

Data Subject Access Requests

We will make it easier, quicker and cheaper for you to deal with them

The full works



DATA SUBJECT ACCESS REQUESTS

Individuals have the legal right to make them and organisations have to respond to them – there is no choice in the matter

It is a fundamental right of any individual to ask for information about personal data stored by another party about him or her. Under UK law, the individual does so by making what is commonly known as a data subject access request – a DSAR – under the Data Protection Act 1998.

Any individual can make a DSAR of any organisation that holds his or her data – the data controller. The individual might be an employee or a customer of a business or a user of a service but does not need to be – what matters is that personal data is held about him or her. The data controller has to respond. The response must be quick. It must be full. If the data controller relies upon an exemption, that has to be spelled out. If a response is not given or is not right, the individual making the request might complain to the Information Commissioner or claim in the courts.

Experience tells us that data controllers are now encountering a swell of DSARs if not a flood. Individuals might raise a DSAR for many different reasons. The individual might, quite properly, wish to understand what information about him or her is being processed or held by an organisation. Sometimes it has to do with litigation in prospect or in train. Sometimes it has to do with an employment or contractual relationship. Other requests might be made simply to cause mischief, by putting an organisation to time and trouble in responding.

Data controllers have to respect the right of individuals to raise DSARs in accordance with the law. However, we can help organisations address properly and fully these requests. We can make it all easier and quicker.

We are versed in all the technicalities of the relevant law and what should or should not be done. Although the law is complex, we are adept at making it accessible for data controllers, and not clouding it in mystery.

We offer a complete package for dealing with DSARs – the full works. We provide the specialists who know their way around the subject. We supply a team of whatever size needed to sift and review volumes of data. We can lend the review platforms to process the material. And we will price what we do so that the organisations can save costs and accurately budget as well as being confident that a good job has been done.

The teams and the technology that can take the pain out of the exercise

We have a specialist team of more than 30 lawyers, including 8 partners and 22 solicitors, drawn from across the firm with direct experience of handling DSARs. As well as being experts in the intricacies of the law of data protection, they have a wider remit, and so cover related legal areas, such as the law of confidence and privilege. They are seasoned in the management of complex review projects. They know how to harness the technology and ensure that any review is conducted briskly, efficiently and correctly.

We can also deploy members of our Transaction Services Team (TST), which is more than 130 paralegals strong. They are schooled in providing support in extensive document searches and reviews. They represent a flexible and cost-efficient resource.

And we have the right review platforms in the shape of Relativity, a “gold standard” tool incorporating the latest technology, and ICEViewer, a lower cost alternative for less challenging reviews. We would be glad to work with any platform that an organisation itself might use. We have experience of using most platforms on the market.

DATA SUBJECT ACCESS REQUESTS

What is the problem?

There are reasons why there is a proliferation of DSARs:

- ▶ Individuals are more alive to the desirability of protecting their personal information
- ▶ Raising a DSAR is easy – it can be done informally, costs next to nothing and can be done with impunity
- ▶ DSARs are being used tactically, as a simple means of gaining potentially helpful material for individuals to pursue a grievance or litigation
- ▶ Data volumes continue to grow exponentially. There is much more to look at in order properly to respond
- ▶ Innovation and the ever increasing use of technology mean that there are multiple sources of data – every potential source might need interrogating

All of this means that the task of responding to DSARs can have a disproportionate impact on an organisation:

- ▶ Carrying out searches and reviews can be a drain on time and resources
- ▶ The law is complex and developing and not always easy to apply – no "one size fits all"
- ▶ It is increasingly hard to map data held by organisations
- ▶ Failures to answer and mistakes in answering risk court action or action by the regulator
- ▶ There is a risk that too much information might be provided – or indeed too little – and a risk that the organisation's own confidential information or that of a third party might be inadvertently disclosed

Overviews and checklists

We offer a collaborative approach. We would make it the first order of business to understand how an organisation goes about handling DSARs. We would:

- ▶ Comment on any protocols that should be in place
- ▶ Take account of the volume of DSARs faced and the teams in place to respond
- ▶ Consider the organisation's general practices – and advise on attendant risks

In equipping organisations to respond to a DSAR, we would go through the following checklist:

- ▶ Is the individual who makes the DSAR entitled to make the request?
- ▶ Has the request been made before – if so, for what, and when?
- ▶ What information could be properly subject to the DSAR?
- ▶ What might be the motivation underpinning the DSAR – is it related to prospective litigation?
- ▶ Is there any way of properly limiting the scope of the request?
- ▶ Are there any exemptions in play which might justifiably limit the scope of the response or the searches for records covered by the request?
- ▶ In responding, what data held should be searched? e.g. would the DSAR cover CCTV?
- ▶ How would be best to structure searches and reviews and approach them in a cost-efficient manner?
- ▶ How should the response be framed – by providing raw material or information?
- ▶ When might the response to the DSAR be due (currently 40 days after the request is made, but 30 days from 2018) - and is it possible to ask for more time?
- ▶ Could the organisation recover the cost of all the work that they are put to in responding to the DSAR – and (if not) what could the business do if the exercise is cost prohibitive?
- ▶ Could redactions be made of any material supplied – should they be made – and if so, how?

ISSUES FACING ORGANISATIONS

INCREASE IN LITIGATION AND REGULATION

60% of corporates reporting an increase

Conflicting regulations in multiple jurisdictions

Keeping track of changes is challenging

EXPLOSION OF DATA VOLUMES

Data volumes growing at 50% p.a.

Increase in variety and complexity of data

Cloud is scattering "data footprint"

TECHNOLOGICAL ADVANCEMENT

Adoption of new technology platforms

Mobile mindset tablets & iPhones

Instant messaging, social networking

BLURRED BOUNDARIES

Integrating life and work communications and devices

"Quasi-corporate" data on the rise

Challenging to monitor and enforce



INCREASED COSTS

Drain on time and resources

Significant and unbudgeted fines

Higher legal & compliance costs

INCREASED RISK

Mobile devices not as secure

Higher incidents of data leakage

Risk profile difficult to scope

UNCERTAINTY

Governance can become fragmented

Challenging to predict and manage

Concern about "loss of control"

STRETCHED RESOURCES

Budgets under pressure

General increase in workload

Limited document review expertise

THE FULL WORKS

We offer a full package to any organisation which needs help with DSARs

Under the General Data Protection Regulation (GDPR), in force in the UK from May 2018, we expect a surge in the number of DSARs.

After the GDPR becomes law, data controllers will not be able to ask for a fee. In a government impact assessment, it estimates that the number of DSARs may increase by 25-40% as a result.

On top of that, data controllers' time for responding is docked by 10 days, down from 40 to 30.

We can help organisations deal with this probable surge in work.

	<p>EXPERT LAWYERS</p> <ul style="list-style-type: none"> ○ Seasoned lawyers at all levels of seniority ○ Lawyers who take the time to listen and understand the organisation ○ Lawyers who will collaborate closely with the organisation so that the right and proportionate response is quickly arrived at 	<p>VALUE</p> <ul style="list-style-type: none"> ○ Strategic input ○ More focused/ efficient reviews ○ Reduced risk
	<p>TRANSACTION SERVICES TEAM</p> <ul style="list-style-type: none"> ○ A large team (130 strong) of paralegals – sufficient bench strength to deal even with the most taxing DSARs ○ A team schooled in the methodologies necessary to carry out reviews efficiently and quickly – and with no fuss 	<p>VALUE</p> <ul style="list-style-type: none"> ○ Right work at the right level ○ Available to help onsite, onshore or offshore ○ Deliver significant savings
	<p>PROCESS MAPPING</p> <ul style="list-style-type: none"> ○ Paths laid for getting the job done as efficiently as possible, with clear reporting lines – organisations know where they are in the process ○ Consistently and more efficiently, getting it right first time ○ Processes tailored to the organisation ○ The mapping constantly refreshed and improved 	<p>VALUE</p> <ul style="list-style-type: none"> ○ Deliver significant efficiencies ○ Improved quality output ○ Reduces overall risk
	<p>TECHNOLOGY</p> <ul style="list-style-type: none"> ○ Experts on all leading review platforms ○ Ability to size up quickly and carry out the job ○ Market leaders in use of predictive coding and technology assisted review ○ Constant assessment of new technologies ○ No ties to any particular platform provider ○ The right platform selected for the job ○ We know the capabilities and limitations of the technology 	<p>VALUE</p> <ul style="list-style-type: none"> ○ Vendor independent ○ Select the right platform ○ Rapid deployment

WHAT WE CAN OFFER YOU

▶ We can help you with:

- ▶ Training
 - ▶ Generic advice on internal processes for dealing with DSARs
 - ▶ Advice on the validity and scope of specific DSARs
 - ▶ Support with the design and implementation of searches
 - ▶ Document review – conducted by paralegals, supervised by specialist lawyers
 - ▶ Document redaction
 - ▶ Provision of information in response to request
 - ▶ Responding to investigations/enforcement by the Information Commissioner and other regulators
 - ▶ Potential litigation
- ▶ We understand the costs pressure. And we understand the need for as much certainty as possible. We also appreciate that organisations need to know they have done all they can to satisfy their obligations under the Data Protection Act.
- ▶ We have created a menu of prices corresponding with the above tasks typically involved in responding to a DSAR, allowing organisations to pick and choose what best suit their needs.

Platforms

The employment of an electronic review platform can greatly help in responding to a DSAR. We take a flexible approach to document review, working with a number of providers to ensure the best and most cost effective approach.

Mark Chesher leads our e-disclosure practice. He is a Legal Director in the firm and an acknowledged expert with unrivalled experience in the field.

As well as working with external providers, we also have two in-house platforms for processing and hosting electronic document reviews.

- ▶ For smaller DSARs we use ICEViewer, hosted by Consilio on its secure servers, but operated autonomously by our firm. ICEViewer allows us quickly to process and review modest collections of emails and documents.
- ▶ For larger DSARs, we offer our own Relativity platform. We have specialist “super users” in the TST.
- ▶ Our in-house capability means that we are able to sift data very quickly.
- ▶ We would also be glad to work with organisations’ own preferred providers or in-house platforms.

OUR APPROACH TO PRICING

After discussing your needs, we would devise a bespoke menu of services and prices to meet your requirements for responding to the DSARs that your organisation faces.

You would be provided with a complete “rate card” that will look similar to the example set out opposite.

The prices for the initial scoping meeting and initial advice would be fixed.

The cost of any review of documents would depend on whether you need us to host the data collated, the number of documents that are responsive to the search criteria, and the complexity of the DSAR and any underlying issues.

Depending on your requirements we could agree in advance the fixed fees for typical cases based on two or more different levels of complexity so you will be able to assess the likely cost of any given DSAR as soon as possible after it hits your desk.

EXAMPLE RATE CARD				
TASK		FIXED FEE		
Training for your team				
Initial scoping meeting or call				
Advice note and discussion				
Hosting and processing charge (ICEViewer)		£500 for up to 10GB for 6 months		
		LEVEL OF COMPLEXITY		
		1	2	3
Review of documents		Price per document		
	1001 – 10,000			
	10,001-30,000			
	30,001+			

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CASE STUDIES

- ▶ Assisting a high street bank with its response to a DSAR made by an individual who was litigating against the bank. Advising on application of exemptions, undertaking the review. Our TST also undertook the task of redacting 3,000 documents containing non-subject personal data in a single day
 - ▶ Defending proceedings brought against a company for failing to respond to a DSAR in which damages were claimed for distress
 - ▶ Advising an individual in a claim for damages after their personal data was provided by a local authority to a third party pursuant to a DSAR made by that third party
 - ▶ Acting for circa 100 victims of phone hacking in relation to claims against News Group Newspapers and/or Mirror Group Newspapers which included claims for breach of statutory duty under the DPA
 - ▶ Advising a university in relation to a DSAR request made by a former employee in the context of both High Court and Employment Tribunal proceedings
 - ▶ Advising an NHS Trust in relation to the unlawful disclosure of personal data of its employees to the media and the retrieval/deletion of that data
- ▶ Some other recent examples of DSAR reviews we have undertaken include:
 - ▶ A team of 5 from TST, supervised by 2 associates from our Employment team, conducted a review of 18,000 documents for a major bank. The team provided responsive information to the data subject within 11 working days of receipt of the documents
 - ▶ Another review which began with 13,000 documents. Our TST reviewers quickly realised that a number of documents had been harvested that would not contain relevant information. A tweak to the search strategy resulted in the reduction of documents to be reviewed to just over 1,850
 - ▶ On a matter for a major bank, a team of 4 paralegals working with our Employment team reviewed 9,400 documents and responded to a DSAR within 4 working days
 - ▶ We deployed ICEViewer for a major bank in response to a DSAR brought by a customer in litigation with the bank. We have also employed ICEViewer for internal investigations, early case assessment and smaller scale reviews
 - ▶ In a recent urgent matter we used ICEViewer to process an email inbox, undertake a review utilising the TST, and identify the 100 key documents - all within 24 hours of receiving the data

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Aberdeen, Doha, Dubai, Edinburgh, Glasgow, Hong Kong, Leeds, London, Manchester, Muscat, Singapore and Tokyo*

*a formal alliance with Hashidate Law Office

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