



# **THE DATA PROTECTION ACT 1998**

# **SUBJECT ACCESS REQUESTS**

## **PERSONAL INFORMATION (YOUR RIGHT TO KNOW)**

Advice for members of the public enquiring about their rights under the Data Protection Act 1998 and/or requesting access to personal data held about them (i.e. making a Subject Access Request).

## **Do you know what personal information is held about you and why it is needed for the council's purposes?**

In this leaflet we explain your rights, as a user of council services, to see your personal information and be provided with information about the uses to which it is put.

### **What are your rights?**

- to ask us if we hold personal information about you
- to ask what we use the information for
- to be provided with a copy of the information
- to be given details of the purposes for which we use the information
- and other persons/organisations to whom it is disclosed
- to ask for incorrect data to be corrected

### **Why do we keep personal information?**

We keep personal information about you for a variety of reasons, for example, in order that:

- we can provide you with the services you require
- we can collect council tax and rent
- we can assess the correct level of benefit for your needs
- we can provide you with up to date information about these services and the most appropriate service for your needs.

The information about you is also used to maintain a record of any help provided (e.g. Social Work's provision of home care services) in order that we can look at it from time to time to see if it is still what you need and to plan for any changes. The personal information you provide may also be shared with other agencies involved in the provision of services to you and between departments of the council where we are legally required to do so.

*Appendix 1 shows a list of purposes for which the council keeps personal data.*

### **Who do we share information with?**

We will only share information where we have a statutory right to do so.

Depending on the original purpose for which it was obtained and the use to which it is to be put, information may be shared with a variety of services. Examples include Social Work sharing with Health, Housing, and Education; Housing Benefits sharing with the Department of Work and Pensions. It may also be shared, where necessary, with other organisations that provide services on our behalf e.g. providers of residential accommodation, providers of voluntary care and contractors for housing

maintenance. In all of these examples the information provided is only the minimum necessary to enable them to provide services to you.

Personal information about you may also be provided to Government departments, or other local authorities, where we are required to do so by law. An example would be when you have moved from one local authority to another and the new authority requires confirmation of the services you were receiving. Information about you may also be provided for statistical research. This will not include your name and address unless you have given us permission to provide that information.

## **What sort of information do we hold?**

The personal information held will depend on the service being provided. Basic information includes your name and address, age, date of birth, sex, next of kin, plus a note of the service provided. Decisions regarding the provision and any meetings between you and the department of the council providing the service will appear on all records.

Other, more sensitive, data may also be held. Depending on the needs of the service being provided such data may include for example: details of a person's physical or mental health, disabilities and racial or ethnic origin. Data relating to specific services include:

- the level of payment and the current state of the account – rents and council tax;
- property details and extent of proposed alterations – planning;
- health and disability information – Social Work after care service.

Personal information we hold may also take the form of images captured by CCTV equipment on council premises for security and prevention of crime purposes.

## **How do we keep the information and who is responsible?**

The information is kept on secure computer systems and in secure manual filing systems. Maintaining the record and keeping it secure is the responsibility of the department providing the services you receive. All our employees are required to comply with our Information Security Policy and undertake Data Protection training.

## **Are the records confidential?**

Our employees have a duty of care when providing services. This includes respecting the right to confidentiality and ensuring that information about you is only used and given to others for the purposes of the service being provided. Care is taken to ensure that third parties cannot access the information without permission and that data about you is not disclosed – to third parties or others – without your consent.

## How long are records about you held?

Normally, your records will be kept only for as long, after the service provided to you has ceased, as is required by law. If there is no legal requirement to keep the records they will be destroyed as soon as is practicable. Where there is no legal requirement to retain information it is not normally kept for more than six years.

Examples of records that must be kept for longer include adoption records and those to do with children who have been in care.

## How do you ask to see your information?

You must submit a request in writing. A "Subject Access Request Application" form is available at Aberdeenshire Council offices or from the address shown at the end of this leaflet. If you have difficulty with the form help will be provided. We may ask you to be more specific in your request in order to cut down on the time and effort we spend in extracting your information.

You have a right of access to your record, regardless of your age, as long as we are satisfied that you understand what it means to exercise your right. In Scotland you are presumed to understand what it means from the age of 12.

## What information will you receive?

All of the personal information you have requested on both our computer and structured\* manual record systems. You will also be given a description of the purposes for which we process your data, a list of those to whom we may disclose the data and information about sources where this is available.

*(\*Note: structured manual record systems are those where the information about you is readily accessible by name, reference number etc.)*

## What information might we withhold?

There are some occasions where we will refuse to disclose information you have requested. For example:

- if the information on your record identifies other people then we will not disclose their identity without their consent
- if disclosure of the information might lead to serious harm to the physical or mental health of the data subject or any other person
- if it would hinder the prevention and detection of crime or the prosecution or apprehension of offenders to provide it.
- if the information forms part of a court report or a report made by or for a reporter to the children's panel.
- if the information is about adoption records or reports.
- if the information is confidential because it was provided in the context of legal privilege or a lawyer-client relationship

- if there is a legal obligation not to disclose.
- if the information requested refers to someone who is now unable to manage his or her own affairs and we are satisfied that at the time the information was given, he or she would not have wanted it to be disclosed to you.

If we withhold information we will tell you that we have.

## **Can you see information about members of your family or any other person?**

You may not normally see information about other persons, unless they have given their consent. This includes information about members of your family.

You may make a request on behalf of someone who is unable to manage his or her own affairs and you have been appointed by a court to do so. We will normally require to see proof of such entitlement.

If you are a parent of a child still at school you have a right of access to your child's education records.

You may apply to see the social work records of a child aged under 16 who does not have sufficient understanding to make his or her own request and for whom you have parental responsibility.

## **How will you be given the information?**

Where possible, a copy of your information will be provided to you via secure email. In completing the Subject Access Request form, you must ensure that the email address provided is both legible and correct.

Alternatively, you will be able to collect a copy of your information from mutually-convenient Council premises. In this case, you will be contacted when your information is ready for collection.

Due to the risk of information being lost in post, regardless of whether mail is tracked or not, the Council no longer issues such information via post.

## **Will you be charged a fee for information provided?**

Yes. We charge a fee for providing the information requested. This is to cover the costs of searching for and providing a copy of the information. The fee is £5 for a simple request involving one service and £10, which is the maximum permitted by law, for a request involving two or more services.

Note that if you require paper copies of school records you may be charged on a sliding scale from £1 for up to 19 pages, to £50 for 500 pages or more.

Please make your cheque payable to Aberdeenshire Council.

## **How long does it take to provide you with the information?**

We must respond within forty (40) days of receiving your application. The period begins from the date on which we receive the written application, the fee and any additional information required by us.

## **What should you do when you get the information?**

You should check it to ensure that you have received all of the information to which you are entitled and to make sure it is correct.

## **What do you do if the information provided is incorrect?**

You should tell the department that the data are incorrect and ask for corrections to be made. You must do so in writing. The department must inform you if they have or have not corrected the data within 21 days of you asking them to do so. If the department does not agree that the information is incorrect you can ask it to record your disagreement on the record itself. If the department does not correct the information you may also appeal to the Information Commissioner (formerly known as the Data Protection Commissioner) or the courts. These organisations have the power to order the department to correct data which is wrong.

## **When are data inaccurate?**

The Act defines inaccurate data as being “data which are incorrect or misleading as to any matter of fact”.

## **How else can you have inaccurate data about you corrected?**

The Act provides you with a right to apply to the court to have inaccurate data rectified, blocked, erased or destroyed. This right extends to any other personal data, which contain an opinion about you based on the inaccurate data.

## **What do you do if you think you have not been given all the information you asked for?**

You can appeal to us, through our complaints procedure or to the Information Commissioner whose staff will look into the matter on your behalf.

## **Do you have any other rights under the Data Protection Act and what are they?**

Yes. In addition to the right of subject access, mentioned above, individuals have the following rights:

- to prevent processing likely to cause damage or distress
- to prevent processing for the purposes of direct marketing
- not to be the subject of decisions based on wholly automated means
- to take action for compensation if you have suffered damage by any contravention of the Act, by us
- to make a request to the Commissioner for an assessment as to whether any provision of the Act has been contravened by us

### **How do you go about exercising these rights?**

As far as the first three of these rights are concerned you should write informing us that you require us to cease or not to begin the processing of personal data about you.

In the case of the first of these you must state the purpose for which the data are being processed and that you consider the processing is already causing or is likely to cause you or another person unwarranted substantial damage or substantial distress.

The second requires you to notify us, in writing, that we should cease or not begin the processing of personal data about you for the purpose of direct marketing.

The third is specific to the use of automated decision-making processes. If you do not wish to be the subject of decisions based wholly on such a process you must write requesting us to ensure no decisions, which significantly affect you are based solely on such processing.

### **How will you know if we have made any decisions about you based, wholly, on automated processes?**

If we have not received a notice from you we will inform you that a decision, which significantly affects you has been taken by automatic means. If we do so and you object then you can inform us in writing that you require us to reconsider the decision or take a new decision by some other means. We have 21 days in which to respond to your letter.

### **Is there a time limit for you to write to us?**

Yes, you must inform us within 21 days of our telling you that we have taken our decision by automated means.

### **How can you be sure we have complied with your notice(s)?**

The Act requires us to respond to your notice within 21 days of receiving it. Our reply will tell you whether or not we have complied with your request; intend to comply with your request or the extent to which we intend to comply. If we do not consider your request is justified our response will list our reasons.

### **What do you do if we do not reply or refuse to comply with your notice?**

If you do not receive a reply or if you consider we have not complied with any of the above notices you have a right to apply to the court for an order requiring us to comply.

### **Under what circumstances can you claim compensation?**

If you have suffered damage or distress as a result of our contravention of any of the requirements of the Act, then you may be entitled to compensation.

The court will only support such a claim if you can show that we had not taken reasonable care to ensure we complied with the relevant requirement of the Act.

### **Are you entitled to compensation as a result of our use of inaccurate data?**

As with the example quoted earlier only if the court is satisfied that you have suffered damage as a result of our use of the inaccurate data.

### **What can you complain to the Information Commissioner about?**

You can complain to the Information Commissioner if you consider that we have breached any of the requirements of the Data Protection Act. These include a breach of any of the data protection principles, processing data without having notified the Commissioner, a failure to respond to any of your written notices (see above), processing data without your consent (where consent is necessary) refusing to provide you with the personal information you have requested. This list is not exhaustive.

### **What will the Information Commissioner do?**

At your request the Information Commissioner will carry out an assessment of our processing to establish whether or not we are doing so in compliance with the Act.



Should the Information Commissioner find we are not then we will be issued with a notice requiring us to take steps to ensure compliance.

### **Do we provide you with help in understanding the information?**

If you need help in understanding the information provided or the contents of this leaflet, please inform us and we will provide someone to explain the contents of the information.

### **Address to which Subject Access Request Forms should be sent:**

**Data Protection Officer,  
Aberdeenshire Council  
Town House  
Low Street  
Banff  
AB45 1AY**

You may obtain further information about data protection by contacting the Data Protection Officer at the above address or visit our web information page for further information at:-

<http://www.aberdeenshire.gov.uk/online/legal-notices/#subject>

The Information Commissioner can be reached through:-

<http://www.ico.org.uk/>

*Acknowledgement is made to the following sources in the preparation of this leaflet:*

*Improvement and Development Agency (I&DeA)  
National Consumer Council (NCC)*

## Appendix 1

### List of purposes for which the council keeps personal data:

- Accounts and records (management and administration of supplier records)
- Advertising, marketing and public relations
- Assessment and collection of taxes and other revenue (including council tax and non domestic rates)
- Benefits, grants and loans administration
- Corporate functions (including legal services, emergency planning, administration of council meetings, liaison with outside bodies, administration of elections, research and analysis)
- Crime prevention and prosecution of offenders (including CCTV)
- Education
- Leisure and cultural services
- Planning, licensing, registration and regulation (including environmental health, trading standards, consumer protection)
- Property management
- Social services
- Staff administration
- Other commercial services (including general insurance administration, operation of caravan sites)
- Other non-commercial activities (including concessionary travel, maintenance of public grounds)