Managing Information and Data Requests
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Event starts at 11.00am
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Topics for Discussion

- Requests for access to Information/Data
  - Data Protection
  - Freedom of Information
  - Access to Environmental Information
- Managing a Data Subject Access Request (DSAR)
- Freedom of Information and Access to Environmental information
Access Requests

Data Protection Act/GDPR
- Personal Data
- Data Controllers
- Restriction of Rights

Freedom of Information Act
- FOI Bodies
- Records
- Refusal of request/Exempt Records

Access to Environmental Information
- Public Authorities
- Environmental Information
- Refusal of Request
Data Subject Access Requests
Managing Data Subject Access Requests

Topics discussed:

• GDPR Article 15/Section 91 Data Protection Act 2018
• Receiving a DSAR
• Responding to a DSAR
• Right of Appeal/Complaint
Legislation

• **General Data Protection Regulation – Article 15**

• **Data Protection Act 2018 (“DPA 2018”) – Section 91**

• **Statutory Instruments under DPA 2018**
Key Concepts

- What is Personal Data?
- Who has the obligation to respond?
  - Data Controller
  - Data Processor
- Lawful basis
What is Personal Data?

- Article 4 and Article 29 Working Party Guidance

- Information relating to a Data Subject

- Identified or Identifiable
  - directly or indirectly
  - identifiers

- Natural Person
Who has the obligation to Respond?

• Data Controller/Joint Controller

• Data Processor

• What are the obligations of a Data Controller?
What will a DSAR look like?

- In writing – email sufficient
- No requirement to mention GDPR
- Template DSAR forms – useful not mandatory
Can you charge a Fee?

- No fee
- Administrative charge for additional copies
- Manifestly unfounded or excessive requests – request can be refused or reasonable fee charged on administrative costs
What is the time frame for responding?

- Without undue delay
- **One month** after the date on which the request is made
- Extension up to two further months
- Identity of data subject
Where will I find personal data?

- HR/Employment files
- Emails
- Recorded telephone calls
- CCTV Images
- Medical Records
- Financial Information
- Application forms
- Browsing history
Automated and Manual Personal Data

- **Automated** – on a computer – all subject to GDPR
- **Manual** – part of a “relevant filing system” otherwise not subject to GDPR
- Filing system is any structured set of personal data which are accessible according to specific criteria (e.g. alphabetical order) whether centralised, decentralised or dispersed on a functional or geographic basis
Manual Data – Filing System

- Structured by reference to individuals and organised so that specific information regarding an individual is readily accessible

- **Covered** – Sick leave records in alphabetical order

- **Not Covered** – Manual diary with opinions and personal data
Searching for Personal Data

• Computer Files/Automated Data
  o USB Keys
  o Search by name or other identifiers
  o Search all likely electronic files
  o Email inboxes

• Manual Data
  o Check if part of a “filing system”
  o Do not create a filing system in your search
What are the rights of a Data Controller to restrict access?

- Restriction is for important objectives of public interest where they are necessary and proportionate (Section 60 DPA 2018)

- Confidential expressions of opinion

- Multiple requests (section 91 (12) DPA 2018)

- Third party data (section 91(7) DPA 2018)

- Legal privilege/Contempt of Court (section 162 DPA 2018)
What are the rights of a Data Controller to restrict access?

- Manifestly unfounded or excessive requests (section 93 (4) DPA 2018)
- Health data
- Journalistic exemption (section 43 DPA 2018)
- Further exemptions possible by Statutory Instrument
What are the rights of a Data Controller to restrict access?

Section 94 DPA 2018 - Restriction is necessary and proportionate for purpose of:

- avoiding obstructing official or legal inquiries, investigations or procedures,
- avoiding prejudicing the prevention, detection, investigation or prosecution of criminal offences or the execution of criminal penalties,
- protecting public security,
- protecting national security, or
- protecting the rights and freedoms of other persons
Can Data Access Requests be made by Third Parties?

- Solicitors
- Public Representatives
- Parents
- Friends
- Financial advisers
What does the right of access involve?

- Right to know if their personal data is being processed
- Where their data is being processed:
  - Right of access to the personal data processed
  - Right to specific information relating to the processing
Managing the DSAR Process

- Receipt of request
- Confirm compliance with Article 15
- Carry out search
- Consider any exemptions
- Collate data and apply any redactions or restrictions
- Deliver Response
What other information must a DSAR Response contain?

- Right to complain to the DPC and contact details
- Statement of reasons for any refusal of data/redactions subject to prejudice to controller
- Provide copy of personal data in accessible form
- Electronic request – response in commonly used electronic form
- See further section 93 DPA 2018
Governance

- DSAR Policy
- Data Protection Policy
- Information Notice
- Data Processing Agreements
- Subject Access Request Forms
What happens if the Data Subject Complains?

• Right to complain to the DPC

• Powers of the DPC
  • investigate data controller’s handling of complaint
  • Information Notice
  • Enforcement Notice
  • Fines

• DPC Audit/Statutory Investigation
DSAR Case Law

• Peter Nowak v Data Protection Commissioner (2010 to 2017/2018)
• McErlean v Data Protection Commissioner (2007)
• Dublin Bus v Data Protection Commissioner (August 2012)
• Ezhias v Welsh Ministers (UK, 2007)
• Elliot v Lloyds TSB (UK April 2012)
• Dawson – Damer v Taylor Wessing [2016] 1 WLR 28 (High Ct) and [2017] EWCA Civ 74 (Ct of Appeal)
Freedom of Information and Access to Environmental Information
Data Protection Considerations in Freedom of Information Requests

- What does Freedom of Information apply to?
  - Records held by FOI body
  - Includes Personal Information

- What should I do if a request does not indicate the legislative basis for the request?

- Differing exemptions

- Timeframe for responding

- Fees

- Appeal Rights
Data Protection Considerations in Requests for Access to Environmental Information

• What do the Access to Environmental Information Regulations apply to?
  o Environmental Information
  o Public Authority

• What should I do if a request does not indicate the legislative basis for the request?

• Differing exemptions

• Timeframe for responding

• Fees

• Appeal Rights
Questions?

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