	Action/Date
Title/Status-	Procedure
New document or revised	New
Date approved SMT	Corporate document signed off by organisation.
Responsible Head of Service	
Date review	When amendments required.
Date SMT approved.	

Leicestershire Procedure
GDPR Right Of Access Requests
A Guide to Managers Signing-Off Children's Social Care Requests
Applies to-
All children

Contents

What is Right of Access?

In brief:

- Individuals have the right to access their personal data
- This is commonly referred to as subject access
- Individuals can make a request verbally or in writing
- Generally, we have one month to respond to a request

Your role is to undertake a final review and authorise release of the records prepared by the SAR Team to ensure that the individual is given access to their information in a controlled way, considering any harm or distress that could be caused. This guidance should be read in conjunction with the Subject Access Requests sign off procedure.

Back to Contents

Who can make a request?

The request may be submitted by the individual themselves or by somebody (solicitor/family member) acting on their behalf. If we think an individual may not understand what information would be disclosed to a third party who has made a request on their behalf, we may send the response directly to the individual rather than to the third party. The individual may then choose to share the information with the third party after having had a chance to review it.

It is within the spirit of the GDPR that we are as open and honest with our service users as possible but we must remember that an individual is only entitled to their own personal data, and not to information relating to other people (unless the information is also about them).

Back to Contents

Right of Access and children

Even if a child is too young to understand the implications of subject access rights, data about them is still their personal data and does not belong, for example, to a parent or guardian. It is the child who has a right of access to the information held about them, even though in the case of younger children these rights are likely to be exercised by those with parental responsibility for them.

Before responding to a subject access request for information held about a child, we should consider whether the child is mature enough to understand their rights. If we

are confident that the child can understand their rights, then we should usually respond directly to the child. We may, however, allow the parent to exercise the child's rights on their behalf if the child authorises this, or if it is evident that this is in the best interests of the child.

It might be useful to take the following in to account:

- the child's level of maturity and their ability to make decisions like this;
- the nature of the personal data;
- any court orders relating to parental access or responsibility that may apply;
- any duty of confidence owed to the child or young person;
- any consequences of allowing those with parental responsibility access to the child's or young person's information. This is particularly important if there have been allegations of abuse or ill treatment;
- any detriment to the child or young person if individuals with parental responsibility cannot access this information; and
- any views the child or young person has on whether their parents should have access to information about them.

In Scotland, a person aged 12 years or over is presumed to be of sufficient age and maturity to be able to exercise their right of access, unless the contrary is shown. This presumption does not apply in England where competence is assessed depending upon the level of understanding of the child, but it does indicate an approach that will be reasonable in many cases.

The SAR Team may ask you to assess the competence of a child if there is any doubt.

We must be clear that providing access to a child's file is always to be in the child's best interests and not to serve the interests of the parent or guardian. Estranged parents who are trying to establish location or contact with children must do so through the proper court process.

Back to Contents

The file contains other relatives details – what do we do?

Responding to a subject access request may involve providing information that relates both to the individual making the request and to another individual. The Data Protection Act 2018 says that we do not have to comply with the request if it would mean disclosing information about another individual who can be identified from that information, except if:

- the other individual has consented to the disclosure; or
- it is reasonable to comply with the request without that individual's consent.

In determining whether it is reasonable to disclose the information, we must take into account all of the relevant circumstances, including:

- the type of information that we would disclose;
- any duty of confidentiality we owe to the other individual;
- any steps we have taken to seek consent from the other individual;
- whether the other individual is capable of giving consent; and
- any express refusal of consent by the other individual.

So, although we may sometimes be able to disclose information relating to a third party, we need to decide whether it is appropriate to do so in each case. This decision will involve balancing the data subject's right of access against the other individual's rights. If the other person consents to us disclosing the information about them, then it would be unreasonable not to do so. However, if there is no such consent, we must decide whether to disclose the information anyway.

We cannot refuse to provide access to personal data about an individual simply because we obtained that data from a third party. The rules about third party data apply only to personal data which includes both information about the individual who is the subject of the request and information about someone else.

> E.g. *"The child was voluntarily accommodated as mum was unable to cope due to post natal depression"* could be edited as follows:
>
> *"The child was voluntarily accommodated ~~as mum was unable to cope due to post natal depression"~~*
> or
> *"The child was voluntarily accommodated as mum was unable to cope ~~due to post natal depression".~~*

In balancing the data subject's right to know with Mum's right to privacy, disclosing in line with the second option provides a context that may probably already have been shared, without disclosing Mum's mental health issues.

Back to Contents

Foster Carers

Again we need to distinguish between factual information and opinions provided by carers in their role as agents for the Council and personal opinions/information they would provide in the same way that a relative might.

> *E.g. Last night the young person returned home drunk which felt like a slap in the face*

We delete the personal view of the foster carer as to how they felt.

Last night the young person returned home drunk ~~which felt like a slap in the face.~~

If the foster carer subsequently told the young person how they felt, the subsequent statement could be released e.g. *'I told … that it felt like a slap in the face'.*

Back to Contents

Should staff names come out?

No – individuals will routinely know the names of any professionals who have been involved in their care, so the names should stay in. The only exception to this is where disclosing the names would put the staff members at risk of harm.

Back to Contents

Data from Professional 3rd parties - what can we release?

Many individuals who are receiving support from us will have a number of professionals working with them. Their data will be recorded in the file, including the opinions of professionals working for 3rd parties such as health, the police or education organisations.

If the professional is stating facts already known to the individual (e.g. within a joint meeting they attended, or letters from medical professionals that they received a copy of) then the information should be provided.

However, where the data subject is not aware of the information provided by a 3rd party, consideration needs to be given to whether its release would cause serious harm to that individual. Where it is determined that it would not be harmful, the 3rd party information can be released. However, careful consideration needs to be given to information which may potentially cause serious harm.

E.g. A looked after child with ongoing mental health issues was aware of abuse happening when they were young but did not realise that a sexually transmitted disease was passed on. This information was provided in a letter from a hospital to the Council.

A decision should be made on who the most appropriate person would be to consider what effect release of this information would have on the young person. Would it be the hospital, a social worker who knows the person well, or both?

When consulting a 3rd party organisation, we need to ask:

- Should the identity of the individual from that organisation be released?
- Would releasing the information cause serious harm?

It is important to note that where a health, social care or educational professional has provided data, their identity should be released as they will have had a significant professional impact on decisions made about the data subject. If the 3rd party organisation asks for the professional's details to be redacted, there should be clear and documented reasons.

Back to Contents

Police Information

The Police should be treated as a professional 3rd party.

Information can be withheld if providing it would prejudice the prevention or detection of a crime or the apprehension or prosecution of an offender. If there is anything in the file which may indicate that the police are gathering information on someone with the view to taking action then their opinion on disclosure should be sought. We can only withhold such information for the reasons stated above.

Back to Contents

What if releasing information could stop me providing social care to the individual?

In some instances, information held for social work purposes can be withheld if releasing it would prejudice the ability to carry out social work because of a likelihood of serious harm to the individual or another person.

For example, if there is information within the file which we consider may cause the individual to stop engaging with social services and this could significantly harm them or anyone else, we can consider withholding the information.

However, we must consider what impact this will have –

- Will the service user still disengage because they think we are hiding something?
- Could we manage the situation differently by working with the individual to understand why decisions were taken in a particular way?

The key is to think whether there is a real quantifiable risk of serious harm in releasing the information.

Back to Contents

Legal privilege

Where legal advice is sought from either internal or external legal professionals and this is recorded within the file, this advice is subject to legal privilege and should not be disclosed.
However a general discussion with legal advisors that does not involve actively seeking “legal” advice may not warrant this exemption.

Back to Contents

Further information

Please contact the SAR Team if you have any questions:

SAR@leics.gov.uk

0116 305 1985