Blackburn with Darwen Borough Council

Subject Access Request Policy and Procedure

Vision:

In our family school, we strive to be the best for today, for tomorrow, for ourselves, for each other, the wider world and for God.

As a Christian family we nurture an understanding that we are all of equal value and infinite worth.

In the safety of our unique family we will flourish and grow towards being Global Citizens and Courageous Advocates.

('You are now citizens together with God's people and members of the family of God'. Ephesians 2:19)

Mission statement:

Learning to love, loving to learn in the family of Christ.

('Encourage one another and build each other up'- 1 Thessalonians 5:11)

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1. The General Data Protection Regulation

The General Data Protection Regulation (GDPR) regulates the processing of 'personal data'. Personal data is information that relates to a living individual which allows that individual to be identified from that information (or that information with other information likely to come into the organisation's possession).

St Cuthbert's CE Primary School is a Data Controller as it determines the purposes, and the way in which personal data is processed.

The GDPR provides individuals with certain rights, one of which enables individuals to find out what personal data is held, why it is held and who it is disclosed to. This right, is commonly known as subject access, and is set out in Article 15 of the GDPR. Individuals may exercise the right by making a 'subject access request' (SAR).

2. What is a subject access request?

A Subject Access Request (SAR) is simply a request made by or on behalf of an individual for the information which he or she is entitled to ask for under Articles 12 and 15 of the GDPR. The request does not have to be in any particular form, nor does it have to include the words 'subject access' or make any reference to the GDPR.

These requests are most often made by individuals who want to see a copy of the information an organisation holds about them. However, except where an exemption applies subject access entitles an individual to be:

- told whether any personal data is being processed;
- given a description of the personal data, the reasons it is being processed, and whether it will be given to any other organisations or people;
- given details of the source of the data (where this is available).
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Subject access provides a right to see the personal information or a right to have copies of the documents that include that information. If the request is made electronically, you should provide the information in a commonly used electronic format.

Formal requirements

Under GDPR a Subject Access Request (SAR) can be made either verbally or in writing. If the request is received verbally then it is best practice for the individual taking the request to record and agree the nature and content of the request with the requestor. The school has a Subject Access Request form which can be used by staff to record a request and a Data Protection Policy, both of which are available from our website.

Although, the form may make it easier for an individual to ensure they include all the information that we need there is no requirement for them to use this form. Requests may also be received via email, fax, letter etc.

Adults and children who can understand their subject access rights can apply to the school for their personal information. The form also allows official representatives to apply on behalf of vulnerable or less able applicants (see section on requests made on behalf of others and requests for information about children).

To avoid personal data about one individual being sent to someone who is not entitled to it, the school need to be satisfied that they know the identity of the applicant. Enough information should be requested to confirm the individual's identity, however this must be reasonable especially in situations where the individual is known to the school through ongoing contact.

Subject Access Requests to the school are free under GDPR.

The statutory response time is one month from the date of receipt.

3. Subject Access Procedures

When a SAR is received which meets the formal requirements above, the one month response begins to run. This one month deadline is set by the GDPR, however in all cases the school should respond promptly.

Please be aware unlike FOI the response time DOES NOT pause for School Holidays or weekdays and this should be taken into consideration.
It may be possible to extend the time limit to three months if the request is complex in nature.

On receipt of subject access request, it may be more appropriate for staff members to try to satisfy the request informally by telephone, perhaps when individuals are requesting copies of documents which have previously been provided or should have been provided.

Before responding to a subject access request, staff may ask the applicant for information that is reasonably required to find the personal data that they are seeking. Staff are not required to comply with the request until this information is received, however there shouldn't be an unreasonable delay in seeking clarification.

Upon receipt of a subject access response, an individual may wish to contact the school. If they remain dissatisfied following this they may also contact the Information Commissioner's Office (ICO) at any time if they are not satisfied with their response, or the way their request has been handled, although they (the ICO) may ask the school to resolve these concerns directly in the first instance.

A detailed record of the contents of subject access replies should be kept for 7 years. This record should include the information that was and/or wasn't disclosed, and where necessary the exemptions that were used where information was not provided.

4. Requests made on behalf of or by others

The GDPR does not prevent an individual making a subject access request via a third party. Often, this will be a solicitor acting on behalf of a client. In these cases, you need to be satisfied that the third party making the request is entitled to act on behalf of the individual, but it is the third party's responsibility to provide evidence of this entitlement. This might be a written authority or might be a more general power of attorney.

When a SAR is received from a Law firm, staff must ensure that the request letter confirms that the school will not be a party to the claim. If the school is a party, the matter should be sent directly to the Risk Management & Insurance Team for their advice. The request letter must also include a signed consent or release form from the client. The information disclosed should be exactly as outlined in the client's consent form. Information must not be released without the client's consent form.

If the request is received by a third party such as the Police or Social Care you must take appropriate steps to ensure the request is genuine such as verifying the identity of the individual making the request and also to ensure that there is an appropriate legal gateway to allow the disclosure of the requested data.

In the case of the Police they will usually submit a request for personal data on a *DP1* form which will specify the information requested and the legal basis for the request.

5. Requests for information about children

Pupils attending any type of school have a right of access under the GDPR to their own information. When a child cannot act for themselves or the child gives permission, parents will be able to access this information on their behalf.

Parents have an independent right of access to their child's educational record, under separate education regulations. This covers information that comes from a teacher or other employee of a local authority or school, the pupil or a parent, and is processed by or for the school's governing body or teacher, except for information the teacher has solely for their own use. It will cover information such as the records of the pupil's academic achievements as well as correspondence from teachers, local education authority employees and educational psychologists engaged by the school's governing body. It may also include information from the child and from a parent. Information provided by the parent of another child would not form part of a child's educational record.

A request for an educational record must receive a response within 15 school days. The school can charge what it costs to supply a copy of the information. It is free for a parent to **view** the educational record.

There are certain circumstances where the school can withhold an educational record; for example, where the information might cause serious harm to the physical or mental health of the pupil or another individual. The request for access would also be denied if it would mean releasing examination marks before they are officially announced.

A parent can access all the other information about their child if their child is unable to act on their own behalf or gives their permission. As a general guide, a child of high school age is expected to be mature enough to make this kind of request although you should consider the issue of *Gillick Competency* to assess whether a child under 16 is able to provide their own consent.

6. Editing information (exemptions)

Some types of personal information are exempt from the right of subject access. Information may be exempt because of its nature or because the effect that its disclosure would have. There are also restrictions where this would involve disclosing information about another individual (third parties).

If third parties are included in material to be released, a balancing of interests between the applicant and the third party should be carried out. The third party's views on the release of this information to the applicant may be sought. If, as a result of this consultation, information is to be edited it should be kept to a minimum and the context of information should always be retained where possible.

Decisions about disclosing third party information should be made on a case by case basis. It may be necessary to seek legal advice where appropriate.

7. School Office visits

Applicants may be encouraged to visit the school offices to view the information they have requested. If this is to occur, the Headteacher must first view the documents and consider whether the information can be released or whether an exemption may apply. The applicant should also be accompanied by an appropriate member of staff so that information can be explained and clarified. Office visits should be carried out within the statutory time limit and the visit documented. A reference should be kept on the database to the information that was viewed.

Further advice and guidance can be provided by the Schools IG Team as required. Please contact them on schools.ig@blackburn.gov.uk