The Data Protection Bill (DPA 2018) was published on 14 September 2017 and aims to modernise data protection laws to ensure they are effective in the years to come. Alongside it, the General Data Protection Regulation (GDPR) will together replace the Data Protection Act 1998 (DPA). As such, The National Archives must makes changes to how it handles subject access enquiries. There are two main changes: the abolition of the statutory £10 charge, and the deadline to complete enquiries moves from 40 calendar days to one calendar month. There are also some different options for claiming exemptions to the provision of personal information from our archival holdings to subject access requesters. The new regulations come into force at midnight on Friday 25 May 2018.

The Executive Team is asked to decide on two related issues:

1. The National Archives future policy for the provision of information for subject access enquiries 

2. The future policy for charging for the provision of information for subject access enquiries, either under exemptions to GDPR and DPA2018, or by claiming the under the Public Record Act (Fees) Regulations 2017

1 The provision of information for subject access enquiries

1 (a) The current situation under DPA

Requesters have the right to be given their personal information that the National Archives holds in its automated, or digital records, structured manual, usually paper, case files indexed by name, and to unstructured manual/paper files. There are certain general exemptions to these rights:

In all cases we are not obliged to respond to subject access enquiries until we have received sufficient clarification to enable us to locate it. In cases of subject access enquiries...
The National Archives

directed to the archival collections which ask for everything we have on the requester, they are directed towards paid search (or to independent researchers).

We can claim an exemption, referred to as the research exemption s 33 DPA, for closed archival records, but as a publicly funded institution, The National Archives believes that it should, where possible, provide information necessary for people to claim their rights and entitlements. We do not always charge the fee.

There are also some exemptions for particular circumstances of processing personal data: References for employment or education, judicial appointments, Crown or ministerial appointments, management forecasting, corporate financial services, negotiations with the data subject

Therefore under the current DPA we comply with all corporate subject access enquiries, unless the above exemptions apply. We get very few – a handful each year.

We comply with Subject access enquiries for open archival records. As the records are open, people can come here to see their own information, but if they are unable to do that, we provide their information to them unless the above exemptions apply.

The position with open personal data that has been digitised by Licensed Associates varies, for example the digitisation process may have created material indexed by name enabling the data to be located that could not be located in the original paper copies. The Publisher may be the Data Controller, for some or all of the information they make available and therefore responsible for complying with subject access requests.

We usually comply with subject access enquiries for closed archival records

1 (b) The situation under GDPR/DPA2108

The three sets of exemptions under the current DPA are carried over in GDPR/DPA2018.

In addition GDPR separates archiving in the public interest from scientific, statistical and historical research, and provides member states an option of an exemption from subject access requests in very particular circumstances. DPA2018, is making this exemption available, at Sch. 2 part 6 para 28:

'The listed GDPR provisions [including right of access to the data subject's own data] do not apply to personal data processed for archiving purposes in the public interest to the extent that the application of those provisions would prevent or seriously impair the achievement of those purposes'.

The purposes are defined by GDPR as:
'to acquire, preserve, appraise, arrange, describe, communicate, promote, disseminate and provide access to records of enduring value for general public interest'.

Agenda item:
Options for the provision of information for subject access enquiries:

1. Continue as we are: providing personal data so long as we have enough information to locate it and in the case of closed archival data if we believe necessary for people to claim their rights and entitlements.

2. Refuse all archival data by under the exemption that it would prevent or seriously impair our function of archiving in the public interest - given that open data is available to subject's who visit us. This would go against our ethos. We have staff and systems in place to comply with subject access enquiries. It may look as if the National Archives is churlishly refusing to comply with requests now it can no longer charge the £10 fee.

3. Consider each request for open and archival data on its merits as to whether compliance would prevent or seriously impair our function of archiving in the public interest. This would be time consuming, difficult to apply consistently and requesters may well query the decision, possibly leading to an Internal Review, for which resource would have to be found. As for Option 2 it would be difficult to argue compliance would prevent or seriously impair archiving in the public interest when the National Archives has been complying with subject access enquiries.

Option one is therefore the recommended option.

2 Charging for the provision of information for subject access enquiries

CEE currently provides £10 Subject access searches for the main in the following series:
- RG 101 (1939 Register)
- WO 416 (Prisoners of War – WW2)
- BT 372 and BT 382 (Merchant Seamen)

But, under the current situation and option 1, above, we can do and must do for any open series and pieces which are easily identified as containing records of living people if we are asked to do so, though we are not obliged to respond to a vague “send me everything you have on me” as such a request would exceed the maximum search time limit and is unreasonable given the nature and arrangement of our collection. Data subjects can only request their own information. Discretionary data protection requests to closed records are generally handled by the FOI Centre without a fee mirroring FOI requests. Although there is a legal exemption possible, ethically TNA will usually provide information if the data subject can identify the record they believe contains their personal data.

Under GDPR/DPA2018 we can charge a ‘reasonable fee’ when a request is manifestly unfounded or excessive, particularly if it is repetitive.
We may also charge a reasonable fee to comply with requests for further copies of the same information. This does not mean that you can charge for all subsequent access requests.

The fee must be based on the administrative cost of providing the information.

**Options for charging for the provision of information for subject access enquiries**:

1. Replace the £10 statutory fee with no fee. Annually, CEE carries out about 50 Subject Access searches generating an income of £500 so we would lose this but it is not significant and does not reflect the true cost recovery amount, in fact there are additional administrative steps associated with payment systems so there would be some savings there by no longer charging for such searches. Plus, the FOI team do not charge for Subject Access searches in closed records so not charging would bring this in line with their approach.

2. Offer to carry out searches listed above under the Public Records Act at cost recovery rates, in line with paid searches carried out under the FOIA. The minimum cost would likely be £23.35, but more for Merchant Seaman searches. This option carries reputational risks. Not only is it a marked increase on the current data protection fee but other public authorities, including those that created the records and most other archives, cannot charge in a similar manner.

3. Claim an exemption under the 2018 Act once passed and refuse the enquiry. This is legally possible but ethically is a significant change for current position (enquirers are sometimes the victims of crime for example).

**Recommendation for the Executive team**

This paper asks the Executive team to consider the above options and recommends option 1 for providing personal data, and option 1 for Fees with the caveat that there is a review in December 2018 should the resource burden involved in handling such requests increase significantly.

If you’re happy for us to proceed then over the next six weeks, we will work with the web team to amend information on our website and remove the fee and payment links as well as reference to £10.

Linda Stewart,
18 April 2018