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1.0 Your rights

What are your rights?

Whenever we collect your personal data we do so in order to carry out a particular activity (or 'process'). The best way to find out what your rights are is to consult the privacy notice for the particular process that you're interested in, as different rights apply to different processes.

From 25th May 2018 the relevant privacy notice will be provided to you at the point that the Council collects your personal data. If you do not know what the relevant privacy notice is you can consult the Data Protection Officer at info@moray.gov.uk

You will have different rights depending on the Council's legal basis for using your data. For example, if you were to ask to be removed from an optional mailing list used solely for marketing purposes then the right to erasure (commonly known as 'the right to be forgotten') will usually apply. However, if for example the Council requires some of your personal data to fulfil a legal or statutory obligation relating to a criminal justice process then the right to be forgotten would most likely not be applicable.

Below is a full list of rights of rights you will have in all situations:

- to lodge a complaint with the Information Commissioner's Office
- to request access to your personal data
- to request rectification or erasure of your personal data, as so far as the legislation permits
- to request restriction of processing of your personal data (that is, to request that we halt any activity performed on your personal data), as so far as the legislation permits
- to object to any direct marketing
- to object to any processing undertaken for the purposes of scientific/historical research and statistics, as so far as the legislation permits

Below is a full list of rights of subject rights which you *may* have in *some* situations:

- to challenge and request a review to any decisions made by automated means or to object to such processing
- to withdraw consent at any time*
- to object to the processing activity
- to data portability

* Note: this only applies when the legal basis for the processing is the consent of the data subject. It does not apply when the Council is processing data due to a statutory or legal obligation. As ever, consult the Data Protection Officer for more information.

1.1 Rights of access, rectification, erasure and restriction

How do you make a request regarding these rights?

You should contact the Data Protection Officer at the following address:

info@moray.gov.uk

The Data Protection Officer,
The Moray Council,
Council Office,
High Street,
ELGIN.
IV30 1BX

In order to help us process your request please provide your name and address; details of the service(s) you are receiving; and any other information such as date of birth, sex, householder status (e.g. tenant, owner) you think may help the authority find your information.

In the case where you are requesting access to your data you may also call in person where you will be provided with a copy of the authority's access application form for your use. If you have difficulty with the form help will be provided.

Normally the Council must respond within one month of receiving your application. This may be extended if:

- We ask you for further information if we need to confirm your identity (potential 1 month extension)
- The request is deemed to be complex (potential 2 month extension and/or charge of a reasonable fee to account for the administrative cost of processing the information)
- The requests are deemed to be numerous (potential 2 month extension and/or charge of a reasonable fee)

In the above cases you will be informed of why the extension is necessary.

However, if the request is found to be manifestly unfounded or excessive, or particularly if it is repetitive, then the Council may:

a) charge a reasonable fee to account for the administrative cost of processing the information;
or

b) choose not fulfil the request. You will be informed of the reasons the Council is not taking action, and you will have the right to make a complaint to the Information Commissioner's Office and/or appeal to the courts for this right to be enforced.

1.1.1 More about requests to access your data (Subject Access Requests)

Access requests: what information will you receive?

All of the personal information we hold about you on both our computer and manual record systems. You will also be given a description of the purposes for which we process your data, a list of those to whom we disclose the data and information about sources where this is available.

If you need help understanding the information you receive inform the authority and we will provide someone to explain the contents of the information. A translation service is also available and you can ask for an advocate to assist you.

Can you see information about members of your family or any other person?

You may not see information about other persons, unless they have given their consent. This includes information about members of your family. If you are a parent or a member of an elderly person's family you may be provided with information about your child or the elderly person but only where you have written permission to ask for it or have been granted powers to do so by the court and the authority is satisfied that such permissions are genuine.

How will you be given the information?

You will be provided with a copy for your retention and use. As far as possible, when your information is held electronically we will provide you with a copy of this data in a commonly used file format such as a Word document or Excel file (as appropriate for the kind of data in question). For paper documents this may be a printout of the information from the computer system or a photocopy of your manually held record. If you have difficulty in understanding any of the contents you may ask a member of staff for assistance.

What should you do when you get the information?

You should check it to ensure that you have received all of the information to which you are entitled and to make sure it is accurate.

1.1.2 More about requests to rectify your data

I disagree with the outcome of my request to have my data rectified. What can I do?

If the relevant the department does not agree that the information is incorrect you can ask have your disagreement noted on the record itself. If the department does not correct the information you may also appeal to the Data Protection Commissioner or the courts. These organisations have the power to order the department to correct data which are wrong.

You should contact the Data Protection Officer (info@moray.gov.uk) and ask them to correct it.

The Council has one month to respond to this request from date of receipt of the request.. We may also extend this period by up to two months if the request is deemed to be complex, if we have received a number of requests from you or if the request is deemed to be manifestly unfounded or excessive. We will inform when such a decision is made and the grounds it is made one.

1.2 Right to object to direct marketing

If you are receiving direct marketing from a Department of the council you can object to this marketing through contacting the Data Protection Officer (info@moray.gov.uk) or by contacting the department you are receiving the marketing from directly. As long as it is certain that you are indeed being contacted for marketing purposes rather than as part of carrying out a different process we will stop processing your data for marketing reasons and you will no longer receive marketing material for us.

You should only receive marketing material from a Council department if you have explicitly opted in to receiving it. If you believe you are receiving marketing material as part of being in a non-marketing process please contact the Data Protection Officer (info@moray.gov.uk).

1.3 Right to challenge and request a review to any decisions made by automated means or to object to such processing

An automated process is an activity that makes a decision affecting you using your personal data and has zero human involvement from beginning to end. The privacy statement for a given process will state if this process (or part of this process) is automated and what effects this decision will have on you.

Where you are subject to an automated process have the right to:

- Challenge the outcome of the process
- Request human intervention/a review to any decisions made by automated means
- Object to the processing (essentially, request that we stop the processing)

If you wish to exercise these rights you should contact the Data Protection Officer (info@moray.gov.uk).

1.4 Right to object to any processing undertaken for the purposes of scientific/historical research and statistics

This right is a special case, and only applies:

A) if you have grounds for objection “relating to you particular situation” (that is, you have a particular, justified reason for objecting); and

B) the research is not necessary for the performance of a public interest task.

You should contact the Moray Council Data Protection Officer (info@moray.gov.uk), describing the research that you are objecting to and your grounds for objecting to it.

1.5 Right to withdraw consent

The privacy statement for a given process will state the legal basis for that process. One possible legal basis is the consent of the data subject (that is, you). If this is the case then you can withdraw consent to this process at any time. You should contact the Moray Council Data Protection Officer (info@moray.gov.uk) to do so.

Note that when the legal basis is anything other than consent then the right to consent does not apply. For example, in cases where the Council uses your personal data for an activity that we are required by law to carry out you will not be able to withdraw consent for this process. (The other rights outlined in this page may still apply.)

1.6 Right to object to processing activity

The privacy statement for a given process will state the legal basis for that process. Two possible legal bases are:

- Processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller (i.e. Moray Council)
- Processing is necessary for the purposes of the legitimate interests pursued by the controller (i.e. Moray Council) or by a third party.

Where either of these legal bases are specified in the privacy statement you have the right to object to the processing activity. To do this you should contact the Data Protection Officer (info@moray.gov.uk).

All of the processing the Council carries out under the ‘public task’ legal basis is done so for important and legitimate reasons, primarily to meet our legal obligations as a public authority. For example, schools in Moray are required to process personal data as part of their legal duty to provide an education and to ensure the safety and wellbeing of pupils. If however we are

unable to demonstrate that the processing activity you are objecting to is carried out for a sufficiently legitimate reason, balanced against your rights and freedoms, then we will be required to halt the processing of your information for this purpose.

The 'legitimate interests' legal basis is only available to local authorities under highly exceptional circumstance. If the privacy statement has specified this as the legal basis and you want to object to the process you should contact the Data Protection Officer (info@moray.gov.uk).

1.7 Right to data portability

The right to data portability only applies to entirely automated processes for which the legal basis is:

- A) the consent of the data subject (i.e. you); or
- B) required for the performance of a contract.

As ever, you will be informed on your privacy notice if this right is applicable. As the Council undertakes very little automated processing (and even less that relies on the above legal bases) there are very few circumstances in which the right to data portability will apply. If however your privacy notice states that the right does apply you can contact the Data Protection Officer (info@moray.gov.uk) to request the data you have submitted for this process in a structured, commonly used and machine readable format.

1.8 Right to lodge a complaint with the Information Commissioner's Office

What can you complain to the Commissioner about?

You can complain to the Commissioner if you consider the authority has breached any of the requirements of the GDPR. These include a failure to respond to any of your requests relating to your data rights, processing data without your consent (where consent is necessary) and unreasonably refusing to provide you with the personal information you have requested. This list is not exhaustive.