



## **Data Protection Technical Guidance Subject access requests and legal proceedings**

**Information Commissioner's Office**  
Promoting public access to official information  
and protecting your personal information

**The Data Protection Act 1998 gives individuals a right of access to information about themselves. The Freedom of Information Act 2000 gives a right of access to recorded information held by public authorities.**

**The aim of this guidance is to provide an explanation to Legal practitioners and Data Protection specialists of the Information Commissioner's view on the exercise of these access rights where legal proceedings are contemplated or ongoing**

### **Data Protection Act 1998**

Section 7 of the Data Protection Act 1998 entitles an individual to request from a data controller a copy of the information constituting personal data about him. This right is subject to a number of exemptions in Part IV and schedule 7. There is nothing in section 7, nor Directive 95/46/EC, limiting the purposes for which a subject access request may be made. There is also nothing to provide for a data controller to require the data subject to state the purposes for which he intends to use information obtained as a result of his subject access request. There are also no exemptions from the right of access where civil legal proceedings are contemplated or ongoing.

If a data controller refuses to comply with a subject access request, then the applicant may complain to the Information Commissioner and / or apply to the Court for an order under section 7(9). Under section 40, the Commissioner has discretion to serve an enforcement notice requiring a data controller to comply with section 7.

In practice, subject access rights are often used by individuals who are in dispute with the data controller. In many cases, they may intend to begin or have already begun legal proceedings against the data controller and see section 7 as a way of obtaining additional information to assist in such proceedings.

It has been suggested that recent case law, and in particular *Durant v Financial Services Authority* [2003] EWCA Civ 1746, provides authority for data controllers to refuse to comply with a subject access request where the applicant is contemplating or has already begun legal proceedings.

The Commissioner does not accept this proposition. He takes the view that failing to comply with a subject access request in such circumstances will, unless an exemption under the Act applies, amount to a breach of the Sixth Data Protection Principle. The right of subject access is one of the cornerstones of Data Protection legislation. If a data controller were able to avoid complying with a subject access request in circumstances where the data subject was contemplating or had begun legal proceedings it would seriously undermine this fundamental right.

However, the courts do have discretion as to whether to grant an order under section 7(9) and may be reluctant to exercise that discretion where it is clear that the purpose

of the request is to fuel separate legal proceedings and, importantly, where the discovery rules under the Civil Procedure Rules would provide a more appropriate route to obtaining the information sought. The Commissioner is also likely to take such matters into account when considering whether to exercise his enforcement powers under section 40.

## **Freedom of Information Act 2000**

Section 1 of the Freedom of Information Act 2000 entitles a person to request any recorded information held by a public authority. Although this right is subject to a number of exemptions, a public authority cannot refuse to comply with a request simply on the grounds that civil legal proceedings are contemplated or ongoing. Like subject access requests made under the Data Protection Act, the purpose for which the information is sought is irrelevant and a public authority cannot require the applicant to tell it why the request has been made.

Under section 50, a complainant may apply to the Commissioner for a decision whether their request for information has been dealt with in accordance with the requirements of the Freedom of Information Act. In many cases, the Commissioner is under a duty to serve a decision notice, when a complaint is upheld, on both the public authority and the complainant. Where the public authority has failed to provide the information requested, the decision notice will specify the steps required by the authority to comply with that request. If a public authority fails to comply with a decision notice, the Commissioner may certify that fact to the court which may deal with the authority as if it had committed a contempt of court.