

London Borough of Lambeth Subject Access Request guidance manual

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1 Introduction

1. This guidance document sets out the how the Council intends to handle subject access requests from individuals in line with the provisions of the Data Protection Act 1998 (DPA) and the Council's [Subject Access Request Policy](#).

1.1 The right of access to personal data

1. The DPA provides individuals with a right to request access to the personal data that an organisation holds on them; this is called "the right of subject access". This right was introduced in order to promote the principles of transparency and accountability. It enables individuals to understand how their personal information is used, to check the accuracy of the information and exercise their rights over the processing of that information. The right of access to personal data can only be denied in limited circumstances, where one of the Act's exemptions apply.

1.2 What is a valid subject access request?

1. A valid request:

- a) Must be for that individual's personal data;
- b) Must be made in a permanent form (in writing, email/fax etc);
- c) Should include a £10 fee; and
- d) Must contain sufficient information to verify the identity of the person making the request and to locate the information which that person seeks.

2. The request does not have to cite the DPA. Further, the Act is purpose blind; this means that applicants do not have to explain the reasons why they are making a request. Once these criteria are fulfilled, the individual can expect his personal data to be provided within 40 calendar days (subject access requests for education records must be responded to within 15 school days).

3. Where a person may be unable to make a written request without support or because English is not the person's first language the officer in contact with that individual should consider referring them to the Citizen Advice Bureau or Children's Rights Service.

4. An alternative course of action to the above would be for the member of staff to take down the request in writing for the applicant, then send the completed request form (appendix 5) to them with a covering note asking for the £10 fee. Should the applicant wish to proceed with the request they should send the request form back together with the £10 fee.

1.3 What is “personal data”?

1. Personal data is information which relates to an individual and which can identify that individual, either on its own or when combined with other information held by the Council (e.g. an e-mail about a case which does not mention names but does include a reference number that can be linked to a specific individual). In the case of *Durant v Financial Services Authority* (2003) this definition has been refined to indicate that, in order to be considered personal data, the focus of the information in question must be on the individual. For example, the minutes of a meeting will not be personal data if the individual's name is simply mentioned in the list of attendees. However, if the meeting is in full or in part about the individual then that document (or the relevant part) is their personal data. Personal data can be simply a name and reference number; alternatively it could be an entire case folder.

2. Examples of personal data that the Council hold include; information held on academy in relation to an individual's housing benefit claim, information held in an individual's manual youth offending file, comments and opinions expressed in emails about clients of the council, or information held within an individual's personnel file. Additional guidance on the types of personal data held and where it can be located is provided in section 2.7

1.4 Who can make a request under the Act?

1. Any living individual has a right to request access to the personal data that the Council holds on them. A resident of Lambeth, a Council employee, or any other person that the Council holds personal data on will therefore have a right to request access to their personal data.

1.5 Making a request on behalf of another person

1. A data subject may authorise any other person (e.g. a relative) to make a subject access request on their behalf. In most cases written authority from the data subject should be provided before the Council can comply with a request from an agent.

2. In the case of a member acting on behalf of their constituent (who is the data subject), it can be assumed that they are authorised to make the request without requiring further clarification.

3. A child is, in theory, entitled to make a subject access request. However, a request from a child should only be complied with if it is thought they understand the nature of the request. As a general rule, a child aged 12 or over is presumed to be of sufficient age and maturity to be able to make a request for their own data. Where a child is deemed able to make a subject access request, the officer handling the request should reply directly to the child.

4. If the child is not of sufficient age and maturity, then a person with parental

responsibility is entitled to make a request on their behalf. The officer should be satisfied that the person with parental responsibility is acting in the best interests of the child before releasing the data. Caution should be exercised where child custody or abuse cases are concerned and where the Child has given information to a practitioner on an expectation of confidentiality.

5. If the nature of the request suggests that the data subject is/or has been involved with CYPS or ACS, then the Officer dealing with the request should check with the relevant department to establish if the data subject has the necessary mental capacity to be able to authorise another individual to access their data.

6. An agent appointed by the Court of Protection or with a valid Power of Attorney may make a request on behalf of a mentally incapacitated individual. Upon receipt of such a request, the officer should check the validity of the Power of Attorney or the Court of Protection Order. A Power of Attorney must specify the purposes for which it is granted and it must be a certified copy (i.e. the document has the original stamp and signature of a solicitor).

7. Take care with spouses, partners or other relatives who may claim to be authorised to access the data – unauthorised disclosures to family members are a frequent cause of complaint to the Information Commissioner.

8. If you doubt the agent's authority, seek advice from the Council's Data Protection Advisor.

1.6 What about rights of access to information relating to deceased individuals?

1. The DPA only applies to the personal data of living individuals and as such does not give rights of access to deceased individuals' data.

2. Whilst the DPA does not apply to deceased individuals' information, the Council does still owe a common law duty of confidentiality to the deceased person's estate and advice should be sought before disclosing information relating to deceased individuals.

3. Under the Access to Health Records Act 1990 any person with a claim arising from the death of a patient has a right of access to information that is directly relevant to that claim. Information which is not directly relevant to the claim should not be released.

4. Therefore a personal representative or executor can access information to benefit the deceased's estate, as can an individual who was a dependant of the deceased and who has a claim relating to that dependency which has arisen from the death.

5. If you receive a request for access to information relating to a deceased individual contact the Council's Data Protection Advisor for further advice.

1.7 What is an individual entitled to following a subject access request?

1. Upon making a request in permanent form, and paying the £10 fee, an individual is entitled to be told whether the Council is processing that individual's personal data. If the Council is, the individual is entitled to a description of:

- a) The personal data;
- b) The purposes for which they are being processed; and
- c) Those to whom the data are or may be disclosed;

2. The individual is also entitled to a copy of the manual and computerised personal data the Council holds on them (unless an exemption applies – see section 3). The personal data should also be provided in an intelligible form (see section 2.8.2).

3. The entitlement is to receive personal data not documents and as such an individual is not necessarily entitled to the original documents and all the information that they contain. However, providing copies of the documents that contain personal data is often the simplest and most cost effective way of dealing with a subject access request.

1.8 Does the DPA give an individual the right to view their personal data?

1. Individuals may request, or even demand, to view their file. The DPA does not provide individuals with this right. The Act only entitles them to copies of their personal data (i.e. through the provision of photocopied documents containing personal data). However, the Act provides that the Council can fulfill its obligations under the subject access provisions by allowing an individual to view their records (rather than being provided with a copy), providing that the individual agrees to this proposal.

2. In the case of requests for social work records it may be prudent to invite the individual into the Council to view their records, with a social worker available to help the applicant understand and "take in" the information that is held on them.

3. If an individual agrees to a viewing of their records and they have specific needs in relation to language or disability, arrangements must be made to present the information in a suitable manner and to involve approved interpreters. Consideration should also be given as to the accessibility of the building where the viewing is to take place.

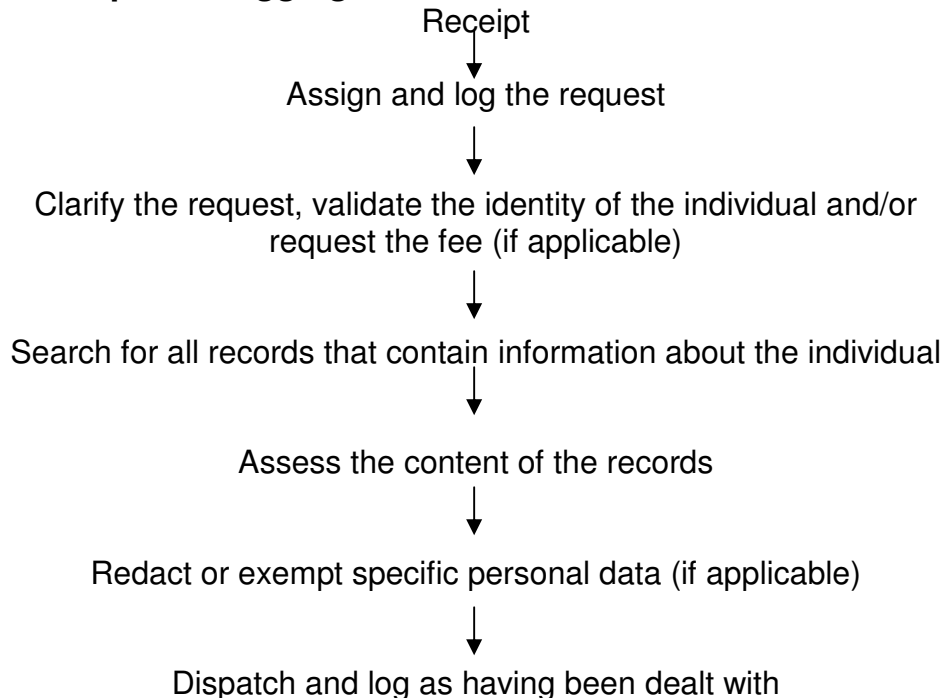
4. Interpretative and supportive counselling may be advisable in certain cases, using a number of interviews to disclose the information if the person is willing to proceed in this manner.

1.9 Where can a member of the public get more information on making a subject access request to the Council?

1. The Council has produced template forms that can be used by applicants to submit their request. The subject access forms will be placed on the intranet and are available at Appendix 5.

2 Procedures for dealing with a subject access request under DPA 1998.

2.1 Receipt and logging



2.2 Receipt of the subject access request

1. When opening and sorting the post, subject access request letters or data protection enquiries should be date stamped and passed immediately to your department's Data Protection Officer.

2.3 Who deals with a subject access request?

1. Responses to requests should normally be coordinated by your department's Data Protection Officer. The letter should be date stamped and sent immediately to the relevant DPA Officer. A list of contacts can be found in appendix 3.

2. Requests for access to personal data held by a number of departments should be passed to Rebecca Kemish in the Corporate Complaints Unit who will co-ordinate a response to the request.

2.4 Logging the request

1. Details of the request should normally be entered onto RESPOND (unless the request is from a social work client, youth offending client or employee of the Council). A record showing the receipt of the subject access request should be made in the RESPOND activity log. Any request, which by agreement, is referred to another department to deal with, should be sent

there immediately, together with any fee submitted and a covering note. A record of the date of transfer should be made on the RESPOND record. Where files or copies of documents are being transferred to another department, they must be sent out via recorded delivery.

2. Requests from social work clients (past or present) should be entered into FRAMEWORK. A record showing the receipt of the subject access request should be made in the case notes section on FRAMEWORK.

3. Special Education need subject access requests should be recorded on SENATE.

4. Requests from Youth Offending clients should be recorded on YOIS.

5. Requests from a Council employee (past or present) should be referred to the Human Resources Employee Relations team. These requests should not be registered on RESPOND. A log should be maintained by Human Resources of the date the request was received from the employee/former employee.

6. If the Data Protection Officer does not have access to RESPOND they should contact the Data Protection Officer in Corporate Complaints (Rebecca Kemish) who will transfer the relevant details on to RESPOND.

2.5 Clarifying the request, verifying identity, fee charging

2.5.1 Clarifying the request (section 7(3) DPA)

1. The Act allows the Council to seek further information from the applicant, where this is reasonably required in order to be able to locate the information that the applicant is seeking access to.

2. General subject access requests for 'all personal data' are valid, and Data Protection Officers should not simply ask the applicant to be more specific if the location of the data is already known. If clarity is sought please bear in mind that the applicant will not be aware of the different ways in which the Council holds their personal data.

2.5.2 Verification of the identity of the individual (section 7(3) DPA)

1. The Council must be satisfied as to the identity of the individual making the request. This may be as simple as comparing the address and signature on the individual's housing application form with the address and signature on their subject access request letter. However, if there is any doubt about the identity of the person making the request, further details should be sought.

2. Possible methods of checking identity in these circumstances include:

a) Asking the individual to give information which has been recorded as personal data by us and which the individual might be expected to know (e.g. National Insurance Number, service specific reference numbers etc).

b) Asking the individual to produce a copy of a document that might reasonably be expected to be only in their possession (e.g. their passport, driving licence).

c) Asking the individual to have their signature witnessed by another person who is over the age of 18 and is not a relative (e.g. their Doctor confirms the individual's identity in a letter using the GP's headed paper).

3. If the request is from an agent of the data check that they have the necessary authority (see 1.5 above).

2.5.3 Charging a fee (section 7(2) (b) DPA)

1. Although this provision is discretionary, it is the Council's policy to charge £10 (the maximum fee chargeable under the legislation) subject access requests.

2. The £10 fee should be credited to your business unit's bank account. To do this you should forward the fee together with the individual's name and the reason for payment (e.g. Mr V Cross, DPA request) to your business unit Finance Manager or Finance Team.

3. If your business unit does not have a bank account in which to deposit the fee contact Treasury and Banking for advice.

2.5.4 Other Fee amount

1. Where an individual requests access to the manual educational records held on them by the Council (e.g. in respect of Looked after children) then regulations permit that the council can charge a fee in line with the table set out in appendix 6. The maximum fee that can be charged in these circumstances is £50. However, this depends on the number of pages being photocopied.

2.6 Time limits (section 7(10) DPA)

1. The statutory time limit for complying with a subject access request is 40 calendar days (although, subject access requests for education records must be responded to within 15 school days). The 40 days will normally start from the date the Council receives the request. However, if one or more of the items listed in (a) – (e) below have not been provided, the 40 day time limit will not commence until that item has been provided:

a) The fee.

b) Information reasonably required to validate the identity of the data subject.

- c) Information reasonably required to locate the personal data requested.
 - d) Written authority from the data subject where another person is applying on their behalf.
 - e) A certified power of attorney or court of protection order (where applicable).
2. If the request does not meet the criteria identified in (a) – (e) send a letter to the applicant/their agent requesting the necessary fee/information (The template letter in appendix 1 provides useful paragraphs for this purpose). Any further information/fee required should be asked for promptly within 7 calendar days; the Council should not add its own delays to the process.
 3. Confirmation of the fee having been processed should not hold up the process of dealing with a subject access request. Once the fee (and other information) has been received the 40 calendar days start. If there is a problem processing the applicant's cheque then they should be notified as soon as possible.
 4. One of the main reasons why people complain to the Information Commissioner is because their subject access request was not completed within the statutory time limit.
 5. Every effort should be made to comply with the 40 calendar days time limit (or 15 school day time limit for educational records). If it is clear that data collection and provision is going to exceed this limit, then the applicant should be advised of the date when their personal data is likely to be provided.
 6. If we do not receive a response to the letter asking for the fee or the further information required, then we are not obliged to deal with the request.

2.7 Searching for records

1. When searching for records in order to respond to a subject access request you should bear in mind that your department may not be the only one which has dealt with the individual concerned. Checks should be made with other departments/teams, such as the Corporate Complaints Team, to capture any additional information that they hold.

2.7.1 Manual files

1. The type of manual files held on the data subject will depend on the nature of their involvement with the Council. The computerized information held on an individual may well indicate if manual personal data is held.
2. Some manual files may be stored off site. It is important to confirm whether this is the case and ensure that these files are located so that access can be given.

2.7.2 Computerised personal data

1. Below is a non-exhaustive list of the databases that hold personal data:

2. **Framework** is the database used by ACS and CYPS to record details in respect of social work clients. This database contains, such as, assessments carried out on clients, correspondence with clients and other third parties involved in the care of that individual.

3. **Academy** is used to record case details in respect of Council Tax, Housing Benefit and Council Tax Benefit.

4. **Anite** is an electronic document records management solution which holds correspondence relating to Housing, Housing Benefit, Council Tax, Council Tax Benefit and ACS matters.

5. **HICS/SAFFRON/SX3** contain tenancy case details, repairs information on Council properties and housing register details.

6. **Uniform** contains information relating to environmental complaints (inc noise complaints), environment health and licensing, land charges, planning applications, private sector housing and building control data.

7. **ContactPoint** is a database which is due to be in place during 2009. This database will hold basic details in relation to every child that lives within the borough (contact details, school details, GP details etc). When ContactPoint is implemented the Council may receive a number of requests from those individuals who are seeking to access the information that this held on them in ContactPoint (e.g. to check its accuracy).

8. **ICPS** contain details of Penalty Charge Notices issued and related correspondence.

9. **Respond** is the Council's Corporate Complaints database which contains correspondence and activity notes on complaints that individual's have made to the Council.

10. **Oracle HRIS** contains personal details in respect of employees of the Council.

11. **CRM** holds the basic contact details (i.e. name and address) of individuals who have contacted Lambeth Service Centre on a particular matter. The CRM also shows which Council departments that individual has had interactions with.

12. **Impulse** contains case details relating to school admissions and appeals.

13. **YOIS** is the database used by the Youth Offending Team and contains case details and activity logs on their clients.

14. **Webcore** is the casework management system used by Connexions. It contains details of clients who have received careers advice from Connexions.

15. **SENATE** is the Special Educational Needs database that contains case details of customers who have had assessments.

16. **EPIC** is the database used by the Educational Psychologists it contains case details of client who have been referred for assessments.

2.7.3 E-mails

1. We are also obliged to provide personal data held within e-mails. The Information Commissioner has developed guidance in this area as e-mail systems are often difficult to search. This guidance provides that it may be advisable to ask the data subject for additional information to help narrow down the search, and that the following should be taken into consideration:

a) Whether the data subject indicates that any data might be held in e-mails.

b) Whether the data subject can supply the authors and recipients of the e-mails.

c) Whether the data subject can indicate the subject of the e-mails.

d) Whether staff who have had dealings with the data subject are aware of e-mails exchanged either internally or externally relating to the data subject.

2. In the first instance, the Data Protection Officer should contact those individuals who have had dealings with the data subject to see if there are any relevant e-mails in their Outlook account (this is particularly relevant with regard to requests from employees and former employees of the Council). The e-mails containing personal data relating to the data subject should be copied and forwarded to the Data Protection Officer. Further information should only be sought from the data subject where it is reasonably required in order to locate the data they are seeking access to.

3. It should be noted that it is a criminal offence for an individual to alter, block or destroy information, where their intention is to prevent the disclosure of the information to the data subject.

2.7.4 Back-up data

1. Back-up data may have to be supplied if requested, though only if it contains information not held on (or different to) the live system. This may be extremely time consuming and costly. The Council's policy generally is to determine whether we would be prepared to retrieve the data for our own purposes. If we would, then we ought to do the same for a data subject. The

Data Protection Officer should contact the Data Protection Advisor if they receive a request for back-up data.

2.7.5 CCTV

1. Where the Council uses CCTV cameras the images that they capture may need to be provided in response to a subject access request (e.g. Streetcare or Parking Control).
2. It is not necessary to check and supply footage unless the individual has specifically requested it. When asking for this type of data the individual will need to complete the Council's CCTV SAR request form to help us to find the images (available from <http://www.lambeth.gov.uk/NR/rdonlyres/447D0D87-D828-4D6E-831B-470A6ED06BEF/0/CouncilCCTVSurveillanceSystemForm.pdf>). The following information will be needed: date and place of the incident, approximate time, description of the individual e.g. what they were wearing, and any other information which may help identify the images requested.
3. Requests for CCTV footage should be referred to either Ian Iverson (in Streetcare) or Richard Luckman (in Lambeth Parking Services), depending on the context of the request.
4. If a request for CCTV footage is received and that information would normally be destroyed within the 40 calendar days for compliance, then the footage must not be deleted until the data has been provided. Once you have given the individual a copy of the footage. You should confirm that the data has been/or is about to be deleted when providing your response. However, staff must not delete the recording solely on the basis that they want to prevent the data subject from gaining access, as this is a criminal offence.

2.7.6 Recorded telephone calls

1. The data subject may request access to the personal data contained within a telephone recording. This data can be provided in the form of a recording of the telephone conversation, or alternatively, through the provision of a transcript.
2. If the deletion date for the telephone recording occurs within the time period for compliance with the request (40 calendar days), then the recording should not be deleted. Once you have given the individual a copy of it. You should confirm that the data has been/or is about to be deleted when providing your response. However, staff must not delete the recording solely on the basis that they want to prevent the data subject from gaining access, as this is a criminal offence.
3. Calls received by the LSC are recorded and are normally held for a period of 1 month.

2.7.7 Personal data held within unstructured manual records.

1. From 1 January 2005 individuals have had a right to request access to their personal data which is contained within unstructured manual records (i.e. a manual file not held by reference to the individual).
2. If an individual is requesting access to personal data which is held within an unstructured record, they will need to specify the information that they are seeking so that we can locate it (e.g. "I am requesting access to the personal data held about me which is contained in the minutes of your meeting of 5th June").
3. A separate fee (calculated under the Freedom of Information Fee Regulations) can be charged where an individual is requesting personal data held within an unstructured manual record. Should you receive such a request, please contact the Data Protection Advisor for further advice.

2.7.8 Integrated social care and health records.

1. Where an applicant is seeking access to the joint health and social care record, they should not be required to apply to both the Local Authority and the NHS Trust. In these circumstances the Officer handling the request should liaise with the SLAM Trust.

2.8 Assessing the contents of a record (inc. third party details)

1. Once all the personal data requested has been located, the Data Protection Officer should assess the content of the records for:

- a) Third party data.
- b) Unintelligible terms.
- c) Personal data that is covered by one of the DPA's exemptions.

2. This section only deals with issues regarding third party data and unintelligible terms. Guidance on the Act's exemptions is contained in section 3.

3. If the information held is inaccurate then amendments should not be made before the data is sent to the individual. The individual should be informed that we are aware of the inaccuracy and have taken steps to amend or annotate the original data.

2.8.1 Third party information (s.7(4) DPA)

1. The DPA acknowledges a third party's right to privacy where they can be identified from another individual's personal data (e.g. a complaint letter from a member of public held within another individual's housing file). Section 7(4)

of the Act introduces a number of criteria which aim to balance an individual's right of access against a third party's right to privacy. Personal data which also identifies a third party could be withheld unless:

- a) The third party has consented to the disclosure.
- b) It is reasonable in all the circumstances (see below) to comply with the request without their consent.
- c) The third party identifiers can be removed from the document and the data subject can still receive the personal data contained within that document. In practice this may be difficult as the subject matter of the information may mean that the data subject is still able to infer the identity of the third party.

2. When deciding whether it is reasonable to disclose without consent, the following should be considered:

- a) Any duty of confidentiality owed to the third party (i.e. consider the nature of the data and if the third party provided this information to the Council on an understanding of confidentiality).
- b) Any steps taken to obtain the third party's consent.
- c) Whether the third party is capable of giving consent.
- d) Any express refusal of consent by the third party and the reason for the refusal.

3. If the third party has not consented, this does not mean that personal data should be automatically withheld. Their reason for the refusal should be sought, as these reasons will determine whether it is reasonable in all the circumstances to withhold information that identifies them. For example, it may be reasonable to withhold data where the third party justifiably believes that disclosure may lead to physical retribution by the data subject. However, it may not be reasonable to withhold an individual's name if they have been acting in a work capacity and the documents show inability or incompetence in work which they are accountable for.

4. If the Data Protection Officer decides that the data identifying the third party should not be provided, only that information which identifies the third party (either explicitly in the document or as the source of the information) may be withheld. This may require documents to be edited, either by blocking out third party identifiers or by retyping the information with third party details omitted.

2.8.2 Providing information in an intelligible form (s.7(1)(c) DPA)

1. Data subjects are entitled to be provided with a copy of their personal data in an intelligible form, with any codes, abbreviations or technical terms explained (e.g. HICS printouts contain a number of codes and abbreviations).

2. This also means that if the requestor is a child or someone who lacks the mental capacity, then the information may need to be explained in simpler terms than when dealing with an adult.

3. We should always communicate with members of the public using plain English at all times. You should avoid using acronyms or jargon that only we would be familiar with.

2.9 Dispatch and Completion

2.9.1 Dispatch

1. Before sending the data, check:

- a) Whether the consent of any relevant third party has been obtained.
- b) If not, whether the data has been edited to conceal the third party's identity, or
- c) Whether it is reasonable to disclose the data without consent.
- d) If the third party is a Council employee acting in that capacity, it should be noted that employee names are already routinely disclosed. However, officers may delete names of staff where it is considered appropriate in the circumstances to do so (e.g. where this may put that employee in danger).

2. Ensure explanations of all abbreviations and codes have been provided, where relevant.

3. Copy the edited manual and computer data and, if there is a considerable amount of data, compile a schedule of all documents to be disclosed.

4. Make a note on the relevant file of any information/documents that have not been provided in response to the request, stating the reason for the non-disclosure (e.g. third party data or the particular exemption that applies). This information will be of assistance if we receive a subsequent request or if we have to justify our decision to the Information Commissioner.

5. Send the requested copies with a covering letter (Appendix 2 contains a template letter that can be adapted where necessary) to the applicant via recorded delivery, advising them:

- a) That any query about the response should be addressed to that Department's Data Protection Officer.
- b) Of any exemptions that have been relied if withholding information (unless the disclosure of the particular exemption would cause prejudice – e.g. to a criminal investigation).

c) That if they are dissatisfied with the way their subject access request has been dealt with, they can seek an internal review by the Data Protection Advisor or alternatively, the Information Commissioner can undertake an assessment (a copy of the internal review procedure is contained within Appendix 4).

2.9.2 Logging the request as dealt with

1. Record on RESPOND (or FRAMEWORK, SENATE or HR database - depending on the nature of the request) the date that the request has been complied with and closed. Note the amount of time spent dealing with the request.
2. Include on the tracking database the letter(s) sent from the data subject/their agent, together with a copy of the letter(s) sent in response to the request and a schedule of the personal data provided.

3 Exemptions to the right of access under the Data Protection Act 1998

1. There are limited exemptions to the right of subject access which allow information to be withheld from an applicant. However, they should be approached with caution, and applied on a case-by-case basis.
2. This section will only cover those exemptions that may apply to the Council. In complex cases seek advice from the Council's Data Protection Advisor before withholding (or disclosing) information.
3. There is no exemption from disclosing embarrassing comments and in the majority of cases such comments will have to be released.

3.1 Disproportionate effort (section 8(2)(a) DPA)

1. This exemption has a limited effect as it only relates to the effort of providing a permanent copy of the information. The Council may still be required to allow the individual access to view their personal data if a copy can not be provided. However, allowing a viewing could be problematic as there may be exempt information in the computerised/manual records. Advice should be sought from the Data Protection Advisor prior to relying on this exemption.
2. The term "disproportionate effort" is not defined in the Act, so it is a question of fact in each case. The following may be taken into consideration:
 - a) The cost of providing the information.
 - b) The length of time it may take to provide the information.
 - c) How difficult it may be for information to be provided.
3. These issues must be balanced against the effect that withholding the information would have on the individual. The greater the adverse effect, the less likely the exemption could be applied.

3.2 Repeated requests (section 8(3) DPA)

1. There is no requirement to comply with a request from an individual which is identical or similar to a previous request from them, unless a "reasonable interval" has elapsed.
2. Factors to consider when deciding what amounts to a "reasonable interval" are:
 - a) The nature of the data.
 - b) The purposes for which the data are processed.

c) The frequency with which the data are altered.

3. Caution should be exercised here as the individual may have only requested specific personal data in their original request, and their subsequent request could be for other personal data held.

3.3 Crime and taxation (section 29)

1. Section 29 allows information which is processed for investigating a potential criminal offence to be withheld following a subject access request if, by disclosing the information, an investigation would be significantly prejudiced. This is likely to apply if we are prosecuting individuals who may have committed an offence or where we are working closely with the Police or other prosecuting body in respect of an individual.

2. Similar, information which is processed in connection with the assessment or collection of any tax may be withheld following a subject access request if, by disclosing the information, that assessment or collection would be significantly prejudiced.

3. Decisions on the withholding of personal data should be made on a case-by-case basis. Whoever is involved in the investigation should be consulted when the request is received.

4. The Information Commissioner's view is that there must be "a substantial chance rather than a mere risk that in a particular case the purposes (i.e. the investigation or assessment/collection) would be noticeably damaged". Therefore, information held by the Council should only be withheld where it can be shown beyond doubt that current or future processing carried out by the Council (or other prosecuting body) would be prejudiced by such a disclosure.

5. Where redactions are made they should only affect the prejudicial information. Other information which would not prejudice an investigation should therefore be disclosed as normal in response to a subject access request.

3.4 Health, education and social work records (section 30)

1. The Council holds education and social work records to undertake its functions. The Council may also hold occupational health records for Council staff. There are only very limited reasons for withholding these records where a subject access request has been made, as explained below.

3.4.1 Personal data relating to an individuals' physical or mental health

1. In some instances, the applicant may not have seen this personal data (or may have only seen part of the records). This type of personal data may be

exempt where the disclosure would be likely to cause serious harm to the physical or mental health of the individual themselves or any other person.

2. Before deciding whether this exemption under section 30 of the DPA applies, the Council is obliged to consult the health professional responsible for the clinical care of the individual. It is the health professional's decision as to whether the health data can be disclosed and there is no discretion to disclose without a response from the health professional.

3.4.2 Personal data contained within educational records

1. If the release of personal data contained within an education record would be likely to cause serious harm to the physical or mental health of the individual, or any other person, then that personal data may be withheld. Information that would reveal that the data subject is, or may, be at risk of child abuse should be withheld.

2. The author of the education record should be consulted prior to deciding whether to rely on this exemption.

3.4.3 Personal data contained within social work records

1. This type of personal data would be exempt from disclosure where the release is likely to prejudice the carrying out of social work because serious harm to the physical or mental health of the data subject or any other person could result from the disclosure.

2. The author of the social work record or lead social worker should be consulted prior to deciding whether or not to rely on this exemption.

3. If the request is for CYPS case records that have been closed for several years previous then the appropriate team to consult will be the team which was the individual's last point of contact with the department. For example if individual was previously on the child protection Register then the Family Support/Child Protection team should be consulted. Alternatively if the individual was previously in care then the Leaving Care Service should be consulted prior to any disclosure of information.

3.4.4 Personal data held within occupational health reports

1. An employee (or former employee) may request access to their occupational health report. In such circumstances personal data can be exempt if the disclosure of the personal data is likely to cause serious harm to the physical or mental health of the data subject, or some other person.

2. The health professional who wrote the report should be consulted prior to relying on this exemption.

3.5 Health and Social Care Complaints – Regulatory Activity (amendment to section 31 of the DPA)

1. Personal data processed in connection with complaints under the Health and Social Care (Community Health and Standards) Act 2003 is exempt from disclosure where the disclosure would be likely to prejudice the handling of the complaints under that Act.

3.6 Adoption Records (SI No. 1865 [2000])

1. Requests for access to adoption records are exempt from disclosure under the DPA. Any such requests should be handled in line with the provisions of the Adoption and Children's Act 2002. If an individual is seeking access to their adoption record they should contact Cecile Wills-Eversley.

3.7 References (schedule 7, paragraph 1)

1. This section provides an exemption to subject access where the data subject is requesting access to confidential references written by Council employees.

2. This exemption does not apply to references that the Council has received. If the data subject is requesting access to references that the Council has received, then regard should be had to the third party data provision (see section 2.8.1).

3. References for the purposes of internal transfers or promotions are not covered by this exemption.

3.8 Management forecasts and planning (schedule 7, paragraph 5)

1. Personal data processed for the purposes of management forecasting or management planning are exempt from subject access to the extent that disclosure would be likely to prejudice the planning or forecasting activity.

2. For example, information about plans to promote, transfer or make a worker redundant may be withheld if access would be likely to prejudice the conduct of the Council's business.

3.9 Negotiations (schedule 7, paragraph 7)

1. Personal data which contain a record of the intentions of the Council in relation to any negotiations with the individual are exempt from subject access to the extent that disclosure of that personal data would be likely to prejudice the Council's position in those negotiations.

2. For example, a statement outlining the maximum amount of money that the

Council would be willing to give a data subject as an out of court settlement could be withheld under this exemption, whilst the negotiations are on-going.

3. Information about negotiations which have ended are unlikely to be exempt unless it can be shown that other on-going negotiations would be prejudiced by such a disclosure.

3.10 Legally professionally privileged information (schedule 7, paragraph 10)

1. If personal data consists of information in respect of which a claim to legal professional privilege could be maintained, then that data may be exempt.

2. Legal professional privilege applies to correspondence (e.g. letters, emails and memos) between Council employees and the Council's legal advisors (internal or external) for the purposes of obtaining legal advice.

3. For example this exemption could apply where an individual involved in litigation with the Council is requesting access to the personal data contained within the Council's legal advice file (from our internal or external lawyers).

4. Communications with Council's lawyers are likely to be subject to legal professional privilege and must not be disclosed. If such documents are found whilst dealing with a subject access request, seek advice from the legal adviser concerned.

3.11 What should you do if an exemption applies to the personal data?

1. If personal data is to be withheld under any of the exemptions then the reasons for the non-disclosure (including the exemption relied upon) should be documented on file so that the Council can justify its actions to the Information Commissioner or the courts. Such reasons should normally be provided to the applicant, as well as an explanation of the way the application of the exemption can be challenged (See standard letter in Appendix 2).

2. The Crime and Taxation exemption does not have to be cited in your response to the applicant, if notifying the applicant of the reliance placed on this exemption would cause prejudice to the criminal investigation or taxation assessment/collection.

3. Where an exemption applies only in part, then the information which is not exempt should be released to the data subject within the statutory time frame.

4 Monitoring subject access requests performance

1. The number of 'subject access requests' received, as well as the Council's compliance with the Data Protection Act, must be monitored. For the Council's own management purposes it is necessary to ensure that our systems and procedures operate effectively to deal with these requests.

2. Each Data Protection Contact Officer will be responsible for completing a monitoring spreadsheet on a quarterly basis. The following information should be provided:

- a) The applicant's name, and whether this person is the data subject.
- b) Any reference number applicable to the request.
- c) Whether all the information requested was disclosed, and if not the reasons for withholding personal data.
- d) Dates the request was received and responded to.
- e) Whether the 7 calendar day acknowledgement and the 40 calendar day (15 school days for educational records requests) substantive response time limits were achieved.
- f) Total amount of staff time spent dealing with the request.

Appendix 1 – Standard letter to an applicant seeking a fee and/or additional information to locate their personal data/prove their identity.

Our reference:

[Name]
[No. Street]
[Town]
[City]
[Postcode]

Date:

Dear Mr/Mrs/Miss/Ms

Access to personal data under the Data Protection Act 1998

Thank you for your [letter/email] of [dd/mm/yy] requesting information that the Council holds about you in its computer systems and manual files.

(*Delete paragraphs if not appropriate)

***Seeking payment**

[Under section 7(2)(b) of the Data Protection Act 1998 a fee of £10 is payable before I can deal with your request for your personal information. Please make your cheque or Postal Order payable to the “London Borough Of Lambeth”, and send it to me at the above address, clearly marking your letter “Data Protection Act 1998 – Subject Access Request ”.]

(The paragraph below should be used if you are in any doubt about the identity of the person claiming to be the data subject making the subject access request, and you are concerned about the damage or distress that would result to the real data subject if data was accidentally disclosed to the wrong person. Otherwise it is safe to rely on the usual signature of the individual as proof of identity and information sent to the known address we have on file).

***Seeking further proof of identity**

[As some of the information we have about you may be sensitive, for security reasons, I would be grateful if you would provide one further form of identification. This could be:

A witness to your signature by someone who is over 18 and is not a relative, (preferably by your doctor/solicitor on their headed business paper);

A copy of your driving licence;

A copy of your passport.]

***Seeking reasonable additional information to locate data**

[Your request for all personal data that we may hold on you is very vague, and I would be grateful if you would let me know more specifically what

information you are seeking, and/or provide any other information that would enable me to locate it, such as:

Details of your involvement with Council (e.g. Council department(s) involved);

Dates of your involvement with the Council department(s) (i.e. from xxxx to xxxx);

Any reference numbers that the Council has included in correspondence to you (if known).

You may already have seen some of the information that the Council holds on you. If you do not wish to receive copies of correspondence that have previously been sent to you, please let me know otherwise they will be provided again. If there is any specific information that you require, please indicate this and provide sufficient details to enable me to locate it, such as the subject matter of any document, date, and the relevant team or person dealing with it (if known).

Once I have received your reply, your request will be dealt with as quickly as possible and, in any event, within the 40-day limit set by the Act. The 40 days will start from the date I receive the fee and/or the additional information* that I have asked you for in this letter.

*** delete as appropriate**

Yours sincerely

Appendix 2 – Standard response letter to a subject access request.

Our reference:

[Name]
[No. Street]
[Town]
[Postcode]

Date:

Dear Mr/Mrs/Miss/Ms

Access to personal data under the Data Protection Act 1998

Thank you for your letter of [dd/mm/yy] requesting information that the Council holds about you. I confirm that we have received the fee of £10.

I confirm that the Council does hold information about you, which we are processing in connection with the services that the Council provides. A full copy of our notification to the Information Commissioner, setting out all the different types of processing we undertake, can be found on the Commissioner's website at www.ico.gov.uk

Our records show that [explain briefly the nature of the records held on the applicant and their relationship with the Council].

I enclose copies of your personal data held on our computer system and in our manual files.

Where abbreviations have been used in a document, these are explained in full. Any text that may be missing from the computer screen printouts have been typed in full so that you can see the complete details recorded.

Any information that has been received from third parties about you has also been provided, subject to any duty of confidentiality we owe to the third party concerned. This may mean that some documents could have had information erased if they contain personal details about the third party and their consent to the disclosure has been withheld.

[Identify if any personal data has been withheld on the basis of one the DPA exemptions].

If you have any questions about the data I have provided to you, please do not hesitate to contact me. If you are dissatisfied with the way I have dealt with your subject access request, you may refer the matter to the Council's Data Protection Advisor who will look into the matter for you. If you wish to take this course of action, you should write to:

Data Protection Advisor
e-Government & ICT Services
London Borough Of Lambeth
c/o Lambeth Town Hall
Brixton Hill
SW2 1RW

Should you remain dissatisfied following any assessment carried out by the Data Protection Advisor you may write to the Information Commissioner's Office at:

Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Information Commissioner enquiry line: 01625 545745

Yours sincerely

Appendix 3 – List of Data Protection Contact Officers

ACS	Paul Bradley, Paula Fearon
CYPS	Patience Wilson, Dunevia Bakpa
Housing General	TBC
Housing Allocations	Sandra Afflick
Housing Homelessness	Lauren C Brown
Lambeth Benefits	Sandy Williams, Denise Moorhouse
Council Tax	Greg Sinclair
Environment and Culture	Stephen Pollock
Corporate Services	Kate Greening
Corporate Complaints	Becky Kemish
HR & Legal	TBC
Archives	Anne Ward

Appendix 4 – Data Protection Internal Review Procedure

Data Protection Complaints Procedure

Summary –

Requests to review decisions made under the Data Protection Act 1998 will no longer be dealt with at stage 2 of the Corporate Complaints Policy

It is good practice for us to have an internal review procedure to deal with complaints arising from requests for information under Data Protection legislation.

Disclosures of personal data under the provisions of the Data Protection Act can be made in the following circumstances:

1. Section 7 - Where an individual (or an agent acting on their behalf) requests access to their own personal data (this is known as the right of subject access).
2. Section 29 - Exemption from certain provisions of the Data Protection Act where disclosure is necessary either in connection with the investigation of a criminal offence, or for crime prevention purposes (i.e. requests for disclosure of personal data from the police or another prosecuting body).
3. Section 35 – Exemption from certain provisions of the Data Protection Act where disclosure is connection with legal proceeding or required by statute or by order of a court.

In order to ensure that the request to review a decision is processed properly, the new procedure is as follows:

The person(s) involved in making the initial decision should not be involved in the review. The aim is to ensure that there is a fair and thorough review of handling issues and decisions taken in relation to the Act. Due to this the officer responsible for undertaking the review, will be either:

- The Data Protection Adviser (currently Ian Goodwin) **OR**
- A representative from Legal Services

In order to ensure that the request to review a decision is processed properly, the new procedure is as follows:

1. All requests for reviews should be directed to the Corporate Complaints Unit (CCU), preferably to the general mailbox (complaints@lambeth.gov.uk). The request will be logged on the RESPOND database
2. The CCU will acknowledge the request for review, within 2 working days and provide the complainant with the target response date. The CCU will then forward the request for review to the relevant officer for action
3. The responsible officer will action the request within 20 working days, notify the CCU when this has been done and provide the copy of the response to the CCU. The CCU will then close the complaint on RESPOND

The response to the complainant should include:

- A thorough re-evaluation of all the issues relevant to their complaint
- Where the outcome of the complaint is a decision that information should be disclosed where it was previously withheld, the information in question should be disclosed at the same time the response to the complainant is sent. If this is not practicable, the applicant should be informed of the timescale for the information being sent to them.
- Where the outcome of the complaints is that the initial decision to withhold the information is upheld, then the complainant should be informed of their right to apply to the Information Commissioner for an independent review (in respect of requests under section 7 of the Data Protection Act).

N.B. If the applicant remains dissatisfied and decides to pursue their complaint with the Information Commissioner they are not under any obligation to inform us of this intention

The Data Protection Adviser, currently Ian Goodwin, is the named contact within the Council for notices from the Information Commissioner

Appendix 5 – Subject Access Request forms



Our ref ¹ : Your ref ¹ :	Date ¹ :
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To help us find the records you want and to confirm your identity we ask you now to fill in this form.

Your (the applicant's) name	
Your address	
Your postcode	
Your daytime phone number	

If you are making this application on behalf of another person ("the data subject"), please (1) use the next box to supply the subject's name & address, and (2) get the subject to sign the statement. If you do not, the information will be sent to the subject's home address.

If the subject is a child under the age of 12 please provide their date of birth:

The subject's name	
Subject's address	
Subject's postcode	
I authorise the person whose name is given as the "applicant" to receive my personal data from the Council.	
(Signature of the subject)	(Date)

If the subject is an adult who lacks the capacity to authorise a third party to act on their behalf, please provide a copy of the Power of Attorney or Court of Protection Order that authorises the applicant to act on the subject's behalf.

Under section 7(2)(b) of the Data Protection Act 1998 a fee of £10 is payable before we can deal with your request for your personal information. Please make your cheque payable to the "London Borough of Lambeth"

¹ These boxes should be filled in by Council staff before the form is sent to the applicant if an initial request has been received.

Please complete the other side of this form.

Please provide as much information as you can to help us identify the data you want.

Please state which Council function you want your personal records from, for example Benefits payments, schools allocation, Homecare management. You don't have to know the official title, your own description will do.

If you want records about a particular incident, transaction or range of dates, please give details.

You do not have to give us a reason for wanting your records.

Now return this form to the address below on the left, unless you want your Benefits information only, in which case send it to the address on the right.

**Subject Access Request Officer
Corporate Complaints
The London Borough of Lambeth
Town Hall
LONDON
SW2 1RW**

**Data Subject Access Officer
Lambeth Benefits
Olive Morris House
18 Brixton Hill
LONDON SW2 1RL**

Spanish

Si desea esta información en otro idioma,
rogamos nos llame al 02079262341

Portuguese

Se desejar esta informação noutro idioma
é favor telefonar para 02079262341

French

Si vous souhaitez ces informations dans une
autre langue veuillez nous contacter au 02079262341

Bengali

এই তথ্য অন্য কোনো ভাষায় আপনার প্রয়োজন
হলে অনুগ্রহ করে ফোন করুন 02079262341

Twi

Se wope saa nkaeboy yi wo kasa foforo
mu a fre 02079262341

Yoruba

Tí ẹ ba ẹ imoràn yíí, ní èdè Òmíràn, ẹjẹ,
ẹ kàn wà l'ágogo 02079262341

If you would like this information in large print, Braille, audio tape or another language, please contact us on 02079262341

Appendix 6 – Fees chargeable for manual education records held by the Council.

Number of pages of information comprising the copy	Maximum fee
Fewer than 20	£1
20-29	£2
30-39	£3
40-49	£4
50-59	£5
60-69	£6
70-79	£7
80-89	£8
90-99	£9
100-149	£10
150-199	£15
200-249	£20
250-299	£25
300-349	£30
350-399	£35
400-449	£40
450-499	£45
500 or more	£50