

## **Compliance advice**

### ***Subject access – Right of access to social services record.***

The Data Protection Act 1998 came into force on 1 March 2000. It gives all individuals who are the subject of personal data (“data subjects”) a general right of access to the personal data which relates to them. These rights are known as “subject access rights”. Requests for access to records and for other information about those records are known as “subject access requests.” Personal data may take the form of computerised or, in some cases, paper records. In most cases there is no right of access to paper records until October 2001. However, there are important exceptions which include local authority social work records.

This leaflet explains the rights of access to social work records. (It does not set out to explain the general right of access to other records held by local authorities. This is described in the leaflet, “Using the law to protect your information,” also available from the Data Protection Commissioner.)

#### **Which records are covered?**

The Act gives a right of access to social work records which are held by any of the following:

- In England and Wales, a local social services authority;
- In Scotland, a social work authority;
- In Northern Ireland, a Health and Social Services Board or Trust.

The records themselves may be held on computer or paper.

#### **Who is entitled to make a request?**

Subject access requests may be made by the individuals to whom the data relate irrespective of age or any other criteria. A data subject can make a request through agents such as a solicitor or advice worker, although they may be asked for evidence that they are acting on behalf of the data subject.

In cases where data subjects are incapable of understanding or exercising their rights, for instance because they are too young or suffer from a severe mental handicap, then subject access requests may be made by parents or other persons who are legally able to act on behalf of the data subjects.

In many cases a Social Services Department may choose to disclose information about a client who is incapable of exercising his or her rights to a parent or other third party. However, it cannot be compelled to make the disclosure if the third party does not act on behalf of the data subject in law.

#### **Making a subject access request?**

Subject access requests must be made in writing to data controllers who are allowed up to 40 days in which to respond. (The “data controller” is technically the organisation responsible for the data, in this case local authority as a whole. For practical purposes it is often easiest, however, to approach its social services department directly.) Data subjects are entitled to be told if any personal data are held about them and, if it is:

- To be given a description of the data;

- To be told why the data are held;
- To be told who the data may have been given to;
- To be given a copy of the data with any technical terms explained;
- To be given any information available to the controller as to the source of the data;
- To be given an explanation as to how any automated decision taken about them have been made.

Data controllers may charge a fee of up to £10 for responding to a subject access request. They may also ask for any information which they need in order to verify the identity of the person making the requests and to locate the data (for instance names of relevant social workers, dates of contact with the Department.)

### **Information which may be withheld**

In principle individuals have a right to be given a copy of all the information contained in their social work files. There are, however, times when the Act allows the social services department to withhold some information. The main exceptions are:

- If the information on a file identifies other people, then it will often be right to remove that information unless the third parties have agreed to the disclosure. (This is less likely to apply to information identifying social workers or other social work professionals unless to disclose it would cause them serious harm.)
- If the disclosure of the information would prejudice the carrying out of social work by reason of the fact that serious harm to the physical or mental health of the data subject or any other person would be likely to be caused;
- 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 of the information should not be disclosed or if they have provided the social services department with information on the assumption that it will not be disclosed;
- If in that particular case it would hinder the prevention and detection of crime or the prosecution or apprehension of offenders to provide it.

### **What if access is denied?**

If no response is received to a subject access request or if you think that there is information to which you are entitled which has been withheld, you should write to the Director Social Services or to the Chief Executive of the Council. If you remain dissatisfied you may either apply to a court for release of your data or contact the Data Protection Commissioner.

Further information about the Data Protection Act can be obtained from the Commissioner's web site ([www.dataprotection.gov.uk](http://www.dataprotection.gov.uk)) or can be requested from our Information Line (01625 545745).

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### **The Office of the Data Protection Commissioner**

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