



# DPA INDIVIDUAL RIGHTS PROCEDURES

## 1. Introduction

The main purpose of the Individual Rights Procedures is to provide guidelines for the appropriate and effective completion of Surrey Heath Borough Council's (SHBC) statutory requirement under the Data Protection Act 2018 (DPA) and General Data Protection Regulation 2018 (GDPR) and to ensure employees and FOI staff are aware of how they should action and manage Individual Rights requests received by the Council.

The DPA and GDPR provides the following rights for individuals:

1. The right to be informed
2. The right of access
3. The right to rectification
4. The right to erasure
5. The right to restrict processing
6. The right to object
7. The right to data portability
8. Rights in relation to automated decision making and profiling.

## 2. Definitions

The term 'Individual Rights' is given to request received into the Council in writing either via; letter, post, email, internet or fax, or verbally over the phone or in person, in reference to the personal data of a living individual held by the Council in physical and electronic format, including but not limited to; hardcopy documents, online folders, emails, voice recording, images, and data held on ICT systems, and the rights the individual has over that data. The request does not need to stipulate Data Protection for it to be handled by the Council under the legislation.

FEB 2023



### 3. Scope

The Individual Rights Procedures will apply to all employees and workers (including fixed term, casuals, agency staff, contractors and work experience students, volunteers as well as permanent staff) employed on Council business, including those working with partner organisations. This procedure should be read in conjunction with the following policies and all other relevant policies will apply:

- ◆ Information Governance Strategy and Policy
- ◆ Information Security Policy
- ◆ Data Protection Policy
- ◆ Records Management Policy
- ◆ Complaints Policy
- ◆ Vexatious and persistent complaints policy and procedure

Individual Rights requests are managed centrally within the FOI office. Any requests received into the Council should be passed onto the FOI office either via internal mail or email [foi@surreyheath.gov.uk](mailto:foi@surreyheath.gov.uk) in a timely manner.

The Council has 1 calendar month in which to respond to Individual Rights requests, this is from the point the request enters the Council regardless of where it was received. We can extend the time to respond by a further two months if the request is complex or we have received a number of requests from the individual. We must let the individual know within one month of receiving their request and explain why the extension is necessary.

Individual Rights requests should only be processed if the request is received from the individual themselves, if it is not the individual submitting the request then consent to process the request on their behalf must be received from the individual before processing can begin, this can be either via a signed consent form or email from the individuals registered email address. If the request is received from another party that is not the individual or someone working on behalf of the individual then there must be a legitimate legal basis identified before



the processing can take place, guidance should be sort from the Information Governance Manager as to what this is and if the basis is applicable.

To enable us to ensure that we are processing an Individual Rights request from the individual themselves, if there are any doubts about their identity proof of identification must be requested. We must let the individual know without undue delay and within one month that we need more information from them to confirm their identity. We do not need to comply with the request until we have received the additional information. Proof of identity should include an copy of photographic ID; passport, or drivers licence, and a recent (within 3 months) household bill or bank letter with the registered address and name of the individual. If requestors do not wish to send copies of documents by post and are unable to scan their identification documents they should be offered an appointment by the FOI team to inspect their documents.

It is not necessary to retain a copy of identification documents but it is very important that a note is retained to indicate the steps taken to verify identity. Where the requester sends the original through the post, it should be inspected and logged and sent back to the requester via recorded delivery as soon as possible.

## 4. Right to be informed

Individuals have the right to be informed about the collection and use of their personal data. This is a key transparency requirement under the GDPR.

SHBC must provide individuals with information including: our purposes for processing their personal data, our retention periods for that personal data, and who it will be shared with.

SHBC must provide privacy information to individuals at the time we collect their personal data from them, This information is usually provided in a Privacy Notice or Privacy Statement that is made available online at the point the data is collected. The Council also published its Personal Information Charter on the internet.



Each Service Area within the Council has a Privacy Notice. If the services changes or introduces new systems or data collections it must ensure that the Privacy Notice is updated to reflect this. The Information Governance Manager can be contacted to assist with updating privacy notices.

There are a few circumstances when SHBC does not need to provide people with privacy information, such as if an individual already has the information or if it would involve a disproportionate effort to provide it to them.

SHBC must regularly review, and where necessary, update our privacy information. SHBC must bring any new uses of an individual's personal data to their attention before we start the processing.

## 5. Right to Access – Subject Access Request (SAR) Procedures

If an individual makes a request for copies of their own information, this should be considered to be a Subject Access Request and processed in accordance with this procedure. The Council has a duty to provide a requester with a copy of, or access to all structured personal data held them.

A template request form has been produced to assist individuals in making a request. However, whilst we may invite individuals to use the template form, it is not compulsory and requests made by letter, email or verbally must still be responded to. The form can be found at <https://www.surreyheath.gov.uk/council/information-governance/data-subject-access>

Occasionally requesters will make a written request for 'everything the Council holds on me'; in these circumstances it is reasonable to ask for clarification. In these situations it will be reasonable to write to the requester explaining that we need further information before we can begin to locate the information. We should only ask for information that we reasonably need to find the personal data covered by the request. However, if an individual refuses to comply and provide additional information the Information Commissioner (ICO) advises that we must



still endeavour to comply with their request i.e. by making reasonable searches for the information covered by the request

Where the requested information includes personal data relating to another individual (a third party), we need to consider whether to release that information to the enquirer, the following should be considered;

- ◆ Obtaining the third party's consent to the disclosure, if it is reasonable to do so, or
- ◆ Edit the information so as not to reveal the third party's identity, for example, blocking out the text or retyping text without the identifying information; or
- ◆ We can decide that it is reasonable to disclose the information to the data subject without the third party's consent.

In taking this third option we need to consider:

- ◆ the type of information we would disclose
- ◆ any duty of confidentiality owed to a third party
- ◆ any steps we have taken to obtain consent;
- ◆ whether the third party is capable of giving consent;
- ◆ whether the third party has expressly refused consent;
- ◆ whether the information is of particular importance to the data subject.

For the purposes of data protection, references to SHBC officers carrying out their professional roles and duties and records of their professional assessments, statements or opinions are not generally considered to be third-party data.

We must not amend, or delete data relevant to the request if we would not otherwise have done so. Under the Data Protection Act 2018, it is an offence to make any amendment to information held with the intention of preventing disclosure

If we consider that a request is manifestly unfounded or excessive we can request a “reasonable fee” to deal with the request or refuse to deal with it. However, in either case we will need to justify our decision and confirm the reasons for this to



the requester. If we decide to charge a fee we do not need to comply with the request until this has been received

## **SAR Process**

- 5.1 A request for personal information is received by an officer at the Council. The request is emailed by the receiving officer to the FOI office to log and action either via internal mail or email to [foi@surreyheath.gov.uk](mailto:foi@surreyheath.gov.uk)
  - 5.1.1 Verbal request should be noted ensuring that the date and time of request and address and telephone number of the requestor is taken. Confirmation of what information they wish to be receive copies of should also be agreed. This should then be passed onto the FOI as detailed above
- 5.2 The FOI office log the request on the 'House on the Hill' (HoTH) system under case type 'DP Request' and case sub-type 'SAR' this will allocate the case with a DPA reference number which should be used in all correspondence.
- 5.3 The FOI office will set up a box folder using the DPxxxx reference number issued by the HoTH system as the folder name, this is so that all records found in response to the request can be centrally managed.
- 5.4 The FOI office will consider whether it is necessary to verify the requester's identity. If it is necessary an acknowledgement letter requesting proof of identify will be sent from the HoTH system and the HoTH system will stop the clock on the time to respond until a time that the ID is confirmed.
- 5.5 The FOI office will consider whether they have enough information to locate the required data or whether it is necessary to seek further clarification from the requester. If it is necessary to seek further clarification an acknowledgment letter requesting the additional information will be sent from the HoTH system, the HoTH system will stop the clock on the time to respond until a time that clarification is received.



- 5.6 If no clarification or proof of ID is required an acknowledgment email will be sent from the HoTH system confirming that the request is being actioned providing a date by which a response will be provided.
- 5.7 The FOI officer will allocate the request to the relevant department/officers via the HoTH system ensuring that it is clear that it is a Subject Access request and that copies of all records held including, documents, photos, records and emails should be searched and provided. The HoTH system will provide the deadline for responding to the request and set an automated reminders if the requests has not been processed by 1 week before the case is due to be sent out.
- 5.8 If it is necessary to extend the time limit due to the request being complex the FOI office will notify the requestor with the reasons for the delay as soon as possible and within 1 month of their initial request. The HoTH clock must be manually altered to reflect this.
- 5.9 After all of the information has been gathered, the FOI office preparing the information will ensure at this stage that third party data is redacted or the appropriate consents are sought, and that all other information is removed or redacted as appropriate.
- 5.10 The FOI office must retain an electronic copy of all of the information that was considered in response to the request in an unredacted format as well as the redacted version in a box folder set up as detailed in 5.3. It is very important that it is clear what information has been withheld and which exemption has been engaged, this is in case the requestor complains to the ICO.
- 5.11 Depending on the nature of the information, departments may want to invite the requester to read the records with an officer in order that the requester can discuss any concerns or questions they have about the information; this may be appropriate, for example, when viewing a social care record. However, in most circumstances the information will simply be sent to the requester's home address by the FOI office. Care should be taken when addressing envelopes and ensuring that it is securely packaged. If information is being supplied via email, the Council's secure email policy must be followed.



- 5.12 Once the final response has been sent to the requester the HoTH system will be updated by the FOI office to confirm what actions have been taken including any exemptions used and the date the case was closed.
- 5.13 If the requestor is not happy with the response provided by the Council they are within their rights to complain to the ICO. Any complaints to the ICO will be sent to the FOI office, if a complaint is received the FOI office will update the HoTH system to case sub-type 'ICO', to reflect that the case is under investigation they will also log the complaint on the ICO complaints spread sheet held within the FOI office box folders.
- 5.14 The FOI office will inform the Councils SIRO and DPO of the complaint to the ICO and work with them on the ICO investigation. Copies of all ICO correspondence must be logged in the relevant Box folder above by the FOI office.

## 6. Right to rectification

Individuals can ask the Council to correct any personal information it holds about them to ensure their data is accurate. Individuals may also ask the Council to complete incomplete data held about themselves although this will depend on the purposes for the processing.

### Rectification Process

- 6.1. When a request for rectification is received into the Council it should be passed immediately to the FOI office to log and action either via internal mail or email to [foi@surreyheath.gov.uk](mailto:foi@surreyheath.gov.uk)
- 6.1.1. Verbal request should be noted ensuring that the date and time of request and address and telephone number of the requestor is taken, as much information about the data to be rectified or amended should be taken, this should then be passed onto the FOI as detailed above.
- 6.2. Once a request for rectification is received by the FOI office they will log the request on the House on the Hill Systems (HoTH) under the case type 'DP Request' case sub-type 'Other'. A formal acknowledgment will be issued to the requestor within 3 day of the request being received.





6.3. The FOI Office will work with the relevant department Information Asset Owner to identify the information held by the Council and take reasonable steps to satisfy ourselves that the data is accurate and to rectify the data if necessary. Taking into account the arguments and evidence provided by the data subject.

6.3.1. If the data refers to a mistake that has subsequently been resolved. It may be relevant that the record of the mistake is, in itself, accurate and should be kept. In such circumstances the fact that a mistake was made and the correct information should also be included in the individuals data.

6.3.2. If the data in question records an opinion that the requestor disputes it will need to be considered if this should be rectified. Opinions are, by their very nature, subjective, and it can be difficult to conclude that the record of an opinion is inaccurate. As long as the record shows clearly that the information is an opinion and, where appropriate, whose opinion it is, it may be difficult to say that it is inaccurate and therefore will not need to be rectified

6.4. Once a request for rectification is received, SHBC should restrict the processing of the personal data in question whilst we are verifying its accuracy, whether or not the individual has exercised their right to restriction.

6.5. Once the Council is satisfied that the information is accurate and all necessary actions have been taken within the Council, the FOI office will write to the individual detailing any actions taken or decisions made by the Council explaining these decision, and informing them of their right to appeal to the ICO if they are not satisfied with our response.

6.6. Once the final response letter is sent to the requestor the FOI office will update the HoTH system and ensure all necessary correspondence is filed within the system.

## 7. Right to erasure / To be forgotten



Individuals have the right to (under certain circumstances) ask for their personal data to be erased where:

- ◆ personal data is no longer necessary in relation to the purpose for which it was collected/processed
- ◆ consent is withdrawn and there is no overriding legitimate interest to continue processing
- ◆ objection to the processing is received and there are no overriding legitimate grounds for the processing
- ◆ Individuals object to the processing and their personal data was processed for direct marketing purposes
- ◆ Individuals personal data was unlawfully processed or should be erased to comply with a legal obligation

The Council can refuse to erase personal data where it is processed:

- ◆ to comply with a legal obligation or for the performance of a task of public interest
- ◆ for the exercise or defence of legal claims
- ◆ for purposes relating to public health, archiving in the public interest, scientific/historic research or statistics

### **Erasure/Forgotten Process**

7.1. When a request for erasure is received into the Council it should be passed immediately to the FOI office to log and action either via internal mail or email to [foi@surreyheath.gov.uk](mailto:foi@surreyheath.gov.uk)

7.1.1. Verbal request should be noted ensuring that the date and time of request and address and telephone number of the requestor is taken. Confirmation of what information they wish to be erased should also be sort. This should then be passed onto the FOI as detailed above.

7.2. Once a request for erasure is received by the FOI office they will log the request on the House on the Hill (HoTH) Systems under case type 'DP Request' case sub-type 'Erasure'. A formal acknowledgment will be issued to the requestor within 3 day of the request being received.



- 7.3. The FOI Office will work with the relevant department Information Asset Owner to identify the information held by the Council, if no exemption applies then steps must be taken to ensure erasure of the data including erasure of any backup systems.
- 7.4. Once the information has been erased the FOI will issue a formal letter to the requestor informing them of the action that has been undertaken by the Council to erase their information.
- 7.5. If an exemption applies and the data will not be erased the FOI office will inform the individual without undue delay and within one month of receipt of the request, this will include the reasons we are not taking action and their right to appeal to the ICO.
- 7.6. If individuals data has been disclosed to a third party, the FOI office working with the Information Asset owner will identify who this is and formally ask them to erase that data, unless this proves impossible or involves disproportionate effort. If individuals ask who those third parties are and the Council has to inform them accordingly.
- 7.7. Once the final response letter is sent to the requestor the FOI Office will update the HoTH system and ensure all necessary correspondence is filed within the HoTH System.

## 8. Right to Restriction

Individuals have the right to restrict the processing of personal data held by the Council, this means that an individual can limit the way that an organisation uses their data where:

- ◆ Individuals have contested its accuracy
- ◆ Individuals have objected to the processing and the Council is considering whether they have a legitimate ground which overrides this processing is unlawful
- ◆ the Council no longer needs the data but you require it to establish, exercise or defend a legal claim



## Restriction Process

- 8.1. When a request for restriction is received into the Council it should be passed immediately to the FOI office to log and action either via internal mail or email to [foi@surreyheath.gov.uk](mailto:foi@surreyheath.gov.uk)
  - 8.1.1. Verbal request should be noted ensuring the date, time of request and address and telephone number of the requestor is taken. As much details about what restrictions are being requested should also be confirmed, this should then be passed onto the FOI as detailed above
- 8.2. Once a request for restriction is received by the FOI office they will log the request on the House on the Hill (HoTH) Systems case type 'DP Request' case sub-type 'Non-Disclosure Provision'. A formal acknowledgment will be issued to the requestor within 3 day of the request being received
- 8.3. The FOI office will work with the relevant department Information Asset Owner to identify the information held by the Council, if no exemption applies then steps must be taken to restrict processing of the data.
  - 8.3.1. There are a number of different methods that should be considered to restrict data, such as;
    - ◆ temporarily moving the data to another processing system
    - ◆ making the data unavailable to users
    - ◆ temporarily removing published data from a website
- 8.4. Once a request for restriction has been completed we must not process the restricted data in any way except to store it unless;
  - ◆ we have the individual's consent to restart the processing
  - ◆ it is for the establishment, exercise or defence of legal claims
  - ◆ it is for the protection of the rights of another person (natural or legal)
  - ◆ it is for reasons of important public interest
- 8.5. If the restricted information has been shared with third parties the FOI office and Information Asset Manager will contact each recipient and inform them of the restriction of the personal data - unless this proves impossible or



involves disproportionate effort. If asked to, you must also inform the individual about these recipients.

8.6. Once the information has been restricted the FOI office will issue a formal letter to the requestor informing them of the action that has been undertaken by the Council. If the restriction will be lifted within a certain timeframe this should be communicated to the requestor at this time.

8.7. If an exemption applies and the data will not be restricted the FOI office will inform the individual without undue delay and within one month of receipt of the request, this will include the reasons we are not taking action and their right to appeal to the ICO.

8.8. Once the final response letter is sent to the requestor the FOI Office will update the House on the Hill system and ensure all necessary correspondence is filed within the House on the Hill System

## 9. Right to Object

Individuals have the right to object to processing of their personal data in certain circumstances and have an absolute right to stop their data being used for direct marketing. Individuals can also object if the processing is for:

- ◆ a task carried out in the public interest
- ◆ the exercise of official authority vested in the Council
- ◆ Council's legitimate interests (or those of a third party)

However, in these circumstances the right to object is not absolute and individuals must give specific reasons why they are objecting to the processing of their data.

Council would be able to continue processing personal data if:

- ◆ we can demonstrate compelling legitimate grounds for the processing, which override the interests, rights and freedoms of the individual
- ◆ the processing is for the establishment, exercise or defence of legal claims

SHBC must inform individuals of their right to object at the latest at the time of our first communication with them



## Objection process

- 9.1. When an objection to processing is received into the Council it should be passed immediately to the FOI office to log and action either via internal mail or email to [foi@surreyheath.gov.uk](mailto:foi@surreyheath.gov.uk)
  - 9.1.1. Verbal request should be noted ensuring that the date, time of request and address and telephone number of the requestor is taken you should also ensure it is clear as to what processing the request refers to, this should then be passed onto the FOI as detailed above
- 9.2. Once an objection to processing is received by the FOI office they will log the request on the House on the Hill (HoTH) Systems case type 'DP Request' case sub-type 'Non-Disclosure Provision'. A formal acknowledgment will be issued to the requestor within 3 day of the request being received
- 9.3. The FOI office will work with the relevant department Information Asset Owner to identify the processing activity in question and put in place appropriate safeguards to restrict the processing, this could include deletion of the personal information from a system/register, however bear in mind erasure may not be appropriate if we process the data for other purposes in which case other safeguards should be investigated such as moving the data to another location where it will not be processed for this specific purpose.
- 9.4. Once the information has been safeguarded from the processing identified the FOI office will issue a formal letter to the requestor informing them of the action that has been undertaken by the Council.
- 9.5. If an exemption applies and the data will not be stopped from processing the FOI office will inform the individual without undue delay and within one month of receipt of the request, this will include the reasons we are not taking action and their right to make a complaint to the ICO.
- 9.6. Once the final response letter is sent to the requestor the FOI Office will update the House on the Hill system and ensure all necessary correspondence is filed within the House on the Hill System



## 10. Right to Portability

The right to data portability allows individuals to move, copy or transfer personal data easily from one IT environment to another in a safe and secure way, without hindrance to usability. This enables individuals to obtain and reuse their personal data across different services.

- 10.1. The right to data portability only applies:
- ◆ to personal data that an individual has personally provided to the Council
  - ◆ where the processing is based on consent or the performance of a contract
  - ◆ where processing is carried by automated means (i.e. excluding paper files)
- 10.2. Requests for portability should be passed onto the FOI Office who will work with the ICT Department to confirm if it is possible to accommodate the request within the IT infrastructure.

## 11. Right to automated decision making/profiling

Automated decision-making takes place when an electronic system uses personal information to make decisions without human intervention.

The Council could use automated decision-making in the following circumstances:

- ◆ where we have notified individual of the decision and given them 21 days to request a reconsideration
- ◆ where it is necessary to perform the contract and appropriate measures are in place to safeguard their rights

At present, there are no fully automated decision making or profiling systems in use within the Council. This means that this right does not currently apply to any processing activities.

## 12. Review



12.1. This procedures was last reviewed in Feb 2023.

12.2. A procedure review will take place after legislative changes or important changes in case law or guidance.

