

Data Protection Policy

Technical Guidance Note

Access to pupils information held by schools in Wales

This guidance is aimed at head teachers of maintained schools in Wales to help them understand their responsibilities under the Data Protection Act 1998 (the Act) regarding requests for access to pupils' information. Special schools¹ including those that are not maintained by the local education authority are covered by this guidance. Local education authorities may also find it useful. The note also covers the separate right of access that parents, have to access the official educational records of their child.

What rights exist for access to a pupil's personal information?

There are two distinct rights to information held by schools about pupils.

1 The subject access right - under the Act a pupil has the right to a copy of their own information. In certain circumstances requests may be made by a parent on behalf of their child.

2 Rights to the educational record - under the Education (Pupil Information) (Wales) Regulations 2004, referred to here as the Regulations, a parent has the right to access their child's educational record.

Under the subject access right parents will only be able to see all the information about their child when the child is unable to act on their own behalf or gives their consent.

Who has responsibility for requests for information?

Under the Regulations, requests from parents to view their child's educational record should be dealt with by the head teacher. All other requests for personal information from the pupil, or someone acting on their behalf, should be dealt with by the school.

In practical terms this will make little difference in dealing with requests. However, it is important that requests for personal information are passed to the appropriate person as soon as possible after the request is received.

1 The subject access right

Under the Act, a pupil, or someone acting on their behalf, has the right to access their personal information held by the school. This includes:

1 As defined by section 6(2) Education Act 1996

• information held on computer (or other automated means);

• information held in structured files;

• information in their educational record; and

• unstructured information, for example, held in loose correspondence.

It is likely that most of a pupil's personal information will be held by a school

as part of the educational record. These are described in more detail below in What is an educational record?. However, there is a possibility that some information could fall outside the educational record, such as information provided by the parent of another child.

Requests should be made in writing and the school is entitled to ask for any further information reasonably required to locate the information and satisfy itself about the identity of the person making the request.

A pupil is also entitled to be told whether or not the personal information they want is held by the school, and to ask what that information is. They will also be entitled to a description of the information, the purposes it is used for, who it is released to, and any information available about the source of the information. The information must be supplied in an intelligible form (so any codes should be explained) and should be in hard copy unless it is not possible to do this, it would involve a disproportionate effort, or if the child or parent agrees to access the information in another form.

At what age can a child make their own subject access request?

The Act does not specify an age at which a child can make their own request for access to their information. When a request is received from a child for access to their own information, those responsible for responding should take into account whether:

- the child wants their parent (or someone with parental responsibility for them) to be involved in the request; and
- the child properly understands what is involved in making the request and the type of information they will receive.

As a general guide, a child of 12 or older is expected to be mature enough to understand the request they are making. A child may, of course, be mature enough at an earlier age or may lack sufficient maturity until a later age, and so requests should be considered on a case-by-case basis.

When can a parent or other person make a general subject access request on behalf of their child?

If the child cannot understand the nature of the request, someone with parental responsibility can ask for the information on the child's behalf and receive the response. A child who understands the nature of an access request may ask an adult to act on their behalf. Anyone can appoint an agent in this way and those responsible for responding should treat the agent's request as though it came from the child. If it is not clear whether an adult has parental responsibility for the child or is acting as their agent, then this should be clarified before responding to the request.

What happens if there is information about other individuals in the information requested?

Where the response includes information about another individual, the request should be considered carefully. There is a duty to consider the rights of the individual making the request and the privacy of any other individuals who may be identified. For advice on how to deal with general subject access requests containing information about another individual, please see our guidance 'Subject access requests involving other people's information'.

Can any other information be withheld?

There are two situations when information may be withheld. The first is when the information is covered by an exemption in the Act (see (a) below). The second is when the cost of supplying information held in an unstructured way would exceed the set limits (see (b) below).

a The main exemptions when information may be withheld relate to:

ï information which might cause serious harm to the physical or mental health of the pupil or another individual;

ï cases where the disclosure would reveal a child is at risk of abuse;

ï information contained in adoption and parental order records;

ï information given to a court in proceedings under the Magistrates' Courts (Children and Young persons) Rules 1992;

ï copies of examination scripts; and

ï providing examination marks before they are officially announced.

If the information relates to exam marks and scripts, please see our guidance on Individuals' rights of access to examination records.

Please contact our office if you need detailed advice about how an exemption applies.

b Unstructured personal information.

The Act limits the action a school must take to respond to a request from a child, or parent acting for them, for personal information held manually and in a completely unstructured way. This needs to be distinguished from personal information held in highly or partly structured files, such as a teacher's own records with sections for different classes and pupils, to which the normal rules of subject access apply.

Where the request is for unstructured personal information, schools are entitled to ask for a description of the information to help them find it. They do not have to supply the information, or confirm whether or not it exists, if it would cost more than £450 to do either of these things. This cost structure is in The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004. Guidance on this is available from the Department for Constitutional Affairs website at www.foi.gov.uk/practitioner/feesguidance.htm

The parents right of access to their child's educational record

As stated earlier the Regulations give a parent their own independent of access to their child's educational record.

What is an educational record?

The Regulations provide a legal definition of an educational record, mirrored in Schedule 11 of the Act. The definition is wide and includes, regardless of its form, any information about current and past pupils that is processed by or for a school's governing body or teacher. It includes a 'curricular record', defined as a formal record of a pupil's academic achievements, other skills and abilities and progress in school.

The educational record is confined to information that comes from a teacher or other employee of a local authority or school, the pupil or their parents. Communications about a particular child from head teachers and teachers at a school and other employees at an education authority will therefore form part of that child's official educational record, as will correspondence from an educational psychologist engaged by the governing body under a contract of services. It may also include information from the child and their parents, such as information about the health of the child.

Information kept by a teacher solely for their own use does not form part of the official educational record.

How should a request be made?

A parent should make the request in writing to the head teacher.

Can any of the information in the educational record be withheld from the parent?

The Regulations state that any information which is covered by an order under section 30 of the Data Protection Act must not be disclosed. This includes:

- ï information which might cause serious harm to the physical or mental health or emotional condition of the pupil or another individual;
- ï cases where the disclosure would reveal the child is at risk of abuse;
- and
- ï any information relating to proceedings under the Magistrates' Courts (Children and Young Persons) Rules 1992.

In addition to this, the Regulations state that no information should be disclosed where it would reveal the levels of attainment and any other results in any attainment target or subject of any other identified pupil.

3 What are the timescales for dealing with requests?

Requests for information from pupils, or parents, for information that contains, wholly or partly, an educational record must receive a response within 15 school days. Unless a parent simply asks to see the official educational record under the Regulations, schools and authorities are entitled to receive any fee first (see below).

Most requests for information are likely to ask for at least some information in the educational record. However, should a subject access request be made just for personal information outside the educational record, a response must be made promptly and at most within 40 calendar days. However, the 40 days does not begin until after the fee (see below) and any further information about identity or the location of the information is received.

4 Can a charge be made for accessing personal information?

If a pupil or parent acting on their behalf requests makes a subject access request for personal information containing, in whole or part, the 'educational record', the amount that can be charged depends on the number of pages provided. The fees work on a scale basis as shown below.

Number of pages / Maximum fee

| | |
|---------|-----|
| 1-19 | £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+ | £50 |

If a pupil or parent acting on their behalf requests makes a subject access request for personal information which does not include any information contained in the 'educational record', the maximum charge is £10.

If a parent exercises their independent right under the Regulations simply to view the educational record, then this should be free of charge. If a copy of

the educational records is supplied under the Regulations, a fee can be charged by the head teacher. This fee must not exceed the cost of supplying the information.

Is there an obligation to translate documents?

If the head teacher decides that any information needs to be translated to respond to any request under the Regulations, then that information should be translated. The Regulations state that documents should be translated into English, Welsh or any other language as required.

No additional charges may be made for any translation that the head teacher feels is needed.

More information

If you need any more information about this or any other aspect of data protection, please contact the ICO.

Phone: 01625 545745 or 029 2044 8044 (Wales Regional Office)

E-mail: wales@ico.gsi.gov.uk or use the online enquiry form on the website

Website: www.ico.gov.uk