

Clare County Council

Data Protection Acts - Data Subject Access Request Policy (Under review)

The current Data Protection Acts 1988 and 2003 will be replaced by a new Data Protection Act (which is currently a Bill) and is due to be enacted shortly

1. Data Subject: A Data Subject is the living individual to whom the personal data relates.

2. Data Subjects are entitled to find out, free of charge, if a Clare County Council holds information about him/her. Data Subjects also have a right to be given a description of the information and to be told the purpose(s) for holding the information.(Article 15 GDPR).

Data Subjects must make the request in writing. Clare County Council must send you the information within 21 days

3. Data Subjects are entitled to the following information from Clare County Council:

- a) Confirmation as to whether we keep Personal Data relating to them.
- b) A description of the categories of Personal Data processed.
- c) A copy of such Personal Data in intelligible form.
- d) A description of the purpose(s) behind the processing of the Personal Data.
- e) The identity of those to whom we have disclosed (or currently disclose) the data and
- f) The source of the Personal Data (unless this is contrary to the public interest)

Under the GDPR there is no fee to make a Data Subject Access Request unless “*manifestly unfounded or excessive, in particular because of their repetitive character*”

4. Formalities for Data Access Requests

A Data Access Request must meet certain requirements as specified in the Data Protection Acts:

- (a) It must be in writing (this includes email);
- (b) It must include a reasonable level of appropriate information to help us to locate the information required. (However no reason for the request needs to be provided);
- (c) Clare County Council will make reasonable enquiries to satisfy ourselves about the identity of the person making the request to ensure we are not disclosing Personal Data to a party who is not entitled to it.

The policy and procedure in relation to requests by the Gardai (or a law enforcement agency)for access to personal data from council records in relation to the prevention, detection or prosecution of offences is covered by the policy set out in this document.

Data Access Requests should be submitted to the Data Protection Officer, Clare County Council, Áras Contae an Chláir, New Road, Ennis. Co. Clare or email: DPA@clarecoco.ie

Data Access Requests will be complied with within 30 day days of receipt of the request (extendable taking into account the “*complexity and number of requests*”).

Where reasonable additional information is required to substantiate the request as described in (b) and (c) above the time frame for responding runs from receipt of the additional information.

If we receive a very general Data Access Request, e.g. "please give me everything you have on me", the Data Protection Acts allow us to seek more detailed information on the nature of the request, such as the approximate date of a particular incident, our reference number, the identity of the other party etc. However, this will be assessed on a case-by-case basis.

The Data Protection Acts provide a right of access to a permanent copy of the Personal Data that is held about the Data Subject unless this is not possible or would involve disproportionate effort.

The information must be communicated to the Data Subject in an intelligible form. Usually this will mean that a photocopy or printout of the Personal Data will be provided to the Data Subject. However, where a Data Subject agrees, information can be provided in electronic format e.g. by email or on disk.

Access requests under apply to Personal Data held by Clare County Council in its computer systems and in manual form within a relevant filing system. However, where a document exists in duplicate, e.g. where correspondence is scanned into our systems, two copies of the same document will not be provided in response to a request.

The Data Protection (Access Modification) (Health) Regulations, 1989 (S.I. No. 82 of 1989): The Data Protection (Access Modification) (Health) Regulations, 1989 (S.I. No. 82 of 1989) provide that health data relating to an individual should not be made available to the individual, in response to a Data Access Request, if it would be likely to cause serious harm to the physical or mental health of the Data Subject. In the event that these Regulations apply, the health data in question will not be provided to the Data Subject but will, however, be furnished to the Data Subject's own medical practitioner.

5. Information which will not be provided

Clare County Council will not normally disclose the following types of information in response to a Data Access Request:

(a) Information about other People

A Data Access Request may cover information which relates to one or more people other than the Data Subject. The information about the other person may be Personal Data about that person, to which the usual data protection rules under the Data Protection Acts, including the restrictions on disclosure, apply. In such circumstances we will not grant access to the information in question unless either:

(i) the other person has consented to the disclosure of their data to the Data Subject; or
(ii) in all the circumstances it is reasonable to make the disclosure without that person's consent.

If the person's consent is not forthcoming and it is not reasonable to make the disclosure without consent, we will make available as much Personal Data as we can without revealing the identity of the other person (for example by excluding the person's name and/or other identifying particulars).

(b) Opinions given in Confidence

Where we hold Personal Data about the Data Subject in the form of an opinion given in confidence we are not required to disclose such opinions in response a Data Access Request in all cases.

(c) Repeat Requests

The Data Protection Acts provide an exception for repeat requests where an identical or similar request has been complied with in relation to the same Data Subject within a reasonable prior period. Clare County Council will consider that if a further request is made within a period of six months of the original request and where there has been no significant change in the personal data held in relation to the individual, it will be treated as a repeat request. Accordingly, where Personal Data has recently been provided to the Data Subject or his/her legal representative, Clare County Council will not normally provide a further copy of the same data in response to a Data Access Request. Clare County Council will not consider that it is obliged to provide copies of documents that are in the public domain.

(d) Privileged Documents

Where a claim of privilege could be maintained in proceedings in a court in relation to communications between an individual and his or her professional legal advisers (or between those advisers) any privileged information which we hold need not be disclosed pursuant to a Data Access Request.

6. Data Access Request refusal

Where Clare County Council refuses a Data Access Request, it will do so in writing and will set out the reasons for refusal. Any person who is dissatisfied with the response of Clare County Council to their request has the right to make a complaint to the Data Protection Commissioner.

7. Exceptions to Right to Data (to be revised under new legislation)

Section 5 of the Data Protection Acts provides that individuals do not have a right to see information relating to them where any of the following circumstances apply.

- (a) If the information is kept for the purpose of preventing, detecting or investigating offences, apprehending or prosecuting offenders, or assessing/collecting any taxes or duties: but only in cases where allowing the right of access would be likely to impede any such activities;
- (b) If granting the right of access would be likely to impair the security or the maintenance of good order in a prison or other place of detention;
- (c) If the information is kept for certain anti-fraud functions; but only in cases where allowing the right of access would be likely to impede any such functions;
- (d) If granting the right of access would be likely to harm the international relations of the State;
- (e) If the information concerns an estimate of damages or compensation in respect of a claim against the organisation, where granting the right of access would be likely to harm the interests of the organisation.
- (f) If the information would be subject to legal professional privilege in court;
- (g) If the information is kept only for the purpose of statistics or carrying out research, but only where the information is not disclosed to anyone else, and where the results of

the statistical work or research are not made available in a form that identifies any of the individuals involved.

8. Rectification or Erasure of Data

If a Data Subject seeks to have any of his or her Personal Data rectified or erased, this will be done within 30 days of the request being made provided there is reasonable evidence in support of the need for rectification or erasure.

Policy and procedure in relation to requests by the Gardai (or a law enforcement agency) for access to personal data from council records in relation to the prevention, detection or prosecution of offences:

The general principal is that personal data cannot be disclosed to a third party unless you have one of the following:

1. The persons (Data subjects) consent
2. A legislative basis

However, the Data Protection Acts allow for the disclosure of personal data in certain circumstances:

(extract from DPC website)

Section 8(b) "required for the purpose of preventing, detecting or investigating offences, apprehending or prosecuting offenders or assessing or collecting any tax, duty or other moneys owed or payable to the State, a local authority or a health board, in any case in which the application of those restrictions would be likely to prejudice any of the matters aforesaid"

If a data controller is approached by a law enforcement authority or by a tax collecting authority, which seeks to have personal data disclosed to it under this section of the Data Protection Act, it is a matter for the data controller:

- (i) to satisfy itself that the provisions of this section are met, for example by establishing the bona fides of the authority and by obtaining assurances that the disclosure is actually necessary, and not merely of side interest, for the investigation of an offence; and*
- (ii) to decide whether or not to comply with the request for disclosure.*

While this section of the Data Protection Act lifts the restrictions on disclosure by a data controller to a law enforcement authority or to a tax collecting authority, this section does not impose any obligation on a data controller to comply with the request for disclosure.

It is not a blanket exemption and must be applied on a case by case basis.

Procedure:

Accordingly, to establish the requirements in part (i) (and to comply with section 4 of the DPA - see below) any such requests should;

1. be made in writing (this includes email),
2. with some detail provided in relation to the data required,

3. confirm why it is required,
4. the name/s under which a search for such data is to be undertaken should also be indicated
 - a. (e. g. Patrick might be Pat, Pa, Paddy etc and McMahon could be Mac Mahon).
5. The Gardai should quote any relevant legislation which might apply to their request for data.

Written requests for personal data are forwarded to the Data Protection Officer to be registered.

There is a data protection nominee in each directorate and they would be consulted initially on all requests for personal data before any data is released.

While there may be instances where the data is urgently required, the above procedure in relation to how a request is made should be adhered to by all staff. Note that the 30 day maximum time limit to deal with the request also applies.

To be in accordance with the DPA, any request for personal data must be in writing.

Right of access.4.—(1) (a) Subject to the provisions of this Act, an individual shall, if he so requests a data controller in writing —

- (i) be informed by the data controller whether the data kept by him include personal data relating to the individual, and*
- (ii) be supplied by the data controller with a copy of the information constituting any such data, as soon as may be and in any event not more than 30 days after compliance by the individual with the provisions of this section; and, where any of the information is expressed in terms that are not intelligible to the average person without explanation, the information shall be accompanied by an explanation of those terms.*