**Individual rights – processes and guidance**

Evolve Intervention Data Rights Assessor:

**Emma Prince – email - telephone**

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**Introduction**

The GDPR’s aims are primarily associated with protecting and empowering data subjects. To this end there are various rights and powers that data subjects have over the data that is being processed about them. If a data subject wants to exercise one of their rights it is up to the Evolve Intervention Data Rights Assessor (EIDRA) to determine:

* The authenticity of the request
* The data to which it relates
* Whether the request can be complied with (there are instances where requests can be refused and these will be set out in this document)

Some of the rights set out in the GDPR are more relevant than others to Evolve Intervention’s work but they are given a brief description here so that staff can be fully informed and aware.

A data subject attempting to exercise their rights shows an engaged individual and one who recognises the power that their personal information holds, and so should be seen as a positive action by them.

Unless otherwise stated below any of these rights can be exercised in writing or verbally. More information and guidance for the individual rights set out below can be found on the ICO website: [www.ico.org.uk](http://www.ico.org.uk)

**Individual rights**

**Establishing the identity of a requester**

It is important that the identity of the data subject is established and if they are a third party acting on behalf of a data subject then they need to provide proof that the data subject has consented to this before enacting any of the rights below. In cases where the request is made to Evolve Intervention staff in a face to face scenario then if they know the individual to be the data subject this is enough proof of identity.

However, for requests made in writing or by telephone then the request should be passed to the EIDRA who will respond and ask for identification to be sent to email or brought to them in person. They should explain that this is to protect the rights of them as the data subject – using the following standard text is advisable:

**Thank you for your request regarding your personal data. In order to make sure we follow the rules in the General Data Protection Regulations and the Data Protection Act 2018 and to make sure that we protect your rights we need to ask you to confirm your identity. Please could you send us a scan of your photographic ID or two other pieces of identification such as a copy of your birth certificate and a utility bill NOTE THIS IS AN EXAMPLE – EDIT THIS SO THAT IT CORRESPONDS TO THE DOCUMENTS YOU WOULD BE HAPPY TO RECEIVE AS PROOF OF ID. Please send these to** **info@evolve-intervention.com** **or let us know if you can not do this and need to bring them in person to us.**

The person receiving the request should then forward it to info@evolve-intervention.com or otherwise write an email to the same address if the request is not in writing. They will need to confirm the action they have taken so far, including dates and whether they perceive any issues with the request.

**Timeframe for responses**

The timelines for responding to a request start from the establishment of the identity of the individual. However, it is good practice to do some preliminary work before the identity is established to ensure there is no delay in providing the data once identity has been confirmed.

Most rights are actionable within one calendar month. As consecutive months sometimes have a differing number of days Evolve Intervention has adopted a **28 day time limit**. It is important to not that this is calendar days and **not working days**. In exceptional circumstances, where the request is particularly complex for example, the deadline can be extended and in these cases the requester will be kept fully informed and the timeframe will not exceed 3 months.

**The right to be informed**

This right is one that should be covered by privacy notices and practices already in place by Evolve Intervention. It states that individuals must be given privacy information about:

* The purposes of processing their data
* Retention periods
* Who it will or could be shared with

The key requirement other than the above is that they must be provided with this information at the time you collect their information from them, if this was obtained from other sources then they must be given the privacy information within a month.

**The right of access**

This covers the individual’s rights relating to accessing their personal data – this will be covered in more detail a little further on as this is the most common request that will be dealt with by Evolve Intervention.

**The right to rectification**

This right states that individuals can request to have inaccurate personal data changed or incomplete data completed. The DPA 2018 defines inaccuracy in data thusly “personal data is inaccurate if it is incorrect or misleading as to any matter of fact”.

**The right to erasure**

This right is also known as the right to be forgotten. This only applies in certain circumstances and does not apply to data that Evolve Intervention has or will archive as this has been deemed to be in the public interest and / or needed for historical research purposes. The main circumstance where this applies to data that Evolve Intervention processes is if the data is being held is based on consent given by the data subject.

**The right to restrict processing**

This gives data subjects the right to ask Evolve Intervention to stop processing their data. This will only really apply if the accuracy of the data is in question and the continued processing of the data would be detrimental without the inaccuracy being corrected.

**The right to data portability**

This gives data subjects the right to obtain and reuse their data with another service. This will not apply to Evolve Intervention as it is mainly concerned with financial data.

**The right to object**

This gives individuals the right to object to the processing of their data. Where data is being processed based upon legitimate interests or a task carried out in the public interest. They must give specific reasons as to why they do not want their data processed that are relevant to their circumstances. This is not an absolute right and Evolve Intervention can refuse if:

* There is a compelling legitimate interest which overrides the rights of the individual (see the Legitimate Interest Assessment)

**Rights related to automated decision making including profiling**

This lets a data subject request human intervention in the automatic decision-making processes associated with their data. Evolve Intervention does not employ this type of automation and therefore it is not applicable.

**Subject access requests**

**Recognising a request**

As with the other rights, requests to access personal data can be made in writing or verbally. If the identity of the requester is in any doubt, then the steps in the section ‘establishing the identity of the requester’ should be followed.

There are some key points to remember when seeking to recognise a subject access request:

* It can be made to anyone employed by Evolve Intervention
* It can be made in any way, including through social media and text messages
* As long as it is clear that the requester is asking for access to their personal data the request does not need to contain any specific wording or reference to the GDPR / DPA

If a request is made then it should be passed on without delay – and in any case within 72 hours – to the EIDRA by email to info@evolve-intervention.com

There is a subject access request form further on in this document that should be used for all requests, however, this does not mean that it is compulsory for the requester to fill in. It should be made available on the Evolve Intervention website with instructions to email it to info@evolve-intervention.com, along with proof of identity to speed up the request – it should also state on the website that if they do not want to fill it in then they can email or telephone instead. If the requester does not want to or can not fill it in, then the EIDRA should fill it in on their behalf after communicating with them – there should be a completed form for each request that is recorded on the individual’s file.

**Third party requests**

A third party request relates to someone requesting access to the data on behalf of the data subject. This is separate to information requests from organisations for their own use, these requests should be dealt with under Information Sharing Agreements or the ad hoc request procedures.

It is a legitimate request if the third party can provide proof that they are acting in accordance with the data subject’s wishes, some examples of this might be:

* A solicitor with a written confirmation of their clients wish for them to act for them
* Power of attorney (where someone has lost the mental capacity to manage their own affairs

In any case it is the duty of the third party to provide adequate proof of their right to act for the data subject.

If there is doubt about the data subjects knowledge of the scope of the request, or if the data would contain particularly sensitive information then it may be appropriate to send it directly to the data subject who can then share it themselves with the third party, as long as they have capacity to do so.

**Requests relating to children**

Where the request is from a parent acting on behalf of a child then the EIDRA needs to establish whether the child is mature enough to understand their data rights. If they are then it is appropriate to respond directly to the child rather than the requester.

When deciding whether to respond to a third party acting on behalf of a child or to a child directly the following points should be taken into account:

* The child’s level of maturity and their ability to make decisions like this
* The nature of the personal data
* Any court orders relating to parental access or responsibility that may apply
* Any duty of confidence owed to the child or young person
* Any consequences of allowing those with parental responsibility access to the child’s or young person’s information. Particularly if there are or have been safeguarding concerns or if the information being disclosed could lead to safeguarding concerns
* any detriment to the child or young person if individuals with parental responsibility cannot access this information
* any views the child or young person has on whether their parents should have access to information about them

As Evolve Intervention work with children of ages 5 upwards it can not be assumed that the child will have the capacity to understand the request, however those of 10 and over should be deemed to have the capacity to understand and should be considered competent unless it can be proved otherwise. It is important to note that the right to access is the child’s right, no matter their age and that parents can only exercise it on their behalf – the parents do not have any automatic rights of their own to access the data.

**Responding to a request**

Once the preliminary steps above have been carried out then, the identity of the individual established and the data located and collated then it will be time to respond to the individual.

The data should be provided, where possible in a common digital form e.g. pdf, rtf, jpeg, csv and sent by secure email or protected via a verbally communicated password (see security document for more information on transmitting digital files). It is also important to:

* Translate, provide a key or otherwise decipher abbreviations, acronyms or other codes
* Ensure that information is provided in clear and concise language (this will be dependant on case recording practices as it is illegal to alter data before sending it out unless it would have been altered regardless of the request)

The rule is that it should be able to be understood by an average person or child, Evolve Intervention has no responsibility to translate documents into another language or to provide typed versions of hand written notes (although this last point is good practice).

**Third party information contained in data requested**

Where there is information about a third party contained within the data it is not necessarily a barrier to disclosing the data in question. Consideration should be given to redacting the information about a third party so that identification is impossible – in reality this may mean doing more than redacting just their name. If redaction is not possible then consideration needs to be given as to whether to release that particular data set to the requester, this should be done on an individual basis and should take account of the following:

* The type of information that would be disclosed
* What effect would this have on the third party
* The duty of confidentiality Evolve Intervention has to the third party
* Whether consent can or has tried to be obtained and if the third party would be capable (without compromising the confidentiality of the requesting data subject)
* If consent to share has been refused by the third party

**Record Keeping**

A clear record of all requests should be kept on a spreadsheet along with dates and decisions made regarding it. The data recorded should include:

* Data subject name
* Requester name if different from data subject
* What the request was
* How the request was made (email, telephone etc)
* Decisions made (e.g. redact some entries, supply to third party)
* Date that the request was made, acknowledged, fulfilled etc

The request form should then be uploaded onto the person’s casefile or included in their archive record depending on the location of the file, along with communications relating to the request.

**Subject Access Request Details**

|  |  |
| --- | --- |
| Title (Mr / Mrs / Miss / Ms / Other) |  |
| First Name |  |
| Middle name(s) |  |
| Last / family name |  |
| Date of Birth |  |
| Email address  |  |
| Telephone number |  |
| Does this request relate to your data, or someone else’s? If so who and why are you acting on their behalf?  |  |