

**GUIDANCE: How to handle
someone's 'data subject
access request' when there is
information about other
individuals involved.**

(Section 16 of the Law)



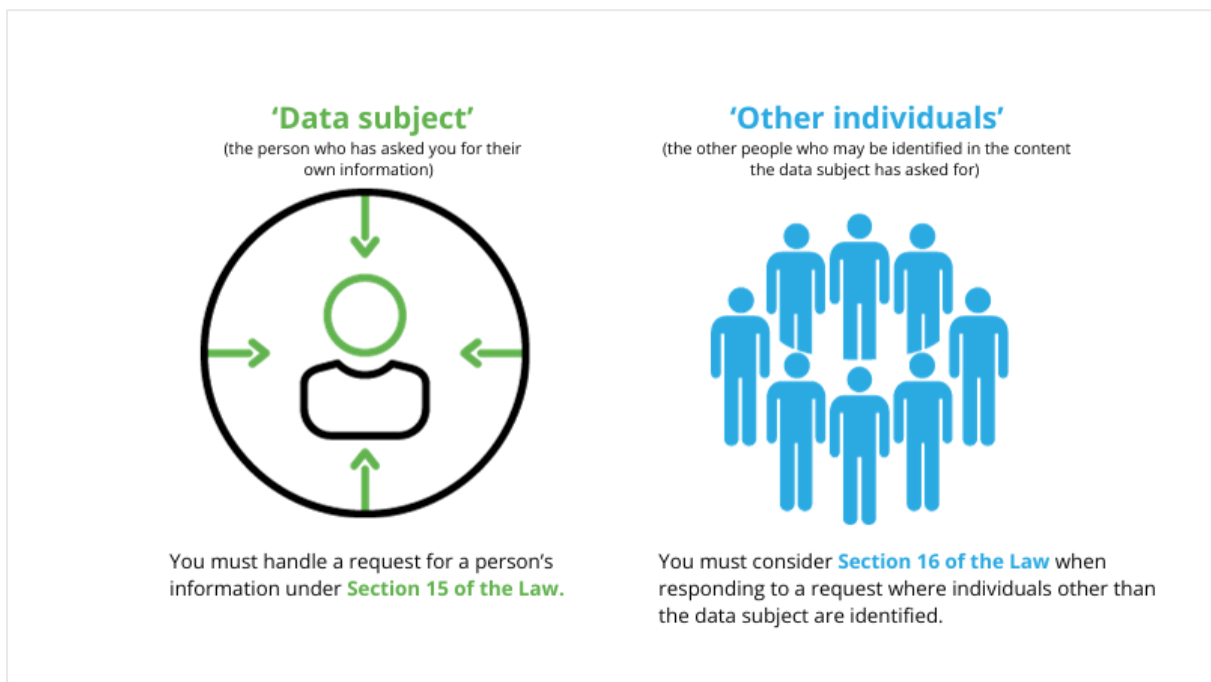
Section 16 guidance

Overview

This guidance is intended to help anyone who needs to respond to an individual's 'data subject access request' ('DSAR') in the specific circumstances where the information the individual is requesting includes information about other people. In this scenario, you need to understand and apply section 16 of The Data Protection (Bailiwick of Guernsey) Law, 2017 ('the Law').

The role of section 16 is to ensure that you balance the rights of everyone involved, allowing you to come to a well-reasoned decision over whether to disclose or withhold the other people's information.

Before going further, it's important that you note the different terminology for the people involved: the person making the DSAR is known as the 'data subject' or 'the requestor', and the people who may be identified in the content the data subject has asked for are known as 'other individuals'.



Scope of section 16

Section 16 of the Law applies where you cannot comply with a request made by an individual ('the requestor' or the 'data subject'), without disclosing information relating to another individual ('the other individual'), who is identifiable from that information.

It is common for documents and records, whether they exist in electronic or paper form, to contain a mixture of references to multiple identifiable individuals, even if such references are indirect.

If a DSAR (section 15) or a right to data portability request (section 14) relates to a mix of personal data, providing a copy of this mixed personal data may potentially impact the significant interests of other individuals. You may sometimes be able to disclose the information about the other individuals, but you have to consider whether it is reasonable to do so in each case. This involves weighing the data subject's right of access against the significant interests of the other individual.

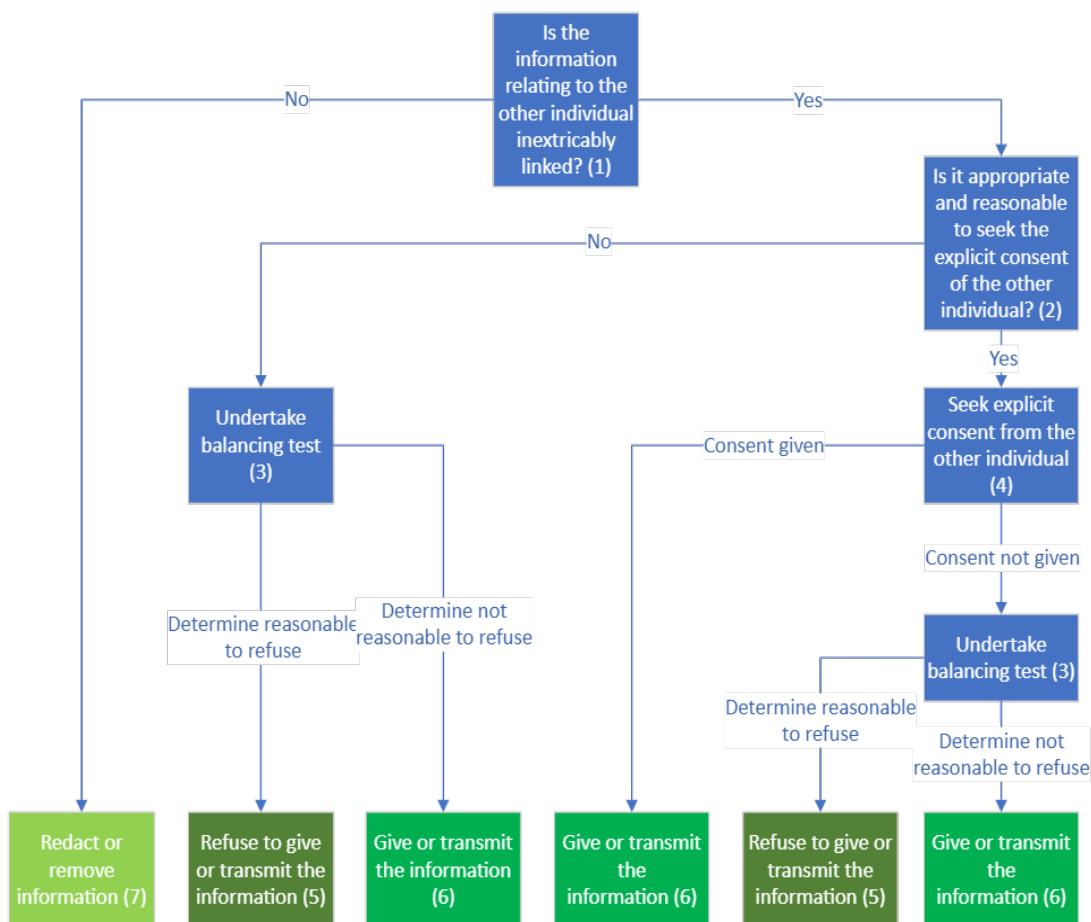
Document decision making

You must document all the decisions you make as you apply section 16, as you may be asked by the data subject (or by the Data Protection Authority) to justify how you arrived at the decisions about what information you include, or exclude from, your DSAR response.

To be clear, you should document your decision-making as you go, not retrospectively.

Step-by-step through section 16's considerations

The flow chart below is designed to help you consider all the relevant steps when applying section 16 of the Law. Each box in the flowchart contains a bracketed number which relates to an explanatory note detailed below the flowchart.



Flowchart notes

1. Is the information relating to the other individual inextricably linked?

Think about the information the data subject is asking for and what the requestor might already know or could find out to identify the other individual.

The mix of information being requested will likely fall into one of these two categories:

Personal data that is not linked – This is where personal data relating to another individual is not linked to the requestor's personal data, therefore it can be removed from information relating to the requestor without impacting the context of the requestor's personal data, e.g. a register containing a list of names of individuals attending an event, or a single document containing details of multiple separate customer orders.

Personal data that is inextricably linked – This is where personal data of another individual cannot be extracted from that of the requestor without affecting the context of the requestor's personal data. This will most often be the case with recorded opinions that have been given by the other individual about the requestor, e.g. a performance appraisal written about the requestor by their line manager.

2. Is it appropriate and reasonable to seek the explicit consent of the other individual?

You must consider whether it is appropriate to seek the consent of the other individual prior to approaching them for their consent to share their information. This avoids a situation in which the other individual is approached and does not provide their consent, but the Controller assesses that it is still appropriate to disclose their information.

It is good practice to ask for explicit consent, however, you are not obligated to do so in every case. For example, there may be situations where: you do not have the other individual's contact details; making the request for consent would reveal personal data of the requestor to the other individual; or it would be inappropriate for the other individual to know about the requestor's DSAR.

If you have assessed that it is appropriate to approach the other individual for their consent, please move to step 4.

3. Undertake a balancing test.

The Law states that you must take into account various factors when assessing whether to disclose or withhold another individual's information. The way you answer these questions in your balancing test will help you arrive at a well-reasoned decision on how to proceed, some considerations the Law points to include:

- (a)** Has consent been sought for sharing information?
- (b)** Has the other individual refused consent for sharing?
- (c)** Can the other individual give consent?
- (d)** What type of personal data is it?
- (e)** Who are the requestor and the other individual, and what are their significant interests? (see below for more information on this)
- (f)** What is the context in which the information has been collected and what is the nature of the relationship between each data subject (the requestor and other individual) and the controller?
- (g)** What are the expectations of disclosure? Was the personal data collected directly? Does the controller owe a duty of confidentiality? (see below for more information on this)
- (h)** With whom and when will the information be disclosed?
- (i)** How long will it be stored?
- (j)** Are there safeguards in place to protect the information?
- (k)** What are the consequences of disclosure for each person?

To read the full text section 16, please refer to the Law via the following link: [Data Protection \(Bailiwick of Guernsey\) Law, 2017 \(guernseylegalresources.gg\)](https://www.guernseylegalresources.gg/Data-Protection-(Bailiwick-of-Guernsey)-Law,-2017)

Please note, you cannot rely on section 16 of the Law to withhold the identity of job holders in the fields of Education, Health or Social assistance. However, if disclosing that information could seriously harm the data subject or other individuals, the exemption outlined in paragraph 16D of Schedule 8 of the Law can be applied. This states that:

1. Any educational data, health data or social assistance data is exempt from part 3 of the Law ('Data Subject Rights') if applying those rules could seriously harm the data subject or other individuals.
2. A non-health organisation ¹ must first consult a health professional to determine if the exemption in point 1 applies, before disclosing the information to the requestor.
3. However, this consultation is not required if the data subject already knows about the health data or if a health professional has given their opinion on the exemption within the last six months.
4. The term "appropriate health professional" refers to the person responsible for the clinical care of the data subject or someone suitable to advise on the health data.

¹ For clarity this means an organisation that is not in the health sector.

Significant interests

A person's significant interests are defined in the Law as any aspect of their life that could be put at risk due to their personal data being breached. This includes, therefore, their physical safety, their reputation, their identity, financial loss, psychological distress or humiliation.

If you assess that the disclosure of information could impact the other individuals' significant interests, you must balance this against how the requestor's significant interests would be impacted if the information relating to the other individual were withheld.

In a professional setting, considerations like an individual's seniority and job responsibilities play a significant role when deciding whether to disclose or withhold information under section 16. Generally, it is more appropriate to share information about an individual when they are acting in their professional capacity as opposed to their private life. Additionally, it is usually more reasonable to disclose information of senior staff than it is to disclose the identity or personal information of junior staff. The Authority is of the view that individuals in positions of increased responsibility and accountability should stand by decisions made or actions taken in that capacity. Section 16 should not be used to hide those in senior roles or positions of power.

Duty of confidentiality

Confidentiality is an important factor when deciding whether to disclose information relating to another individual without their consent. A duty of confidence arises when someone provides you with genuinely confidential information (not publicly available) to you, and there is a clear expectation that it will remain confidential. This expectation can come from the content and context of the other individual's data or the relationship between the parties, such as in medical, employment, legal, financial, caring, or trade union contexts.

However, you should not assume confidentiality solely based on something being marked as 'confidential.' It is important to consider whether the information is widely available elsewhere or if other factors, like public interest, nullify the duty of confidence.

It is important that you document your reasoning for any decisions or actions taken, at the time these considerations are made.

4. Seek explicit consent of the other individual.

If you have assessed that it is appropriate and reasonable to ask the other individual for their explicit consent to disclose the information relating to them, you should have in mind that explicit consent has the same requirements as consent, but with the extra safeguard that it must be conveyed by the other individual in an express written statement. This could be through a signed written statement, by filling in an electronic form, or by sending an email.

When approaching the other individual for their explicit consent, you must ensure that they understand what specific information is to be disclosed. Their consent must be informed.

In instances where the other individual has refused to give their consent to disclose information relating to them, it may assist in your justification for not disclosing the information if that other individual conveyed any concerns they had to you.

If you do not have the other individual's consent and you do not believe it is reasonable to disclose their information, you should keep it confidential.

Where the other individual has given explicit consent, the information must be provided to the requestor unless another exemption applies ([Exemptions · ODPA](#)).

5. Refuse to give or transmit the information.

Regardless of what decision is taken as to whether to share information about someone else, you will need to respond to the person making the request.

It is important to be able to justify your decision to withhold information about another individual. Therefore, you must keep a record of your decision-making and the reasons behind it.

6. Give or transmit the information.

If the other individual has given their consent; you believe it is reasonable to share the information without consent; or you have assessed that it is possible to fulfil the request without revealing information about another individual, you should provide it in the same way as any other information you provide when responding to a DSAR.

Information should be provided in a manner consistent with the request's original format or as specifically stipulated by the requestor. In cases where the request is submitted electronically, you should provide the information in a commonly accepted electronic format, unless the requestor specifically requests an alternative format.

It is important to be able to justify your decision to disclose information about another individual. Therefore, you must keep a record of your decision-making process and the reasons behind it.

7. **Redact or remove information.**

Depending on the situation, you may be able to share some information after editing or removing details that could identify the other individual. If this is the case in your specific circumstance, then you are ready to start redacting.

‘Redaction’ is the process of concealing information while leaving intact the rest of the document or record containing it. When redacting information, it is important to remember that redactions should be limited in scope and not blanket applied.

Always work on a copy, leave your original records completely intact. Do not take any chances with data that might be needed for other things.

Do not simply highlight or change text colour to redact. Even though it might make parts of the document hard to read on the screen or in print, the actual text may still be visible if someone copies and pastes it into a text editor. Even if you export or convert the document to something like a PDF, the text might still be readable.

Instead, replace the text you want to redact. The easiest way to do this is by selecting the text and replacing it with symbols or words like [REDACTED]. This removes the personal data and shows where you have made changes.

When redacting information from paper copies of documents, it is advisable to produce an additional photocopy or digital scan of the edited document before disclosing to the requestor.

It is important that you document your reasoning for any redactions applied, at the time these considerations were made.

Help and advice

If after reading the above guidance you need further clarification on your specific circumstances, please visit the [Contact Us](#) page of our website for details of our free drop-ins, and our contact information. You may also find it helpful to read our general guidance on handling data subject access requests, and the exemptions that may apply – both of these can be found in our [‘Information Hub – Guidance’](#) area.