

# Subject Access Request Policy

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# Document Version Control

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This is a live document effective from the issue date. It supersedes any previous versions of this document, which are now withdrawn.

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# 1. Introduction

Individuals have the right under the Data Protection Act (DPA) and General Data Protection Regulation (GDPR), subject to certain exemptions, to have access to their personal records that are held by Bury Council.

This is known as a 'subject access request' (SAR). Requests may be received from members of staff, service users or any other individual who the Council has had dealings with and holds data about that individual. This will include information held both electronically and manually and will therefore include personal information recorded within electronic systems, spreadsheets, databases or word documents and may also be in the form of photographs, audio recordings and CCTV images etc.

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.

## What is a Subject Access request?

A subject access request (SAR) is a written request made by or on behalf of an individual for the information which is held by the Council about them. Data Protection Legislation entitles all individuals to make requests for their own personal data to enable individuals to verify the lawfulness of how their information is being processed. An individual is not entitled to information relating to other people (unless they are acting on behalf of that person).

Subject access is most often used by individuals who want to see a copy of the information an organisation holds about them. However, subject access goes further than this and an individual is entitled to be:

- told whether any personal data is being processed;
- given a description of the personal data, the reasons it is being processed, and whether it will be given to any other organisations or people;
- given a copy of the personal data; and
- given details of the source of the data (where this is available).

Some types of personal data are exempt from the right of subject access and so cannot be obtained by making a SAR. Information may be exempt because of its nature or because of the effect its disclosure is likely to have. There are also other restrictions on disclosing information in response to a SAR, for example where this would involve disclosing information about another individual.

## Scope

This policy applies to all members of staff that are directly employed by the Council or employed on a temporary basis and for whom the Council has legal responsibility.

This policy also applies to all third parties and others authorised to undertake work on behalf of the Council. The purpose of this policy is to provide a guide to all staff on how to deal with subject access requests received and advise service users and other individuals on how and where to make requests. This is based on the Information Commissioner's Office Subject Access Code of Practice: ICO Subject Access Code of Practice.

## 2. Policy

### Making a request

The GDPR does not set out any requirements for a valid SAR. The request does not have to be in any particular form, nor does it have to include the words 'subject access' or make any reference to the Data Protection Legislation. A SAR may be a valid request even if it refers to other legislation, such as the Freedom of Information Act 2000 (FOIA) and should therefore be treated as a SAR in the normal way. Individuals requesting a SAR do not have to explain the reason for making the request or what they intend to do with the legislation, however it may help the Council to find the relevant information if they do.

Therefore, SAR's can be received by the Council via:

- Letter to Policy and Compliance Team, Bury Council, Knowsley Street, Bury, BL9 0SW
- Email to [subjectaccessrequest@bury.gov.uk](mailto:subjectaccessrequest@bury.gov.uk)

- Via the Bury Council website - <https://www.bury.gov.uk/council-and-democracy/requesting-information/subject-access-request>
- Social media
- Verbally

The Council will need to be satisfied that:

- They know the identity of the requester (or the person the request is made on behalf of) and
- the data the Council holds relates to the individual in question

As such, the Council will ask all requesters to provide a form of photo identification in order to process the SAR. If an individual does not have a form of photo identification, they should contact the Policy and Compliance Team to discuss other methods of identification that can be provided.

### Requests on behalf of a third party

A third party may assist an individual in making a subject access request.

The council will need to determine whether they must comply with the request by considering whether they:

- have been made aware that a particular individual is making a SAR
- are able to verify the identity of the individual
- are satisfied the third party is acting with the authority of, and on behalf of, the individual
- are able to view the SAR without having to take proactive steps such as paying a fee or signing up to a service

### Requests on behalf of children

The right to access information the Council holds about a child is the child's right, rather than anyone else's, even if

- they are too young to understand the implications of the right to access
- the right is exercised by those who have parental responsibility for the child
- they have authorised another person to act on their behalf

Before Bury Council will respond to a SAR for information held about a child, they will consider whether the child is mature enough to understand their rights. If the council is confident that the child has the capacity to understand their rights and any implications of the disclosure of information, then the child's permission should be sought to action the request. The Information Commissioner has indicated that in most cases it would be reasonable to assume that any child that is aged 12 years or more would have the capacity to make a subject access request and should therefore be consulted in respect of requests made on their behalf.

If a child is deemed competent, they may authorise someone else – other than a parent or guardian – to make a SAR on their behalf. This could be an adult or a representative such as child advocacy service, charity or solicitor.

If a child is deemed as non-competent and the request is from a person with parental responsibility for the child, it is usually appropriate to let the holder or parental responsibility exercise the child's rights on their behalf.

What matters is that the child is able to understand (in broad terms) what it means to make a SAR and how to interpret the information they receive as a result of doing so.

When considering borderline cases, the following should be taken into account:

- Where possible, the child's level of maturity and their ability to make decisions like this;
- The nature of the personal data;
- Any court orders relating to parental access or responsibility that may apply;
- Any duty of confidence owed to the child or young person;
- Any consequences of allowing those with parental responsibility access to the child's or young person's information. This is particularly important if there have been allegations of abuse or ill treatment;
- Any detriment to the child or young person if individuals with parental responsibility cannot access this information; and
- Any views the child or young person has on whether their parents should have access to information about them.

## Clarifying requests

There may be instances where we have to contact the individual to request clarification of their request. The time limit for responding to the request is paused until the Council receives clarification. Clarification will only be sought when it is genuinely required in order to respond to the SAR and/or the council process a large amount of information about the individual.

## Fees

The Council is unable to charge a fee to comply with a SAR in the majority of cases. A 'reasonable fee' can be charged for the administrative costs of responding to a request if

- If it is manifestly unfounded or excessive or
- An individual requests further copies of their data following a request

## Response times

A SAR response must be provided within one calendar month of receipt of the request or within one calendar month from the point at which all the information has been provided (including proof of ID and/or a fee).

The response date may be extended by a further two months if the request is complex, or the Council have received a number of requests from the individual simultaneously.

## Complex requests

The following are reasons the request may be deemed complex:

- Technical difficulties in retrieving the information
- Applying an exemption that involves large volumes of particularly sensitive information
- Clarifying potential issues around disclosing information about a child to a legal guardian
- Any specialist work involved in obtaining the information or communicating it in intelligible form

- Clarifying potential confidentiality issue around the disclosure of sensitive medical information to an authorised third party
- Needing to obtain specialist legal advice
- Searching large volumes of unstructured manual records

## Responding to requests

A log of all requests received will be maintained by the Policy and Compliance Team, detailing:

- Date received
- Date response due (within one calendar month unless complex)
- Applicant's details,
- Information requested,
- Exemptions applied in respect of information not to be disclosed,
- Details of decisions to disclose information without the data subjects consent,
- Details of information to be disclosed and the format in which they were supplied,
- When and how supplied

The Policy and Compliance Team will

- Determine whether the person's request is to be treated as a routine enquiry or as a subject access request. If we would usually deal with the request in the normal course of business, e.g. confirming appointment times or details of public meetings planned then do so.
- Ensure adequate proof of the identity of both the data subject and the applicant, where this is a third party. This must be obtained before releasing the information requested.
- Ensure adequate information has been received to facilitate locating the information requested.
- Locate the required information from all sources and collate it ready for review by the Compliance Officer. This review is to ensure that the information is appropriate for disclosure, i.e. to ascertain whether any exemptions apply (e.g. it does not contain information about other individuals, it is likely to cause harm or distress if disclosed, or is information to be withheld due to on-going formal investigations).

- Advice may be sought from the Data Protection Officer or Director of Law and Governance
- Where information in respect of other individuals is contained within the information requested, it should not be disclosed without the consent of that individual.

## Exemptions

The UK GDPR and DPA 2018 recognise that, in some circumstances, the Council may have a legitimate reason for not complying with a SAR, and there are exemptions from the right of access.

If an exemption applies to the facts of the request, the Council may refuse to provide all or some of the requested information, depending on the circumstances.

The exemptions are set out in Schedules 2 and 3 of the DPA 2018 are:

- Crime and taxation: general
- Crime and taxation: risk assessment
- Legal professional privilege
- Functions designed to protect the public
- Regulatory functions relating to legal services, the health service and children's services
- Other regulatory functions
- Judicial appointments, independence and proceedings
- Journalism, academia, art and literature
- Research and statistics
- Archiving in the public interest
- Health, education and social work data
- Child abuse data
- Management information
- Negotiations with the requester
- Confidential references
- Exam scripts and exam marks
- Other exemptions

## Refusing a request

If the council refuses a request, we must inform the individual:

- The reasons why
- Their right to make a complaint to the ICO
- Their ability to seek to enforce this right through the courts

## 3. Compliance and Monitoring

### Legal and Professional Obligations

Bury Council will take actions to comply with the relevant legal and professional obligations, in particular:

- General Data Protection Regulation and Data Protection Act 2018
- Human Rights Act 1998
- Common Law Duty of Confidentiality
- The Information Commissioner's Office (ICO) code: right of access

### 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 collecting, accessing, using, disclosing or destroying personal information. Failure to do so may result in disciplinary action and legal prosecution.

If an employee is in any doubt about how to respond to subject access requests, they should speak to their line manager or contact the Policy and Compliance

Team by emailing [IG@bury.gov.uk](mailto:IG@bury.gov.uk).

## 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 information governance 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.

## 4. Policy exemption

Occasionally there may be situations where exceptions to this policy are required, as full adherence may not be practical, could delay business critical initiatives or could increase costs.

Where the significance and purpose of the data does not justify a particular aspect (for example the cost of building an internal system validation check outweighs the benefit of the additional data accuracy) then this should be risk assessed on a case-by-case basis. Where there are justifiable reasons, the Data Protection Officer must be consulted immediately using [ig@bury.gov.uk](mailto:ig@bury.gov.uk).