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# Generic Protocol for Requesting Information Under

# Section 10 Adult Support and Protection (Scotland) Act 2007 (the Act)

# TO BE USED WITH THE LOCAL AUTHORITY OR DELEGATED BODY’S LOGO OR LOGOS FOR SUCH REQUESTS AT THE TOP OF EACH PAGE

# Image result for nhs highland logo

# Dear

# Re: Request for Information Under

# Section 10 Adult Support and Protection (Scotland) Act 2007 (ASPA)

I , (name), in my role as Council Officer for [insert relevant organisation name and where the power is delegated from the local authority state ‘with delegated authority and powers in relation to this request under s1(5) of the Public Bodies (Joint Working)(S) Act 2014 from [ENTER LOCAL AUTHORITY NAME] formally require disclosure of information from (company/organisation name and address). The request is made under Sections 4 (Inquiry) and 10 (Examination of Records) of the Adult Support and Protection (Scotland) Act 2007 (the Act) on the basis that we know or believe the below named to be an “adult at risk” as defined by the Act.

Please contact the Council Officer named above upon receipt of this request for records to discuss the provision of the information required. The professional title of the Council Officer may vary as per the definition of Council Officer in the attached information sheet. *If for any reason, you are unable to comply with this request, please contact the Council Officer immediately* **and** *advise them of your reasons in writing* as a person commits an offence by, without reasonable excuse, refusing or otherwise failing to comply with a requirement made under section 10 of the Act.

All information provided will be managed within the terms of the Act, the Data Protection Act 2018 (“DPA”) and the General Data Protection Regulation ((EU) 2016/679) (“GDPR”).

Please see the *Information Sheet* attached regarding the legal context of this request and provide the information below:

|  |  |
| --- | --- |
| **Name of Adult**  |  |
| **Date of Birth (if available)** |  |
| **Address (if available)** |  |
| **Relevant reference numbers (please state which reference is being used e.g. national insurance, CHI etc.)** |  |
| **Brief Description of the ASPA Inquiry** |  |
| **Information that is required (please include any third party mandates relating to the information located)** |  |
| **Information Format required** | * *Hard Copy*
* *[ ]  Electronic Copy to the stated email addresses above (where available)*
 |
| **Information Required by** | *Date Month Year* |
| **Council Officer's Name, Contact Details and Signature** |  |

Yours faithfully

**Information Sheet**

**Designated Agency Application for Disclosure of Information under Sections 4 and 10 of the Adult Support and Protection (Scotland) Act 2007**

The Adult Support and Protection (Scotland) Act 2007 (the Act) gives councils and other public bodies working with them various powers to support and protect adults at risk (as defined by the Act). The Act states the following;

*The Adult Support and Protection (Scotland) Act 2007, (the Act) confers on ‘Council Officers’ a duty to investigate cases of suspected harm to an ‘adult at risk’. As part of this investigation, records pertaining to the adult at risk can be requested. Bodies holding these records have a legal duty to co-operate with the investigation. Failure to do so, without reasonable excuse, can amount to the commission of an offence under the Act making the individual liable on summary conviction to a fine or imprisonment, or both.*

“Council Officer” means an individual appointed by a council (local authority) under section 64 of the Local Government (Scotland) Act 1973. The Council Officer submitting this request is registered with the appropriate professional body as a Social Worker, Social Service Worker, Occupational Therapist or Nurse, and has at least 12 months' post qualifying experience of identifying, assessing and managing adults at risk. They have been delegated the statutory responsibility of Council Officer by the Chief Social Work Officer of [insert agency].

Section 4of the Act statesthat a council [or delegated agency] must make inquiries about a person’s wellbeing, property or financial affairs if it knows or believes that the person is an adult at risk, andthat it might need to intervene to protect their wellbeing, property or financial affairs.As part of this process, Section 10 of the Act stipulates:*A Council Officer may require any person holding health, financial or other records relating to an individual whom the officer knows or believes to be an adult at risk to give the records, or copies of them, to the officer.* **Where there is any dubiety about the identification of the Council Officer the organisation receiving the request will verify this**.

Section 3 of the Act defines an ‘adult at risk’ as an individual aged 16 or over who is unable to safeguard their own well-being, property, rights or other interests and is at risk of harm. In such instances and where the person is more vulnerable to harm because of a disability, mental disorder, illness or infirmity, the Act can be used to protect them.

The request does not require the consent of the individual, any power of attorney or guardian before the required information is provided, as in some circumstances the adult in question may be placed at greater risk of harm. *Under section 49(2) of the Act it is an offence for a person or an organisation to fail to comply with a requirement made under section 10, without reasonable excuse*. **Whilst you will be concerned about confidentiality, it is important to note that NOT sharing this information may place the adult at further risk of harm. Please refer to your internal guidance.**

Any information received in the course of an investigation is treated with the utmost confidence and will not be disclosed to any third parties other than in accordance with the provisions of the above Act and other relevant legal requirements.

For the avoidance of doubt, data processing in relation to this request is necessary for compliance with legal obligations [sections 4, 10 and 49(2) of the Adult Support and Protection (Scotland) Act 2007] to which the local authority, the Council Officer and the organisation in receipt of this request are subject.[[1]](#footnote-1) Organisations could also rely on Article 6(1) (e) of the GDPR, as read with section 8(c) of the DPA, namely the necessity of processing for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller, as a lawful basis for processing (i.e. passing on) personal data to a local authority.

Where data sharing is necessary to ensure safeguarding but is not specifically covered by the Act, legal advice should be sought.

Should you be unfamiliar with the Adult Support and Protection (Scotland) Act 2007, you can view a copy of it at: <http://www.legislation.gov.uk/asp/2007/10/contents>

**Council Officer Guidance Notes**

The wording and ordering of this document has been approved by national agreement with Social Work Scotland. If issues arise with the structure of the form please advise your lead officer for adult protection in order that any amendments can be considered at national level.

Please use this template in conjunction with the [Adult Support and Protection (Scotland) Act 2007 Code of Practice (April 2014)](http://www.gov.scot/Resource/0044/00449622.pdf) especially noting chapter ten.

***It is essential at this point that you identify the correct legal entity to address your request to***. The name of the legal entity may be different to that of the organisation you are contacting and may also change over time. Some organisations may provide a central point and others local or regional contacts. Ascertaining the correct person, title and address will save time and allow the organisation to provide you with the fullest level of detail.

The request should use the locally agreed logo or logos and be accompanied by the Information Sheet. Where the functions of a local authority have been delegated to your agency under Section 1(5) of the Public Bodies (Joint Working) (Scotland) Act 2014 please indicate in your request which local authority has delegated that power to your agency.

Where requests are made electronically the Council Officer must ensure that the information is sent and received securely.

|  |  |
| --- | --- |
| **Name of Adult** | Full name and any known pseudonyms listed separately e.g. Mary McTavishMay McTavish |
| **Date of Birth (if available)** | Please state in full e.g. 22nd July 1952 |
| **Address (if available)** |  |
| **Relevant reference numbers e.g. national insurance, CHI etc.** | Please indicate which reference number or code is being used |
| **Brief Description of the Inquiry** | Basic information only to demonstrate that there is a risk or potential risk which has triggered an inquiry under the Act. This may assist the organisation in locating the type of information required. **NB** Where you have concerns regarding a proxy do not state these, however do advise that your request should not be shared with them. |
| **Information that is required (please include any third party mandates relating to the accounts located):** | The information requested must be specific as opposed to generic. Ensure you emphasise the need to provide any information about third party mandates. Requests for ‘all information’ will not be accepted. Consider the issues the service user is facing and what material over what period may support your inquiry. Where you are unclear about the types of information the organisation may hold use the ‘verbal’ option to seek advice as to what may be available to support your inquiry.  |
| **Information Format required** | It is likely that most organisations will only provide information in hard copy due to potential security issues with electronic transmission of personal information. |
| **Information required by** | In some circumstances this will be urgent and it may be useful to state the reasons the information is required quickly and facilitate a verbal information exchange.In other circumstances please indicate in your request the required time frame e.g. 7, 14 or 21 calendar days. |
| **Council Officer’s Details and Signature** | Name, position, organisation, address, email address, telephone number and signature. Please DO NOT provide a direct dial contact in the first instance. |

**Use of Information Received Under Section 10**

**It is essential to note that information received must not be distributed in its original form to third parties. It must only be used to inform protection planning.** For example, bank statements obtained should not be distributed as this may be neither relevant nor proportionate. Others only need to understand that harm has been substantiated. However, sharing an assessment or actions required based upon the information received may be relevant and proportionate but should not refer to exact amounts or details. Where a crime has been committed this may not apply. If in doubt please check your local data protection policy.

**Where a Section 10 Request is Refused**

1. Request that the organisation provide their reasons promptly in writing if they have not done so.
2. Discuss the issue with your line manager and consider a request to your legal services department. This request should be based around the need to formally contact the organisation re-emphasising the legal basis of the request, the fact that inaction can lead to further harm and may be an offence under Section 49 (2) of the Adult Support and Protection (Scotland) Act 2007.
3. Record the initial refusal, reasons given and the actions and outcomes thereafter.
1. If the records in question contain ‘special categories of personal data’, in addition to identifying a lawful basis for processing data under Article 6 of the GDPR, an additional condition under Article 9 (2) of GDPR must also be met in order to share data lawfully. Special Category data includes: Racial or ethnic origin; Political opinions; Religious or philosophical beliefs; Trade Union Membership; Genetic data; Biometric data (when used for ID purposes); Health (physical or mental); and, Sexual life or orientation. If the organisation is complying with a Section 10 request under the Act, the Article 9 (2) condition will likely be: (b) Processing is necessary for the purposes of carrying out the obligations and exercising specific rights of the controller or of the data subject in the field of employment and social security and social protection law in so far as it is authorised by (UK) law. Section 10(2) of the DPA then requires a further condition in Part 1 of Schedule 1 of the DPA to be met, for example that in paragraph 1: Employment, social security and social protection. [↑](#footnote-ref-1)