

WIDFORD PARISH COUNCIL

DATA PROTECTION ACT

SUBJECT ACCESS REQUEST PROCEDURE

Draft for adoption November 2015

Data Protection Subject Access Procedures and Guidance

1 Making a Subject Access Request (SAR)

1.1 Applicants must make their request in writing either manually or electronically.

1.2 Unless the applicant is clearly known to the Council, the applicant may be expected to supply proof of identity with the application. These may include copies of driving licence, passport or birth certificate in addition to other relevant information confirming the applicant's address e.g. copy of a utility bill.

1.3 Requests submitted by a nominated representative (e.g. Solicitor) acting on behalf of an individual should obtain the individual's consent in writing and include a copy of this with the request.

1.4 Widford Parish Council is legally obliged to comply with all subject access requests within 40 calendar days of receipt of request and the fee, or, within 40 calendar days of receipt of verified proof of identity and the fee.

2 Charging for subject access requests

2.1 A fee of £10 must be requested promptly on receipt of the subject access request. The 40 calendar day deadline will not begin until the fee has been received from the applicant.

2.2 This charge applies to both electronic and manual information. The fee covers the cost of either viewing or providing copies of the information. No further charges may be made by the Parish Council to cover photocopying or postage fees.

2.3 If the fee has not been received with the initial application but all of the necessary information required to process the request has been included, a request for payment should be sent to the applicant. The 40 calendar day counter is then halted on the day that the request is sent and re-started when payment has been received

3 Procedure for processing subject access requests

3.1 Stage 1 – receipt of request

3.1.1 Subject access requests should always be received in writing.

3.1.2 If the request has sufficient information to be processed and the applicant's identity has been proven (and consent provided if via a nominated representative) and the fee has been received, the Parish Council's Data Protection Officer (DPO) will acknowledge receipt stating that their request will be processed within 40 calendar days. It may be necessary to ask the applicant to specify the scope of the request (eg for them to give the parameters of a specific time frame).

3.1.3 If the applicant has not supplied sufficient information for the request to be processed, or sent the fee, the DPO will request the applicant to provide it. The 40 calendar days will then start upon receipt of the missing information and the fee.

3.1.4 If the request is from a representative of the individual, a letter of consent must be included with the request.

Stage 2 – processing of request

3.2.1 Once the DPO has validated the request by making the appropriate checks, an acknowledgement should be sent to the applicant notifying them when they should expect to receive a response.

3.2.2 A search of all relevant databases and filing systems (including archived systems) within the specified scope of the request should be initiated.

3.2.3 Types of personal information that might be held by the Parish Council are:

- Personnel/human resources files if the applicant is/was a member of staff or applied for a post within the organisation
- Complaints files
- Client files or reports such as delayed transfers or applications for funding
- Payments made or received by the applicant

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- Information held by other organisations on behalf of the Parish Council

Stage 3 – Reviewing the information

3.3.1 All information that has been collated by the DPO must be carefully reviewed by a member of the Parish Council independent of the request.

3.3.2 If any ‘third party’ individual is named or has provided information about the applicant, the following must be considered prior to releasing the information:

- Is it possible to comply with the request without revealing information which relates to and identifies any third party individuals? If so the third party information must either be removed prior to releasing the information or alternatively consent of the individual/s must be obtained. .
- If a third party individual does not consent to releasing the information and the DPO is not satisfied that it would be reasonable to disclose the information, it should be withheld. However, as much of the information requested should be given without disclosing the identity of the third party where possible unless it is reasonable given all of the circumstances to disclose without consent.

3.3.3 If the third party information has previously been provided to or is already known by the applicant, or it is generally available, it would be considered reasonable to disclose the information without third party consent.

3.3.4 A record should be made with details of the course of action and reasoning behind why consent was not sought or considered not appropriate.

3.3.5 The DPO must check the information thoroughly to ensure that any codes or acronyms are explained to the applicant.

3.3.6 It must be decided by the DPO whether there are any grounds for withholding the information under the Acts exemptions. Examples include safeguarding national security, crime and taxation and parliamentary privilege.

3.3.7 Any police requests recorded by the DPO should NOT be routinely disclosed when dealing with a subject access request without considering the following:

- How long is it since the police request was received i.e. is the investigation now closed?
- What details were obtained from the police officers requesting the information?

If there is any doubt as to whether the information regarding police requests should be disclosed, enquiries will be made to establish if releasing the information would prejudice the detection and prevention of a crime.

3.3.8 The DPO to make a record detailing any information that is withheld and the exemptions used.

Stage 4 – releasing / refusing the information

3.4.1 As soon as the request has been processed, a hard copy of the information which has been judged to be the applicant’s personal data, redacted as necessary, should be released using the applicant’s preferred method i.e. sent via mail, collection or viewing.

3.4.2 If the information is to be sent to the applicant, it should be sent by Special Delivery marked ‘**Private and Confidential**’, ‘**Addressee only**’ and packaged securely in a double envelope. The Special Delivery reference number should be recorded.

3.4.3 If the applicant has chosen to collect the information from the DPO, then a receipt will be required to be signed and, if the applicant is not known to the DPO, photographic ID (e.g. passport or driving licence) must be provided to confirm the recipient’s identity.

3.4.4 If the applicant has chosen, and the Parish Council has agreed, to allow the information to be viewed, the DPO will write to the applicant to arrange a convenient time and place that is both suitable to the DPO and the applicant within 40 calendar days of receipt of the fee.

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3.4.5 Ideally the viewing should be of photocopied information. Any copies required by the applicant can then be removed as they are being viewed.

3.4.6 If there is no other choice but to view the original record, the process must be witnessed by the DPO and a member of the Parish Council who must ensure that the applicant is not left alone with the records at any time.

3.4.7 Up to a maximum of one hour will normally be allowed for the applicant to spend viewing the information. However this time may be extended, if justified, with the DPO's discretion. The applicant will be informed of the time allowance prior to and as a condition of the viewing.

3.4.8 Following release of the information, copies of the documentation should be stored manually in accordance with the Records Management Procedures. However any redacted documents will be retained in accordance with the requirements of the Data Protection Act. The date of release and file reference should then be recorded by the DPO.

3.4.9 If the application has been denied, restricted, or no information has been found, the applicant should be notified in writing. There is no requirement to explain the reason for denying or restricting the information. However the DPO may consider disclosing if this would not contravene any of the Act's principles.

3.4.10 All decisions must be recorded by the DPO.

4 Dealing with requests from the Police

4.1 In addition to the Act, personal information is also protected by the common law duty of confidentiality. This duty requires that confidential information may only be disclosed:

- With the consent of the individual to whom the information relates
- If there is a legal requirement e.g. court order, Act of Parliament
- If it is in the public interest i.e. the public interest in the specific circumstances outweigh the individual's right to privacy

4.2 There is no legal obligation for the Parish Council to disclose information to the police without a court order. However, the Parish Council may consider releasing the information following a request made by the police, under the DPA (Section 29) or the Crime and Disorder Act (Section 115) without the subject's consent for the purposes of the prevention or detection of crime or the apprehension or prosecution of offenders

4.3 It is essential that prior to releasing personal information without consent, the DPO is assured that the public interest in the specific circumstances outweigh the individual's right to privacy. The factors that should be considered are:

- Whether there is a threat to public health and safety
- Whether there is a risk of death or serious harm to the individual concerned or other individuals
- The circumstances of the matter under investigation

It will be the DPO's decision whether to release information, without consent, under either Section 29 or Section 115.

4.4 It is mandatory to comply with a court order requiring release of personal information.

4.5 Requests should be submitted on a Section 29 or Section 115 police request form containing full details of the data subject and reason for requiring information. It should be signed by a senior police officer of the minimum rank of Inspector. It should also be clear whether the police have the consent of the individual.

4.6 The DPO must record the request and process it as soon as possible.

4.7 A charge will not be made to the police for subject access requests.

4.8 When the information is ready for release, the DPO should arrange for it to be sent to an address and by a secure means agreed with the police officer signing the SAR.

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4.9 If an agreement has been made for the information to be collected, the DPO should make the necessary arrangements. The police officer collecting the information must provide proof of identity e.g. warrant card.

4.10 The DPO must record the date that the information was sent or collected.

4.11 A paper copy of the information released should be retained for a minimum of 3 years.

5 Complaints & feedback

5.1 Comments and feedback about the discharge of the duties of Parish Council with regard to the Act will be dealt with by the Council's Data Protection Officer who will inform the Parish Council accordingly.

5.2 All complaints will be dealt with in conjunction with the Parish Council's Complaints policy and procedures.

Queries or questions in relation to this procedure should be addressed to the Widford Parish Council Data Protection Officer.

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Glossary of Terms

Data Controller – The person who (either alone or with others) decides what personal information Widford Parish Council will hold and how it will be held or used.

Data Protection Act 1998 – The UK legislation that provides a framework for responsible behaviour by those using personal information.

Data Protection Officer – The person(s) responsible for ensuring that Widford Parish Council follows its data protection policy and complies with the Data Protection Act 1998.

Individual/Service User – The person whose personal information is being held or processed by Widford Parish Council for example: a councillor, an employee, or parishioner.

Explicit consent – is a freely given, specific and informed agreement by an Individual/Service User in the processing of personal information about her/him. Explicit consent is needed for processing sensitive data.

Notification – Notifying the Information Commissioner about the data processing activities of Widford Parish Council, as certain activities may be exempt from notification.

The link below will take to the ICO website where a self assessment guide will help you to decide if you are exempt from notification:

http://www.ico.gov.uk/for_organisations/data_protection/the_guide/exemptions.aspx

Information Commissioner – The UK Information Commissioner responsible for implementing and overseeing the Data Protection Act 1998.

Processing – means collecting, amending, handling, storing or disclosing personal information.

Personal Information – Information about living individuals that enables them to be identified – e.g. name and address. It does not apply to information about organisations, companies and agencies but applies to named persons, such as individual volunteers or employees within Widford Parish Council.

Sensitive data – refers to data about:

- ⌚ Racial or ethnic origin
- ⌚ Political affiliations
- ⌚ Religion or similar beliefs
- ⌚ Trade union membership
- ⌚ Physical or mental health
- ⌚ Sexuality
- ⌚ Criminal record or proceedings

The **Information Commissioner's Office (ICO)** – provides independent advice and guidance about data protection and freedom of information.

Regular updates can be found on their website www.ico.gov.uk