

Data Subject Access Requests –FAQs



Co-funded by the Rights, Equality and Citizenship
Programme of the European Union (2014-2020)

THIS PROJECT HAS BEEN CO-FUNDED FROM THE EUROPEAN UNION'S RIGHTS,
EQUALITY AND CITIZENSHIP 2014-2019 PROGRAMME UNDER GRANT AGREEMENT
N°874524.



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The General Data Protection Regulation (GDPR), under Article 15, gives individuals or 'data subjects' the right to request a copy of any of their personal data which are being 'processed'(i.e. used in any way) by 'controllers'(i.e. those who decide how and why data are processed, e.g. SMEs), as well as other relevant information (as detailed below). These requests are often referred to as 'data subject access requests', or 'access requests'.

These requests must be responded to free of charge and in an accessible form, and SMEs should seek to facilitate access requests being both made and responded to easily, including electronically where appropriate and where the individual wishes.

The following guidance should answer some of the most frequently asked questions by SMEs who are struggling to deal with the access requests they are receiving.

When is an individual entitled to make an access request?

There are no special conditions that need to be satisfied in order for an individual to be entitled to make an access request. An individual can make an access request to any SME who they think might be processing their personal data.

What information is an individual entitled to when they make an access request?

There are actually a few different aspects to the right of access under Article 15 GDPR. First of all, individuals are entitled to confirmation of whether the SME is processing any of their personal data, which means any information which concerns or relates to them. Where that is the case, they are also entitled to a copy of their personal data. Further, individuals are entitled to other additional information about the processing of their personal data.

The additional information individuals are entitled to includes: the purposes of the processing; the categories of personal data processed; who the personal data are shared with; how long the personal data will be stored; the existence of various data subject rights; the right to lodge a complaint with the relevant Data Protection Authority; information about where the data were collected from; the existence of automated decision-making (such as 'profiling'); and the safeguards in place if the personal data are transferred to a third country or international organisation. In many cases, SMEs will already be providing this information to data subjects, such as through their privacy notice.

How broad can the scope of an access request be?

Whilst an individual is entitled to access to any or all of their personal data, where an SME processes a large quantity of information concerning the individual, the SME should be able to request that the individual clarify the request, by specifying the information or processing activities which they want access to or information on.

This should only be done where reasonably necessary to clarify a request, and not to delay in responding to it. Where an SME asks an individual to clarify their request, they should let them know as soon as possible. If the individual refuses to clarify the request, the SME will still need to comply with the original request.

Does an access request have to be made in writing?

The GDPR does not set out any particular method for making a valid access request, therefore a request may be made by an individual in writing or verbally. Where an access request is made verbally, it is recommended that SMEs record the time and details of the request, so that they can ensure they comply with and do not misunderstand the request. SMEs may want to follow up with individuals in writing to confirm that they have correctly understood the request.

Some SMEs may wish to use standard or online forms for individuals to submit access requests through –Recital 59 GDPR even encourages this for electronic requests. Whilst such forms can help streamline the exercise of the right of access and support consistency and timely responses, SMEs should keep in mind that access requests can still be validly made by other means, such as letter, email, telephone call, or even through social media.

Where an access request is made, an SME may invite or encourage the individual to submit it through their designated form instead, but they should make it clear that this is not compulsory, and the deadline for responding to the access request begins to run from the time the valid request is made by any means, not only through the designated form. Nevertheless, an online form will often be the most efficient method for an individual to make their request and have it responded to in a timely manner.

Does an access request have to be made to a specific contact point designated by the SME?

As with the question regarding the format an access request may take, where SMEs have a particular contact point or member of staff designated for handling access requests, contacting them will normally be the most efficient way for an individual to have their request responded to promptly, but it should not be considered mandatory.

It is possible that a valid access request may be made to any member of staff of an SME. This may present a challenge, particularly in absence of sufficient awareness or training regarding data protection obligations. SMEs should ensure that systems are in place so that all valid access requests are actioned appropriately – particularly regarding staff who regularly interact with customers or the public.

As with standard forms, an SME may encourage data subjects to contact the designated contact point, but they cannot oblige them to do so. Therefore, where a request is made to another member of staff, the clearest approach may be to forward the request to the correct contact point, whilst copying in the individual and explaining the process for handling the request.

Are there other formalities required for a valid access request?

There are no other formal requirements for an access request to be valid, other than that the request is sufficiently clear to act upon, and that the identity of the requester is sufficiently clear. Individuals should be sufficiently clear about what information they are seeking, and proof of their identity should only be requested where reasonable and proportionate to do so. Where the SME does require more information or proof of identity, they should inform the requester as soon as possible, and the time limit for responding to the request begins when they receive the additional information.

Seeking proof of identity would be less likely to be appropriate where there was no real doubt about identity; but, where there are doubts, or the information sought is of a particularly sensitive nature, then it may be appropriate to request proof. SMEs should only request the minimum amount of further information necessary and proportionate in order to prove the requester's identity.

Further, there is no need for an individual to use a particular form of words, or even to specifically mention data protection legislation, to make a valid access request; however, it may be helpful for the sake of clarity to mention that the request is an access request, pursuant to the relevant data protection legislation.

How long does an SME have to respond to an access request?

SMEs who receive a valid subject access request must respond to the request without undue delay and at the latest within one month of receiving the request. SMEs can extend the time to respond by a further two months if the request is complex or they have received a number of requests from the same individual, but they must still let the individual know within one month of receiving their access request and explain to them why the extension is necessary.

Further, it is good practice for SMEs to keep requesters regularly updated on the progress of their request, and give them sufficient notice in advance of any potential delays or requests for clarification or proof of identity.

How should SMEs provide the information to individuals?

The general rule is that an SMEs should respond to an individual's access request in the same way the request was made, or in the way in which the requester specifically asked for a response. Where a request is made electronically, SMEs should provide

the required information in a commonly used electronic format, unless the individual requests otherwise.

Where an individual makes a verbal access request, they may want or be satisfied with a verbal response to their access request, depending on the nature of the request. SMEs should consider keeping a record of the verbal response issued, as well as what they understood the request to be. If a request asks that the response be made in writing, SMEs should provide the response in writing to the address provided.

Can SMEs charge a fee for responding to an access request?

In most cases individuals cannot be required to pay a fee to make a subject access request. Only in certain very limited circumstances, per Article 12(5) GDPR, where the initial request is 'manifestly unfounded or excessive'(which the SME must prove), can SMEs charge a 'reasonable fee' for the administrative costs of complying with the request. SMEs are also allowed to charge a reasonable fee, based on administrative costs, where an individual requests additional copies of their personal data undergoing processing.

Are there any other limitations on the right of access?

Under Article 12(5)GDPR, in limited circumstances, where an access request is 'manifestly unfounded or excessive', a SME may also, where appropriate, refuse to act on the request. This is, however, a high threshold to meet, and the SME must be able to prove that the request was manifestly unfounded or excessive, in particular taking into account whether the request is repetitive. There should be very few cases where a SME can justify a refusal of a request on this basis.

There is a general limitation on the exercise of the right of access under Article 15(4) GDPR, which states that the right to obtain a copy of the personal data undergoing processing should not negatively impact ("adversely affect") the rights and freedoms of others, such as privacy, trade secrets, or intellectual property rights. However, where an SME does have concerns about the impact of complying with a request, their response should not simply be a refusal to provide all information to the individual, but to endeavour to comply with the request insofar as possible whilst ensuring adequate protection for the rights and freedoms of others.

Whilst the right of access to personal data is a fundamental data protection right it is not an absolute one, and is subject to a number of limited exceptions. Article 23 GDPR allows for data subject rights to be restricted in certain circumstances. Any such restrictions must be set out in a 'legislative measure', respect the essence of the fundamental rights and freedoms, be necessary and proportionate in a democratic society, and safeguard an interest of public importance.

Accordingly, if an SME considers that it is justified in withholding certain information in response to an access request it must identify an exemption under the GDPR, provide an explanation as to why it applies, and demonstrate that reliance on the exemption is necessary and proportionate.