



Information Commissioner's Office

Promoting public access to official information
and protecting your personal information

Data Protection Technical guidance note

Dealing with subject access requests involving other people's information

This technical guidance note replaces the previous guidance on this subject ('Subject Access Rights and Third Party Information') published in March 2000. It deals with the potential conflict between an individual's right of access and a third party individual's rights to privacy or confidentiality, which can arise when dealing with a subject access request. In particular, this guidance sets out the main factors you need to consider when you receive a subject access request which involves information which relates to other individuals as well as the individual making the request.

Legal framework

Section 7(1) of the Data Protection Act 1998 (the 'Act') gives individuals the right to access their personal data. By making a written request and paying a fee, an individual is entitled to see (among other things):

- the information which is the personal data; and
- any information available to the data controller about the source of the data.

Responding to such subject access requests may involve providing information relating to another individual (a 'third party individual'). For instance, if the requested information is a personnel file on an employee, it may contain information identifying managers or colleagues who have contributed to (or are discussed in) that file. This may lead to a conflict between the requesting employee's right of access and the third party's rights over their own personal information.

Section 7(4) of the Act 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 the circumstances to comply with the request without the consent of the third party individual.

To help you decide whether to disclose information relating to a third party individual, follow this three-step process.

Step 1 – Does the request require the disclosure of information which identifies a third party individual?

Section 7(4) of the Act is only relevant if information about a third party individual is **necessarily** part of the information which the requesting individual is entitled to.

You should 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.

For instance, in the personnel file example discussed earlier, even if the third party individual is only referred to by their job title then it is likely they will still be identifiable based on information already known to the employee making the request.

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.

However, if it is not possible to separate the third party information from that requested and still comply with the request, you need to take account of the considerations in section 7(4).

Step 2 – Has the third party individual consented?

The practical effect of section 7(4) and associated provisions of the Act is that the clearest grounds for disclosing the information is to get the third party individual's consent.

However, there is no obligation to try to get consent. There will be some circumstances where it will clearly be reasonable to disclose without trying to get consent, for example, where the information concerned will be known to the requesting individual anyway. Indeed it may not always be appropriate to try to get consent (for instance, if to do so would inevitably involve a disclosure of personal data about the requesting individual to the third party individual).

If the third party individual has consented, you would be obliged to comply with the subject access request and disclose all the relevant information, including that relating to the third party individual. However, in practice, it may be difficult to get consent. The third party may be difficult to find, they may refuse to give consent, or it may be impractical or costly to try to get their consent in the first place. In these situations, you would then need to consider whether it was 'reasonable in all the circumstances' to disclose the information anyway (section 7(4)(b)).

Step 3 – Would it be reasonable in all the circumstances to disclose without consent?

Section 7(6) of the Act provides a non-exhaustive list of factors to be taken into account when deciding what would be 'reasonable in all the circumstances'.

These are:

- any duty of confidentiality owed to the third party individual;
- any steps you have taken to try to get the consent of the third party individual;
- whether the third party individual is capable of giving consent; and
- any express refusal of consent by the third party individual.

We would expect you to be able to justify and keep a record of your course of action and reasoning, including, for example, why you chose not to try to get consent or why it was not appropriate to try to do so in the circumstances.

Confidentiality

Another factor to be considered in assessing how reasonable a disclosure would be is whether a duty of confidence exists for the third party information. This would arise where information which is not generally available to the public (that is, genuinely 'confidential' information) has been disclosed to you with the expectation that it will remain confidential. This expectation might result from the relationship between the parties. For instance, the following relationships would generally carry with them a duty of confidence in relation to information disclosed.

- Medical (doctor/patient)
- Employment (employer/employee)
- Legal (solicitor/client)
- Financial (bank/customer)
- Caring (counsellor/client)

However, you should not always assume confidentiality. For instance, just because a letter is marked 'confidential', a duty of confidence does not necessarily arise (although this marking may indicate an expectation of confidence). It may be that the information in such a letter is widely available elsewhere (and so it does not have the 'necessary quality of confidence'), or there may be other factors, such as the public interest, which mean that an obligation of confidence does not arise.

However, in most cases where a clear duty of confidence does exist, it will usually be reasonable to withhold third party information unless you have the consent of the third party individual to disclose it.

Information generally known by the individual making the request

If the third party information has previously been provided to the individual making the request, is already known by them, or is generally available to the public, it will be more likely to be reasonable for you to disclose that information. It follows that third party information relating to a member of staff (acting in the course of their duties), who is well known to the individual making the request through their previous dealings, would be more likely to be disclosed than information relating to an otherwise anonymous private individual.

Similarly, where the third party individual is the source of the information held about the person making the request, there may be a strong case for their identification if the person needs to correct some damaging inaccuracy. However, it will always depend on the circumstances of the case and in the *Durant v Financial Services Authority* case ([2003] EWCA Civ 1746), the Court of Appeal decided it would be legitimate for the Financial Services Authority (the data controller) to withhold the name of one of its employees who did not consent to disclosing the requested information because Mr Durant (who made the request) had abused them on the telephone.

Information relating to certain professionals

There is separate legislation relating to access to education records, health records and social services records (see note 1). In practice this means that if the third party individual is an education, health or social services professional, information relating to them can be disclosed.

Circumstances relating to the individual making the request

These will also be relevant in assessing how reasonable it is to disclose third party information - in particular, how critical access to the third party information is in preserving the privacy rights of the individual making the request. This approach reflects the judgement in the *Gaskin Case* (see note 2). In this case, the individual, who had been in local authority care for most of his childhood, wanted to see the local authority records relating to him as they were the only coherent record of his early childhood and formative years. The court held that the local authority had to weigh the public interest in preserving confidentiality against the individual's right to access information about his life, even where consent to release the information had been withheld.

Disclose or withhold?

If you have not got the consent of the third party individual and you are not satisfied that it would be reasonable in all the circumstances to disclose the third party information, then you should withhold it. However, further to section 7(5) of the Act, 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 information with any third party information edited or deleted may be the best way to meet this request if you cannot disclose all the information.

More information

If you need any more information about this or any other aspect of data protection, please contact us.

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E-mail: mail@ico.gsi.gov.uk

Website: www.ico.gov.uk

Note 1 SI 2000/413; SI 2000/414; and SI 2000/415

Note 2 *Gaskin v United Kingdom* [1990] 1 FLR - this was a case before the European Court of Human Rights which looked to balance competing rights under Article 8 of the European Convention on Human Rights and which provides the basis for section 7(4) and associated provisions of the Act.