

## Appendix C - Disproportionate Effort Exemption Guidance

This guidance sheet is based on the revised Information Commissioner Subject Access Code of Practice that was issued in July 2017:

<https://ico.org.uk/media/for-organisations/documents/2014223/subject-access-code-of-practice.pdf>

### 1. What is disproportionate effort?

- The 'disproportionate effort' exception is in section 8(2) of the DPA. The Court of Appeal has provided clarification as to its application in its 2017 judgments in the cases of Dawson–Damer<sup>1</sup> and Ittihadieh/Deer and Oxford University<sup>2</sup>
- The DPA does not define 'disproportionate effort', but the court has explained that there is scope for assessing whether, in the circumstances of a particular case, complying with a request by supplying a copy of the requested information in permanent form would result in so much work or expense as to outweigh the requester's right of access to their personal data
- The court also made it clear that in assessing whether complying with a SAR would involve disproportionate effort under section 8(2)(a) you may take into account difficulties which occur throughout the process of complying with the request, including any difficulties you encounter in finding the requested information
- This approach accords with the concept of proportionality in EU law, on which the DPA is based. When responding to SARs, the Information Commissioner expects you to evaluate the particular circumstances of each request, balancing any difficulties involved in complying with the request against the benefits the information might bring to the data subject, whilst bearing in mind the fundamental nature of the right of subject access

### 2. How is this applied in practice?

- In order to apply the exception, the burden of proof is on you as data controller to show that you have taken all reasonable steps to comply with the SAR, and that it would be disproportionate in all the circumstances of the case for you to take further steps
- The Information Commissioner considers it good practice for you to engage with the applicant, having an open conversation about the information they require. This might help you to reduce the costs and effort that you would otherwise incur in searching for the information
- If the Information Commissioner receives a complaint about your handling of a subject access request, they may take into account your readiness to engage with the applicant and balance this against the benefit and importance of the information to them, as well as taking into account their level of co-operation with you in the course of the handling of a request
- Even if you can show that supplying a copy of information in permanent form would involve disproportionate effort, you must still try to comply with the request in some other way, if the applicant agrees. This could form a useful part of your discussions with the applicant, in order to identify an alternative way of satisfying their request
- In addition, even if you do not have to supply a copy of the information in permanent form, the requester still has the right:
  - to be informed whether you are processing their personal data; and
  - if so, to be given a description of:

- the personal data in question; o the purpose of the processing; and o the recipients or classes of recipients; and
- to be given information about the source of the personal data.

### **3. Example**

- An organisation has decided that to supply copies of an individual's records in permanent form would involve disproportionate effort
- Rather than refuse the individual access, they speak to her and agree that it would be preferable if she visited their premises and viewed the original documents. They also agree that if there are documents she would like to take away with her, they can arrange to provide copies

### **4. Key things to remember**

- Where the disproportionate effort argument is used this is NOT a reason for not seeking to respond to a request
- This is about recognizing the difficulties that an organisation at times may have in finding information and providing a constructive approach that recognizes this
- The applicant still has the right of appeal and an organisation MUST be able to demonstrate the structured approach that it has taken if the disproportionate effort argument is used