



## **Subject Access Request – Guidance for employers**

### **Introduction**

The Information Commissioners Office (ICO) has recently published new [guidance](#) for employers dealing with Subject Access Requests (SARS) from their employees. The guidance sets out how to [recognise](#) a subject access request, request clarification and when the employer can withhold the information. When asking for [clarification of the request](#) the employer can ask the data subject to specify the information or processing activities they are requesting and where the scope of the request is wide and the volume of information large the employer should consider a “reasonable search” against the efforts required. The ICO website also has some examples of requests and how these can be processed.

The guidance is useful, particularly where there may be an investigation, grievance or other HR process ongoing and where personal data is about more than one person. There are options to consider when responding to these SARs and a high level summary is provided below. Each request must be assessed on a case by case basis, however options to consider include the expectation of confidentiality in regards to witness statements, the complexity of mixed personal data within these statements, management forecasting and manifestly excessive or unreasonable.

Routine requests for information from staff - such as a copy of a payslip should be dealt with under a normal course of business process and not under the SARS process.

### **Witness statements**

Where witness statements have been gathered in response to allegations which result in an HR process (disciplinary or grievance) and those statements have been given with an expectation of confidentiality then such statements can be withheld from disclosure in response to a SAR. Some witness statements may contain what is termed “mixed data” ie information about the requestor and a number of other individuals. In this case the [third](#) party exemption set out in the Data Protection Act 2018 should be considered.

### **Whistleblowing**

Where a whistleblowing or any other report may disclose the identity of the individual whistle blower, then such a report could be withheld from disclosure in response to a SAR.



### **Management Forecasting.**

Where information is held specifically for management forecasting or planning about a service or other activity this information can be withheld. Any potential changes to services where staff may be affected can be withheld as releasing the information would likely prejudice the conduct of the Trust by causing staff unrest.

### **Manifestly excessive SARs**

If the SAR includes a request to search multiple email accounts of other staff which would result in the search, location and review of a significant number of emails, the Trust can consider the request to be manifestly [excessive](#). For example if this member of staff would have generated (or been copied into) significant levels of email communication, most of which is not about them as an individual, but is about their role, service or function within the Trust, these should not be considered personal data. The Trust should seek clarification from the requestor.

It would be appropriate in this event to provide the information held in any Personnel file and provide a summary of the other information, for example – “the Trust identified 2000 emails with your name but you are not the focus of the information in those emails”.

### **Manifestly unfounded and unreasonable**

The Trust must balance whether the SAR is clearly or obviously [unfounded](#) and must assess whether the response required is proportionate when balanced with the burden and cost involved. Some of the considerations are, if the requestor is making unsubstantiated accusations against the Trust of specific employees which are clearly prompted by malice or where it targets a particular employee against whom they have some personal grudge. The Trust can also consider charging for staff time, photocopying, printing and postage.

### **Legal Professional Privilege**

Where the Trust has or intends to communicate with the Department of Legal Services (or any other Legal Professional) then this information is [exempt](#) from disclosure as communications between lawyers and clients are considered confidential. Consideration should be given as to how legal advice is filed within the personnel file to reduce the risk of inappropriate disclosure as part of a SAR response.

### **Tribunal or Grievance Process**

The Trust must provide a response to a Subject Access Request even though there are ongoing proceeding such as a Tribunal, Grievance or Disciplinary Process. If



you believe it isn't appropriate to disclose relevant information the Trust must demonstrate the exemption the Trust is applying and why.

It is important to note that whilst there may be separate rules for disclosing information in the course of tribunal, the Trust must comply with a SAR and respond within the statutory timeframe.

### **Social Media or messaging platforms**

If the Trust uses Social Media Platforms or messaging Apps (such as WhatsApp or Voicera) or Microsoft Teams then these platforms may also have to be searched and information released.

### **Confidential References**

Under UK GDPR, confidential references (including those provided for education, training or employment purposes) are exempt from release, regardless of whether you give or receive the reference. The ICO recommends that it be made clear to workers and referees that the reference will be treated as confidential.

### **For further information or advice please contact:**

Information Governance Department

10, Moyallen Road, Gilford, BT63 5JX

Email: [FOI.Team@southernTrust.hscni.net](mailto:FOI.Team@southernTrust.hscni.net)

Telephone: 028 3756 1458

Other Contact Numbers available on the IG Sharepoint site. [Information Governance - Home](#)

### **Additional Resources can be found on the Information Commissioner's Website:**

[Information Commissioner's Office \(ICO\)](#)

[SARs Q&A for employers | ICO](#)

[Draft Guidance - employment practices and data protection : information about workers health](#)

[Working from home | ICO](#)