



## **Data Subject Rights Procedures**

### **(Appendix 2 to Data Protection Policy)**

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## **Introduction**

The General Data Protection Regulation (GDPR) provides all living individuals (data subjects) with certain rights over their personal data. Not all rights are absolute, and some can be subject to exemptions. This Procedure should be read in conjunction with the Data Protection Policy.

## **Purpose**

The purpose of this procedure is to explain how a data subject can make a rights request in relation to their personal data, as defined in Articles 15 to 21 of the GDPR, and how Trafalgar Housing Association will manage requests to ensure compliance with the GDPR and any other relevant legislation.

Where personal data is being processed by Trafalgar Housing Association and the identity of the data subject has been verified, Trafalgar Housing Association will respond to the request and provide the data subject with a response within the statutory timeframe.

## **Scope**

The following rights involving personal data are covered by this procedure:

<b>Data Subject Right</b>	<b>GDPR Article</b>
Right of Access (Subject Access Request)	Article 15
Right of Rectification	Article 16
Right of Erasure (Right to be forgotten)	Article 17
Right to restrict processing	Article 18
Right of transfer data (Data Portability)	Article 20
Right to object to processing	Article 21

## **Responsibilities**

All employees and staff, including temporary staff, are responsible for complying with this procedure. The Data Protection Lead (Angela Wood), with advice and assistance from the Data Protection Officer (DPO), is responsible for maintaining a register of all rights requests and co-ordinating the collection of personal data and providing any required responses.

## **Definition of Personal Data**

Personal data, for the purposes of this procedure, is defined as any information relating to an identified or identifiable living individual who can be identified, directly

or indirectly. Personal data includes facts, opinions or intentions relating to the data subject. The GDPR applies to personal data which:

- Is processed wholly or partly by automated means e.g. IT system, CCTV, voicemail.
- forms or is intended to form part of a filing system, e.g. a categorised file that enables personal data to be readily accessible.

## **Receiving a Valid Request**

A data subject can make a request in any way, e.g. verbal, written, email, fax, social media or website contact form etc. A request cannot be progressed if it does not include sufficient information to identify clearly what personal data is being requested; in these instances the data subject can be asked for further information in order to help identify and locate the information.

## **Verifying the Identity of the Data Subject**

The identity of the data subject must be confirmed and Trafalgar Housing Association must be sure that the request has come from, or with the authority of, the data subject. Where there are any reasonable doubts concerning the identity of the data subject, additional information must be requested to confirm the identity of the data subject.

Once Trafalgar Housing Association is satisfied, a note will be made that this requirement has been met and any copies of identification documents will be shredded (there is no requirement to retain copies of any ID verification). Any originals will be sent back via recorded delivery.

If Trafalgar Housing Association can demonstrate that it is not able to identify the data subject, even after additional information is provided, a refusal notice to act upon the request will be issued.

## **Requests from parties other than the data subject**

There are occasions where a data subject may agree to a third party making a request on their behalf, such as a solicitor or family member.

To protect a data subject's personal data, Trafalgar Housing Association will make all the necessary checks to be satisfied that the individual making the request on behalf of the data subject is entitled to do so. This may include requesting a written authority to make the request (e.g. evidence of consent from the individual) or a more general power of attorney.

No information will be released until Trafalgar Housing Association is satisfied. Trafalgar Housing Association may feel it appropriate to contact an individual directly to discuss the request, e.g. if asked to release special category data.

In the event of this, the data subject will be given an overview of the type of information that will be released and the option to;

- view their personal data first and upon consent it will be released to the third party.
- grant permission for it to be sent directly to the third party.
- withdraw consent and no information will be sent to the third party.

## **Charges**

In most cases there will be no charge for responding to a request. However, where Trafalgar Housing Association can demonstrate that the request is manifestly unfounded or excessive in nature it can either;

- charge a reasonable fee, reflective of the administrative costs of dealing with the request; or
- refuse to act on the request.

A data subject will be informed of such decision, the reason why and how a complaint can be raised with the Information Commissioner's Office (ICO) if they wish to appeal. If the request relates to access to personal data, where Trafalgar Housing Association has provided one copy of the personal data free of charge, for further copies of the same data, Trafalgar Housing Association may charge a reasonable fee to the data subject based on administrative costs.

## **Timescales**

Trafalgar Housing Association shall provide a response to the data subject without undue delay and in any event within one month of receipt of a valid request. The day the request is received is day one, e.g. if the request is received on 10<sup>th</sup> August the last day for responding is 10<sup>th</sup> September. Where there is no corresponding date in the following month the last day of that month will be the last date for responding, e.g. received on 31<sup>st</sup> August the last day will be 30<sup>th</sup> September. This period may be extended by two further months where necessary, considering the complexity and number of requests.

The Data Protection Lead shall inform the data subject of any extension within one month of receipt of the request, together with the reasons for the delay.

If it is not possible to action the request, the Data Protection Lead shall inform the data subject without delay and at the latest within one month of receipt of the request together with the reasons for not responding to the request and how the data subject may complain to the ICO.

## **Responding to Requests**

The data in any response shall be presented in a concise, transparent, intelligible and easily accessible form, using clear and plain language. Where an email or online request for copy data is received, the data shall be provided by email, unless the data subject has requested that it be provided in another form. Any personal data which is emailed shall be encrypted and subject to appropriate security measures.

## **Access Requests (Subject Access Requests)**

This right enables a data subject to verify that Trafalgar Housing Association is lawfully processing their personal data and to check its accuracy. Where data is being processed by Trafalgar Housing Association and the data subject makes a request to access the data, Trafalgar Housing Association shall provide the data subject with access to the personal data and, provide:

- the purpose of the processing;
- the categories of personal data being processed;
- the recipients or categories of recipients to whom we have disclosed or will disclose personal data;
- the retention period for the data (or how we determine that);
- the existence of the right to have us rectify, erase or restrict processing of that data;
- the right to lodge a complaint with the ICO;
- the source of the information if we have not collected the data direct from the subject; and
- the existence of any automated decision making.
- Where personal data is transferred to a third country or to an international organisation, the appropriate safeguards relating to the transfer.

Trafalgar Housing Association has a duty to ensure that other (third party) individual's information is treated fairly and protected accordingly. Therefore, before Trafalgar Housing Association releases anything to the data subject it has to ensure that it is not inappropriately releasing information about another individual who can be identified from that information. On occasions where someone else can be identified from the information, Trafalgar Housing Association will not release the data relating to that individual unless the individual has consented to the release of the information or it is reasonable in all circumstances to release the information without consent. Trafalgar Housing Association will take the following approach when dealing with third party information:

- Seek documented consent from other individuals.
- Where appropriate, redact information so other individuals cannot be identified, such as names / addresses/ identification.
- Where appropriate, provide a summary of the personal data.
- Review whether it would be reasonable to release the information without consent, considering:
  - is the information already known by the data subject?

- is the individual acting in their professional capacity and had dealings with the data subject?
- is there a duty of confidentiality owed to the other individual?

All decisions will be made on a case by case basis, taking into consideration other legislation that may force the release of information to the data subject.

The Data Protection Act 2018 makes it an offence to intentionally alter, deface, block, erase, destroy or conceal information with the intention of preventing disclosure of all or part of the information that the person making the request would have been entitled to receive.

## **Rectification Requests**

Where the request is for the rectification of inaccurate personal data, Trafalgar Housing Association will restrict further processing of personal data whilst verifying the accuracy of the data. Where the rectification request is upheld, Trafalgar Housing Association shall inform any third parties who have been sent personal data that the data subject has made a rectification request and instruct all parties what rectification is required. There is no requirement to notify third parties if it is impossible to do so or involves disproportionate effort.

## **Erasure Requests**

When requested by the data subject, Trafalgar Housing Association will erase personal data without undue delay where the request does not conflict with any legal, regulatory or other such constraint. This right can only be exercised by data subjects where:

- the personal data is no longer necessary in relation to the purpose for which it was collected or processed;
- where the data subject's consent to processing is withdrawn;
- where the data subject objects to the processing and there are no overriding legitimate grounds for processing;
- where there is no legal basis for the processing; or
- where there is a legal obligation to delete data.

Where personal data is to be deleted, data held in different locations and in different formats will be reviewed to ensure that all relevant personal data is erased. Where personal data has been made public, we shall take reasonable steps (taking into account technology and cost) to notify other controllers processing the data of the data subject's request for erasure. Trafalgar Housing Association is not required to, and will not, delete personal data where the processing is necessary for:

- exercising the right of freedom of expression;

- complying with a legal obligation in the public interest or in the exercise of an official authority;
- for public health reasons;
- for archiving purposes; or
- for the establishment, exercise or defence of legal claims.

Once the relevant personal data has been deleted the data subject shall be advised that the data has been erased unless doing so is impossible or involves disproportionate effort.

## **Restriction Requests**

The data subject shall have the right to restrict (block) processing of their personal data. This is not an absolute right and the data subject will only be entitled to restriction where:

- the accuracy of personal data is contested by the data subject for a period to enable us to verify the accuracy;
- the processing is unlawful, and the data subject does not want it to be erased but requests restriction instead;
- we no longer need the data for the purpose of the processing, but the data is required by the data subject for the establishment, exercise or defence of legal claims; or
- the processing has been objected to and verification of that objection is pending.

Where the data subject exercises their right to restriction, personal data can then only be processed with their consent or for the establishment, exercise or defence of legal claims, or for the protection of the rights of another person or legal entity, or for reasons of important public interest of the UK or an EU Member State. Where we have restricted any form of processing and that restriction is subsequently to be lifted, we shall advise the data subject accordingly unless doing so is impossible or involves disproportionate effort.

## **Transfer Requests (Data Portability)**

This right allows a data subject to obtain and re-use personal data for their own purposes for different services. Where a data subject requests a copy of their personal data for the purposes of transferring it from Trafalgar Housing Association to another data controller we shall do so provided:

- the legal basis for processing is based on consent or a contract with the data subject; and
- the processing is carried out by automated means.

The data subject shall only be provided with the personal data they have provided to Trafalgar Housing Association and the personal data gathered by us in the course of

our dealings with the individual or which has been generated from our monitoring of the data subject's activity; this will only be data held electronically. The data subject is entitled to be provided with their personal data in a structured, commonly used and machine-readable format for transfer to another controller; or where possible to have Trafalgar Housing Association transfer the data direct to another controller.

## **Objection Requests**

A data subject can object to the processing of their personal data, including profiling, on grounds relating to their particular situation. Where a request is received, Trafalgar Housing Association is under an obligation to act upon a request where one of the following conditions applies:

- where their personal data is processed based on the public interest or in the exercise of official authority; or
- where we are processing their personal data based on legitimate interests.

If we can demonstrate that Trafalgar Housing Association has legitimate grounds for the processing which override the interests, rights and freedoms of the data subject or for the establishment, exercise or defence of legal claims, it is not necessary to cease processing. This does not apply to direct marketing; data subjects are entitled to object to direct marketing (in any form) which is sent to them. This is an absolute right and where such a request is received, Trafalgar Housing Association must comply with the request.

## **Applying Exemptions**

The UK Data Protection Act 2018 provides exemptions which allow organisations to refuse to respond to data subject rights requests in certain circumstances. Trafalgar Housing Association may be exempt from compliance with the data subject rights if certain exemptions apply. Careful consideration should be given to these exemptions and whether they apply before responding to any request by a data subject. Advice from the DPO or legal adviser is recommended. The exemptions are set out in Schedule 2 Parts 1, 2 and 3 of the Data Protection Act 2018 and in summary are:

- **Crime and taxation** – for the prevention or detection of crime; the apprehension or prosecution of offenders or the assessment or collection of tax or duty or an imposition of a similar nature to the extent that those provisions would prejudice the activity.
- **Immigration** – for the maintenance of effective immigration control or the investigation or detection of activities that would undermine the maintenance of effective immigration control.
- **Information required to be disclosed by law etc. or in connection with legal proceedings** – to the extent that the application of the provisions would prevent same including disclosure which is necessary for the purpose of or in connection with legal proceedings (including prospective legal proceedings) or for obtaining legal advice or otherwise establishing, exercising or defending legal rights.

- **Functions designed to protect the public** – certain functions carried out to protect the public from financial loss through fraud etc.; to protect charities; for health and safety reasons; to prevent malpractice in a public office; or to protect business interests.
- **Regulatory activity** – relating to certain bodies where the application of the provisions would prejudice the discharge of their function.
- **Legal professional privilege/confidentiality of communications** – some solicitor/client communications or information prepared for the purpose of litigation.
- **Self-incrimination** – to the extent that complying would reveal evidence of an offence.
- **Corporate finance** – in certain circumstances.
- **Management forecasts** - to the extent that the application of the provisions would prejudice the conduct of the business or activity concerned.
- **Negotiations** - with the data subject to the extent that the application of the provisions would prejudice those negotiations.
- **Confidential references** - given to or provided by Trafalgar Housing Association.
- **Health, social work, education and child abuse** data to the extent that the application of the provisions would cause prejudice.

If we apply any exemptions or refuse the request for any reason, we will provide the data subject with the following information:

- the reasons why the request is refused/exemptions applied.
- their right to make a complaint to the ICO.
- their ability to seek to enforce this right through judicial remedy.

## **Register of Requests**

The Data Protection Lead is responsible for maintaining a register of requests to allow monitoring of the progress of requests and the volume of requests received.

## **Records Retention**

A copy of all the data retrieved must be retained for reference should the response be challenged by the data subject. These will be maintained in line with the records retention schedule and retained for at least 1 year.

## **Complaints / Right to appeal**

If the data subject or their representative is not satisfied with the outcome of their rights request, in the first instance the individual will be encouraged to contact the Data Protection Lead or DPO. If they are still not satisfied, they may contact the Information Commissioner's Office directly at:

Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF  
Tel:  
E-mail: [caserwork@ico.org.uk](mailto:caserwork@ico.org.uk)  
Website: [www.ico.org.uk](http://www.ico.org.uk)