



Data Subject Rights

Apart from the legal obligations under the Data Protection Act that schools are required to discharge, there are a number of rights that the data subject has of which school staff must also be aware. These rights must not be infringed in any way as the Information Commissioner can enforce them, as can the Courts. The rights in question are as follows:

- Right of subject access
- Right to prevent processing likely to cause damage or distress
- Right to prevent processing for direct marketing
- Rights about wholly automated decision making
- Right to seek compensation if distress has been caused
- Right to rectify, block, erase or destroy inaccurate or unjustified personal data
- Right to ask the Information Commissioner for a ruling about whether the Act has been contravened by school

Right of subject access (Section 7 DPA)

The right most often exercised is the right of access to personal data held about ones-self - also known as "subject access". Anybody can ask to see information that the school is holding about him or her - this is what "subject access" means.

If somebody simply comes to school reception and asks to check an item of information, e.g. their registration details with school, then they should be shown this information providing that they can prove their identity. Acceptable proof includes production of a passport, driving license or birth certificate. However, in the absence of any other form of proof, comparison of the person's signature with one already held on file is acceptable.

A data subject can however be much more formal and ask for written copies of all the information that school holds about them. This is a more complex matter with very specific legal rules. If a formal request is made, it must be dealt with in a set timescale so it is important that is brought to the attention of the responsible officer in school, without delay.

Where education is concerned, there is what is known as a "statutory instrument" in force, which changes the rules for dealing with subject access requests, which involve an "educational record". An educational record is any record held by a school in connection with a child's education.. SR Education Pupil Records NI 1998 refers. and provides amongst other things, that where such a request is made, there are **15 school days** in which to respond (as opposed to 40 consecutive days for all other requests.).

A separate order also provides that schools may charge up to £50 (dependant on the number of pages to be disclosed). **Note:** the maximum charge for access to personal records other than educational is £10(DPA). For information, Belb currently has a no-charge policy in respect of such requests.

Also, note that section 30 Of the Data Protection Act exempts certain health, education and social work information. However, also refer to statutory instrument 2000 no 419 “The Data Protection (Miscellaneous Subject Access Exemptions) Order 2000 where special educational need records may be accessed.

Right to prevent processing likely to cause damage or distress (Section 10 DPA)

The second right is concerned with processing that causes damage or distress. This does not include damage or distress that might be caused to a legal entity such as a school; it is only concerned with individuals. This usually arises where a mistake has been made and the personal data being processed is incorrect, for instance, where a child is refused a free school meal because incorrect information has been used to determine whether or not he or she is entitled to one. This right does not apply under the following circumstances: -

- If the data subject has already consented to the processing
- The processing is necessary for the performance of a contract
- Processing is necessary to comply with legal obligations (other than contractual)
- Where the processing is necessary to protect the vital interests of the data subject

Right to prevent processing for direct marketing (Section 11 DPA)

The third right, about direct marketing means that the data subject should ideally opt in for any direct marketing purposes. Small tick boxes in obscure parts of an application form with "tick here if you do not wish to receive further information" are no longer considered to be fair under the First Data Protection Principle.

If you need to use such a statement then it should be re-worded to "tick here if you wish to receive further information". However, there is a potential sting in the legislative tail, which it is important to understand. If parents give personal data to school for one purpose (such as the enrolment of their child) and it is subsequently used to write to parents about some other, different and non-statutory service, this might be caught under the direct marketing rule.

An example of this might be where school, under a reciprocal arrangement, writes to inform parents that a discount in some local garden center has been secured following the donation of plants or equipment in return. In such cases, there is a risk that schools may be breaching the individual's right to object to direct marketing. Under such circumstances, it is always advisable for school to include on any such correspondence that if no further notices or letters of this nature are desired then parents should indicate this by returning a slip or by writing to a nominated contact in school.

Rights about wholly automated decision making (Section 12 DPA)

The fourth right, about automated decision-making, is really targeted at the credit referencing industry. Data subjects can easily be refused credit under automated reference systems with no appeal to a representative of the organisation. Under the Data Protection Act, the data subject can demand a written explanation of how the automated decision was taken and ask for a member of staff to re-assess it.

However, this right will equally apply to any automated decision-making processes that school puts in place. Schools **must** therefore ensure that they have adequate procedures

in place to explain how any automated decisions are reached and be able to perform the same process manually if asked to do so.

For example, if optical mark readers are used to determine a child's score in a test, then this process of scoring must be explained on receipt of a request from either a pupil at school (if over 12 and able to understand what this particular right means) or from his or her parent. Either the pupil or his or her parent also has the right to object to this method of automated scoring and can insist that a re-assessment is undertaken by a member of school staff instead.

Right to seek compensation for damage or distress (Section 13 DPA)

The right to compensation might arise where school has not taken reasonable care when processing personal data and has caused damage or substantial distress. It may also arise in circumstances where school fails to comply with the rights of an individual, for example, subject access requests.

It should be noted that it does not necessarily have to be the data subject who suffers damage or distress. For example, if a parent following some breach of the Act in connection with his or her child suffers this, they themselves can take action for compensation. Children cannot take action themselves; they must sue by a next friend (**e.g.** their parent or guardian).

In any case where damage or distress is claimed, it must be demonstrated that this was due to a contravention of the Act. Damage might result from such things as loss of earnings or benefit or equally from pain or suffering. Loss of reputation would also be covered under this provision. Distress alone is not usually sufficient to justify successful claims unless the distress is substantial and is associated with, for example, psychiatric or other medical conditions. All of these effects must be evidenced, say for example, by a medical certificate or demonstration of loss of earnings or benefit.

Claims for compensation are likely to stand unless it can be proven that school took reasonable care to prevent such damage or distress, for instance, by having a data protection policy and by training its staff in the requirements of the Act.

Right to rectify, block, erases or destroys inaccurate personal data (Section 14 DPA)

An individual may apply to Court for an order requiring school to rectify, block, erase or destroy their personal data if it is inaccurate. This might also include other personal data which contains an expression of opinion which the Court finds is based on the inaccurate data. Data will be considered inaccurate if it is incorrect or misleading in any matter of fact.

A data subject can also apply for an order if he or she can prove that damage has been suffered through any contravention of the Act, such as processing inaccurate personal data, which entitles him or her to compensation (see **Right to seek compensation for damage or distress (Section 13 DPA)**). In either of these cases where the Court considers it to be reasonable, school can be ordered to notify third parties, to whom the data has been disclosed, of the rectification, blocking, erasure or destruction ordered.

In simple terms, rectification entails making the personal information accurate by removing errors, although it is good practice to be able to demonstrate what the original error was in order to provide an audit trail.

Blocking orders require, for example, that the personal information in question should no longer be disclosed to any or to specified recipients. It may also be useful in the context of the Second Data Protection Principle in order to block processing of personal data for purposes which are inconsistent with the original purpose for which it was collected.

Erasure of personal information appears at first glance to mean the same as destruction in that once either has been carried out; the personal information should no longer exist. However, the difference is to do with the medium on which the information is held.

For example, a sheet of paper on which personal information is held and which contains no other information can be destroyed and this will serve the purpose of ensuring that the personal information no longer exists. However, personal information held on a computer disk might exist alongside other information, the removal of which has not been ordered. In such circumstances, the erasure of the specified personal information serves the purpose of ensuring that it no longer exists whilst the other information remains intact.

It is good-practice to keep a reminder not to collect any information again which has already been the subject of such an order.

Right to ask the Information Commissioner for a ruling about whether the Act has been contravened by School (Section 42)

An individual may choose to request that the Information Commissioner carries out an assessment where he or she feels that they have been directly affected by the processing in question. Such requests do not have to state whether it is suspected that a breach of the Act has occurred although this is often the case, for example, where:

- A data subject is unhappy with the way in which a subject access request was handled or if the request was ignored
- A data subject is not satisfied that school complied with their request that their personal data should not be used for direct marketing purposes

Such assessments commence with the issuing of an Information Notice by the Information Commissioner (IC). Such a notice would inform school of the nature of the complaint and ask that certain information be provided in order that the IC may make an assessment as to whether or not a breach has occurred.

It must also set out what rights of appeal school have against the complaint, the time-scale for response and the form in which the requested information is to be provided. The IC can issue a warrant for entry into premises in the event that an information notice is ignored. It must be noted that failure to comply with any notice issued by the IC is a criminal offence.

Following the assessment, the Commissioner may, if he finds that a breach has occurred, issue an Enforcement Notice. This is a statement of action that is required in order to rectify any operational problems identified in the assessment. Again, such a notice must set out what rights of appeal school has against the notice, the time-scale for response and what action it is required to take in order to ensure that further processing is compliant with the Act. Again, such a notice must be complied with as to not do so is a criminal offence.