

## East Kent Learning Alliance

### Data Subject request procedures

07/11/2018

#### Introduction

The GDPR (General Data Protection Regulation) creates some new Rights for Data Subjects as well as strengthening existing Rights. As a Data Controller, East Kent Learning Alliance Ltd (EKLA) must be able to comply with these Rights. The GDPR provides the following Rights for individuals:

- Right of Access (Also known as a Subject Access Request) **(Such requests must be dealt with within 1 calendar month)**
- Right to Rectification **(Under GDPR must be dealt with without undue delay)**
- Right to Erasure **(Under GDPR must be dealt with without undue delay)**
- Right to Restrict Processing
- Right to Data Portability
- Right to Object
- Rights in Relation to Automatic Decision Making and Profiling

Further information about each of the above Rights can be found in **Appendix 1** of this procedure. It is important that should you receive and identify such a request against any of the above Rights that this procedure is followed.

It is important to recognise that such requests may be made by current or past EKLA Staff, customers or contractors and may not follow a clear and standard format where the Data Subject clearly sets out which Right they are requesting to be exercised. For example they may simply say 'I want to know what EKLA is using my data for' or 'I want to see all emails about me in the EKLA system'.

When a request is recognised it is important that you obtain some basic details about the request, such as the time frame, whether it is in relation to a particular event or time / activity as this can help to provide the correct information required in a timely manner before forwarding the request to the Data Protection lead action.

**It should be noted that Data Subjects can make such requests verbally (for example over the telephone), as well as in an email or postal letter.**

#### Purpose

The purpose is to provide a procedure to follow when a Data Subject Request in relation to the above rights is received by EKLA.

#### Responsibilities

All staff and contractors have a responsibility to recognise a request and to comply with the procedure as follows.

## Procedure

Where a request is received by staff or contractors covering any of the GDPR Data Subject Rights (See Section 1 of this document) the request must be passed to ECLA's Data Protection lead immediately.

If the request was made over the phone then as much information as possible regarding what was requested must be typed into an email and sent to the Data Protection lead immediately. If the request is received in a postal letter, this can either be scanned or sent to the Data Protection lead by email, or the hardcopy taken to the Data Protection lead immediately.

The Data Protection lead will process the request accordingly and respond to the Data Subject in line with the legislation. They may ask for input and/or provision of data from across ECLA in order to ensure they have fully complied with the request. Due to the time limits for complying, staff requested to assist should treat such requests as a priority.

If there is uncertainty around whether it is a request please refer to the Data Protection lead for further advice.

On receipt of a request the Data Protection Lead will obtain identification to confirm they are the data subject.

Depending on the type of request will determine how the request will proceed, Appendix A provides details on how requests will be dealt with.

## Associated documents and policies

This policy is to be read in conjunction with the related policies;

- Data Protection Policy

## Definitions

<b>Data Subject</b>	An individual who is the subject of personal data and whom particular personal data is about.
<b>Personal Data</b>	'Personal data' means any information relating to an identified or identifiable person ('data subject'). An identifiable person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that person;
<b>GDPR</b>	General Data Protection Regulation is a regulation by the European Parliament intended to strengthen and unify data protection for individuals.
<b>Processing</b>	Obtaining, recording or holding the information or data or carrying out any operation or set of operations on the information or data, including – organisation, adaptation or alteration of the information or data, retrieval, consultation or use of the information or data, disclosure of the information or data by transmission, dissemination or otherwise making available, or alignment, combination, blocking, erasure or destruction of the information or data.

<p><b>Legal Basis for Processing</b></p>	<p>Processing will only be lawful if at least one of the following applies:</p> <ul style="list-style-type: none"> <li>a. the data subject has given consent to the processing of their personal data for one or more specific purposes</li> <li>processing is necessary for the performance of a contract with the data subject or in order to take steps to enter a contract</li> <li>processing is necessary to comply with a legal obligation</li> <li>processing is necessary to protect the vital interests of the data subject</li> <li>processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller</li> <li>processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party, except where such interests are overridden by the of the data subject</li> </ul>
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## Appendix 1 – Rights of Data Subjects:

### Right of Access (Also known as a Subject Access Request)

Data Subjects have the Right to obtain:

- Confirmation that their data is being processed
- Access to their personal data and
- Other supplementary information

Identification must be obtained and where needed any third party data should be redacted prior to release.

**Right of access requests must be responded to within one month.**

### Right to Rectification

Data Subjects are entitled to have their personal data rectified if it is inaccurate or incomplete. If the information in question has been disclosed to a third party the Data Controller must inform them of the request for rectification where possible. The Data Subject is also entitled to be informed of the third parties to whom the data has been disclosed, where appropriate.

**Rights to rectification must be responded to within one month.**

### Right to Erasure

This Right is also known as the ‘Right to be forgotten’. It enables Data Subjects to request the deletion or removal of personal data where there is no compelling reason for its continued processing by the Data Controller.

The Right to Erasure applies in the following circumstances:

- The personal data is no longer necessary in relation to the purpose for which it was originally collected
- The processing was based on consent, and the Data Subject has now withdrawn their consent
- The Data Subject objects to processing and there is no overriding legitimate interest of the Data Controller
- The data was being unlawfully processed
- The data must be erased to comply with a legal obligation

## **Right to Restrict Processing**

When this Right is exercised you are permitted to store the personal data but not further process it. Restricted information about the individual may be retained to ensure that the restriction is respected in the future.

The Right to Restrict Processing applies in the following circumstances:

- When a Data Subject contests the accuracy of their personal data, then processing should be restricted to storage only until accuracy is verified
- When a Data Subject objects to processing which is being carried out for the reason of performance of a task in the public interest, or for the legitimate interests of the Data Controller, then the Data Controller must restrict processing to storage only whilst they consider whether their legitimate grounds override the Rights and freedoms of the individual.
- When processing is unlawful and a Data Subject opposes erasure and requests restriction to storage instead.
- When the Data Controller no longer needs the personal data but the Data Subject requires it for the purpose of a legal claim.

## **Right to Data Portability**

This Right allows individuals to obtain and reuse their personal data for their own purposes across different services. It allows the individual to move, copy or transfer personal data easily from one IT environment to another in a safe and secure way in a common data format, for example, Excel or CSV file.

- The Right to Data Portability applies in the following circumstances:
- When the personal data was provided to the controller directly by the Data Subject
- Where the processing is based on consent or performance of a contract
- When processing is carried out by automated means

## **Right to Object**

Individuals have the Right to object to:

- Processing based on legitimate interest or performance of a task in the public interest/exercise of official authority (including profiling)
- Direct marketing (including profiling)
- Processing for the purposes of scientific/historical research and statistics

## **Rights in Relation to Automatic Decision Making and Profiling**

This Right provides safeguards for individuals against the risk that a potentially damaging decision is taken without human intervention.

The Right not to be subject to a decision applies when:

- It is based on automated processing
- It produces legal/significant effects on the individual
- It does not apply if the decision:

- Is necessary for entering into or performance of a contract
- Is authorised by law
- Is based on explicit consent
- Does not have a legal/significant effect on the data subject