

## INTRODUCTION

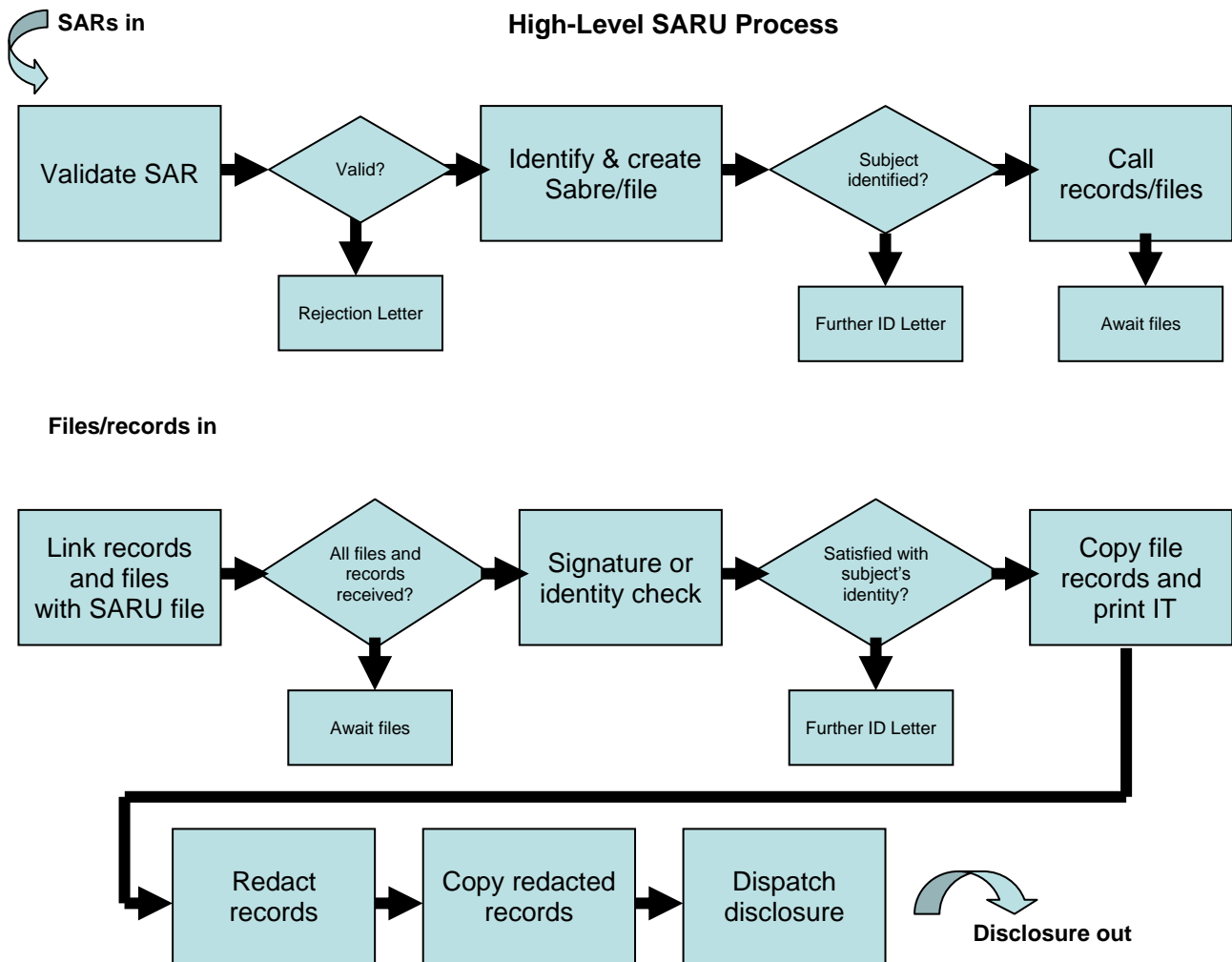
The Data Protection Act 1998 ('DPA') allows individuals access to personal records held on them by organisations – for the UK Visas and Immigration this means that individual subjects are entitled to request access to their records held by us. They do this by submitting a 'Subject Access Request' ('SAR') which must be accompanied by a £10 fee; under the DPA we are then legally required to disclose all personal data records (excluding any exemptions) held on the subject within 40 calendar days. The Subject Access Request Unit ('SARU') handles all SARs for the UK Visas and Immigration.

[redacted - Section 36]

It is vitally important that we take as much care as we can to ensure that not only the right records are identified, and quickly, but also that they are then subsequently disclosed according to the DPA. That Act legally obliges us to handle the data of individuals securely and to only disclose records to the individual subject concerned, or to those persons the subject has allowed to represent them [redacted]. In certain areas we are legally obliged not to disclose data (for example, third party details) and the DPA also allows us to exempt certain sensitive data from disclosure ([redacted- Section 36]).

The result is, after having received the request, the Subject Access Request Unit must fulfil the Agency's statutory obligations under the Data Protection Act and disclose a subject's records within 40 calendar days. [redacted- Section 36]

The diagram below shows the high-level process undertaken by the SARU:



This Training Guidance document relates to the processes and tasks undertaken by the SARU. [redacted – section 36].

[redacted- Sections 31, 36 & 40(2)]

### **Destruction of Bundles:-**

SARU policy is to retain these documents for 3 months before secure destruction. [redacted - Section 36]

## **AO GUIDANCE**

### **Dealing with new Subject Access Requests (SARs)**

#### **Is the request acceptable?**

- Is there an original signed authorisation, less than 12 months old?  
Either a formal authorisation via the legal representative or the letter itself from an individual subject.
- Is the correct fee enclosed? A £10 cheque/postal order, no older than 6 months and made payable to 'The Accounting Officer – Home Office'
- Has the subject's identity been clearly given? e.g. name and date of birth – ideally using a copy of an identification document

If the answer to any of these questions is 'No', then rejection of the SAR is likely to be appropriate.

A missing/incorrect fee is a straightforward rejection, however, original signed authorities can be more difficult to judge – if you have any doubts, you must refer to [redacted – Section 36] before deciding to reject on such grounds. If the authorisation is dated older than 12 months, then it is a rejection and we will ask for a new authorisation.

If the subject's identity given is too vague or throws up too many possible subjects, then rejection is appropriate [redacted – Section 36].

#### **Status Requests**

The UK Visas and Immigration no longer issues Status Letters to individuals – this is simply because we need to adhere to EU rules on acceptable Immigration Status documents – Status Letters are not secure. Individuals must have their status in the form of either a national passport (e.g. British passport) or have a valid visa vignette stuck in their passport showing they are resident or have permission to be here.

People who still make such requests for Status Letters to the main Agency caseworking team are told they must make an application to either get a British passport or to get a visa vignette stuck in their own national passport. But, these people may choose to make a subject access request instead!

[redacted – Section 36]

You will need to identify that it is in fact a status request and identify the subject as normal.

[redacted – Section 36 & 40(2)]

### **Requests for 'IRIS' data**

The IRIS system (Iris Recognition Immigration System) is a method of securely identifying someone by their iris pattern. Joining the system is free and voluntary and when they are enrolled, passengers can enter the UK through automatic immigration control barriers, once they have looked into an iris recognition camera.

The system logs the occasions when a subject uses these barriers and subjects can ask for that data to be disclosed to them. [redacted – Section 36]

Such Iris requests are not treated as Subject Access Requests [redacted – Section 36]

### **SARs Requesting Transcripts Of Phone Calls**

If you receive a SAR which requests a transcript of a phone call, before processing, you need to establish the following -

Has the person informed us who they have called

Have they given us the date and time of the call

[redacted – Section 36]

### **Duplicate records**

If a duplicate record is found and it relates to a request that is still awaiting completion, the new request should be rejected. [redacted – Section 36] If the legal representative has changed, this rejection letter must be sent to both the new and old representatives. [redacted – Section 36]

### **Repeat requests**

If searching against Sabre reveals we have made a disclosure on the subject within the last 6 months, then it is likely that we will reject the new SAR on the basis that a reasonable period has not passed since that last disclosure. The first question that must be asked is:

- Has it been 6 months or less since the last SAR?

[redacted- Section 36] will consider the request under section 8 (3) of the Data Protection Act and with particular regard to section 8 (4).

Section 8 (3) of the DPA 1998 says:

“Where a data controller has previously complied with a request made under section 7 by an individual, the data controller is not obliged to comply with a subsequent identical or similar request under that section by that individual unless a reasonable interval has elapsed between compliance with the previous request and the making of the current request.”

For SARU case working purposes, in the first instance we will take six months as a ‘reasonable period’.

However, Section 8 (4) gives some clarification on what is a reasonable interval and how that relates to casework activity on a case – e.g. as an extreme example, it may be only three months since we disclosed, but since then intense activity on the case [redacted – Section 36] – in such circumstances, we would disclose on the recent activity back to the date of the last disclosure. [redacted – Section 36]

Section 8 (4) says:

“In determining for the purposes of subsection (3) whether requests under section 7 are made at reasonable intervals, regard shall be had to the nature of the data, the purpose for which the data are processed and the frequency with which the data are altered.”

Each request must be dealt with on a case-by-case basis; [redacted – Section 36].

## **Rejections**

If the SAR does not contain the required information such as the £10 fee and the original authorisation or we are unable to identify the subject with the information provided we can reject the request.

[redacted – section 36]

The rejection letter, and everything sent with the SAR is then sent back to the sender [redacted]. No paper records are held at SARU.

[redacted – Section 36]

### **Unable to identify a subject or too many possible subjects**

These are not the same thing and the action to be taken differs. Sometimes a SAR could give just a name and no date of birth, but if the name was not a common one, we may be able to find them or at least find only a handful of possible subjects. If only a name is given and it is a common name (e.g. Arabic, Asian and Chinese names), then we would likely get hundreds of possible matches.

So, as a general rule:

- If there are just a handful of possible subjects (three, four or five), we will ask for further identification in an effort to identify which one is the subject. [redacted – Section 36]
- If the identity given in the SAR is either not clear, or throws up more than five possible matches, then we will reject the SAR. [see 'Rejections' above]

The ideal SAR would supply us with the full names, DOB, nationality and any/all UKVI/HO references held by the subject.

[redacted – Section 36]

### **Acknowledgement Letters & original identity documents**

The Acknowledgement Letter is dispatched by ordinary mail, unless there are original identity documents such as a driving license, passport, birth certificates, in which case you must return them with the Acknowledgement Letter by registered post.

**Important** – if any original identity documents such as driving licenses, birth certificates, passports, utility bills etc are submitted with the SAR, these must be copied for the SARU file and the originals returned with the Acknowledgement Letter. Do not leave original identity documents on SARU files – you only need to copy the photo and signature pages of passports, not every page.

[redacted – Section 31, 36 & 40(2)]

### **Calling subject records/files**

Firstly, check the SAR itself to see if the subject is requesting *all* information held on them in UKVI records or do they require only limited specific information (i.e. asking for a letter or a particular document only).

[redacted – Sections 36 & 40(2)]

### **Verifying the identity of the subject ('Signature Check')**

You must compare the signature provided with the subject's original SAR letter/authorisation against any example you may find in the records received for that subject.

This is extremely important because otherwise we could breach the Data Protection Act by disclosing personal data to a third party – we must be satisfied that the individual requesting the disclosure is really the subject of the records.

Section 7 (3) (a) of the Data Protection Act 1998 states:

Where a data controller...reasonably requires further information in order to satisfy himself as to the identity of the person making a request under this section and to locate the information which that person seeks...the data controller is not obliged to comply with the request unless he is supplied with that further information.

For the purposes of the DPA, UKVI is the 'data controller'.

[redacted – Section 36]

If there is no signature within the HO records/files, then we will need to ask for further identification such as previous addresses, previous legal reps, perhaps even a photo – this extra information will enable us to be satisfied, in the absence of a signature on UKVI files, that the subject is who they say they are.

[redacted – Section 36 & 40(2)]

## **EO GUIDANCE**

### **The UK Visas and Immigration's Obligations under the Data Protection Act 1998**

It is a statutory requirement by law that we need to process subject access requests within 40 calendar days of the original request being received by the Agency.

Section 7 of the DPA gives individuals the right to access their personal data that is held on them by government organisations and departments. The right of subject access only applies to “personal data” within the meaning of the DPA. Section 1 of the DPA states:

“Personal data” means data which relate to a living individual who can be identified –

- (a) from those data, or
- (b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller,

and includes any expression of opinion about the individual and any indication of the intentions of the data controller or any other person in respect of the individual.

Individuals are not required to give a particular reason why they wish to see their records, nor do they have to have any nationality or residence requirements to make a Subject Access Request (SAR).

In order to process a SARU request the SAR should contain original authorisation from the individual on who the request is being made and a £10 fee. We would also need to be able to identify the subject on our systems to be able to proceed with the request. If we are not able to satisfy all of the above the AO would reject this request.

### **A Guide to the Manual and IT records of the UKVI:-**

The UK Visas and Immigration holds and maintains data on subjects across a range of manual and IT records.

Ideally customers will have a single casework file. However, due to the structure of the organisation and nature of the business a large number have data held on more than one file or IT system. Under the Data Protection Act all of these files must be identified and requested so that all personal data can be disclosed to the subject.

[redacted – Section 31, 36 & 40(2)].

### **Removals**



On occasion a subject will make a Subject Access Request and then is removed from the country before it has been processed. In these instances, if the subject has a representative, then it is necessary to call them and enquire as to whether or not they still want the information. If not, the request can be cancelled.

[Redacted - Sections 31, 36 & 40(2)]

### **Decision Service**

[redacted – Section 36] Sometimes a decision will have been made and not served to the individual but to file instead, this is usually because the person has absconded, in this case the decision stands and this can be disclosed.

[redacted - Sections 31, 36 & 40(2)]

### **REDACTING DATA:-**

The casework bundle begins with a SARU a list of common abbreviations [redacted – Section 36].

Before sending your bundle you need to ensure that the documents in your bundle are in order and not mixed up; i.e. all the minutes are together, all the IT printouts are together and so on. **There is no requirement to place them in any specific order within the bundle or even in date order. However there is a legal requirement to ensure the bundle is in an intelligible format and placing them in some sort of order will help with this.**

[redacted – Section 36]

The subject is only entitled to see the information up until the date the request was received in UKVI.

### **Exemptions:-**

Within the DPA there are various exemptions and exclusions that can be applied to your casework to prevent certain documents from being released.

[redacted – Sections 31, 36 & 42]

### **Third Party Data:-**

Section 7(4) of the DPA provides that if you cannot comply with the request without disclosing information relating to another individual who can be identified from that information, then you do not have to comply with the request unless:

- The third party has consented to the disclosure; or
- It is reasonable in all circumstances to comply with the request without the consent of the third party individual.

However, there is no obligation to try and get consent and SARU do not actively seek this.

Section 7(4) of the Act is only relevant if information about the third party individual is necessarily part of the information which the requesting individual is entitled to. You will need to consider whether it is possible to comply with the request without revealing information which relates to and identifies a third party individual. In doing so, you should not only take into account the information you are disclosing, but also any information which you reasonably believe the person making the request may have, or get hold of, that may identify the third party individual. As your obligation is to provide information rather than documents, you may delete names or edit documents if the third party information does not form part of the requested information.

**Remember that a duty of confidentiality is owed to the third party individual.**

Section 7(5) of the Act says that you are obliged to communicate as much of the information requested as you can without disclosing the identity of the third party individual. So, disclosing the data with any third party information edited or deleted may be the best way to meet the request if you are unable to disclose all of the above information.

[redacted – Section 36]

### **Completed Disclosure**

This is when we have copied and redacted all records we have managed to locate and receive for a subject – the disclosure is completed once these records have been redacted and dispatched to the subject, or their legal representative. [redacted – Section 36].

### **Partial Disclosure**

Partial disclosures are where we have not been able to obtain all of the records identified as relating to the subject [redacted]. Such disclosures should not be confused with Interim Disclosures (see below).

In practical terms, it is simply not possible to disclose copies of records that are missing or lost. Nor is it proportionate effort on our part to continue to try and locate them [redacted – Section 36].

BUT, it is imperative that we have made every reasonable effort to locate all records for a subject before we resort to dispatching a partial disclosure [redacted – Section 36].

We must use all of our statutory 40 calendar days to make every reasonable effort to locate records, [redacted – Section 36].

[redacted – section 36]

### **Interim Disclosure**

Interim Disclosures occur when we are still waiting for files/records to arrive in order to complete the case and yet the subject or legal representative wishes to have an interim disclosure of the records we *do* have. In which case, an Interim Disclosure will be sent and when the remaining files/records arrive we can complete the full disclosure of all records.

[redacted – Section 36]

### **Status Requests**

The UK Visas and Immigration no longer issues Status Letters to individuals – [redacted - Section 36] Status Letters are not secure. Individuals must have their status in the form of either a national passport (e.g. British passport) or have a valid visa vignette stuck in their passport showing they are resident or have permission to be here.

You will be responsible for disclosing the applicable information to the subject.

[redacted – Section 36]

Please Note that any letters or documents that are being released to the subject must have FILE COPY printed across the copy, as we do not want the subject to believe we are sending an original document. [redacted – Section 36].

[redacted – Section 31, 36 & 40(2)]