

# **Rights of Access, Rectifications and Erasure (RARE) Requests**

## **Procedure for Data Protection Representatives**

### **Scope**

This procedure applies to all staff and members of the Council and applies to information held by our Data Processors who process information on our behalf.

### **Purpose**

To enable Data Protection Representatives, or any member of staff responsible, to accurately and efficiently prepare responses to Rights of Access, Rectification and Erasure Requests to comply with the General Data Protection Regulations ('GDPR') and the Data Protection Act 2018 ('DPA').

### **What are Rights of Access?**

The Rights of Access can be found within Article 15 of the GDPR and are generally the same as the provision of Subject Access which used to be found under the Data Protection Act 1998 (DPA).

In its Recitals, GDPR sets out that the reason for allowing individuals to access their personal data is so that they are aware of and can verify the lawfulness of the processing.

### **What is a Right of Rectification?**

The Right to Rectification can be found under Article 16 of the GDPR and it allows individuals the right to have inaccurate personal data rectified. An individual may also be able to have incomplete personal data completed – although this will depend on the purposes for the processing. This may involve providing a supplementary statement to the incomplete data.

It is worth noting that their right has close links to one of the new data protection principles, accuracy of data, which is set out in the GDPR at Article 5(1)(d). Even though we may have already taken steps to ensure that the personal data was accurate when we obtained it, this right imposes a specific obligation to reconsider the accuracy upon request.

### **What is the Right of Erasure**

Under Article 17 of the GDPR individuals have the right to have personal data erased. This is also known as the 'right to be forgotten'. The right is not absolute and only applies in certain circumstances.

### **What sort of information is in scope through a RARE Request from the Council?**

Individuals can request to see any personal data we hold about them that we are processing.

Personal Data is defined at Article 4 of the GDPR as:

*"any information relating to an identified or identifiable natural person ('data subject'); an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online*

*identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person”*

And Processing is defined within Article 4 as:

*“Any operation or set of operations which is performed on personal data or on sets of personal data, whether or not by automated means, such as collection, recording, organisation, structuring, storage, adaption or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combinations, restriction, erasure or destruction”*

It should be noted that the definition of processing considerably expands the definition of what is processed data; data that is stored electronically and in paper form, including data held off site, is classed as processed data.

Some information may be withheld under a variety of exemptions that are set out in Schedules 2, 3 and 4 of the DPA. As requests need to be considered on a case by case basis this link should be checked each time - <https://ico.org.uk/for-organisations/guide-to-the-general-data-protection-regulation-gdpr/exemptions/> The exemptions may include:

- Information which identifies another person (third party) unless that person has agreed to them seeing it
- Information which is likely to lead to them, or someone else, suffering serious physical or mental harm (where there is a risk to any individual)
- Information which may relate to legal proceedings
- Information which may have been supplied by another organisation (they may have their own procedure for accessing information)
- Adoption records – please note that we do not hold information relation to adoption records and for these records you should contact the Adoption Service directly
- School record - please note that we do not hold information relation to adoption records and for these records the relevant school should be approached direct by the Data Subject
- We are not obliged to supply information regarding any professional references we may have provided about the Data Subject

## **How can a Rights of Access, Rectification and Erasure Request be made?**

A request for a Right of Access or Rectification should be made in writing. Requests for Rectification and Erasure may be made verbally, the Council will ask for this to be put in writing when the necessary identity checks are undertaken. All requests received need to be logged, validated and responded to.

If a request is received in person or over the telephone, either contact details should be taken of the requestor and emailed to the Clerk or the call should be passed to the Clerk. The Clerk will send the requestor the necessary form to complete and a covering letter explaining the process.

Alternatively, the Access, Rectification and Erasure request form can be downloaded by the individual from our website.

## **How long do Requests take?**

Regardless of the format of the request, action must be taken promptly to comply with the statutory time limit. The Council is obliged to respond to Right of Access, Rectification and Erasure requests within 30 calendar days once it has been validated and accepted.

### **Is there a charge for making a Request?**

Not in normal circumstances. The Council can charge for a request that is manifestly unreasonable or excessive or, if it is a repeat Right of Access Request.

### **What does the Clerk do with the Request?**

The Clerk is responsible for coordinating all requests that the Council receives under the Rights of Access, Rectification and Erasures policy by liaising with the various Data Protection Representatives, Councillors etc.

The Clerk will check all requests to ensure their validity, authenticate the requestor's identification documents and co-ordinate the disclosure of the requested information.

### **Step-by-Step procedure**

This procedure is to be followed by all Data Protection Representatives and any member of staff involved in preparing a response to a request received under the Rights of Access, Rectification and Erasure.

1. The Clerk will liaise with Cornwall Council Corporate and Information Governance Team to ensure that, prior to either compiling the requested information, or considering the request for rectification or erasure, the necessary legal formalities have been complied with. This will include checking that two proofs of identification have been supplied; that the individual has the ability to understand what they are requesting, or that the requestor has the legal authority to make the request on their behalf. The Clerk will work on the assumption that the requestor has the legal authority and capacity and if the Clerk is in doubt they will liaise with the Cornwall Council Corporate Governance Team.
2. Once all the checks at Step 1 are complete, the Clerk will contact all employees and Councillors by email or letter the details of the request.

Where an individual, under the Right of Access has requested all information held about themselves, whilst this may be manifestly unreasonable or excessive if it is processed, we should include emails and any information held by our data processors.

In some cases, a request is received that is requesting information under the Rights of Access, Rectification or Erasure under GDPR and information that can only be supplied under the Freedom of Information Act. In these cases, the Clerk in liaison with the Cornwall Council Corporate and Information Governance Team will extract those parts which form the Rights of Access after reviewing the request and the Clerk will process the Freedom of Information element separately.

3. Within 2 working days of receiving the contact from the Clerk, Councillors must send an acknowledgment to confirm that they have received the email or letter and that they will deal with the request.

As soon as is possible the Councillor will also indicate if the request is so large that it is considered it can be manifestly unreasonable or excessive. If this is the case The Clerk

in liaison with Cornwall Council Corporate and Information Governance Team to contact the Requestor to advise that a charge will be incurred or see if the scope of the request can be narrowed.

Councillors should also notify the Clerk within 2 days of receiving the email if they consider there is sufficient reason to believe that the person making the request:

- Is not entitled to the information;
- May be at risk of harm through the disclosure, rectification or erasure process or needs support for receiving the disclosure; or
- May not have capacity under the Mental Health Act to understand the process of requesting their personal information or having it rectified or erased.

4. The Clerk in liaison with Cornwall Council Corporate and Information Governance Team will review the emails and personal data files to apply any exemptions to them if it is a Right of Access Request, third party views on release are obtained where there are documents belonging to or containing personal data relating to a third party. To obtain a third party's view to disclose documents, the Clerk must write to the relevant third party.

It is not necessary to wait for these views if by doing so it would cause a breach of the statutory 30-day deadline. If the main body of disclosable information is prepared, third party information can be sent separately.

#### 5. **Information to be disclosed under a Right of Access**

A summary schedule of all the records reviewed will be created on a Right of Access Summary Statement and Schedule including the following information:

- Data Subject's name and date of birth
- RARE reference number
- Date range of the documents
- Document type
- Name of the person who has prepared the documents
- Name of the person who has checked the documents

Other information which may be provided on the Right of Access Summary Statement and Schedule if relevant:

- Details of any third-party disclosures where views have been sought and a positive response to disclose received
- An explanation of any codes used within the data
- An explanation of the purpose for processing (i.e. reason why we hold the data)

#### 6. **Information not to be disclosed**

An Exempt Information Schedule or Third-Party Views Schedule will need to be completed where there are exempt documents or where we are waiting from views on disclosure from a third party to release information. If supplying an Exempt Information Schedule, the legal reason for non-disclosure must be stated on any of the documents.

DO NOT send the actual exempt documents to the Clerk. These should be kept for 12 months from Day 30.

7. Where the information is particularly sensitive or there are any complicated legal issues, legal advice will be sought within 5 working days of the request commencing.
8. As the Day 30 deadline is a statutory one, if for any reason, Councillors anticipate that they will not meet this deadline, they must advise the Clerk as soon as possible so the Requestor can be made aware in advance that the deadline is not going to be met. Regardless of whether the Requestor is accepting of this, this will still be classed as a late disclosure.

Therefore, by Day 20 of the Right of Access process, the Clerk should receive from Councillors the following:

- Copies of the documents being disclosed – either hard or electronic copies
  - Details of any information that Councillors feel is exempt and the reasoning for withholding the information
9. The Clerk will check the schedule for disclosure against the records to be disclosed and shall investigate any discrepancies.
  10. The Clerk will send the documents double-wrapped for security with a covering letter to the Requestor so that it reaches them on or before Day 30 of the process.
  11. In exceptional cases the Clerk will arrange for the Requestor to view the relevant records at a date and time convenient to the Requestor and the Clerk.
  12. Once the Requestor has received or viewed the files, the file is closed after 21 days unless there is further correspondence. A copy of the RARE file and disclosures are kept by the Clerk for a period of 24 months from Day 30 or the last disclosure date for phased disclosures, whichever is the latter. Councillors should retain their paperwork for the same period.

## **Right of Rectification**

Under Article 18 an individual has the right to request restriction of the processing of their personal data where they contest its accuracy and it is being checked. As a matter of good practice, all processing of the personal data should be restricted whilst the accuracy of the personal data is being verified, whether the individual has exercised their right to the restriction. If the processing cannot be stopped whilst the accuracy is considered, the individual needs to be advised as to why the processing cannot be stopped and the risk to them if it is.

*What should we do about data that records a disputed opinion?*

It is always complex, if the data in question records an opinion. Opinions are, by their very nature subjective, and it can be difficult to conclude that the record of an opinion is inaccurate. If 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 needs to be rectified.

*What should we do if we are satisfied that the data is accurate?*

The Clerk will let the individual know if they are satisfied that the personal data is accurate and tell them that the data will not be amended. The Clerk will explain their decision and

inform the individual of their right to make a complaint to the ICO or another supervisory authority; and their ability to seek to enforce their rights through a judicial remedy.

It is also good practice to place a note on the Council's system indicating that the individual challenges the accuracy of the data and their reasons for doing so.

## **Right of Erasure**

The right to erasure does not apply if processing is necessary for one of the following reasons:

- To exercise the right of freedom of expression and information;
- To comply with a legal obligation;
- For the performance of a task carried out in the public interest or in the exercise of official authority;
- For archiving purposes in the public interest, scientific research, historical research or statistical purposes where erasure is likely to render impossible or seriously impair the achievement of that processing; or
- For the establishment, exercise or defence of legal claims.

The GDPR also specifies two circumstances where the right to erasure will not apply to special category data:

- If the processing is necessary for public health purposes in the public interest; or
- If the processing is necessary for the purposes of preventative or occupational medicine (e.g. where the processing is necessary for the working capacity of an employee; for medical diagnosis). This only applies where the data is being processed by or under the responsibility of a professional subject to a legal obligation of professional secrecy (e.g. a health professional).

A further document "Rights of Access; The Right of Rectification; The Right of Erasure: Details Guidance on how to process requests and what information to disclose, how to deal with rectification and erasure" is also available.