

Subject Access Request (SAR) Flowchart

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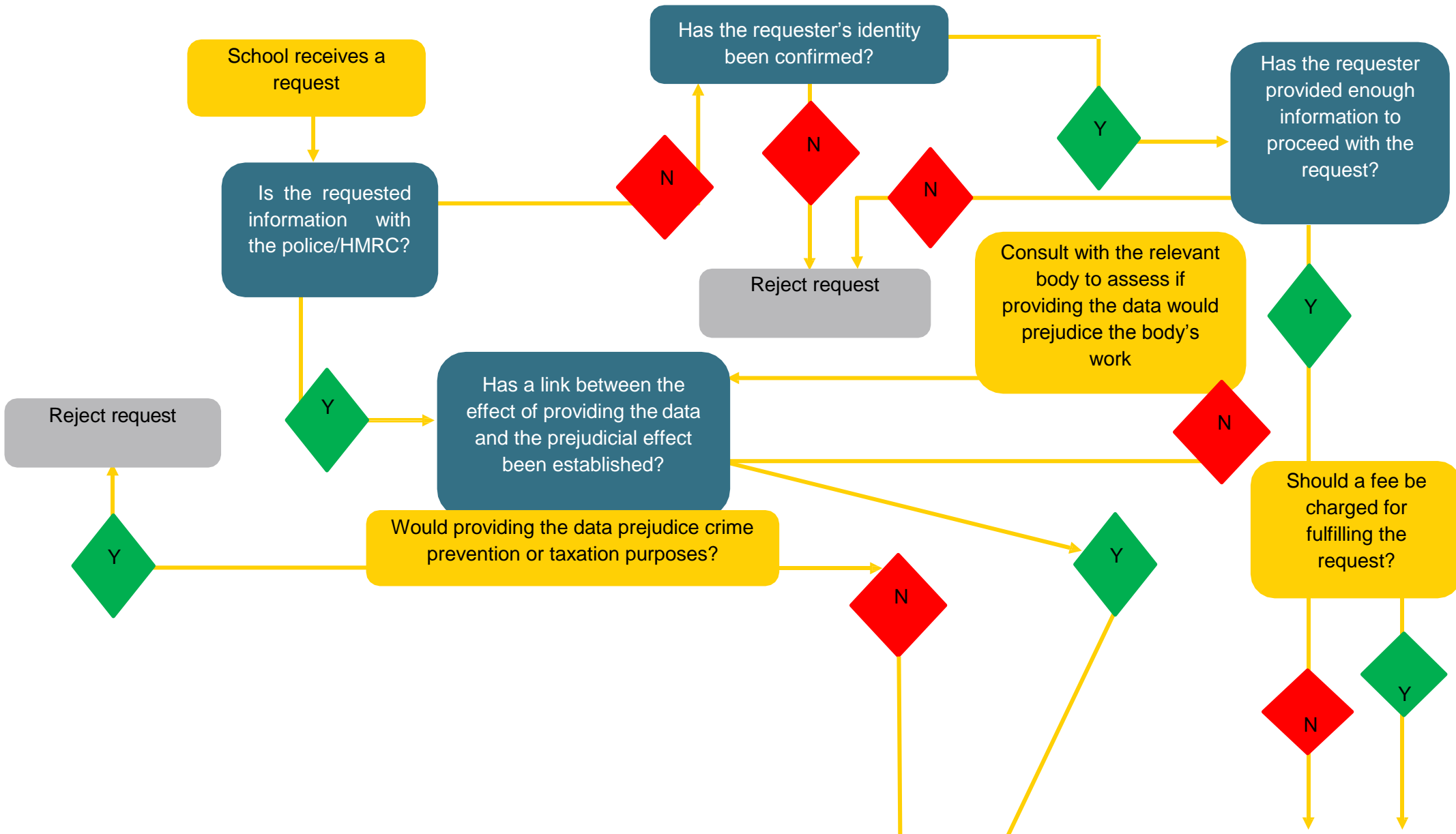
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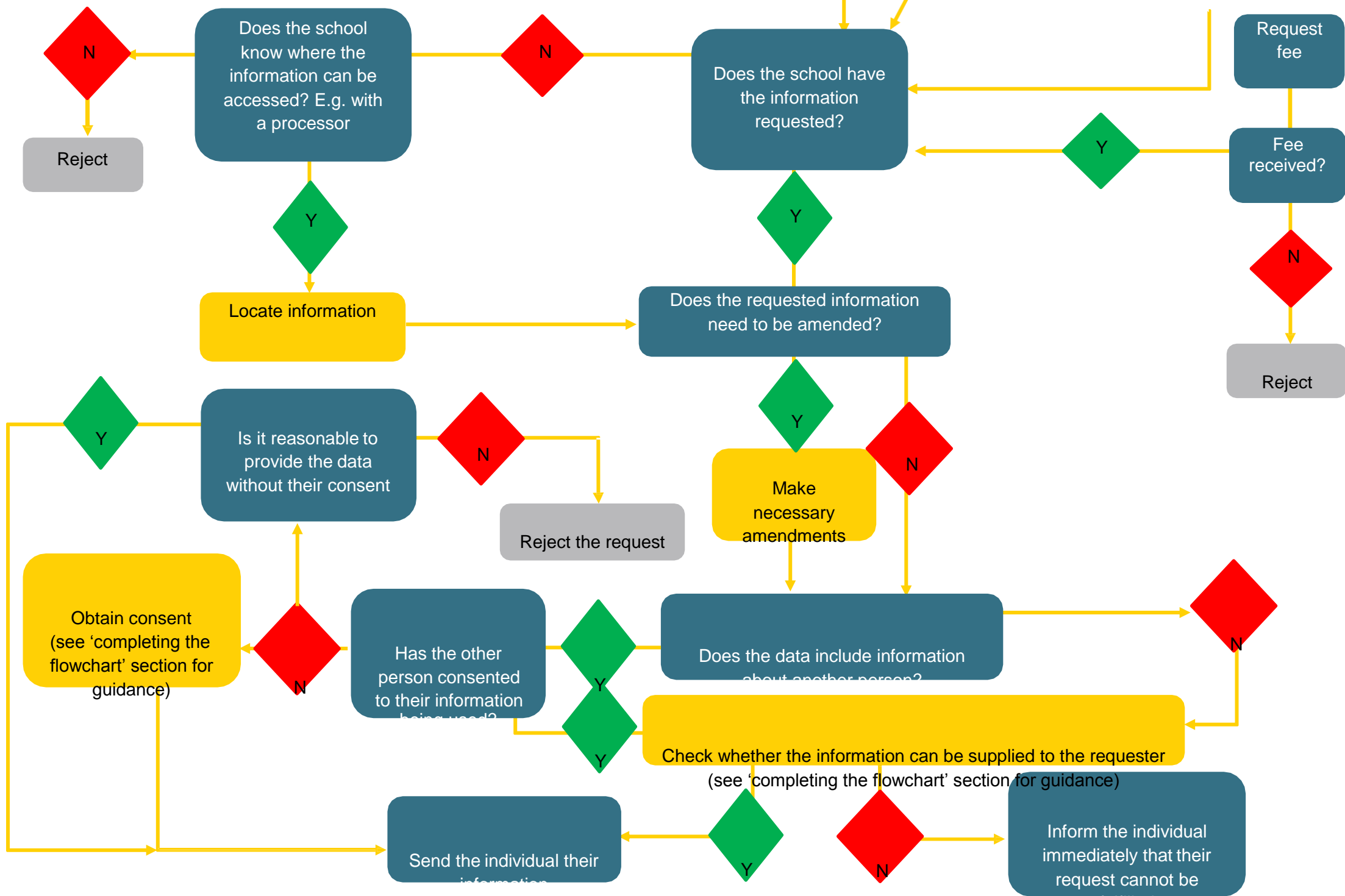
Introduction

Under the Data Protection Act 2018 (DPA), individuals can request access to the personal data an organisation holds about them – this is called an SAR. Under the DPA, schools have one month to respond to these requests. When processing an SAR, there is a lot to take into consideration in relation to fulfilling the request and abiding by the relevant data protection regulations.

This SAR flowchart outlines the standard procedure for handling a request and offers a procedure for handling an SAR from the police or HMRC – to assist users when completing the flowchart, a section has been included offering more information on how to process an SAR in line with the relevant legislation.

SAR flowchart





Completing the flowchart

School receives the request

Once a request for personal data has been received, schools must begin work on fulfilling what the individual has asked for. In accordance with the DPA, a request does not have to include the phrase 'subject access request'; however, the request must be clear that the individual is asking for a copy of their personal data. Individuals are entitled to obtain confirmation that their personal data is being processed, a copy of their personal data and any other supplementary information that should be provided in a Privacy Notice.

In line with the DPA, a SAR must be replied to within one month of receipt; however, where a request is deemed complex or a number of requests have been received from the same individual, the deadline can be extended by a further two months. Where the deadline is extended, schools must inform the individual within one month of their initial request and offer an explanation as to why the extension is necessary.

Is the request from the police or HMRC?

Where a data controller, e.g. school or MAT, receives a SAR from an individual requesting data processed by the police or HMRC a crime and taxation exemption can be used – this exemption is applied to help prevent and detect crime, prosecute offenders and in the assessment and collection of tax.

Has a link between the use of the data and the prejudicial effect been established?

When establishing whether a crime and taxation exemption applies, the data controller should identify the prejudice (likelihood) that might occur if the data was provided to the requester. The prejudice could be that a specific investigation would be compromised by information being withheld or disclosed, for example. Prejudice must be real, actual and of substance.

Once it has been established whether or not an exemption applies, the next step would be to establish a link between the use of the data and the prejudicial effect. For example, if the data requested has been used by the police, such as where CCTV footage is used as evidence of a pupil assaulting another pupil, providing this data could damage the police prosecution. The data controller should be able to demonstrate that, if the information is given to the requester, there would be damage done to the criminal investigation – where this is the case the subject will need to be informed of the reasons the request cannot be fulfilled.

Has the requester's identity been confirmed?

An individual is only entitled to their own personal data, and not to information relating to other people (unless the information is also about them or they are acting on behalf of someone, e.g. a parent and pupil). Where a request for a pupil's information is made, the school should

consider whether the pupil is mature enough to understand their rights – if the pupil is deemed mature enough, the school should reply directly to the pupil.

Has the requester provided enough information to proceed with the request?

Before proceeding with the request, it is important that the DPO understands exactly what information an individual is looking for – where there is any ambiguity regarding a requester, clarification should be sought from the requester.

Does the school have the information requested?

If the school does not have any information requested, e.g. if it has been safely disposed of once the data's purpose has been fulfilled, the request cannot be fulfilled, and the school must reply to the requester as soon as possible.

Do you know where the information is stored? E.g. with a processor

Where information is stored with a processor, e.g. register applications such as SIMS, the school must still handle the SAR as it has been submitted to them.

Does the requested information need to be amended?

In accordance with [ICO guidance](#), a SAR relates to the data held at the time the request was received; however, routine use of the data may result in it being amended or deleted. It would be best to supply the requester with the information the school holds when the response is sent, even if this information is different to that held when the request was made.

It is not acceptable to amend or delete data that would not otherwise have been edited had the request not been received. Under the DPA, it is an offence to amend data with the intention of preventing its disclosure.

Does the data include information about other people?

Under the DPA, a SAR does not have to be complied with if it would mean disclosing information about another individual who can be identified from the information, unless:

- The other individual has consented to the disclosure.
- It is reasonable to comply with the request without that individual's consent.

In determining whether it is reasonable to disclose the information, you must take into account all of the relevant circumstances, including:

- The type of information that you would disclose.
- Any duty of confidentiality you owe to the other individual.
- Any steps you have taken to seek consent from the other individual.
- Whether the other individual is capable of giving consent.
- Any express refusal of consent by the other individual.

Inform the individual immediately that their request cannot be fulfilled

Schools and other organisations can refuse to comply with a request if it is manifestly unfounded or excessive, e.g. if the request is repetitive in nature.

If a request is found to be manifestly unfounded or excessive, schools can:

- Request a reasonable fee to deal with the request.
- Refuse to deal with the request.

In either case, schools should justify their decision – where a fee is sought, schools do not need to comply with the SAR until the fee has been received.

If a request cannot be fulfilled, schools must inform the requester without delay and within the one month of receipt of the request.

Schools should inform the individual about:

- The reason no action will be taken.
- The requester's right to make a complaint to the ICO or another supervisory authority.
- The requester's ability to seek to enforce this right through a judicial remedy.

Schools should also provide this information if they request a reasonable fee or need additional information to identify the individual.

Sending the individual their information

In accordance with the DPA, the information a school provides should be in a concise, transparent, intelligible and easily accessible form, which uses clear and plain language – this is of the utmost importance when information is being addressed to a pupil.

The information a school sends should be understandable by the average parent or pupil; however, schools are not required to ensure that the information is provided in a form that can be understood by the individual who has made the request.

In most cases, a fee cannot be charged when processing a SAR; however, a reasonable fee can be charged if an individual requests additional copies of their data – fees must be calculated based on the administrative costs of providing further copies.

Bibliography

ICO (2013) 'How do I handle subject access requests?'

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ICO (2018) 'Right of access' <<https://ico.org.uk/for-organisations/guide-to-the-general-data-protection-regulation-gdpr/individual-rights/right-of-access/>> [Accessed: 20