

NEATH PORT TALBOT COUNTY BOROUGH COUNCIL

INFORMATION HELD BY PUBLIC AUTHORITIES

A GUIDE TO YOUR RIGHTS OF ACCESS

Both the Data Protection Act 1998 and the Freedom of Information Act 2000 give people rights to see or receive information held by public authorities including Neath Port Talbot County Borough Council. In addition there is also a specific right of access to information which concerns the environment under the Environmental Information Regulations 2004.

So what's the difference

The Data Protection Act allows you to see the personal information that is held about you by organisations of all types – such as the NHS in the public sector or your bank in the private sector. Examples of personal information include your name, address and telephone number, your bank account number, your medical records and the things you buy when you are shopping.

The Freedom of Information Act gives you rights to see official information held by public authorities, hospitals and the police. For example, you could ask your local council for information about hygiene inspections in local restaurants or ask a university for exam pass rates.

The Environmental Information Regulations allows the public to request environmental information from public authorities.

The environmental information covered can be divided into the following six main areas:-

- The state of the elements of the environment, such as air, water, soil, land, fauna (including human beings).
- Emissions and discharges, noise, energy, radiation, waste and other such substances.
- Measures and activities such as policies, plans, and agreements affecting or likely to affect the state of the elements of the environment.
- Reports, cost-benefit and economic analysis.
- The state of human health and safety, contamination of the food chain.
- Cultural sites and built structures (to the extent they may be affected by the state of the elements of the environment).

This guidance is divided into 3 parts. Part 1 explains your right to obtain access to your personal data which is held by public authorities. Part 2 explains your right to obtain access to any other information (excluding your personal information) held by the authority. Part 3 explains your rights to request environmental information.

More Information

- 1) For more information on Data Protection, Freedom of Information or Environmental Information you can visit the Information Commissioner's website: www.informationcommissioner.gov.uk
- 2) You can also contact The Information Commissioner's Office by telephone on: 01625 545745.

PART 1

How to access personal information about you held by organisations

1. Introduction.
2. How can you find out what information is held about you by an organisation?
3. How much will it cost you to make a subject access request?
4. Responding to your request.
5. What will be sent to you?
6. Can any information be withheld from you?
7. What can you do if an organisation does not comply with your subject access request?

1. Introduction

This guidance aims to advise you what rights you have under the Data Protection Act 1998 (the Act) to get a copy of the personal information that is held about you.

Requests for access to records and for other information about those records are known as “subject access requests” and are made to the person or organisation (the “data controller”) who you think is processing (holding, disclosing or using) the information to which you want access.

Personal information can be contained in both paper and computer records but you need to be aware that not all personal information is covered by the Act.

2. How can you find out what is held about you by an organisation?

If you want to know if a person or organisation holds information about you and, if so, what information they hold, you will need to write to that person or organisation and make a subject access request. You should ask for a copy of the information they hold about you. If you are not sure who to write to in an organisation, address your letter to the company secretary.

Set out below is an example of a letter which you can use. It is a good idea to include your full name and address in the heading, and any other information to help identify you and the information you need. For example, if you are making a request to a previous employer, they may need the dates when you worked for them to find the information you want. You should be as specific as possible. It will help the organisation if you tell them exactly what information you want.

Your full address

The date

Dear Sir or Madam

(Your full name and any other details to help identify you and the information you want).

Please supply the information about me I am entitled to under the Data Protection Act 1998 relating to (give details of the information you want).

If you need any more information from me, or a fee, please let me know as soon as possible.

If you do not normally deal with these requests, please pass this letter to your Data Protection Officer or another appropriate officer.

Your faithfully,

Signature

3. How much will it cost you to make a subject access request?

Organisations may charge a fee of up to £10.00 for dealing with your request.

There are special rules that apply to fees for education records (a sliding scale from £1 to £50 depending on the number of pages provided).

You will have to pay a fee (if charged) for every request, so you need to specify all the information you need in your first letter, otherwise you may have to pay another fee to get information you have asked for on a different occasion.

4. Responding to your request

The organisation has to reply promptly, in any event within 40 days, starting from the day they receive both the fee and the information they need to identify you and the information you need.

If an organisation reasonably needs more information from you to help them find your information or identify you, as long as they tell you what they need, they do not have to deal with it until they have all the necessary information as well as the fee. In such a case the 40 day time wait is calculated from the date of receipt of the fee and/or that information.

5. What will be sent to you?

You are entitled to be told if any personal information is held about you and if so, to be provided with:-

- (1) A description of the information,
- (2) The purposes for which it is being used,
- (3) Any information as to the source of the information,
- (4) Who the information is being shared with,
- (5) A copy of the information in a permanent form (i.e. in a written format, as a computer printout or a photocopy).
- (6) An explanation of any technical terms used in the information.

Whilst generally the organisation should give you the information in writing they need not do this if it is not possible or takes 'disproportionate effort' or you agree to some other form, such as seeing it on screen. The Act does not define what disproportionate effort means but the following should be taken into account.

- The cost of giving you the information.
- The length of time it will take.
- How difficult it will be.

- The size of the organisation.
- The effect on you of not having the information in permanent form.

6. Can any information be withheld from you?

Yes. There are some circumstances where the information you have asked for contains information that relates to another person. Unless the other person gives their permission to its release, or it is reasonable in all the circumstances to provide the information without their permission, the organisation is entitled to withhold this information from you.

There are other circumstances where the organisation can withhold information under the Act. For example, if it would put at risk a criminal investigation or catching an offender. If you want more information on the circumstances when information may be withheld in this way, please see the Information Commissioner's website (www.ico.gov.uk) under 'Exempt information'.

7. What can you do if an organisation does not comply with your subject access request?

If you have sent all the necessary information (including any fee) and:

- The organisation does not respond to your request within 40 days; or
- You are not satisfied with their response

You should send them a reminder letter by recorded delivery (and keep a copy of the letter).

If you do not get a reply fairly quickly, or you think the information you receive is wrong or incomplete, you can:-

- Ask the Information Commissioner to carry out an assessment to see whether it is likely or unlikely that the organisation has responded properly; or
- Take legal action through the court.

An assessment will tell you if it is likely that the organisation has broken the Act and may help you decide whether to take legal action. However, you can take a case to court without asking for an assessment.

What orders can the court make?

If a court is satisfied that an organisation has not dealt with a subject access request in line with the Act, the court can order them to comply. The court also has the power to award compensation.

PART 2

The general right to access to information held by public authorities

1. What information can you have access to?
2. What are public authorities?
3. How do you request access to information?
4. When will you receive the information?
5. What format will the information be in?
6. Will it cost you anything?
7. Will you receive everything you ask for?
8. Can you complain?
9. Who do you complain to?

1. What information can you have access to?

The Freedom of Information Act (“FOI”) gives you a general right of access to all recorded information held by public authorities. Recorded information can be held in the form of documents, emails, notes, videos, letters and even audio tapes. It does not have to be about you, and you do not need to give a reason for wanting it.

2. What are public authorities?

(1) The Act applies to public authorities including:-

- Government departments.
- Local authorities.
- Educational establishments.
- NHS GPs and dentists.
- Police forces.
- Health authorities.

(2) A list of organisations covered by the Act is available at:
www.foi.gov.uk/coverage.htm

3. How do you request access to information?

There are two ways to ask for information held by a public authority.

1. You can make a formal freedom of information request. This must:

- Be in writing (e.g. letter; fax; e-mail)
- Clearly describe the information you want, and
- Include your name and address.

2. Alternatively every public authority makes some information publicly available already, for example its annual reports, policy documents and financial information. It should describe this information in a 'Publication Scheme'. This will usually be available on their website or on request. The Scheme lists the information which the public authority routinely makes available, and states whether you will have to pay for that information.

Simply ask for it verbally and the public authority should send it to you soon afterwards.

4. When will you receive the information?

If the information is covered by a Publication Scheme, the public authority should provide it without delay.

However, if you make a formal freedom of information request, a public authority has up to 20 days to decide whether the law permits you to have the information, starting from the day after it gets your request.

In some cases this time limit may be extended. If so, the public authority should write to let you know.

5. What format will the information be in?

You can say in what format you would prefer to receive the information (e.g. on paper or electronically). You should discuss these formats with the individual public authority.

So far as is reasonably practicable a public authority shall give effect to the applicant's preference.

6. Will it cost you anything?

- (a) Charges for information covered by a Publication Scheme should be covered in the Scheme itself.
- (b) Where a request is made for access to information outside of the organisation's Publication Scheme, information may be supplied free of charge. However, you may have to pay an administrative fee to cover the actual costs of photocopying and postage to you of the requested information. You should be told in advance if a fee to cover this administration is required.

7. Will you receive everything you request?

- (1) The Act requires that a public authority should provide all the information you have requested. However, there are some restrictions on what it can provide. These are called exemptions. They allow public authorities to withhold information that should not be released into the public domain. Examples include information that identifies other people or may compromise national security.

If a public authority intends to reply on an exemption to withhold information from you, it must send you a refusal notice stating the exemption and saying why it applies.

- (2) A public authority may also refuse your request if:
- It estimates that the cost of complying would exceed a set limit – currently £450 to £600 depending on the authority. The limit is £450 for local authorities.
 - It cannot identify the information you want – in which case it should work with you to clarify your request.
 - It thinks your request is vexatious – in other words, if the primary purpose of your request is to cause harm or annoyance and not to obtain information, or
 - It has already given you similar information recently.

8. Can you complain?

- (1) You may complain to the public authority if you are unhappy about how it has handled your freedom of information request, or the decisions it reached over what to disclose. You may also complain if the public authority:-
- Failed to respond to your request within 20 working days or to explain why an extension to the 20-day reply period is needed;

- Failed to offer advice and help in connection with your request;
 - Made excessive or unreasonable charges for the information it supplied.
- (2) You can also complain if you think that an authority is not publishing information in accordance with its Publication Scheme (for example, if it refuses to let you have information that seems to be covered by its Scheme or it takes a long time to send it to you).

9. Who do you complain to?

In the first instance you should complain to the public authority itself. Where appropriate, the public authority should be able to reconsider all the relevant factors.

If you believe that the public authority has not dealt with your complaint properly, or if it does not have a complaints procedure you should complain to the Information Commissioner's Office. You should send in your complaint as soon as possible and preferably not later than two months after the public authority's response to your request for information.

PART 3

How to access environmental information

1. Who can environmental information be requested from?
2. How can a request be made?
3. How long does an authority have to respond to a request?
4. Can the information be charged for?
5. Does a public authority only have a duty to disclose information which it produced?
6. Are there any reasons why the information requested should not be released?
7. If an applicant is displeased with the response of a public authority how should they proceed?

- 1. Who can environmental information be requested from?**

Requests can be made to public sector organisations and non-public bodies carrying out a public function, for example utility companies

2. How can a request be made?

Requests for environmental information can be made verbally or in writing (hard copy/electronic). However, a request can be made to any employee of a public authority. If requests can be directed to the appropriate person/section it is likely that the request will be dealt with more efficiently.

3. How long does an authority have to respond to a request?

An authority must respond as soon as possible and at the latest within 20 working days, except in circumstances where the information requested is particularly complex and voluminous. In such cases the time limit can be extended by a further 20 working days. If the time limit is extended, the public authority must notify the applicant of this delay within 20 working days of the initial request, and state when they believe they will be able to respond in full.

4. Can the information be charged for?

A public authority cannot make a charge for allowing an applicant:-

- Access to any public registers or lists of environmental information; or
- To examine the information (at a place chosen by the public authority).

For all other situations, charging is at the discretion of the public authority (any charge must be reasonable).

5. Does a public authority only have a duty to disclose information which it produced?

No. Under the Environmental Information Regulations, any environmental information authorities hold can potentially be disclosed if requested, it is irrelevant whether that authority produced the information or whether it owns it.

6. Are there any reasons why the information requested should not be released?

There are certain restrictions (called exceptions) on the right to access environmental information. These restrictions are applicable to certain categories of information (e.g. national security information, protection of the environment etc).

If a public authority determines that the information cannot be released because it falls within one of these categories, the applicant must be informed and the decision must be explained.

7. If an applicant is displeased with the response of a public authority how should they proceed?

Initially applicants should apply to an authority's internal review/complaints procedure.

An applicant must apply to a public authority for an internal review in writing within 40 working days of receipt of the refusal notice.

Following the response from the public authority, should the applicant still be displeased with the response, a complaint can be made to the Information Commissioner's Office.

The Commissioner will normally only consider a complaint if an applicant has already exhausted the original authority's internal review/complaints procedure.