

## What is my right?

Section 5 of the Isle of Man Data Protection Act 2002 (the DPA) gives individuals a “right of access to personal data”.

The right of access is to enable you to find out what *information* about you is being held by an *organisation* - you may not know whether any of your *information* is even being held by that *organisation* or not, but the right of access allows you to find out.

You are entitled to be supplied with a copy of the *information* relating to you that is held by the *organisation* on computer, in a relevant manual filing system or which forms part of an accessible record. The right extends, but is not limited, to computer and paper records, emails, CCTV images and telephone recordings.

It is not, however, a right to copies of documents, but only to the *information* in them that is about you. An *organisation* may supply the *information* to you copied into a new document, in summary form, or in relation to telephone recordings, a transcript can be supplied.

The procedure used to request copies of the *information* an *organisation* holds about you is commonly known as making a ‘**Subject Access Request**’ (SAR) and section 5 of the Act sets out

- the *information* that can be released,
- the *information* that may be withheld,
- the time scales for complying with a request,
- the fees permitted for the provision of the information, and
- the penalties that can be imposed for failure to comply with a request.

## What jargon will I come across?

To help you understand the process and the parties involved, definitions of regularly used terms are in Appendix 1 to this guidance. We have where possible used ordinary words to replace legal jargon. These appear in **red** in Appendix 1 and in *italics* in the text of this guide.

## How do I make a Subject Access Request?

It is easy to make a SAR - all you need to do is write to, or email, the *organisation*.

There is no requirement to refer to the Act in your letter or email, or state that you are making a SAR, although doing so is advisable. It is recommended that you send the request by recorded postal delivery, or use an email delivery and/or read receipt, and keep a copy of the request.

If you wish to obtain the *information* held about you by an *organisation* you must:

1. send a request in writing to the *organisation*, and
2. enclose the appropriate fee.

In order for the request to be dealt with as quickly as possible you should provide the *organisation* with as much *information* as possible regarding the type of data you wish to see, for example, if you have an account number or customer reference this should be provided. Equally, if you only require *information* between two specific dates this should be clarified. Sample SAR letters can be found in Appendix 2.

## Can the organisation ask for more details?

Yes.

This can be

- to enable the *organisation* to *reasonably* satisfy itself as to the identity of the person making the request, or
- to request further details to assist it to locate the *information* you require.

If requests for further identifying details or other *information* are made, you must provide these details before the SAR can progress.

## Does it cost anything?

The *organisation* may charge up to £10 to provide the *information* you have requested. If you request access to health records, a fee of up to £50 may be charged.

## How long should it take?

Once the *organisation* has received the fee and all other details requested, it must respond promptly and in any event within a maximum of 40 calendar days.

## What will I get back?

The *organisation* **must** reply to your request.

If they do not process any of your *information* they must advise you of the fact.

If they do process your *information*, you are entitled to receive a copy of that *information* in permanent form, unless it is not possible, you agree otherwise or it would involve disproportionate effort on the part of the *organisation* to produce in a permanent form. If you and the *organisation* agree, the *information* may be supplied verbally.

You should also be provided with, or can request, a description of

- the purposes for which this *information* is being processed
- the recipients, or classes of recipients, to which the *information* may be disclosed

## Will I understand what I receive?

All details must be communicated to you in an "intelligible form", with any coding or technical terms explained.

You are entitled to be informed of the logic involved in taking a decision if that decision has been made by automatic means, such as credit scoring or for job applications, unless it constitutes a trade secret.

## Are there any exceptions to the right of access?

Yes, there are exemptions from disclosure specified in the Act, its' schedules and in regulations.

These exemptions include, but are not limited to:

- the detection and prevention of crime and the apprehension and prosecution of offenders
- the discharge of a regulatory activity

- in the interests of national security
- *information* relating to adoption, physical or mental health references within an education or health records, where revealing this *information* could cause serious damage or harm to the mental or physical health of the data subject or any other person.
- *information* relating to health records can only be disclosed if the *organisation* is a health professional or the *organisation* has consulted with the health professional as to whether this data can be released, or the *organisation* is aware that the data subject (you) is already aware of the details.

### **Can I make more than one SAR to an organisation?**

Yes, you can make as many SARs as you wish. However, if you have previously made a similar or identical SAR, the *organisation* has the right to refuse to comply with the new request unless a reasonable interval has elapsed. This will depend upon the type of data, the purpose for which it is held and the frequency with which it changes or is amended.

### **Why have some of the details I received been blacked out?**

There are often occasions when supplying you with your *information* will also involve releasing information which identifies a third party. The *organisation* must be extremely careful when this occurs.

If they do release *information* containing third party details, these details may be blacked out in some way to prevent identifying the third party to you.

### **I haven't received a response. What happens now?**

If you have not received a response by the end of the 40 day period, then the *organisation* will have committed a breach of the Sixth Data Protection Principle, which provides for the rights of the data subject.

At this point you have two options:

1. Take a common sense approach –
  - a. Contact the *organisation* and explain that you have made a SAR but have not received a response, and enquire when you will receive the information requested. This should ideally include a written confirmation from the *organisation*.
  - b. If 1(a) fails to elicit a response, or if you would rather not take that step, you can refer the matter to the Information Commissioner. This will normally encourage a rapid response from the *organisation* without the necessity of legal action.

Or

You can refer the matter directly to the High Court, which can order the *organisation* to comply with the request and the court can, if satisfied that the failure to comply was unjustified, impose a penalty of up to £5000. They are also liable to pay compensation if an individual has suffered distress due to the failure to comply with the request.

You may employ a qualified Manx advocate to represent you, or you may choose to represent yourself. ***The Information Commissioner cannot refer the matter to the High Court on your behalf.***

# APPENDIX 1 - DEFINITIONS

<b>Data</b>	information which — (a) is being processed by means of equipment operating automatically in response to instructions given for that purpose. This includes, among others, computers, email, laptops, smart phones, CCTV, phone systems, entry logging systems. (b) is recorded with the intention that it should be processed by means of such equipment, (c) is recorded as part of a relevant filing system or with the intention that it should form part of a relevant filing system, or (d) does not fall within (a), (b) or (c) but forms part of an accessible record (see below for definition).
<b>Data Subject</b>	YOU - the <b>living individual</b> who is the subject of the personal data.
<b>Personal Data</b> <b><i>INFORMATION</i></b>	Information that relates to a living individual which, on its own, or when combined with other information in the possession of, or likely to come into the possession of, the data controller, identifies that individual. This also includes any expression of opinion or intentions of the data controller toward the data subject.
<b>Data Controller</b> <b><i>ORGANISATION</i></b>	The person or legal entity (e.g. company, government department, club or society etc.) responsible for deciding what information is collected, how it is used (purposes) and to whom it is released (recipients).
<b>Processing</b>	This includes the collection, input, storing, retrieval, amendment, disclosure, blocking, combination and erasure or destruction of data. This also includes data capture which involves the transfer of details from a manually completed form to a database or other computerised system.
<b>Relevant Filing System</b>	A set of information relating to individuals that is not processed automatically (i.e. manual records) but which is structured to enable the ready accessibility of the data. This means that, for example, a Human Resource filing system which has individually named files with sub-divisions for sickness, assessments, c.v. information etc.
<b>Accessible Record</b>	Health or educational record, any housing record kept by the Department of Local Government and Environment, local authority or joint board, and certain other DHSS records.

## APPENDIX 2 – SAMPLE LETTERS

Dear '*Organisation's name*'

I wish to make a subject access request under Section 5 of the Isle of Man Data Protection Act 2002 for a copy of any personal data you keep about me on computer, in an accessible record or within a relevant filing system.

I enclose the fee and details to enable you to identify the information I require.

*'Your Full Name'*

*'Your Address'*

*'Identifying Number (e.g. Account number or NI number)'*

*'Dates (if you require information relating to a specified period)'*

*'Further information which may help the data controller'*

**(If you require to be advised of the logic behind automated decisions, you must make this clear in the letter by adding the following paragraph: - I wish to be advised of the logic involved in automated decisions taken about me pursuant to Section 5(1)(d) of the Data Protection Act 2002.)**

### **CCTV – Subject Access Request**

Dear '*Organisation's name*'

I wish to make a subject access request under Section 5 of the Isle of Man Data Protection Act 2002 for a copy of any CCTV footage you hold about me.

I enclose the fee, a photograph, which is a true likeness, to enable you to identify me, and other details to enable you to identify the information I require.

*'Your Full Name'*

*'Your Address'*

*'The location'*

*'What date(s) you were in the location'*

*'What time(s) you were in the location'*