

**Colyton Grammar School**  
**SUBJECT ACCESS REQUEST POLICY**

## **1. Background**

Under the Data Protection Act 1998 (DPA), an individual has a right of access to information held about them by any organisation. This is known as the Right of Subject Access.

Colyton Grammar School (the “School”) will ensure that the rights of subject access to information held by the School can be fully exercised by everyone.

All requests will be dealt with in accordance with the Subject Access Request Procedures (see Appendix A).

## **2. Legal Context**

### **(a) Data Protection Act 1998**

The Data Protection Act 1998 governs how information about people (Personal Data) should be treated. It also gives rights to individuals whose data is held. The Act came into force on 1 March 2000 and applies to all personal data collected at any time whether held on computer or in/as a manual record. The Act is enforced by the Information Commissioner.

### **(b) Freedom of Information Act 2000**

This Act extended some of the provisions of the Data Protection Act to unstructured information held by public authorities. It also made it a criminal offence to alter, deface, block, erase, destroy or conceal information with the intention of preventing disclosure of information when a request has been made.

### **(c) The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004**

These regulations allow an authority to refuse a request, or part of a request, if to respond to it would exceed an ‘appropriate limit’.

### **(d) The Pupil Information Regulations 2005**

These regulations provide the right of access to educational records. This includes any statement of special educational needs and educational psychology assessments.

## **3. Scope**

The Data Protection Act is fully retrospective and this policy and procedures apply to all information, no matter when created or how it is held. This includes:

- information held on computer (or other automated means);
- information held in structured files;
- information in the educational record regardless of the form in which it is held;
- un-structured information, for example, held in loose correspondence.

The policy applies to any request from an individual, or their advocate or legal representative, to access their personal information held by the School.

This policy and the Data Protection Act do not apply to access to information about deceased individuals.

This policy only applies to requests made by, or on behalf of, the data subject.

#### **4. 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).

The school recognises that 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. 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.

#### **5. Fees**

If a pupil or parent makes a request simply to view the relevant educational records, no charge will be made. If a copy of the relevant educational records is requested, a fee will be charged for the cost of providing the information in accordance with the sliding scale set out in the Information Commissioner's guidance, as follows:

| Number of pages | Maximum fee | Number of pages | Maximum fee |
|-----------------|-------------|-----------------|-------------|
| 1-19            | £1          | 100-149         | £10         |
| 20-29           | £2          | 150-199         | £15         |
| 30-39           | £3          | 200-249         | £20         |
| 40-49           | £4          | 250-299         | £25         |
| 50-59           | £5          | 300-349         | £30         |
| 60-69           | £6          | 350-399         | £35         |
| 70-79           | £7          | 400-449         | £40         |
| 80-89           | £8          | 450-499         | £45         |
| 90-99           | £9          | 500+            | £50         |

If the subject access request is made just for personal information outside the educational records, a fee of £10 is required. The fee is required even if the searches do not result in any information being provided.

#### **6. Exemptions**

If the personal data is unstructured (i.e. not filed by reference to the data subject) the School will refuse requests where it would exceed the appropriate limit (e.g. 18 hours of work) to locate, retrieve and extract the information.

Under section 8 of the Data Protection Act, the School can refuse to respond to requests until a reasonable period has elapsed since responding to the last request; the School has defined that period as 12 months.

Generally, any information that could not be disclosed to the child under the Data Protection Act or other relevant legislation or to which the child would not have a right of access under the same legislation should not be disclosed to a parent exercising their independent right of access.

The School will only withhold information if there is a legal reason to do so.

## **7. Complaints**

Complaints about the School's processing of personal data will be dealt with in accordance with the School's Complaints Procedure.

Unlike Freedom of Information, the Data Protection Act does not set out a specific complaints regime for data protection issues. However, individuals do have a right to request that the Information Commissioner make an assessment of compliance of particular circumstances with the Data Protection Act. Contact details as follows:

The Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF

## **8. Review**

This policy will be reviewed on at least a three yearly basis.

## **APPENDIX A: Subject Access Request Procedures**

### **Who has a right of access?**

Every individual has the right of access to personal information held about them.

This includes a person about whom the School holds a file, or any other individual who is referred to directly in that file.

Someone asking to access information about another person is not usually entitled to know what is recorded about that person without their consent.

Another person (a third party) may act on behalf of the data subject in the circumstances below.  
The following types of third party request may occur:

An adult acting on behalf of a child (see 2.3 Requests on behalf of children) e.g. a parent or carer with parental responsibility

An adult acting on behalf of an adult without capacity (see 2.4 Requests on behalf of adults) e.g. a carer or advocate

An adult acting on behalf of another adult who has capacity and has provided them with consent (see 2.4 Requests on behalf of adults) e.g. a solicitor or carer

In some circumstances a combination of types may occur e.g. a solicitor acting on behalf of a parent, who is acting on behalf of their child.

Other types of third party requests that are not made on behalf of the data subject are dealt with under the Data Protection Policy. This includes data sharing between organisations and requests from the police.

### **2. Procedures for dealing with a request for personal information**

#### **2.1 Responsibilities and processes**

Subject Access Requests (SARs) are processed by the Business Manager.

Requests received directly by other staff must be forwarded to the Business Manager within 3 working days.

The Business Manager will log and monitor all requests and acknowledge requests within 5 working days of receipt.

Individual staff or teams, on being asked to locate information in response to a request, will provide a single-sided photocopy or print out all information held. This will include, but is not limited to, paper records, all database records, emails, information on any personal or shared drives and handwritten notes. This information must not be filtered before providing it to the Business Manager.

The Business Manager will provide support and advice in applying these procedures and on related issues. The Business Manager will also liaise with staff where appropriate to determine what can and cannot be released.

In addition, the Data Protection Act requires the School to consider whether providing information would also release the personal data of other parties. In other words, the School is not able to disclose information that would contravene someone else's rights under the Data Protection Act. Additionally, information will be withheld if disclosure is likely to prejudice the School's ability to provide a service should disclosure be considered to cause harm to any individual.

**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.**

**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. The 40 days does not begin until after the fee and any further information about identity or the location of the information is received.**

## **2.2 Procedures on first receiving a request**

The 'Subject Access Request Application Form' can be used to obtain all the necessary information described in this section.

Under section 8 of the Data Protection Act, the School can refuse to respond to requests unless a reasonable period has elapsed since responding to the last request; the School has defined that period as being 12 months.

On receiving a request for information, the Business Manager will establish whether the individual making the request is the data subject or a third party.

If the request is from the data subject, the following must be received before the request is processed:

- the request in writing (this includes email)
- proof of identity of the requester
- proof of change of name (where appropriate)
- sufficient details to locate the information
- the appropriate fee (if required)

**The 15 school days or 40 calendar days timescale (as appropriate – see above) does not start until these are received by the School.**

Photocopies of one or more of the following are acceptable as proof of identity:

- Passport
- Driving Licence
- Two different utility bills and/or bank statements, from within the past 3 months

The School requires a £10 fee per individual to process requests for access to personal information.

The person making the request can be required to detail the information to which they are seeking access. The requester can be asked for more details if needed for clarification.

**The 15 school days or 40 calendar days timescale (as appropriate – see above) does not start until these are received by the School.**

### **2.3 Requests on behalf of children**

A parent does not have an automatic right to information held about their child. The right belongs to the child, and the parent acts on their behalf providing the parent has Parental Responsibility. Once the child reaches sufficient maturity, the child can exercise their own right and the parent must act with the child's consent.

Where parents have separated, consideration should be given to the 'best interests' of the child in releasing information to the requesting parent.

In England and Wales the age at which the child reaches sufficient maturity is judged to be the age of 12. However, this may vary according to factors particular to that child.

For a child insufficiently mature, the following is required:

- the request in writing
- proof of identity of the requester (adult)
- proof of the requestor's responsibility for the child
- proof of identity of the data subject (child)
- sufficient details to locate the information
- the appropriate fee (if required)

For a child sufficiently mature, the following is required:

- the request in writing
- proof of identity of the requester (adult)
- proof of child's consent for the requester to access their information
- proof of identity of the data subject (child)
- sufficient details to locate the information
- the appropriate fee (if required)

### **2.4 Requests on behalf of adults**

For an adult acting on behalf of an adult without capacity, the following is required:

- the request in writing
- proof of identity of the requester (adult)
- proof that the requester may act on behalf of the data subject
- proof of identity of the data subject
- sufficient details to locate the information
- the appropriate fee (if required)

For an agent acting on behalf of an adult with capacity, the following is required:

- the request in writing
- proof of identity of the requester - a letter on headed paper will normally be sufficient if the requester is a solicitor
- written consent of the data subject
- proof of identity of the data subject
- sufficient details to locate the information
- the appropriate fee (if required)

### **Important note**

Where a third party is asking for information on behalf of the data subject, the best interests of the data subject should be paramount when considering the information for release.

### **2.5 Procedures for providing information**

The appropriate member of the School's Senior Leadership Team must examine the information for anything that they consider should be withheld before sending the copy to the Business Manager. If anything of concern is identified, this must be communicated clearly to the Business Manager, who must take this into consideration when assessing the information for release.

Any information falling under an exemption will be either removed or redacted by the Business Manager. This will be by either blanking out or blocking out the information. The minimum of information will be removed.

If information is withheld the requester will be provided with a letter; in most cases this will explain what has been withheld and why. The letter will also include details of how to complain and/or challenge the decision made.

In some circumstances, confirming or denying that a particular piece of information is held may result in release of information that should be withheld (for example, explaining that information is being withheld because it relates to a criminal investigation would reveal that an investigation has taken place or is underway, perhaps prejudicing that investigation). On occasions where no data is held, to confirm this may help limit searches for an individual. In these and other circumstances it may be necessary to refuse to confirm or deny that the information is held. A 'neither confirm nor deny' response should not be taken as an indication that the information requested is or is not held by the School.

Where the information cannot be easily understood without explanation, supporting information should also be provided.

A record of what has been provided and withheld, with reasons, will be kept by the Business Manager.

The Data Protection Act gives a right to a copy of the information in permanent form. A copy of the information will be provided unless the requester agrees otherwise, or it would involve disproportionate effort.

The requester may be offered the opportunity to view the information on the School premises in the presence of an appropriate member of staff who is able to give appropriate support.

If the amount of information is large, the School will consider whether it would involve disproportionate effort to provide copies. If so, the requester will be offered an appointment to view only but be given the facility to copy information when they attend. An alternative is to ask the requester to refine the request further.

If the personal data is unstructured, i.e. not filed by reference to the data subject, the School will refuse requests where it would exceed the appropriate limit, e.g. 18 hours of work, to locate, retrieve and extract the information.

The School will consider the needs of the requester when providing the information, including facilities for translation or providing the information in another format.

The information should be transferred to the requester in a secure manner, for example by recorded or special delivery or delivered/collected in person.

## **2.6 Using the information while a request for access is being processed**

Personal information may be used as normal while a subject access request is being processed. Routine amendments may be made.

It is a criminal offence to alter, deface, block, erase, destroy or conceal information with the intention of preventing disclosure of information when a request has been made. This offence can be committed by the School or any member of staff, and is punishable on summary conviction by a fine.

## **3. What personal information should be released and what withheld?**

### **3.1 Information about third parties**

#### **Information about members of staff or others acting in a professional capacity**

The information requested will normally include references to members of staff or other professionals involved with the individual. This may include records of attendance at meetings, email exchanges, reports written and decisions taken. The names of the professionals involved will normally be released. The exceptions are:

- Where the member of staff may be endangered by release of the information
- Where the information relates to the private life of the member of staff, as opposed to their professional life e.g. home addresses and telephone numbers.

#### **Information about all other third party individuals (including relatives or carers)**

Information about non-professionals will normally be withheld, unless there is reason to believe that the other person would be content for it to be released.

The following will be considered:

- Any views the third party has given about sharing their information, including any consents or refusal of consents
- The expectations of the third party about what might happen to their information
- Whether the third party is capable of granting consent
- Any duty of confidentiality owed to the third party

In certain cases, it may be appropriate for the Business Manager to write to the third party asking for their consent.

Deceased individuals are still owed a duty of confidentiality. Information about third parties who are deceased may therefore be withheld if releasing it would be a breach of confidentiality.

### **3.2 Requests made on behalf of the data subject by third parties – best interests of the data subject**

The best interests of the data subject should be paramount when considering releasing information to a third party acting on their behalf.

Information may be withheld if releasing it would prejudice the relationship between the data subject and the third party.

If the data subject has previously expressed any wish with respect to the confidentiality of any particular part of the information, this wish should be respected.

### **3.3 Information received from other organisations**

If a file contains information received from other organisations, this information will still be considered for release.

This information will normally be released, subject to other issues. However, if there are any concerns about releasing the information, the other organisation may be consulted to ascertain their views on releasing or withholding information.

If an information sharing protocol exists between the School and the other organisation, it should be consulted for further guidance.

The final decision about whether information provided by another organisation should be released or withheld rests with the School, as the data controller for that information.

### **3.4 Legal advice**

Legal advice from the School's professional legal advisors acting on the School's behalf may be withheld, based upon the principle that any communication with a client's professional legal adviser will be treated in confidence and not revealed without the client's consent, to ensure that a client's confidence will be protected and there is the greatest chance that justice is administered to the client.

There are two categories of legal professional privilege (LPP):

- Advice privilege – where litigation is not contemplated or pending
- Litigation privilege – where litigation is contemplated or pending.

Litigation is the taking of a legal action by one party against another in which an issue is being taken to a court of law for a judge or magistrate to decide.

If a file contains legal advice, the Business Manager will take appropriate advice on whether legal professional privilege applies to the information.

If legal professional privilege does apply to the information, this information can only be released if the client agrees to waive the privilege.

### **3.5 Criminal investigations**

Information may be withheld if releasing it would be likely to prejudice the prevention or detection of crime, or apprehension or prosecution of offenders.

In particular, any information obtained from the police who are using it for this purpose, will be withheld.

The police will be consulted if there is any doubt over a particular piece of information.

## **4. Implementation**

This procedure is effective immediately.

## **5. Monitoring and review**

This procedure will be monitored by the Chairs' Committee and reviewed at least on a three yearly basis.

## **6. Definitions**

**Personal data** is defined as data relating to a living individual who can be identified from the data, and other information, which is in the possession of, or is likely to come into the possession of the data controller. This includes an expression of opinion about the individual and any indication of the intentions of the data controller, or any other person in respect of the individual.

A **Data Subject** is an individual who is the subject of the data.

A **Data Controller** is an organisation, such as Colyton Grammar School, or person that determines the purposes for which and the manner in which any personal data are to be processed.

A **Data Processor** is any person (other than an employee of the Data Controller, but including a legal person such as a limited company) who processes personal data on behalf of the Data Controller e.g. out-sourced work.

**Processing** means obtaining, recording, viewing, holding or carrying out any operation on data and includes organisation, alteration, retrieval, disclosure and destruction of the data.

A **Third Party** is any individual who is not the data subject.

### **Subject access right**

An individual is entitled to

- be informed of what information a data controller holds about them
- have access to the personal information held
- be informed of the reasons for processing
- be informed of who it is disclosed to

An individual is entitled to receive a copy of the information held, in a permanent format, unless the effort involved is disproportionate or the individual agrees otherwise.

**Redaction** means removing or blanking out information from a document in order to withhold a piece of information.

**Legal professional privilege** is defined as the right of the individual or entity to consult lawyers about their legal position and to have the privacy of those consultations respected. Such information is privileged from disclosure in most circumstances.

Proof of **parental responsibility** (for a child under 12) includes:

- birth certificate
- parental responsibility agreement
- enduring power of attorney for them