

Data: A new direction CONSULTATION RESPONSE



19 November 2021

About StopWatch

StopWatch is a coalition of legal experts, academics, citizens and civil liberties campaigners. We aim to address excess and disproportionate stop and search, promote best practice and ensure fair, effective policing for all.

Our response

Q2.3.1. Please share your views on the extent to which organisations find subject access requests time-consuming or costly to process.

Please provide supporting evidence where possible, including:

- What characteristics of the subject access requests might generate or elevate costs
- Whether vexatious subject access requests and/or repeat subject access requests from the same requester play a role
- Whether it is clear what kind of information does and does not fall within scope when responding to a subject access request

In answering this question it is important to identify both perspectives from which it can be interpreted. The question is posed from an organisation's viewpoint as the recipient of subject access requests (SARs), but there is also the requester's perspective. The reason why an individual makes a SAR is to exercise a 'fundamental right' to access their own personal information, and [the Human Rights Act safeguards the right](#) to respect for lawful possession of this information. To this extent, the time or cost to an organisation of complying with an individual's request is and should always be in respect of this right.

This is especially the case when challenging unlawful data processing, such as so-called gangs databases held by police forces (eg. The Metropolitan police's *Gangs Matrix*). Stopwatch has previously used SARs to support people to find out if they are on the *Gangs Matrix*, and to subsequently take action to remove themselves from said database. [Amnesty International discovered](#) that individuals identified on the *Gangs Matrix* – who are disproportionately Black – are subject to individualised surveillance / racial profiling, and criminalisation. This includes victims of serious violence, as well as those with no criminal record who were denied access to education, housing and other public services on the basis of their inclusion on a gang database.

Subsequently, [an investigation by the Information Commissioner's Office](#) (ICO) found that the Metropolitan Police Service's (MPS) use of the *Gangs Matrix* led to multiple and serious breaches of data protection laws. This implies to us that there is a great cost to misusing data in the process of handling requests for their personal information held on them.

It also highlights the indispensable role of SARs in empowering individuals who otherwise would not know why they were (and are) being targeted by the police for enforcement. In our opinion, this is the most pressing issue regarding SARs. Too few people are aware that they can make SARs to find out if they are on the *Gangs Matrix*, necessitating StopWatch to undertake a public campaign to raise awareness. In contrast to this, there is no reliable evidence that organisations are being negatively impacted by SARs, cost or timewise.

The government should not be making proposals that will make SARs more difficult to make, but should instead improve the mechanisms by which people can access their data rights.

Q2.3.2. To what extent do you agree with the following statement: 'The 'manifestly unfounded' threshold to refuse a subject access request is too high'?

- Strongly agree
- Somewhat agree
- Neither agree nor disagree
- Somewhat disagree
- **Strongly disagree**

Please explain your answer, providing supporting evidence where possible, including on what, if any, measures would make it easier to assess an appropriate threshold.

StopWatch understands that the threshold for refusing a subject access request must be high, and the purpose of this is to protect individuals from unfair or arbitrary rejections. Any attempt to lower this threshold would therefore result in an increase in refusal of legitimate attempts by individuals to access their own data and would undermine the basic principle that individuals have the right to know what data is held about them.

Organisations are not entitled to personal data. It is either loaned by agreement or obtained by some other means *only for as long as it is necessary*, and therefore comes with a responsibility to be maintained in a way that is easy to retrieve and delete when and where it is appropriate. Our experience with police-held gangs databases tells us that standards of record keeping are a significant bottleneck to the ease of personal data retrieval – records containing personal information on individuals are too often 'lost'. But with ever more efficient methods of maintaining data becoming available to organisations, StopWatch believes that the onus is on them to do better in this regard.

Furthermore, definitions centred on how SARs are made – such as 'manifestly unfounded' and 'malicious in intent' – are open to interpretation already, and grant organisations a flexible degree of discretion in deciding whether or not to carry out the request. Yet, there is no reliable evidence that the threshold has resulted in responsible organisations becoming overwhelmed by time-consuming or vexatious requests.

For all these reasons, we therefore would reject the statement that the threshold for refusing a subject access request is too high, and instead ask whether organisations are doing all they can to process and maintain personal information efficiently in the first instance.

Q2.3.3. To what extent do you agree that introducing a cost limit and amending the threshold for response, akin to the Freedom of Information regime (detailed in the section on subject access requests), would help to alleviate potential costs (time and resource) in responding to these requests?

- Strongly agree
- Somewhat agree
- Neither agree nor disagree
- Somewhat disagree
- **Strongly disagree**

Please explain your answer, and provide supporting evidence where possible, including on:

- Which safeguards should apply (such as mirroring Section 16 of the Freedom of Information Act (for public bodies) to help data subjects by providing advice and assistance to avoid discrimination)
- What a reasonable cost limit would look like, and whether a different (ie. sliding scale) threshold depending on the size (based on number of employees and/or turnover, for example) would be advantageous

A cost ceiling would mean that whether an individual is able to obtain their personal data would be a lottery, depending on the amount of their data held by an organisation and the way in which it is stored. It would create a barrier preventing individuals from obtaining and challenging personal data which has been collected and retained and, on the basis of which, decisions are made about them.

It also creates a perverse incentive for organisations to store data in an inaccessible way and to make it harder to retrieve records on request (ie because it might exceed the cost ceiling).

Q.2.3.4: To what extent do you agree with the following statement: 'There is a case for re-introducing a small nominal fee for processing subject access requests (akin to the approach in the Data Protection Act 1998)'?

Nominal fees will disproportionately penalise the poorest individuals, the more SARs they make. Even the smallest nominal fee can create an obstacle for some people preventing access to personal information vital for the enforcement of rights, such as unnecessary information acquired by police forces on innocent people defined as 'gang nominals' by their proximity to supposed gang members (eg they happen to have mutual friends).

Any fee system developed would be regressive and subject individuals to significant costs for simply exercising the right to access their personal data. Worse still, nominal fees for

subject access requests would allow irresponsible and malicious organisations (such as rogue elements of police forces) to collect fees against the victims of their own abuses.

Q2.6.1. In your view, which, if any, of the proposals in 'Reducing Burdens on Businesses and Delivering Better Outcomes for People', would impact on people who identify with the protected characteristics under the Equality Act 2010 (i.e. age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation)?

Please see previous answers.