessary for the protection of the rights of another person; or
- if it is necessary for reasons of important public interest, including for example, communicating with the Information Commissioner.

Where a restriction is applied pending a determination of 'accuracy' or any 'objection' you may have submitted, we will let you know the outcome of your representations and will notify you prior to lifting the restriction.

Where the reason for the restriction is for one of the other reasons above, the erasure of the personal information will not take place until we have resolved evidential issues with you.

We must inform you if we decide to lift any restrictions placed on the processing of your data. You should receive this notification before we lift this restriction. Where Bury Council puts a restriction on processing in place and has previously disclosed the data to others, we must inform each recipient of the restriction (unless this is impossible or would involve disproportionate effort).

### Right to erasure ('Right to be forgotten')

You have the right to request that we erase your personal information in defined circumstances. These defined circumstances are:

- if we are storing your personal information for longer than is necessary or in breach of a legal obligation that requires its erasure;
- you decide to withdraw your consent and you ask us to erase your personal information where there is no other legal ground for processing;
- we have accepted an objection made by you to our processing of your personal information (see 3.4 above) and you have further requested that we erase the personal information in question;
- we are processing or publishing your personal information without a legal basis for doing so;

- where we are legally obliged to erase the information; or
- the personal data was collected in relation to an offer of an information society service (in other words, for a fee over the internet) to a child.

We will carefully consider a request for erasure. Our response will outline whether or not we consider retention of your personal information is unwarranted.

Please note that erasure or the “right to be forgotten” is not an absolute right. There are circumstances where it may not always be possible to agree to your erasure request and we have listed a number of grounds below where it may be necessary for us to retain your information:

- in the interests of freedom of expression (special journalistic purposes)
- in order to comply with a legal obligation;
- for archiving in public interest;
- for public health functions in public interest
- for exercising legal rights or defending legal claims

If we agree to erase your personal information, we will attempt to notify any recipients and let you know who they are if you ask us to do so (unless this is impossible or would involve disproportionate effort). If Bury Council has previously made your personal information public, we will also attempt to inform other data controllers who are processing the data that you have requested their erasure (although this will depend on the technical availability and cost of informing them of the request).

### Right to data portability

In certain circumstances, you have the right to request that the personal information you have supplied to an organisation be converted into a structured, commonly used and machine-readable format (e.g. a CSV file) so that it can be transmitted to another organisation. This right is primarily intended to stimulate competition in the commercial sector by making it easier for consumers to switch from one supplier to another.

As most of the processing activities undertaken by us are governed by statute or as a result of legal obligations imposed on us, this right will only be engaged where you have provided the personal information to us yourself, we are processing it on an automated basis, and the legal basis for our processing:

- is based on your consent; or
- is for entering into or the performance of a contract with you.

If you make a request for the personal information you have supplied to us to be converted into a portable format where our legal basis for processing falls within one of the grounds above, we will let you know our decision. We will be unlikely to agree to requests to transfer personal data that concerns other individuals, especially when providing the information will impact on the rights of those individuals or prejudice them in some way.

If we agree to your request, we will transfer the personal data in question directly to the other data controller you have identified, provided that such a transfer is technically feasible. However, we are not required to adopt or maintain processing systems that are compatible with those of other data controllers.

### Rights relating to automated decision-making

In general, decisions which effect you legally or have similarly significant effects are not permitted using solely automated processing (i.e. decision-making without human involvement), especially if this involves the use of 'Special Category Data'. This is because decisions made using automated electronic programmes or software do not involve human beings.

But there are some exceptions where automated decision-making is permitted. This is where the processing:

- is based on your explicit consent;
- is necessary for entering into or the performance of a contract with you;
- it is required or authorised by law

Where an automated decision is made about you based on one of the reasons above, you are entitled to be:

- informed that our processing activity involves automated decision making and to be informed about the logic involved and the likely consequences of the processing for you;
- told what measures and safeguards we have implemented to protect your privacy;

Where Bury Council undertakes automated decision making or profiling we will:

- notify you about the processing;
- provide a mechanism for you to request that we reconsider the decision or take a new decision that is not based solely on automated decision making;
- carry out regular checks to ensure the automated decision making / profiling is working as intended.

We will only subject your Special Category Data to automated decision making or profiling where you have given explicit consent or where the processing is necessary for reasons of substantial public interest.

Within one month of your receipt of the above notification, you have the right to:

- contest the automated decision; and
- ask that the automated decision be reconsidered by an appropriate person with the authority/seniority to reach a fresh decision that is not based solely on automated processing.

If you contest an automated decision and ask for it to be reconsidered, we will respond within the allowed time period and let you know whether or not this fresh decision has led to the same or a different outcome.



## 5. How you can exercise these rights

How do I make a request about any of my rights?

You can exercise any of the data subject rights mentioned in this policy by writing to Bury Council Data Protection Officer at;

Data Protection Officer

Town Hall

Knowsley Place

Knowsley St,

Bury BL9 0SW

You can also email us at [IG@Bury.gov.uk](mailto:IG@Bury.gov.uk)

To help you to understand how Bury Council processes your data in order to exercise any of your rights, we explain on our website how we collect and use personal information about you, including the types of information we process, what we will do with your information, who we may share it with, the 'lawful bases' (conditions) for processing it, and a list of our 'legal obligations' (powers) to use your personal data to provide services to you. You can view this page at <https://www.bury.gov.uk/privacy>

Further information in relation to submitting a Subject Access request via Bury Council may also be found via the following link; <https://www.bury.gov.uk/council-and-democracy/requesting-information/subject-access-request>

For **all** requests, we will need documentary proof that you are who you say you are. This is for security reasons to ensure we are dealing with you and that none of your personal information is accessed or interfered with by anyone else falsely claiming to be you.

Please ensure you provide at least two forms of identification. Preferably a copy of a passport or, driving licence, and a utility bill, council tax bill or bank statement bearing your full name and current postal address.

On receipt of your request, we will send you a written acknowledgement. In some circumstances we may also ask for additional information if necessary.

### Can someone else make a request for me?

You can ask anyone to act on your behalf. For example a friend, relative, solicitor or employee of a consumer organisation such as a Citizens Advice Bureau.

However, before we discuss or provide your personal data to anyone acting on your behalf you must confirm to us in writing that they have your authority to do so. This will require your signed authority, coupled with two forms of identification. If this information is collected in person by a third party, they must also bring with them two forms of identification to collect this data.

### What if a data subject 'lacks mental capacity'?

A person with a lasting power of attorney appointed directly by the data subject or a Deputy appointed by the Court of Protection may exercise rights on behalf of the data subject.

### What about requests involving children?

It is important to remember that personal data about a child, however young, is the child's personal data and is not the personal data of their parent or guardian. A parent or guardian does not have an automatic right to personal data about their child and can only apply on the child's behalf if the child:

- has given consent; or
- is too young to have an understanding to make the application.

Unlike Scotland, there is no set age in England which recognises when children are automatically able to exercise data protection rights. A child aged 13 or over is able to create an online social media account without the consent of a person with parental responsibility. As a general rule a child must have sufficient understanding and maturity to exercise their own rights and a common-sense approach will be adopted in the event a child or young person submits a request.

For children aged under 13, it will generally be expected that a request is made by a person with parental responsibility. A 'best interest' consideration will be taken into account.

You have the right to request that we erase personal data that was collected in relation to an offer of an 'information society service' to a child.

### How do I evidence parental responsibility?

The following documents would be accepted as proof of parental responsibility:

- Birth Certificate of the child
- Court Order
- Adoption Record
- Special Guardianship Order

### When can I expect your response?

We aim to respond to your request without undue delay and no later than one calendar month counted from the first working day after we are in receipt of your request, and:

- proof of your identity, **and**
- any further information (where we have requested this from you) we need to process your request and/or locate and retrieve your personal information.

Where it is not possible to respond sooner and the last day before expiry of one calendar month, falls over a weekend or on a bank holiday, the latest due date will be treated as the first working day after the weekend or bank holiday.

If your request is complex, we may need to extend the length of time required to respond. If this applies, we will let you know before the latest due date on which you would be expecting to hear back from us.

The UK GDPR says we can extend the length of time to respond by a maximum of a further two calendar months.

Where it is not possible to respond sooner and the last day before expiry of the second calendar month, falls over a weekend or on a bank holiday, the latest due date will be treated as the first working day after the weekend or bank holiday.

We will always try to respond as quickly as we can.

### What will you send me when you respond?

At the time of fulfilling your request, alongside copies of any information about you which you have requested and we are able to disclose, we will also provide the following information:

- the reasons why it is necessary to process your personal information;
- the types of personal information we process;
- the recipients or categories of recipient to whom your personal information have been or will be disclosed, including any recipients in third countries or international organisations and if relevant, the safeguards applicable to the transfer;
- where possible, the envisaged period for which your personal information will be stored, or, if not possible, the criteria used to determine that period;
- the right to request rectification, erasure of personal information or to object or seek to restrict such processing;
- the right to lodge a complaint with a supervisory authority
- the source(s) of any personal information we hold that has not been collected directly from you;
- whether or not decisions are made about you solely using automated means, including profiling, without human intervention and, if so, provide meaningful information about the logic involved, as well as the significance and the envisaged consequences of such processing for you.

### Will I have to pay a charge?

Ordinarily we will not charge a fee for fulfilling a request from you.

The only exception is where you make repeat requests for the same or similar information. In these cases, we reserve the right to charge a reasonable fee

based on the administrative costs of supplying further copies if we consider a reasonable time period has not intervened since fulfilling a previous request.

Where the right of data portability is engaged, we must also provide information through this route free of charge.

### Will I get all of the information I am requesting?

This is likely to be the case. But it is important to note that the right of access to your own information does not extend to information about other people who may be identified in the information that also refers to you.

We may therefore redact (blank out) personal information about other individuals (called 'third parties' in the data protection laws) where we are satisfied it is reasonable in the circumstances to do so. We may withhold or redact some information you request about yourself where it is possible to identify a third party.

In some cases, information may be so interlinked that it is not possible to fulfil your request without breaching another person's privacy rights.

The names of professional staff (whether directly employed by us or not) involved in decision-making about your care and education will often be disclosable and their identities will not be automatically redacted, unless this is warranted in a particular case.

The law recognises that there are occasions when it may be appropriate to withhold certain information and provide exemptions in specified circumstances. For example, it may be exempt if providing it to you would compromise the prevention or detection of crime or the prosecution of offenders. In certain cases, we may also withhold some information relating to education, health and social work.

If we withhold information on the basis that it is exempt from disclosure, where it is possible to do so, we will explain the exemption(s) we are relying on and

the reasons why one or more are necessary.

### Can I choose the format in which my information is supplied?

Once we have located your personal data, we will provide copies to you in the same format you first contacted us, unless specified otherwise.

Where you have submitted your request electronically or asked us to respond in a particular format, we will try to do so wherever this is reasonably practicable.

### Can you refuse my request?

In certain circumstances we may refuse to act on your request if we consider that your request is unfounded, excessive or repetitive in nature.

We will give our reasons if we refuse to comply with your request on any of these grounds.

### What if I am not satisfied with your response or it is taking too long?

Upon receipt of your request, we have one calendar month to provide you with a response, or contact you to tell you how much longer we need to fulfil your request.

The Information Commissioner's Office (ICO) is the UK's independent regulator responsible for upholding and enforcing the rights of individuals under the data protection laws.

If you do not hear from us by the latest due date or are not satisfied with the response you have been given, you have the right to complain to the ICO.

If you consider that personal information we hold about you is incomplete and we do not agree with this, we may offer you the option of adding a supplementary statement explaining why you consider the information we hold is incomplete.

If we disagree with your view that the information we hold about you is factually wrong, or refuse your request for erasure, then in our response we will explain the basis for our decision and give you details about your right to complain to the ICO if you are not satisfied.

You can contact the ICO

**By post:**

Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF

**Via their website:** <https://ico.org.uk/make-a-complaint/>.

## 6. Compliance and Monitoring

### Legal and Professional Obligations

Bury Council will take actions to comply with the relevant legal and professional obligations.

### Training

Bury Council will provide relevant training both online and face to face to ensure that staff understand the legislation and its application to their role.

All staff must complete mandatory data protection training every year and undertake any further training provided by Bury Council to enable them to perform their duties appropriately specifically those staff responding to complaints, Subject Access Requests and Freedom of Information requests.

Completion of training will be monitored by the Policy and Compliance Team and all employees must have regard to the Data Protection Legislation and this policy when dealing with personal information.

## Policy Review

This policy will be reviewed regularly by the Policy and Compliance Team to ensure that it is updated in line with any change in legislation.

Bury Council will continue to review the effectiveness of this policy to ensure that it is achieving its intended purpose.

Any breaches of the principles in this policy must be reported to the Policy and Compliance Team immediately; [ig@bury.gov.uk](mailto:ig@bury.gov.uk).

Where staff fail to follow and comply with this policy it may result in disciplinary action via the HR channels.