My personal information

Explains your rights to see and have copies of your personal information, and how to complain if access to your records is refused or if what is written about you is wrong. Applies to England and Wales.

- Overview
- Terms you need to know
- My rights
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Overview

If you have a mental health problem, sometimes you, or someone who is caring for you, may want to see information held about you by an organisation.

Quick facts

- You have a legal right to access personal information held about you by an organisation. This right is protected by the Data Protection Act 1998.

- To access your personal information, you need to make a request in writing, called a subject access request.

- Organisations have 40 calendar days to respond to your subject access request.

- If your request is refused or ignored, you should write to the organisation to remind them of their obligations. If they still don't give you what you've asked for, you should complain to the organisation.

- If you don't receive a satisfactory response to your complaint, you can complain to the Information Commissioner's Office.

Please note

- This guide only covers accessing personal information from the point of view of a person with a mental health problem.

- This guide applies to England and Wales.

- This guide contains general legal information, not legal advice. We recommend you get advice from a specialist legal adviser or solicitor who will help you with your individual situation and needs. See Useful contacts for more information.
## Terms you need to know

<table>
<thead>
<tr>
<th>Term</th>
<th>Meaning</th>
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<tr>
<td>Advocate</td>
<td>An advocate is a person who can both listen to you and speak for you in times of need. Having an advocate can be helpful in situations where you are finding it difficult to make your views known, or to make people listen to them and take them into account. Find out more on our <a href="#">advocacy information page</a>.</td>
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| Attorney                    | An attorney is a person over the age of 18 whom you have appointed to make decisions on your behalf about your welfare and/or your property and financial affairs. You need an attorney if you are unable to make such decisions yourself. If you do not have the capacity to appoint an attorney, the [Court of Protection](#) will appoint a deputy to perform this role.  
  - A health and welfare attorney makes decisions about things like your daily routine, your medical care, where you live and, if you specially request this, whether you should have life-sustaining treatment.  
  - A property and financial affairs attorney makes decisions about things like paying bills, collecting benefits and selling your home. |
| Capacity                    | 'Capacity' means the ability to understand information and make decisions about your life. Sometimes it can also mean the ability to communicate decisions about your life.  
  If you do not understand the information and are unable to make a decision about your care, for example, you are said to lack capacity. |
<p>| Court of Protection         | The Court of Protection makes decisions and appoints deputies to act on your behalf if you are unable to make decisions about your personal health, finance or welfare. |
| Data Protection Act 1998    | The Data Protection Act 1998 is the law that gives you rights to look at and have copies of information held about you by various organisations and agencies. |</p>
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<th><strong>Data subject</strong></th>
<th>This is the person to whom the information relates. If you want to access information held about you, then you are the data subject.</th>
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| **Disproportionate effort** | This is not defined in the Data Protection Act 1998, but the Information Commissioner’s Office suggests that the following should be taken into account:  
  - the cost of giving you the information  
  - the length of time it will take  
  - how difficult it will be  
  - the size of the organisation  
  - the effect on you of not having the information in permanent form |
| **Enforcement notice** | A document sent to an organisation by the Information Commissioner’s Office setting out the action it needs to take to comply with its obligations under the Data Protection Act 1998. Failure to comply with an enforcement notice is a criminal offence which can result in a fine. |
| **Health record** | Any record of information relating to your physical or mental health that has been made by or on behalf of a health professional. |
| **Inaccurate data** | Information that is incorrect or misleading as to any matter of fact. |
| **Information Commissioner’s Office (ICO)** | The independent body responsible for making sure that organisations comply with their obligations under the Data Protection Act 1998. |
| **Personal information** | Information which relates to you in such a way that you can be identified from the information. It might be held on computers, in emails, be printed, in handwritten documents, in photographic images, videos or audio recordings. |
| **Redact** | This means removing the relevant information. It can be done by crossing through the relevant information with a black marker pen and then photocopying the document or by using a computerised programme specially designed for this purpose. |
A written request to an organisation asking for details of the personal information they hold about you.

My rights

- Do I have a right to access my personal information?
- What records do I have a right to see?
- Does the organisation have to let me see all of the personal information I ask about?
- Can I request copies of information held about someone else?
- What are the exceptions to the duty to disclose personal information?

Do I have a right to access my personal information?

Yes, you have a legal right to access personal information held about you by an organisation.

This right is protected by the Data Protection Act 1998, which deals with the rights of people to look at and have copies of information which is held about them by various organisations and agencies.

What records do I have a right to see?

You have the right to ask an organisation:

- what, if any, personal information it holds about you
- why it holds that information
- who it may be sharing your information with
- where the information came from
- for an explanation of any technical or complicated terms relating to the information

You also have the right to see the information held about you and/or to be given copies of it. This includes both computerised and paper records.

The types of organisations that might hold personal information about you include:

- GPs
- hospitals
- social services
- the police
- your employer
- the Department for Work and Pensions

Does the organisation have to let me see all of the personal information I ask about?

Organisations must make proper efforts to find the information you have requested, although they do not have to do anything that would be unreasonable or disproportionate to the importance of providing you with the information.
This does not mean that organisations can refuse to provide the information purely because it will require a lot of work to find it or because it will be inconvenient to do so.

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<th>What is a reasonable request?</th>
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<td>An organisation cannot refuse your request because the information you have requested has been archived at a facility hundreds of miles away. They should have procedures in place to get this archived information.</td>
<td>On the other hand, if the information you have requested is contained in computerised records that have been deleted from the organisation’s system as part of its normal IT management processes, it would not be fair to expect the organisation to spend huge amounts of money employing a technical expert to try to recover the data.</td>
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**What form should the information be in?**

If you have requested copies of your records, the organisation must provide copies in a permanent form (for example photocopies, on a USB memory stick or on a disk) unless:

- you have agreed to the information being provided in some other way (for example, viewing it at the organisation’s offices), or
- doing so would be impossible or involve disproportionate effort. The ‘disproportionate effort’ exception can only be relied on in very exceptional circumstances as there will usually be an alternative – for example, inviting you to see the information at the organisation’s offices and arranging to provide photocopies of any specific information that you would like to take away with you.

If you would prefer to receive the information in a particular way (for example on an encrypted USB memory stick), it is worth saying this when asking for a copy of your records.

There are some exceptions to the duty to disclose personal information. However, if an organisation is relying on an exception to withhold your information from you, they should as far as possible explain to you why information has been withheld.

**Can I request copies of information held about someone else?**

You only have the right to see personal information about you, and not other people. However, if you are an attorney or have been appointed by the Court of Protection to manage the affairs of a person who lacks capacity, you should be able to access that person’s information on their behalf. You will need to provide the organisation with copies of the appropriate paperwork to show that you have the necessary authority.

Parents who have parental responsibility can also access personal information on behalf of their children, but the subject access rights are the child’s. If the child understands what it means to make a subject access request and how to interpret the information they receive as a result, the organisation would expect the subject access request to be made by the child.

**What are the exceptions to the duty to disclose personal information?**
Exceptions to the duty to disclose personal information include:

- **third party information**
- **health records**
- **social services records**
- **police records**

**Third party information**

If the records you have requested include information about someone else (a third party), the organisation will not have to supply the information unless:

- the other person mentioned has given their consent for the information to be disclosed
- it is reasonable for the organisation to disclose the information anyway without the other person’s consent. In these situations, the organisation has to weigh up your right to see information held about you against the other person’s right for information about them to be kept confidential.

One way around this problem may be for the organisation to **redact** information that would identify the third party.

**Health records**

A health record is any record of information relating to someone’s physical or mental health that has been made by or on behalf of a health professional.

This includes records made by:

- GPs
- consultants
- hospital doctors
- psychiatrists
- nurses

You have the right to see your health records except where disclosure would be likely to cause serious harm to your mental or physical health or that of another person. An organisation can only use this as a justification for non-disclosure after assessing how likely it is that this information would cause you or another person serious harm. This would usually involve consulting with the health professional responsible for the clinical care of you or the person the organisation is concerned about. There is guidance on how to access medical records on the NHS [website](https://www.nhs.org.uk).

**Social services records**

You have the right to see and have copies of the information held about you by social services. However, social services can refuse to disclose information if doing so would prejudice the carrying out of social work by causing serious harm to the mental or physical health of you or any other person.
Example

Amir is 16 years old. He is looked after by social services under a Care Order. Amir has a history of self-harming following contact visits with his birth family. He has not seen his birth family for 6 months and has not self-harmed during this time.

Amir asks to read his social services records. His social worker is concerned that there is information contained in these records about Amir’s birth family which may cause him mental distress and therefore lead to him self-harming again.

In this situation, social services may choose not to disclose some of Amir’s social services records as it may cause serious harm to his mental or physical health, or they may invite Amir to look at his records at the social services offices with the support of his social worker or advocate.

Police records

You have the right to find out what personal information is held about you by the police. You should follow the same process for requesting personal information from other organisations and send your subject access request to your local police force, as they will be able to access all of the information held about you centrally.

There are some circumstances in which the police do not have to disclose personal information to you. These are where doing so would be likely to prejudice the:

- prevention or detention of crime – for example, where the information is relevant to an ongoing police investigation
- capture or prosecution of offenders
Example

Jack is applying for jobs at the moment. He is worried about the information that will be revealed if he applies for a job that requires a criminal record check (DBS check).

He could make a subject access request to his local police force as this will give a good indication of the information that would show up on a DBS check.
How do I get copies?

- How do I get copies of my records?
- How long will it take to get a response to my subject access request?
- Will I have to pay?
- Checklist: How do I make a request for personal information?

How do I get copies of my records?

You will almost always need to make a request to see your records in writing. This is called a **subject access request**.

A subject access request can be:

- an email or a letter requesting copies of your records.
- a standard form an organisation may have to request access to records
- a non-standard form, such as through an organisation’s website or social media account – for example Facebook or Twitter. However, this may lead to a delay in your request being dealt with, as it is unlikely that the team responsible for social media will be the same team responsible for dealing with subject access requests. This means they may not recognise your request as a subject access request. There may also be practical difficulties in relation to you being able to prove your identity if you make your request in this way.

However, under **equality law** an organisation has a legal duty to make its services accessible. If your mental health problem makes it impossible (or unreasonably difficult) for you to make a request in writing, an organisation may have to make a **reasonable adjustment** to its normal data protection policy. This could mean that it treats a verbal request as a valid subject access request.

When preparing your subject access request:

- Provide enough detail about the records you wish to see. If your request is too vague, you may be asked for further information which will delay disclosure.
- Think about exactly what you want to see – for example your social services records for a particular period of time or medical records held by a particular doctor.
- Avoid asking for information that is too general – for example “all information that the Council holds about me”. Although you can ask for this, you may end up with information that is not relevant. It might be better to ask for all of the records held by a particular service or department – for example “all of my social services records” or “a copy of my personnel file”. It is a good idea to mention that you’re making a subject access request under the Data Protection Act 1998 and that there is a 40-day deadline for the organisation to respond.
- Send your request by recorded delivery or by email. This will mean that you have proof of the date your request was sent. You should also keep a copy of your letter or subject access request.
request form and all other correspondence exchanged in relation to your request. This will be important evidence if you need to make a complaint.

- **Provide proof of identity.** The organisation needs to be sure that you are the person to whom the information you have requested relates. You might be asked for a photocopy of your passport, driving license or a utility bill. However, if the person you make the request to knows you well you should not need to provide detailed proof of your identity.

**How long will it take to get a response to my subject access request?**

Organisations have **40 days** to respond to your subject access request, starting from the day they receive your request and any fee you have to pay. When calculating the date by which you should receive the information you have requested, you should include weekends as the 40-day time limit refers to calendar days not working days.

**Will I have to pay?**

You will probably have to pay a fee to the organisation for copies of your records. The maximum fee you can be charged is £10.00, unless you are asking for educational or health records, for which the maximum fee is £50.00. [1]

If a fee is payable, the 40 days will not start running until the organisation has received this.

It is worth looking on the organisation’s website or giving them a call before submitting your subject access request to check:

- where to send your request
- what information you will need to provide to confirm your identity
- whether a fee is payable and if so how this can be paid

If you are able to send appropriate proof of identity and the relevant fee at the same time as making your subject access request, it should make the process quicker.

**Checklist: How do I make a request for personal information?**

1. Think about the personal information you wish to see.
2. Identify which organisation holds this.
3. Check their website or call them to find out:
   - who to send the subject access request to
   - whether the organisation has a standard subject access request form
   - whether there is a fee to pay, and if so, how much and how can payment be made
   - what form of proof of identification the organisation needs
4. Draft letter or subject access request form (if the organisation has one).
5. Send to the relevant contact at the organisation with proof of identification and the relevant fee. Ideally, send the request by recorded delivery so that you can track the request.
6. Keep a copy of the letter or subject access request form you have sent.
7. Put the deadline for disclosure in your diary - **40 days after receipt by the organisation.**
Example

Audrey experiences severe anxiety and depression. She also has a diagnosis of rheumatoid arthritis.

For some years now, Audrey has received support from social services with daily living tasks, including bathing, managing her money and getting out and about in the community.

Her package of care has recently been cut by social services. Audrey has an advocate who is going to assist her with making a complaint about this.

The advocate has suggested that it would be a good idea for Audrey to get copies of her social services records. Audrey has received support from social services for the past 15 years, so her records are likely to be extensive.

The decision was made 6 weeks ago. Audrey will need to see the records that relate to this decision and there will probably be records from before the date of the decision which are relevant. However, she is unlikely to need copies of her social services records in their entirety.

Audrey could make a request for copies of her records from the past 6 months. She may not need to provide proof of identity if she makes the request to her social worker as her social worker knows her well.

[1] In relation to health records, the maximum fee depends on how the information requested is held. If it is only held electronically, the maximum fee that can be charged is £10.00. If it is held partly or wholly in paper form, the maximum fee is £50.00.
What if I don’t get what I asked for?

- What can I do if my request is refused or ignored?
- What can I do if the organisation doesn’t send me everything I asked for?
- What can I do if the organisation has provided the information but not within 40 days?
- What if the information in my records is wrong?

What can I do if my request is refused or ignored?

Write a letter or email to the organisation

You should always receive a response of some kind to a subject access request. Even if the organisation holds no information about you, it must write to you to let you know that this is the case.

If more than 40 calendar days have passed since you made your subject access request, and you have not received a response, you should write to the organisation to remind them of your request and their obligations under the Data Protection Act 1998. The Information Commissioner’s Office (ICO) has produced a standard template letter for this on their website (scroll down to ‘What can I do if the organisation does not respond?’).

Within your letter or email, it is a good idea to set the organisation a further reasonable deadline for responding to your request – for example 7 or 14 days. If the organisation still fails to comply with your request, you should make a complaint to the ICO once this second deadline has passed.

Make a complaint

If you do not believe that the organisation has valid grounds for refusing to disclose your personal information, you should complain to the organisation.

If you do not receive a satisfactory response to your complaint and you still believe that the organisation has wrongly refused to disclose your personal information, you can complain to the ICO.

What can I do if the organisation doesn’t send me everything I asked for?

You should write back to the organisation explaining what information you think is missing. You should be as specific as possible.

Template letter

The ICO website has produced a template letter which you can use (scroll down to ‘What can I do if I believe the organisation has not sent me all the information I am entitled to?’).

If you do not receive a satisfactory response to your letter, and you still believe that the organisation has failed to disclose all of the information you asked for, you can complain to the ICO.

What can I do if the organisation has provided the information I requested but not within 40 days?

You can report this to the ICO using the form on its website.
If the ICO receives many reports from different individuals about a particular organisation’s failure to meet the 40-day time limit, they may take action against the organisation for failing to meet its obligations under the Data Protection Act. Find out more about how the ICO ensures organisations meet their information rights obligations.

What if the information in my records is wrong?

If you think that the information an organisation holds about you is inaccurate, you should write to them, setting out your concerns and asking them to correct the mistake. If you are not happy with the response you receive, you can make a complaint to the ICO.

However, there is a difference between information that is wrong and information that you disagree with.

If you disagree with a medical opinion in your health records:

- **you can ask for a note to be added.** You can write to the organisation that holds your health records and ask that a note is added, stating that you disagree with the views expressed. If the organisation refuses to record your objections, you can make a complaint to the ICO.

- **you cannot force the organisation to change or remove the opinion.** This is because it is an opinion expressed by a medical professional at a particular point in time.
Make a complaint

- How do I make a complaint to the ICO?
- What powers does the ICO have?
- Can I take an organisation to court?

How do I make a complaint to the ICO?

The Information Commissioner’s Office (ICO) is an independent body responsible for making sure that organisations comply with the Data Protection Act. The ICO also deals with concerns raised by members of the public about the way in which organisations look after personal information and deal with subject access requests.

You can complain to the ICO if an organisation:

- fails to respond to your request for disclosure
- refuses your request
- fails to send you all of the information you asked for
- fails to comply with the 40-day time limit for disclosure

The ICO will always expect you to have raised your concerns with the organisation before submitting a complaint.

The ICO has a form on its website which you can use to make your complaint. When you send the form to the ICO, include all the communications you’ve had with the organisation about your request for disclosure, including copies of the documents raising your concerns.

- If you have this saved electronically, you can submit the form and the correspondence by email to casework@ico.org.uk.

- If you only have paper copies of the correspondence, you will need to send it along with the form to Customer Contact, Information Commissioner’s Office, Wycliffe House, Water Lane, Wilmslow, Cheshire SK9 5AF.

- You can call the ICO helpline on 0303 123 1113 (local rate)

You should make a complaint to the ICO within 3 months of your last proper contact with the organisation concerned.
Flowchart: How can I complain?

What powers does the ICO have?

If the ICO thinks that an organisation has failed to comply with its obligations under the Data Protection Act, it can:

- write to the organisation and ask it to sort out the problem
- take action against the organisation concerned. The ICO may do this in extreme situations where there has been a serious breach of the Data Protection Act. This may include sending the organisation an enforcement notice, and imposing a financial penalty of up to £500,000

However, the ICO cannot award you compensation. Compensation can only be claimed by taking an organisation to court.
Can I take an organisation to court?

You do have the right to take an organisation to court for failing to respond appropriately to a subject access request, but you need to be able to show the court that you have tried to sort things out directly with the organisation.

It is rare for things to get to this stage as you should be able to sort the problem out by complaining to the ICO.

What you can ask for

You can ask the court to order the organisation to put things right – for example to:

- disclose the information that you have requested
- pay you compensation for harm and distress caused to you as a result of the organisation’s actions

Legal aid

It is also important to be aware that there is no legal aid available for this kind of court application, so you would have to fund the case yourself which could be costly. That’s why you should always get specialist legal advice from a solicitor before making an application to court.

More information

- See Useful contacts for more information on finding a solicitor.
- The ICO website has further information which you may also find useful.
Useful contacts

Information Commissioner’s Office

Helpline: 0303 123 1113
ico.org.uk

The ICO website contains general useful information about accessing your personal information. You should contact the ICO if you want to make a complaint about an organisation not meeting its obligations under the Data Protection Act.

The Law Society

020 7242 1222 (England)
029 2064 5254 (Wales)
lawsociety.org.uk

The Law Society provides details of solicitors you can get in touch with for specialist legal advice.

Where can I get support?

Local Mind

Local Minds support over 280,000 people across England and Wales. Their services include supported housing, crisis helplines, drop-in centres, employment and training schemes, counselling and befriending. They may be able to help you find advocacy services in your area.

Find your local Mind here.

Find an advocate

An advocate is a person who can both listen to you and speak for you in times of need. Having an advocate can be helpful in situations where you are finding it difficult to make your views known, or to make people listen to them and take them into account.

For information on advocacy services and groups in your area, you could start by contacting the Mind Legal Line and your local Mind.

Read more about how advocacy might help you.

Ends