REQUESTS TO ACCESS DATA UNDER DATA PROTECTION LEGISLATION

A LAW SOCIETY OF IRELAND CHECKLIST FOR SOLICITORS

This checklist is designed for use in conjunction with the Law Society's Guidance Note for solicitors on requests to access data under data protection legislation and is intended as best practice guidance. Further information and reference material in relation to data protection obligations generally is available in the members' area of the Society's website under 'Best Practice and Guidance'.

Task	Complete
− For access requests by non-clients, open a file for correspondence in relation to the data access request entitled 'general data access requests by non-clients'	
− Briefly review the legislation – download the *Data Protection Act 1988 Restatement*	
HOW TO APPROACH DATA ACCESS REQUEST WITHIN THE FIRST FEW DAYS	
1. Is the request compliant with *section 4*? − Is the notice in writing - by post, email or fax	
2. Will you charge a fee? − This fee is capped at €6.35	
3. Is the person making the data access request the person they claim to be? − Have you established that the person making the request is the person who they say they are by verifying, in person, with reference to photographic identification?	
4. When must the data access request be completed? − You have 40 days to process the entire request − As the data subject will not be compliant with the legislation until they have discharged your fee or satisfied you as to their identity, the statutory timeframe within which you must complete the data access request will not start to run until the fee has been paid and their identity established	

− Notify the data subject in writing, as early as possible, should you intend to require a fee and identification verification	
− Diary reminders for yourself from the date you receive the request right up until the end of the 40 day time limit to ensure that you meet the deadline	
5. Write to the data subject – Letter 1 of 2 − Write an initial letter to the data subject along the lines suggested in the Guidance Note	
HOW TO PROCESS THE DATA ACCESS REQUEST	
1. How should I search for data in relation to a data subject? − Conduct a search of electronic data – along the lines suggested by the Guidance Note − Conduct a search of manual data – along the lines suggested by the Guidance Note remembering the important definition of *"relevant filing system"*	
2. Is the person entitled to access the data in relation to another individual? − Consider whether *section 4(4)* applies to the data	
3. Do I hold personal data in relation to the data subject? − Refer to the definition of personal data - *"data relating to a living individual who is or can be identified either from the data or from the data in conjunction with other information that is in, or is likely to come into, the possession of the data controller"* − Could the data be interpreted as falling within the meaning of personal data? − Is the data a type of personal data to which access is restricted? (health, social work data, containing an expression of opinion about the person)	

4. Is the data exempted from the right of access? – *section 5* – Does the data fall within the meaning of privileged communications? – Was the data processed with the purpose of preventing an offence?	
5. Inform the data subject of the results of the processing of their data access request – letter 2 of 2 – Write a second letter to the data subject, along the lines suggested in the Guidance Note, informing them of the outcome of the process, within the 40 days statutory time-frame – If a solicitor decides to refuse access, the letter should outline the reasons why the solicitor believes that the data subject should not be allowed to access the data and should also indicate that the individual may complain to the Data Protection Commissioner about the refusal.	

Dated 26th July, 2011