

## Information Management Policy



## Corporate Policy on Access to Personal Records

Version 1.4 August 2016

### Policy Overview

The Data Protection Act 1998 provides for an individual to request, and receive, a copy of the information held about them in both manual and electronic formats.

This policy describes how Solihull Council will fulfil this legal obligation.

# VERSION

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1.3	May 2014	Revision regarding the 40 day deadline not starting until after ID has been supplied
1.4	August 2016	Reviewed as per review schedule. No changes made other than the policy date updated

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# **1. INTRODUCTION**

## **1. INTRODUCTION**

The Data Protection Act 1998 allows an individual to request from any organisation details of what personal information they may hold about them (electronic and manual files) and to receive, a copy of that personal information. Solihull Metropolitan Borough Council has a legal duty to comply with such requests.

Failure to comply with the Data Protection Act 1998 can lead to criminal or civil proceedings that may result in prosecution corporately or individually. In addition, an individual, who is affected by such a failure may be awarded damages.

Because of the nature of the information contained within most of the records held and the complexity of the Data Protection Act 1998, it is essential that all concerned with processing an access to personal records requests adhere to the policy and procedures given in this document.

This policy is intended to ensure that Solihull Metropolitan Borough Council complies with its legal obligations.

## 2. POLICY STATEMENT

### 2. POLICY STATEMENT

#### 2.1 General

- 2.1.1 In order for Solihull Metropolitan Borough Council to meet its legal obligations under the Data Protection Act 1998 this document sets out the corporate policy and procedures with respect to Access to Personal Records / Information.

#### 2.2 Scope

- 2.2.1 This policy applies to all council services with the exception of schools.

##### What is an Access to Personal Records Request?

- 2.2.2 Technically when a person applies in writing for access to information the Council holds about them, then this is an 'access to records request'. However, where requests are simple and can be easily satisfied there is no need to add any extra layers of bureaucracy to what are essentially 'business as usual' or 'service' requests.

- 2.2.3 The requests that fall within the scope of this policy are the types of requests that typically meet one or more of the following criteria:

- **Voluminous** - e.g. requests for access to large Social Services Files.
- **Wide in Scope** – e.g. requests that ask for information held by more than one service area.
- **Sensitive** – e.g. the requested information contains information that a service may have concerns about releasing such as information which may prejudice crime prevention/investigation or may cause harm to individuals.
- **Identify Third Parties** – e.g. the information sought may contain information which relates to third parties. It is likely that this information may need to be redacted to protect the privacy of other these individuals.
- **Confidential** - e.g. there may be information that was provided in confidence and its disclosure may breach the duty of confidence owed to the provider.

## 2. POLICY STATEMENT

### 2.3 Charging

- 2.3.1 Under the Data Protection Act 1998, Solihull MBC is entitled to make a charge (currently £10) for each access to personal records request. Solihull MBC policy is not to make any charge for such requests.

### 2.4 Monitoring and Review

- 2.4.1 The Corporate Information Governance Team will be responsible for:
- The operation, monitoring, reporting, compliance with and publication of the Access to Records Policy and Operational Procedures.
  - Regularly reviewing the Access to Records Policy and Operational Procedures to ensure compliance with the relevant legal obligations / changes in case law, guidance and working practices affecting Solihull MBC.

### 2.5 Responsibilities for Processing Access to Records requests

- 2.5.1 For the purpose of dealing with an access to personal records request:
- The Corporate Information Governance Team may delegate a person(s) from the relevant service areas to undertake the task of finding and preparing the record / information.
  - The Corporate Information Governance team or nominated person(s) will have the authority to request, and be given, immediate access to all record(s) relating to such requests.

## 3. OPERATIONAL PROCEDURE

### 3. OPERATIONAL PROCEDURES

#### 3.1 Access to Records requests

- 3.1.1 Because of the complexity of the Data Protection Act 1998, individual members of staff should not attempt to meet requests from customers/service users or their representative(s) for access to personal records. They should direct such enquiries to the Corporate Information Governance Team.

**WARNING**      The disclosure of personal information to someone who is not legally entitled to it may cause serious distress or harm to the 'owner' of that information, and may result in legal action being taken against Solihull MBC.

**IMPORTANT:**   Solihull MBC has 40 calendar days, commencing the date of receipt, in which to comply with the request. It is, therefore, essential that all written requests are forwarded to the Corporate Information Governance Team immediately.

- 3.1.2 All requests for access to records must be made in a permanent format e.g. letter, pro-forma, facsimile, electronic mail.
- 3.1.3 The request must be legible and contain sufficient information to enable the data subject, and what records they require access too, to be identified.
- 3.1.4 Members of the public wishing to apply directly to the Information Governance team may do so by writing to:

The Corporate Information Governance Manager  
Solihull Metropolitan Borough Council  
Council House  
Manor Square  
Solihull  
West Midlands  
B91 3QB

[infogov@solihull.gov.uk](mailto:infogov@solihull.gov.uk)

## 3. OPERATIONAL PROCEDURE

### 3.2 Receipt of Request for Access to Personal Record(s)

3.2.1 On receiving an access to records request, the Corporate Information Governance Team will:-

- a) Record the details of the request on an appropriate record tracking system.
- b) Acknowledge receipt of the request.
- c) Identify if the record(s) being requested exist and request access to them.
- d) Identify if there any known reasons as to why the access to records request should not be complied with, for example disclosure may:-
  - Prejudice the prevention/detection of a crime, or
  - Cause serious harm to the data subject or other person, or
  - Prejudice the function of the authority.

**Note:** Steps (b to d) may be delegated to nominated employees in the relevant business areas.

#### Deceased person

3.2.2 If the application that is being made relates to a deceased person's record the Data Protection Act 1998 does not apply and there is no legal obligation on Solihull MBC to provide any information to the representative.

3.2.3 Extreme care must be exercised if considering the release of a deceased person's information to a representative as the common law duty of confidentiality may still apply.

#### Repeated requests

3.2.4 If a previous request has been made, the Corporate Information Governance Team will establish the validity of the current request as information that has previously been supplied may not need to be supplied again.



## 3. OPERATIONAL PROCEDURE

### 3.3 Validation of Applicant

**IMPORTANT:** Solihull MBC must take all reasonable steps to ensure that the person making the request for information is who they say they are, and that they are capable of making such a request of their own free will.

Remember, we may be liable if we give information to someone who is not entitled to it.

3.3.1 The Corporate Information Governance Team or nominated staff Member(s) from the relevant service areas must endeavour to validate the authenticity of the request.

For example,

- Comparing the signature on the application with a signature on file.
- Personal knowledge of the individual e.g. the last worker to have contact with the person, may be able to confirm that they are capable of making such a request of their own free will.

3.3.2 If there is any doubt as to the authenticity of the requester, further enquiries must be made. In such cases the 40 day deadline will not start until the authenticity of the requester and / or their representative has been satisfied. (see also Appendix 1)

### 3.4 Searching for the Personal Records / Information

#### The Information sought cannot be found

3.4.1 If the personal information sought cannot be identified, the Corporate Information Governance Team will write to the applicant and advise him/her accordingly and invite the applicant to provide any additional information that may assist in identifying their record, e.g. previous names, previous addresses, approximate dates of contact etc.

**Note:** The '40 day deadline clock' will stop and not start again until the additional information has been received.

### 3. OPERATIONAL PROCEDURE

3.4.2 If having received any additional information from the applicant no record(s) can be found, the Corporate Information Governance Team will write to the applicant and advise him/her accordingly.

3.4.3 If the application is being made by a person other than the data subject (a representative), the request will be handled in accordance with Appendix 1.

#### The Information sought exists

3.4.4 If the personal records sought exist for the applicant, the Corporate Information Governance Team or nominated staff member from the relevant service areas will:

- a) Request that all manual records and copies of all computer records relating to the person be sent to them under secure cover as a matter of urgency.
- b) Within 3 working days of receiving the request:
  - i) Write to the applicant and inform him/her that Solihull MBC holds a record on them and provide the applicant with a copy of their rights under the Data Protection Act / Overview of the process.
  - iii) If it has not been indicated on the application, clarity will be sought to ascertain if the applicant requires the complete record or only specific information.
  - iv) At the time of advising the applicant that their request is being processed, if appropriate assistance will be offered to help the applicant go through the record e.g. social care records relating to a person who has been in care.
  - v) The applicant will be asked how they wish their record to be 'handed over' e.g. collection from local office or by special delivery post.

### 3.5 Preparation of the Record

3.5.1 The actual method of preparing the record for access will depend upon the size and complexity of the record. For very small files it may be practical to photocopy them, however, for larger files scanning and electronically editing them will be far more efficient and cost effective.

3.5.2 Two copies of the applicants records (manual and computer) should be produced before returning any originals to the providing service area.

### 3. OPERATIONAL PROCEDURE

- One copy will be identified as the *'working copy'* and *this will be the one that is redacted and prepared to be sent out to the applicant.*
- The second will be left untouched and remain as a true and original copy of the information. This is in case there are any queries about what has been supplied and what has been withheld.

3.5.3 The Corporate Information Governance Team or nominated staff from the relevant service area will carefully read through the entire *'working copy'* and identify all references to third parties, and any information which falls within the special categories indicated in Appendix 2.

#### Third Party Personal Information

3.5.4 The Corporate Information Governance Team or nominated staff member will decide if third party personal information should be released or whether explicit consent needs to be sought from the persons concerned, or alternatively whether it can be made anonymous (see Appendix 2).

- ❑ If explicit consent is deemed necessary, letters or emails should be sent to the third parties concerned.
- ❑ Alternatively, if possible the third party information may be redacted (See Appendix 1 for details of making information anonymous).

**Note:** Experience has shown that obtaining third party consent is the largest cause of not meeting the 40 day deadline.

Delayed third party responses, although outside of our control, can not be used as an excuse for not providing the information on time. If it is anticipated that response delays may cause problems in meeting the 40 day deadline, the applicant must be contacted and advised of the situation.

The following option may be offered:-

- ❑ Having the record without the information for which consent is still outstanding – this will be forwarded to the applicant as soon as consent is given, or
- ❑ Waiting until the complete record is complete.

### 3. OPERATIONAL PROCEDURE

Whichever option the applicant decides, it is essential that the agreement is confirmed in writing.

#### Final Preparations

- 3.5.5 As soon as practically possible the requesters record should be prepared for handover. .

IMPORTANT: Any information that it is deemed necessary to remove from the record should be clearly marked as removed and the relevant paragraph or page marked with the exemption / reasoning used to justify withholding the information.

Remember: The applicant must also be given a summary explanation of any coding, abbreviations or terminology used within the record.

- 3.5.6 As soon as the record has been prepared, it is advisable to involve other stakeholders and ask them to read through the prepared information to ensure that all the information that should be withheld has been and that nothing has been missed.

For example,

If the Information Governance team has prepared the records it may be advisable to ask a nominated staff member from the relevant service area to double check the record or visa-versa.

- 3.5.7 Once all parties are agreed that the record / information can be released the Corporate Information Governance Team will make arrangements for the records to be delivered to the applicant.

### 3. OPERATIONAL PROCEDURE

#### 3.6 Hand Over of Record

- 3.6.1 As soon as the record is ready for handing over, the Corporate Information Governance Team will contact the applicant and inform them accordingly. There are several methods of delivery available.

##### Help and Support

- 3.6.2 With regard to Social Services records, sometimes it will be necessary to offer support to the applicant and help them understand the information that they have been supplied with. For example,
- It may be complex, or
  - There may be information that the applicant was previously unaware of and that may be upsetting to them.
- 3.6.3 If the applicant has agreed to assistance to help them go through their record the relevant Team/Unit manager will appoint a worker to undertake this support. The appointed worker will contact the Data Subject and make mutual arrangements to hand over and go through the record.

##### Collection in Person

- 3.6.4 If the applicant has opted to collect their record (and they indicated that they do not require any support to help them go through their record), they should be advised to bring with them suitable identification e.g. passport or similar identification containing a photograph and signature (this will certainly be required if collecting from an office where they are not known – we need to be certain that the person is who they say they are).
- 3.6.5 Before handing over a record, the identity of the person collecting the record must be validated and a hand over receipt signed and dated by the recipient and the person handing over the record.

##### Post – Manual Files

- 3.6.6 Advise the applicant that packages sent through the post do sometimes get lost or delivered to the wrong address. There are therefore risks associated with posting the information.

### 3. OPERATIONAL PROCEDURE

- 3.6.7 If the applicant has been informed of the risk and is willing to have the information posted to them then use Special Delivery only as Special Delivery tracks the package on its journey through the postal system and so if it were lost there is more chance of the Post Office being able to find it.
- 3.6.8 Ensure the packaging used is strong and tear proof to prevent spillages.

#### Post – Electronic Files

- 3.6.9 For larger files it will have been more efficient to scan them and electronically redact them. These files should be copied to a CD and encrypted and protected with a strong password containing at least 8 characters which are a mixture of upper and lower case alphanumerics.
- 3.6.10 Do not send the password with the CD, arrange for it to be sent via another means such as by telephone.
- 3.6.11 When sending the CD send it by Special Delivery and in a secure package as described above.

#### Encrypted Email

- 3.6.12 For larger files it will have been more efficient to scan them and electronically redact them. If the size of the file is small enough to be able to email it then it can be sent by encrypted email.

## Solihull Metropolitan Borough Council

### Operational Procedures Access to Records Personal Requests

## APPENDIX 1 - Dealing with Requests from a Representative

### 1. INTRODUCTION

Section 7 of the Data Protection Act 1998 gives an individual the right to be given a copy of their own information (subject to conditions). The key words being 'their own', there is no automatic right for a person to have access to someone else's information, and this includes a parent wishing to see a child's record or for a person to see their partner's or close relative's record.

It is appreciated that there are circumstances when a person may not be able to make the request themselves, because of their age or condition, or perhaps they may choose to nominate a solicitor or someone else to make the request on their own behalf.

This protocol outlines the procedures that will be adopted to deal with requests for access to records by a representative.

### 2. DEFINITION

A 'representative' is any person, or organisation, who is lawfully acting on behalf of the Data Subject.

### 3. DEALING WITH AN ACCESS REQUEST FROM A REPRESENTATIVE

All requests for access to records made by a representative will initially be processed in accordance with the normal procedures given in this document.

### 4. RIGHT TO ACCESS TEST

All requests for access to records made by a representative will need to satisfy Solihull MBC's 'right to access test' that will be undertaken by the Corporate Information Governance Team in consultation with the appropriate team/unit manager.

**IMPORTANT:** If a 'right to access test' is undertaken, a comprehensive record must be maintained of all decisions made and by whom.

## APPENDIX 1

- 4.1. If the application is made by a legal representative or a recognised organisation, e.g. solicitor, attorney, CAB etc., a check should be made to confirm the authenticity of representation if this has not been supplied with the application (letter of authorisation).

If authentication of representation is satisfactory, the application may be processed in the normal manner (3.4. onward of the Access to Records Operational Procedures).

When the Corporate Information Governance Team confirms receipt of the request to the representative, a copy of the letter should also be sent to the data subject if appropriate.

- 4.2. All other access to records from a representative will be 'tested' as described below.

### **The Test**

Satisfy yourself that the Representative is acting with the authority of the person who's information they are seeking.

- Have they supplied signed authority, if so is the signature genuine?
- If they have not supplied signed authority, why not?
  - Is the person who they are representing capable of providing signed authority?
  - Is the person who they are representing got the capacity to provide informed consent?
- If there is any doubt consider contacting the person who's information is being sought and double check that they are happy for it to be released to the Representative
- If the person concerned cannot provide information consent then make enquiries to determine the relationship between the Representative and the person who's information is being sought. For example, a Social Worker may confirm that the person is their Daughter and the main carer in which case it is reasonable to conclude that they are acting in their parents best interests and with their consent.



## 5. CONSIDERATIONS

### 5.1. Consent

It is essential that careful consideration be given to this matter, regardless of the person's age. The key question must be 'is he/she mentally/emotionally capable of giving informed consent of his/her own free will'.

### 5.2. Guidance:

Consent is a person's agreement for something to happen e.g. someone else having access to their records.

For the consent to be valid, the person must:

- ❑ have capacity to take a particular decision;
- ❑ have received sufficient information to make an informed decision; and
- ❑ not be acting under duress.

Consent may be given non-verbally, orally or in writing.

### 5.3. Capacity

For a person to have capacity, he/she must be able to comprehend and retain the information material to the decision and must be able to weigh this information in the decision making process. The BMA has published guidance on the assessment of capacity and advice must be sought from a medical or mental health practitioner if there is any doubt.

### 5.4. Young Persons

Section 8 of the Family Law Reform Act entitles young people aged 16 or 17, having capacity, to give informed consent.

Following the case of Gillick v West Norfolk and Wisbech AHA [1986] AC 122, the courts have held that young people (below the age of 16) who have sufficient understanding and intelligence to enable them to understand fully what is involved will also have capacity to consent.

### 5.5. Parental Requests

The Children Act 1989 sets out persons who may have parental responsibility, these include:

## APPENDIX 1

- ❑ the child's parents if married to each other at the time of conception or birth;
- ❑ the child's mother, but not the father if they were not so married unless the father has acquired parental responsibility via a court order or a parental responsibility agreement or the couple subsequently marry;
- ❑ the child's legally appointed guardian;
- ❑ a person in whose favour the court has made a residence order in respect of the child;
- ❑ a local authority designated in a care order in respect of the child;
- ❑ a local authority or other authorised person who holds an emergency protection order in respect of the child.

Foster parents or guardians do not automatically have parental responsibility.

**IMPORTANT:** When deciding if a 'representative' has the right of access to a person's record it is essential that all decisions must be based upon fact (which may have to be justified to a Court) and all decision should be recorded stating who made the decision and the reason why.

If there are any concerns relating to a person's capacity, qualified advice must be sought.

### 5.6. **Best Interest**

When considering this matter, it is recommended that the starting point should always be 'release the information'.

If there are indications that the representative intends to use the information for their own purpose then legal advice will be required.

## Solihull Metropolitan Borough Council

### Operational Procedures Access to Personal Records Requests

## APPENDIX 2 - Dealing with Third Party Information

### 1. INTRODUCTION

Section 7 of the Data Protection Act 1998 gives an individual the right to be given a copy their own information (subject to conditions).

The Act recognises that when complying with an access to records request it is likely that the individual's record may contain information that:-

- ❑ has been provided by a third party, or
- ❑ may identify a third party.

The Act requires Solihull MBC to provide as much information as possible and it therefore makes provision for the disclosure of such information, subject to certain conditions.

### 2. DEFINITION

Within the context of Solihull MBC, the Act defines a Third Party as any person other than:-

- ❑ the individual who's information is being sought

**Note:** It is usually reasonable to disclose third party personal information relating to members of staff because the personal information relates to their professional life and not their personal life.

## APPENDIX 2

### 3. DISCLOSURE

In order for Solihull Social MBC to disclose information held within an individual's record that either identifies a third party, or has been provided by a third party, one of the following condition should be satisfied:-

- a) The third party has given explicit consent to disclosure, or
- b) The information is made anonymous, or
- c) It is reasonable in all circumstances to do so.

#### **Option a) – Third Party Consent**

This is the safest of the three option. It can however be very time consuming (in terms of the 40 day deadline), and is not always necessary or appropriate.

Generally, consent to disclose must be obtained if the information contains details of a medical or legal nature. All other types of information may be dealt with by using option (b) or (c).

#### **Option (b) – Making Anonymous**

This solution is perfectly satisfactory, provided that all references that could identify the third party have been 'erased'.

#### **Option (c) – Disclosing without consent**

This option relies on someone making the judgement that, given the circumstances, the data subject is already aware of the information and the source.

Because of the potential risk of human error, and bearing in mind that we may be liable for providing data inappropriately, this option is not to be recommended.

Third party information may only be withheld under limited circumstances, for example:-

- ☐ Third party consent refused and the information contains details of a medical or legal nature.
- ☐ Third party consent refused and the information can not be made anonymous.

## APPENDIX 2

- ❑ A statutory requirement or court order preventing disclosure e.g. adoption.

### 4. APPLYING FOR CONSENT

When applying to a third party for consent, the third party should be provided with a copy of the relevant material/text that they are being asked agreed to.

**IMPORTANT:** It is essential that the third party is only given access to that information which they originally provided and that any reference to other parties is removed.

When contacting the third party, a pre-paid envelope (marked "For Addressee Only") should be provided for returning their decision.

When requesting consent from organisations such as Schools, Police, Health Authority, Health Visitor etc, they should be sent to the Manager or senior officer in the first instance.

### 5. SPECIAL SITUATIONS

Contained within an individual's record there may be references made to matters relating to payments made by to others, such as care providers (foster carers, home care agencies etc.).

In most cases there will be a reference to the party concerned (third party) and could, therefore, be dealt with in the normal way by making the information anonymous or seeking consent.

Certain Information relating to adoption matters is exempt under the Data Protection Act 1998 under Statutory Instrument 2000 No.419 and Statutory Instrument 2000 No. 1865