

# GDPR Memorandum – how to respond to an access request

## 1. Legal basis and objective

Art. 15 GDPR

The right of access allows any individual (thereafter “data subject”) to know if data concerning him/her are treated and to obtain the communication of such data in an understandable format. It also allows the data subject to check the accuracy of the data and, if necessary, have it corrected or erased.

## 2. How will the individual exercise his/her right of access?

- An individual may request access, in person or through a representative, by mail, email, phone or on the spot.
- In any event, before answering to such request you must **verify the identity** of the individual making the request. In case of reasonable doubt about the identity, you must request additional information necessary to confirm the identity of the data subject (e.g. copy of passport, copy of ID).
- In case of intervention of a representative, in addition to the confirmation of the identity of the data subject, request a **power-of-attorney** signed by the data subject in favour of the representative.
- Please make sure you take due note of the **date of receipt** of the access request.

## 3. Response time

- Without undue delay and in any event within **one month** following receipt of the request
- Possibility to extend by **two months** in case of complexity and number of requests. In such a case data subject must be informed of the extension within one month of receipt of the request, together with the reason of the delay.

## 4. Form of the response

- In **writing** or, where appropriate, by **email**
- **Orally**, provided the identity of the data subject is proven
- In any event, make sure you keep proof of the response given. Writing or electronic form is therefore recommended.

## 5. Information to provide

In case personal data are being processed, the data subject must receive copy of such data and the following information:

- purposes of the processing;
- categories of the personal data concerned;
- recipients or categories of recipients to whom personal data have been or will be disclosed;
- the envisaged period for which the personal data will be stored or, if not possible, the criteria used to determine that period;
- the existence of the right to request the rectification or erasure of personal data or restriction of processing of personal data or to object such processing;
- the right to lodge a complaint with a supervisory authority;

- where the personal data are not collected from the data subject, any available information as to their source;
- the existence of automated decision making and at least the information about the logic involved, as well as the significance and the envisaged consequences of such processing for the data subject.

## 6. Limits to the right of access

- Make sure that the right to obtain copy of the personal data undergoing processing does not affect the **rights and freedoms of third party**.
- Check **national law** applicable to your organization in order to know the applicable limits to the access right

Indeed limits to the right of access are laid down by the **EU or national law applicable** to the controller.

According to GDPR, such limits can be laid down for the following grounds: national security; defence; public security; prevention, investigation, detection or prosecution of criminal offences or execution of criminal penalties; important objectives of general public interest of the EU or the State; protection of judicial independence and judicial proceedings; prevention and investigation, detection and prosecution of breaches of regulated professions; protection of the data subject or the rights and freedom of others; enforcement of civil law claims.

- In **Switzerland**, according to the current Swiss data protection Act, access right may be denied for the following grounds:
  - a formal law so provides;
  - this is required to protect the overriding interests of third parties;
  - this is required by your overriding interests, provided you do not disclose the personal data to a third party.

Access right provided by data protection rules does not apply to **pending proceedings**, including arbitral proceeding with seats of the arbitral tribunal in Switzerland. The rules of procedure apply in this case.

► **access right can therefore not be exercised as long as an arbitral procedure is pending. Athletes are however entitled to request access to their anti-doping data before any arbitral procedure is launched, including where an internal disciplinary investigation is pending.**

- In case you refuse to respond to the access request, you must indicate the reasons of your refusal.

## 7. Free of charge

- Principle: information must be provided **free of charge**.
- Exception: reasonable fee based on administrative costs may be charged in the following circumstances:
  - the request is manifestly unfounded or excessive, in particular because of its repetitive character;
  - further copies are requested by the data subject.

## 8. Measures to put in place

***This vade-mecum is provided as preliminary information only. It does not dispense you from a comprehensive analysis of the circumstances of the case, where appropriate with the assistance of legal counsel.***

- Provide **contact details**, including email address, where a data subject can submit his/her access request.
- Make sure somebody, preferably several persons, within your organization is/are in charge of perusing the access requests (especially read the letters and emails) and responding to the access requests within the deadline.
- Make the persons in charge of dealing with access request are **trained** about and **aware** of data protection issues.

Encl.: template of answer to access request

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