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DSARs: As a Legal Service



Data Subject Access Requests

The increasing frequency of data subject access requests (“**DSARs**”) has raised repeated questions from businesses about their options for response. A DSAR is a request sent by a person to a company for information concerning their personal data, available under Article 15 of the General Data Protection Regulation (EU 2016/679) (“**GDPR**”).

A DSAR may be in the guise of an employee requesting a copy of their information on record from the HR department, a bank customer wishing to see the progress of their loan application with reference to internal staff correspondence, or a social media user requesting a list of third parties who have been granted access to their personal data from agreeing to cookies.

The purpose of a DSAR is to allow the data subject to verify what personal data relating to them is held by a company, and to ensure that the data is being processed lawfully. In practice, however, DSARs are often used for a number of ‘collateral purposes’, such as a means of obtaining documentation for use in the data subject’s dispute with the company. A DSAR is a much cheaper and quicker means of obtaining this documentation than waiting for discovery.

When receiving a DSAR, companies face various legal uncertainties. This is reflected by the fact that the largest category of complaints made annually by data subjects to the Irish Data Protection Commission (“**DPC**”) concerns DSARs. As such, a DSAR warrants a careful and well-documented response, in order to mitigate the risk of a subsequent complaint being made to the DPC. The GDPR requires a company to respond to a DSAR within one calendar month of receipt of the DSAR. This period can be extended by up to two additional months, where necessary, taking into account the complexity and number of requests. However, sufficient notice must be provided to the data subject of any such extended response time-frame (i.e, before the initial one calendar month period expires).

Our Technology and Innovation Group and expert Digital Services Group (“**DSG**”) work closely with our clients to ensure compliance obligations under Article 15 are met in a timely and cost effective way, and to respond appropriately, per each client’s specific capacity for risk, using responsive and sophisticated document review technology. In the event of a DPC investigation, thorough documentation outlining the searches undertaken by the company are key to demonstrating a reasonable and proportionate response was provided to the data subject. Otherwise, not only might the DPC fine or otherwise sanction the company, but reputational damage, media backlash and other consequences harmful to the company’s business could occur.



Approaching DSARs

DSARs can arise in various scenarios, with many data subjects using them in conjunction with contentious litigation proceedings. Our teams are well-equipped to provide clients with strategic advice regarding litigation proceedings, regulatory inquiries, or investigations running parallel to a data subject's DSAR.

- The most difficult part of responding to a DSAR is often deciding on the scope of the search for personal data. To date, there have been strong grounds to believe that a controller is only required to take reasonable and “proportionate steps” to search for personal data, in line with the EU principle of proportionality. However, the European Data Protection Board (“EDPB”) Guidelines on access requests (01/2022) reject the application of any proportionality test with regard to access requests, adopting the view that as the doctrine of proportionality is not expressly referred to in Article 15 of the GDPR, it should not apply to access requests. If this view is enforced by the Irish Data Protection Commission (“DPC”), it is likely that it will be subject to challenge in the courts.

Whilst the Irish courts have not to date considered whether the EU principle of proportionality can be invoked by a controller to justify limiting its duty to respond to a costly or burdensome access request, there are good reasons to believe that it is a legally permissible approach. The concept of proportionality is a core doctrine of EU law, and is specifically recognised by Article 5(4) of the Treaty of the European Union, and by the Court of Justice of the EU.

- Furthermore, the DPC Guidelines on the right of access state that controllers “are not obliged to conduct searches which go beyond what is reasonable in terms of time and money, taking into account the circumstances of the case”. This arguably indicates that the DPC endorses the application of the proportionality principle with regard to DSARs. Indeed, Recital 4 of the GDPR acknowledges in clear terms that the right to data protection is not absolute, and has to be balanced against other fundamental rights, in accordance with the principle of proportionality. This should arguably include a controller's right to conduct a business under Article 16 of the European Charter of Fundamental Rights.
- Our Technology and Innovation Group can offer guidance on optimising a company's internal processes for handling and responding to DSARs, to enhance efficiency and ensure GDPR compliance. DSG can further provide expert input and recommend best practices for data retrieval, review, and redaction, as well as implementing automated tools to streamline the process. As part of our end-to-end management of DSARs, we can also provide training sessions for staff to ensure they are well-prepared to handle DSARs in a compliant and effective manner.

“The team are highly responsive and practical. Advice is clear and delivered in a definite and timely fashion. The level of knowledge possessed by the team is exceptional and always current. It is of great comfort working with this team as you can depend on their clear advice to assist with and solve matters that we work on.”

Legal 500 2025

Matheson's Technology and Innovation Group are recognized in the Irish and International market for their expertise in the areas of data protection, privacy, and technology and innovation law. Our technology and innovation practice has been at the forefront of emerging technology and its legal implications for over 25 years.

Key contacts



Anne-Marie Bohan

Partner

T +353 1 232 2212

E anne-marie.bohan@matheson.com



Davinia Brennan

Partner

T +353 1 232 2700

E davinia.brennan@matheson.com



Sarah Jayne Hanna

Partner

T +353 1 232 2865

E sarahjayne.hanna@matheson.com



Marie McGinley

Partner

T +353 86 170 650

E marie.mcginley@matheson.com

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DUBLIN

70 Sir John Rogerson's Quay,
Dublin 2
Ireland

T: +353 1 232 2000

E: dublin@matheson.com

CORK

Penrose One,
Penrose Dock,
Cork, T23KW81

T: +353 21 465 8200

E: cork@matheson.com

LONDON

Octagon Point,
5 Cheapside,
London EC2V 6AA

T: +44 20 7614 5670

E: london@matheson.com

NEW YORK

200 Park Avenue
New York, NY 10166
United States

T: +1 646 354 6582

E: newyork@matheson.com

PALO ALTO

228 Hamilton Avenue,
Third Floor, Palo Alto,
CA 94301
United States

E: paloalto@matheson.com

SAN FRANCISCO

156 2nd Street
San Francisco CA 94105
United States

T: +1 650 617 3351

E: sf@matheson.com