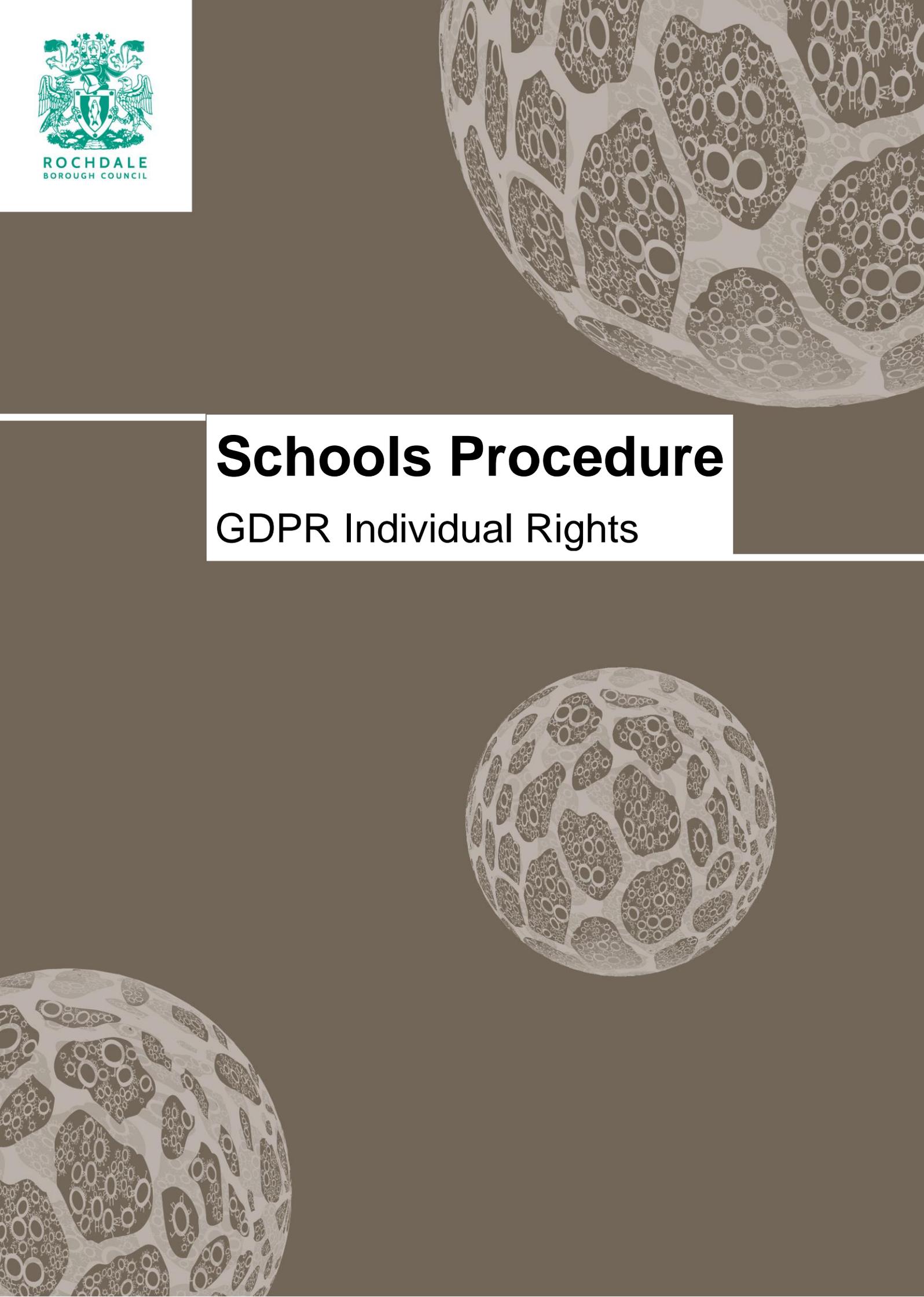




Schools Procedure

GDPR Individual Rights



Document Control

Document Title: GDPR Individual Rights Procedure

Summary

Publication Date	May 2018
Related Legislation / Applicable Section of Legislation	General Data Protection Regulation Data Protection Act 2018
Related Policies, Strategies, Guideline Documents	Overarching IG Policy
Replaces	Not applicable
Joint Procedure (Yes/No)	No
Name of Partner(s) if joint	Not applicable
Procedure Owner (Name/Position)	Maria Tickle, IG Planning & Risk Manager
Procedure Document Author (Name/Position)	Maria Tickle, IG Planning & Risk Manager

Review of Procedure

Last Review Date	Not applicable
Review undertaken by	
Next Review Date	December 2018

Document Approvals

This document requires the following approvals.

Name	Title	Date of Issue	Version Number
Maria Tickle	IG Planning & Risk Manager	8 th May 2018	Version 1
Maria Tickle	IG Planning & Risk Manager	22 nd May 2018	Version 2

Executive Summary

From 25th May 2018, the General Data Protection Regulation (GDPR) as supplemented by the UK Data Protection Act 2018 (not in place yet) will have legal effect. This replacement data protection framework places new obligations on organisations and strengthens the rights that individuals have over the processing of their personal information. This is covered in Chapter III, Articles 15 to 21.

This procedure outlines the requirements that all employees, contractors and members needs to follow. The procedure should be read in conjunction with the RBC Overarching IG Policy.

1. Introduction

Under this legislation, individuals have specified rights relating to their personal data which are limited and require an assessment to determine if they meet the legal criteria. In addition to the rights documented in this procedure, there is also a 'right to be informed' of how information is being processed which is detailed in a separate guidance document. This relates to privacy notices.

These rights are not absolute and are subject to specific conditions and exemptions. In some cases they only apply if the processing activity is undertaken on specific legal grounds and/or in defined circumstances. Therefore all of these rights are unlikely to be engaged in all cases.

The rights need an initial assessment by the School to ensure that:

- Identity is verified and the request has been clarified where this is necessary.
- When clarification is received, an assessment as to whether the request meets the criteria and is therefore valid.

The GDPR clarifies that the reason for allowing individuals to access their personal data is so that **they are aware of and can verify the lawfulness of the processing** (Recital 63).

There will be an expectation that School records are kept in a manner that facilitates compliance with requests for information.

Right	Guidance
<p>SUBJECT ACCESS (Article 15) Ask for confirmation of whether their personal data is being processed and access to personal information held about them. This can be done at 'reasonable' intervals to be aware of, and verify, the lawfulness of the processing.</p>	 A15 Subject Access.docx
<p>RECTIFICATION (Article 16) Ask for information to be corrected if it is inaccurate or incomplete. The right to have incomplete information updated through the provision of a supplementary statement is dependent upon the 'purpose' of the processing e.g. if the information will not be used in future to take a decision, this could limit this right.</p>	 A16 Rectification.docx
<p>ERASURE (Article 17) Ask for personal information to be erased/deleted (right to be forgotten). This right applies where there is no need to hold the data, it should have been deleted, consent is withdrawn, an objection is successful or it has been collected unlawfully. These requests are unlikely to be upheld where there is a lawful and compelling reason that justifies continued processing.</p>	 A17 Erasure.docx

<p>RESTRICTION (Article 18) Ask that we quarantine or stop processing/using personal information without deleting it. Restriction of processing means the marking of stored personal data with the aim of limiting or preventing their future use. A requestor could ask that we stop processing their data if they have asked for information to be corrected or erased or they could ask that information is NOT deleted if the requestor needs them for legal or other purposes. Contact the IG Unit for advice.</p>	 A18 Restriction.docx
<p>NOTIFICATION (Article 19) This only applies where a data subject has made a successful request for <u>Rectification</u>, <u>Erasure</u> or <u>Restriction</u>. The right is to have any changes or erasure to their information communicated to anyone with whom the data has been disclosed unless it is impossible or involves disproportionate effort.</p>	 A19 Notification.docx
<p>PORTABILITY (Article 20) Ask that information (provided by the individual but processed using automated means) is made available in a machine readable format to the individual or another organisation. This right applies when processing is based on consent or a contract. This needs to be technically feasible.</p>	 A20 Portability.docx
<p>OBJECT (Article 21) – Objections to Processing Object to how personal information is being processed and ask that the processing is stopped. The School needs to demonstrate that its interest overrides the interest of the data subject. There is an absolute right to stop processing for direct marketing purposes. This right must be considered on its own merits.</p>	 A21 Objection to Processing.docx
<p>AUTOMATED DECISION MAKING (Article 22) Ask that he is not subject to a decision made using ADM if it has a legal effect. The exceptions are that it is necessary to enter into a contract or is based on the requestor's explicit consent. A decision made using an automated computer process needs to be reviewed by a human if it has a legal effect.</p>	
<p>PROFILING (Article 22) Profiling means any form of automated processing of personal data consisting of the use of personal data to evaluate certain personal aspects relating to a natural person, in particular to analyse or predict aspects concerning that natural person's performance at work, economic situation, health, personal preferences, interests, reliability, behaviour, location or movements;</p>	 A22 Automated Decision Making & Prc

2. Managing Requests Procedure

The procedure needs to be applied as it is documented below. Any queries or exceptions need to be agreed by a manager and a note of the decision and reason for it kept with the response documentation.

Requests can be received verbally or in writing and could be received via social media.

Under GDPR and the Data Protection Act 2018 (not in place yet), safeguards need to be applied to protect personal data. These safeguards have been strengthened by allowing individuals certain rights to a) be informed of the processing of their data and b) challenge how & why their information is used.

2.1 Initial Tasks – Identity Verification and Clarification

Before responding to a request, the School needs to ensure that the requestor is who they say they are and that they have clarified which right(s) they are exercising and/or supplied enough information to help you to respond to the request e.g. for subject access provided clear information on where the information they have requested will be found. Note – the wider the request, the longer it will take to complete, so it is important that you help requestors to provide a focus their search.

You must verify the identity of the person making the request, using ‘reasonable means’.

The requestor needs to provide ‘reasonable’ documentary proof of who they are to ensure that personal information is not accessed by another person. The requirements could be:

- Your knowledge that the individual is who they say they are e.g. a face to face request from a parent known to the school.
- Two proofs of identity which also provide confirmation of the current address.
- Copies can be accepted by post but the School should reserve the right to have sight of original documentation.
- Copies of recent utility bills (within the last 3 month period) bearing the name and current address and/or copies of a driving licence or passport.

The individual can be asked where the information they are requesting can be found (Recital 63).

This means that requests asking for ‘any information you hold about me’ may need to be challenged and the requestor asked to provide additional information e.g. the time period they attended the school, the names of children if the request relates directly to a parent and you would need this information to aid your search.

There is no ‘blanket refusal’ available if additional information is not provided. If they cannot provide required information, a decision can subsequently be taken to refuse the request as being manifestly unfounded or excessive but only in LIMITED circumstances.

Policy/Guidance & Templates		
All requests	In cases where there is inadequate or contradictory information to verify identity, the request will be refused.	See refusing a Request Point 2.9
All requests	In cases where (after attempts are made to clarify) the request is deemed to be unfounded, excessive or repetitive it will be refused.	See refusing a Request Point 2.9

2.2 Requests from 3rd Parties and/or Parents

A friend, relative, advocate or solicitor can make a request when they are acting on behalf of an individual.

If an individual lacks mental capacity, a person with a lasting power of attorney appointed or a Deputy appointed by the Court of Protection may exercise rights on behalf of the data subject.

A child can submit a request directly but as a general rule a child must have sufficient understanding and maturity to exercise their own rights and a common sense approach will be adopted in the event a child or young person submits a request.

For children aged under 13, it will generally be expected that a request is made by a person with parental responsibility with whom the child normally resides and ‘best interest’ considerations will be taken into account.

In all cases, 3rd parties must supply written authority to confirm that they are acting for the requestor and must provide the identification referred to above relating to the requestor.

Policy/Guidance & Templates		
All requests	In cases where there is inadequate or contradictory information to verify the identity of the data subject or advocate, the request will be refused.	See refusing a Request Point 2.9
All requests	In cases where (after attempts are made to clarify) the request is deemed to be unfounded, excessive or repetitive it will be refused.	See refusing a Request Point 2.9

2.3 Verbal Requests

Requests can be made verbally and need to be identified and adequate information collected from the requestor to manage the request e.g. contact details for the requestor, details of the request.

If you have a form, it may help the requestor to complete it but you cannot insist that a form is completed.

It would be good practice, for verbal requests, to confirm in writing to the requestor what they have asked for.

2.4 Timeframes for Responses

Information must be provided at least within 1 month of receipt unless the request is complex when the timescales can be extended by up to 2 months. The requestor must be notified of this before the first month has ended.

- A month is 30 days
- Day 1 is the day after receipt of identification and clarification of where information may be held (where applicable) to locate it.

Example - An organisation receives a request on 3 September. The time limit will start from the next day (4 September). This gives the organisation until 4 October to comply with the request. If this is not possible because the following month is shorter (and there is no corresponding calendar date), the date for response is the last day of the following month. If the corresponding date falls on a **weekend** or a **public holiday**, you will have until the next working day to respond. This means that the exact number of days you have to comply with a request varies, depending on the month in which the request was made.

Policy/Guidance & Templates	
All requests	The standard response time will be 30 days. It is unlikely that extensions would be compliant unless they could be shown to be exceptional.
All requests	Examples of cases where an extension could be sought would be a request for HR records for someone no longer employed where detailed searches would have to be undertaken
Exemptions	The Data Protection Bill will finalise exemptions to some but not all of these rights. More detailed guidance when available

<p>Objections, Rectification & Restriction</p>	<p>If disputes over accuracy and objections to processing are not resolved quickly, you may need to 'restrict' processing of the data pending a determination. Where data is restricted, it may only be used for defined purposes (see guidance and template letters)</p> <p>As a restriction could have consequences for both the requestor and Council, it is imperative that they are investigated and resolved promptly. A lengthy restriction could cause disruption to the service as access to and use of the data is not allowed e.g. a statistical report is due to be submitted to the DfE – you cannot include the individuals data in the report if this data is restricted.</p>
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2.5 Deferred Requests

Requests that are deferred and subsequently not responded to by the requestor, for either ID or information needed to understand the scope and nature of the request, it will be closed 1 month after the written request for ID or clarification has been sent.

Requestors can re-submit requests.

If a requestor disputes closure of request on basis they consider we have the required ID and necessary information and this is not the case, then we may consider formally refusing the request based on grounds the request is manifestly unfounded. Advice of IG Unit should always be sought first

2.6 Charges

Information must be provided free of charge unless the request is repetitive (the requestor has asked for copies of information already provided or similar information to something already provided). In these cases a reasonable administration fee can be charged which could include the cost of paper, photocopying charges, staff time and postage.

Policy/Guidance & Templates	
The Fee	The fee must be based on the administrative cost of providing the information.

Where a request is 'manifestly unfounded, excessive or repetitive', the law says we can either:

- charge a fee to respond, or
- refuse the request on one or more of these grounds

If we conclude that a request is manifestly unfounded, excessive or repetitious, we will refuse the request as a matter of policy and therefore the question of levying a charge does not arise.

2.7 Format of Response

A requestor can ask for a response in a particular format. We will try to meet their requirements where it is reasonably practicable to do so. It may be convenient to fulfil subject access requests by providing copies of documents but the requester is only entitled to access their personal information and is not entitled to demand copies of the documents in which the personal data is held. It is important that any information passed to the Officer responding to the request specifically highlights this.

In all cases staff should adhere to the ICO guidance that all SAR documents sent to a requestor are stamped 'data subject copy' before release. This may help identify the source of any further disclosure of the information, should the need arise e.g. they get left in the pub by the requestor.

In cases where the requestor asks for information to be posted, we need to ensure, where there are large amounts of information or it is particularly sensitive, they are clearly informed of the security risks of posting the information and agree to accept this risk. The Officer should be signposted to information on secure posting practices.

In cases where electronic data is transmitted to a requestor, they should be clearly informed of the security risks of keeping information on an insecure system.

2.8 Withholding information (Redaction)

The right of access to information does not extend to a right to see information about other people which could be included with the requestor's information. The GDPR states that '*the right to obtain information shall not adversely affect the rights and freedoms of others*'. Information will be redacted where it is reasonable in the circumstances to do so. **Err on the side of caution.**

In cases where information is so interlinked that it does not seem to be possible to disclose without breaching another person's right to privacy, you may need to seek advice and a note of the decision and reason for it recorded and kept with the response documents.

The names of professional staff involved in decision-making will often be disclosable and their identities will not be automatically redacted, unless this is warranted in a particular case e.g. there are health and safety concerns relating to the staff member if information is disclosed.

There are a limited number of exemptions to subject access. If information is withheld on the basis that it is exempt from disclosure, in most cases, an explanation will be given of the exemption applied and the reasons for this (unless doing so would prejudice ongoing law enforcement purposes and/or criminal investigations).

2.9 Refusing a Request & Exemptions

In certain circumstances the School can refuse to act on a request by applying a specific exemption. Exemptions are, in many cases, specific to the right and need to be carefully considered.

Some of the exemptions are documented here:

- Rights of other individuals
- Crime and taxation
- Immigration
- Determined by law, and legal proceedings
- Public protection and regulatory functions
- Parliamentary privilege
- Judicial appointments/proceedings
- Other people's data unless consent, or reasonable without consent
- Self-incrimination
- Corporate finance
- Management forecasts
- Negotiations
- Confidential references
- Exams
- Special purposes e.g., artistic, literary, journalistic
- Research and statistics
- Archiving in the public interest

In order to successfully apply an exemption, clear documentary evidence needs to be provided for withholding some or all of the requested information with an explanation of how the exemption applies to the request (unless doing so would reveal exempt information e.g. information held for a fraud investigation that the requestor is unaware of).

When a request is refused, the reasons for the refusal must be explained unless it would reveal processing and prejudice another investigation. Information must be given on the right to complain to the supervisory authority.

Policy/Guidance & Templates		
Manifestly excessive	unfounded or	You have to document why this is the case
Repeated		You have to document why this is the case

2.10 Record Keeping

In all circumstances the School have to maintain records of the request INCLUDING copies of any information/documents disclosed, email delivery receipts. In cases where you need to refuse to comply with a request, information relating to previous requests will be required to justify any decisions taken.

Evidence Checklist		
Original request	Response	Timescales for response
Exemptions applied	Copies of documents released including a full version and the redacted version released to the requestor.	
Approval of responses	Management decisions taken	

3. Procedure Review Date

The DPO is responsible for monitoring and reviewing this policy. This policy will be reviewed and updated when the Data Protection Bill becomes law (as the Data to capture any changes that will affect the Schools practice.

4. Supporting Documents (Links)

Right	Further Guidance
SUBJECT ACCESS (Article 15)	https://ico.org.uk/for-organisations/guide-to-the-general-data-protection-regulation-gdpr/individual-rights/right-of-access/
RECTIFICATION (Article 16)	https://ico.org.uk/for-organisations/guide-to-the-general-data-protection-regulation-gdpr/individual-rights/right-to-rectification/
ERASURE (Article 17)	https://ico.org.uk/for-organisations/guide-to-the-general-data-protection-regulation-gdpr/individual-rights/right-to-erasure/
RESTRICTION (Article 18)	https://ico.org.uk/for-organisations/guide-to-the-general-data-protection-regulation-gdpr/individual-rights/right-to-restrict-processing/
NOTIFICATION (Article 19)	No current guidance

PORTABILITY (Article 20)	https://ico.org.uk/for-organisations/guide-to-the-general-data-protection-regulation-gdpr/individual-rights/right-to-data-portability/
OBJECT (Article 21) – Objections to Processing	https://ico.org.uk/for-organisations/guide-to-the-general-data-protection-regulation-gdpr/individual-rights/right-to-object/
AUTOMATED DECISION MAKING (Article 22)	https://ico.org.uk/for-organisations/guide-to-the-general-data-protection-regulation-gdpr/individual-rights/rights-related-to-automated-decision-making-including-profiling/
PROFILING (Article 22)	https://ico.org.uk/for-organisations/guide-to-the-general-data-protection-regulation-gdpr/individual-rights/rights-related-to-automated-decision-making-including-profiling/

Rochdale Borough School
Number One Riverside
Smith Street
Rochdale OL16 1YH

 rochdale.gov.uk

 01706 647474

 School@rochdale.gov.uk

