|  |
| --- |
|  |
| **Document: DSR-05-**Release V1.4 | **UK GDPR - Data Subject Rights – The Right to Data Portability** | 08.02.2024 |
| **Authorised by:** Jackie Neil |  |

**Introduction**

The UK GDPR provides for the rights of a natural person over the information that is held on them. The Right to Data Portability is applicable only when the lawful basis for processing is consent or to fulfil a contract; where all processing is via automated means with no paper records. From this we can see that in daily activity, the requirement to comply with requests for data portability in the fostering sector are likely to be rare.

**Overview**

When a data subject notifies the Data Controller either directly or indirectly via staff, data processors, sub processors etc., that they require information transferred to another data controller, a record of the notification should be made and time-stamped. The ICO is clear that there is no requirement for a formal template for a right to data portability request. The Data Controller is responsible for satisfying the request, so it is important that all parties involved in the data management lifecycle are made aware of this procedure. If you have a Data Protection Officer (DPO), they must be informed when data portability requests are made so that they can monitor progress.

**Prerequisites**

In order to fulfil a data portability request, the Data Controller must understand what data is specifically under question. In some circumstances, the data subject may require a sub-set of information to be ‘ported’ to a different system in use by an alternate controller. For example, there may be information maintained on a ‘closed’ fostering sector specific social network that is required to be transferred to a competitor’s system. The information on such services must be made ‘portable’. This means the data must be able to be extracted from the source system in a machine-readable format such as comma separated variable (CSV) file format. A data mapping process across the organisation should be performed to help identify where information resides both on-site and with any contracted third parties such as Information Systems providers that might be in-scope, this will ensure that any ‘upstream’ or ‘downstream’ data repositories can be assessed for portability.

**Scope & Limitations**

Although the right of the data subject for personal information to be transferred from one data controller to another is enacted within the Data Protection Act 2018, there are considerations that must be made prior to transport of the information:

* Validation of the requestor’s identity where the request is made in person
* Validation of the data subject’s authority where the request is made by a representative such as a lawyer
* You may refuse the request unless the information consists of data where your lawful basis for processing is consent or to fulfil a contract; where all processing is via automated means with no paper records. Most information managed in the fostering sector is out of scope so ensure you receive adequate guidance before agreeing to comply with the request.
* Consider the time period required for the data transfer as this must be recorded in the central register.

**Data Portability**

Information can be transferred only upon consideration of the scope and limitations listed above. Once it is clear that information is in scope and that the requestor is within their rights to have information transferred to themselves in a durable format or direct to the designated alternate data controller. Your responsibility for the data that you transfer ends upon receipt by the data subject or new data controller. You will still be responsible for any information you maintain on your own systems or those of third parties employed by you and under your instruction. Processing, the request must be attended to without delay; the data must be transferred for all in-scope services and systems.

It is appropriate to advise the requestor once the process is complete.

**Time Frame**

Requests must be acknowledged promptly, this can be accomplished during the identity verification stage. The overall process should be completed within 28 days from the day after the request is received. If you are unable to transfer information directly, for example where it is technically infeasible to extract the information in machine readable format, notify the data subject of the technical limitations and record the exception in the central register.

**Procedure**

1. Data subjects must make their request to the Data Controller (this can be any representative of the Data Controller). Where a data subject makes a request to any member of staff, volunteer, contingent worker or third party processor, the request must be directed to the nominated staff member responsible for requests and this direction must be confirmed via letter or email to both the data subject and the responsible person. If you have a DPO, they must also be informed of the request and kept informed of the request status throughout the process.
2. The details of the request will be entered in a Data Subject Rights register. This will enable tracking to ensure timelines are adhered to.
3. Upon receipt of the request, the data controller must make all reasonable efforts to validate the identity of the requestor to ensure they have a legal right to the data portability of the information requested.
4. Once the data subject’s identity is validated, the controller will consult with the data subject to verify the scope of the requirement.
5. The controller will use the services of data processing staff or services to create the transfer mechanism for the information, unless it falls outside the terms stated in the section headed ‘Scope & Limitations’.
6. Within 28 days of the request, the controller will ensure that the data transfer has been completed. A record of the actions committed will be listed in the central register.
7. Where information cannot be subject to the data transfer within 28 days of the request, the data subject will be notified that additional time is required along with the reason for delay and anticipated time for completion. Where information cannot be transferred due to technical limitations, the data subject will be informed of the lack of completion and that the limitation of the request has been recorded in the central register.
8. The Data Subject Rights register will be updated to conclude the request activity.

A complete data map will be required to provide the data controller with the necessary information to conduct this procedure effectively.