How do you deal with and curtail DSAR weaponisation, e.g. seeking source information for defamation claims, followed by data protection claims when that information is withheld?

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The starting point: Article 15 is motive blind

"79. In my view, there is no general principle that the interests of the requester, when balanced against the interests of the objector, should be treated as devalued by reason of such motivation [i.e. to assist the requester in litigation against the objector]."

DB v GMC [2019] 1 W.L.R. 4044 (Sales LJ)

Ground 1: The wrong target



- A requester who seeks copy documents (e.g. source emails, correspondence, reports) is ***"aiming at the wrong target"*** - *Ittihadieh v 5-11 Cheyne Gardens RTM Co Ltd* [2017] EWCA Civ 121 at [93] (Lewison LJ)

- "***A claim for documentary disclosure pursuant to the DPA is likely, almost always, [to be] misconceived***" *Rudd v Bridle* [2019] EWHC 893 (QB) at [100] (Warby J)



- You are entitled to respond by communicating the data subject's personal data in intelligible form, e.g. confirming how they are described, in how many documents over what period, without producing the documents themselves.

- However, the Art. 15(3) right to a "copy" of the data was not met by providing the data in summary format in a table. Extracts of documents or documents themselves may be required to render the data intelligible *(FF v Österreichische Datenschutzbehörde and CRIF GmbHon)*

- Nb Art. 15(1A): controller only required to perform "a reasonable and proportionate search".

Ground 2: Protection of the rights of others

- *“Article 15(1) to (3) […] do not oblige a controller to disclose information to the data subject to the extent that doing so would involve disclosing information relating to another individual who can be identified from the information.”*

- *‘"information relating to another individual" includes information identifying the other individual as the source of information’*

(DPA 2018 Sch 2 para 16)

The balancing exercise

- The exemption does not apply where *"the other individual has consented to the disclosure of the information to the data subject, or it is reasonable to disclose the information to the data subject without the consent of the other individual."*

- This balancing exercise only arises where the third party's identity is an **integral** part of the data subject's own personal data (*Johnson v MDU* [2004] EWHC 347 (Ch), *Durant v FSA* [2003] EWCA Civ 1746.)



- **Redaction, not refusal, is usually the right response:** you must still communicate what can be given by omitting names and identifying particulars (*Durant v FSA* [2003] EWCA Civ 1746, *Lonsdale v Nat West Bank* [2018] EWHC 1843 (QB).

- Where the balance is reached, you are the primary decision-maker with a **wide margin of discretion** as to the reasonableness assessment.

- Record the balancing exercise (e.g. a source's non-consent or confidentiality interest, the absence of value to the requester in correcting any inaccuracy, and the risk of exposing the source to threats or hostile litigation. Consider offering disclosure conditional on undertakings (not to harass, and not to bring claims beyond data protection claims).

hostile litigation going beyond the exercise of UK GDPR/DPA rights

'In X v Transcription Agency, Farbey J observed at [73]… that the SAR regime:

> *"has a specific and limited purpose, which is to enable a person to check whether a data controller's processing of his or her 'personal data' unlawfully infringes privacy rights and, if so, to take such steps as the DPA 2018 provides [citing Durant [27]]. It is impermissible to deploy the machinery of the Act as a proxy for the wider purpose of obtaining documents with a view to litigation or further investigation (Durant, [31])."'*

***Harrison v Cameron* [2024] EWHC 1377 (KB)** at [129] (Steyn J)

Ground 3: Journalistic, academic, artistic and literary purposes

- Exemption where processing for journalistic etc purposes
- based on controller's reasonable belief publication in public interest taking into account *"the special importance of the public interest in the freedom of expression and information"* (DPA 2018 Sch 2 para 26)
- e.g. *Laurence Westgaph v Mill Media*

Ground 4: Direct the requester to the proper route

- The proper route for a putative defamation claimant needing to identify a wrongdoer is a **Norwich Pharmacal Order** against the party "mixed up" in the wrongdoing

- An order requires: (1) a good arguable claim for wrongdoing by a third party; (2) the respondent being mixed up in it so as to facilitate it; (3) the respondent being likely able to provide information to enable a claim against the wrongdoer; and (4) that it is just and proportionate to make the order.

Davidoff v Google LLC [2024] 4 W.L.R. 6

Protection of journalistic sources

- s.10 Contempt of Court Act 1981:
  - disclosure will only be ordered where it *"is necessary in the interests of justice or national security or for the prevention of disorder or crime."*
  - protection not absolute but "nothing less than necessity will serve to override it." *Tooley v Associated Newspapers Ltd* [2026] EWHC 683 (KB) [85 (iii)] & [96]

Ground 5: Manifestly unfounded or excessive requests

- *"Where requests from a data subject are manifestly unfounded or excessive, in particular because of their repetitive character, the controller may either:*
  - *(a) charge a reasonable fee taking into account the administrative costs of providing the information or communication or taking the action requested; or*
  - *(b) refuse to act on the request.*
- *The controller shall bear the burden of demonstrating the manifestly unfounded or excessive character of the request."*

(Art. 12(5))



An exacting standard

- *"A request may be manifestly unfounded if the person clearly has no intention to exercise their right or if the request is malicious in intent."*

- *"If you refuse to comply with a request, you **must** inform the person of:*

  - *the reasons why you are not complying with their request;*

  - *their right to make a complaint to the ICO; and*

  - *their ability to seek to enforce this right through a judicial remedy."*

(ICO guidance)

Ground 6: The court's residual discretion and abuse of rights

The court has a discretion not to enforce under s.167 DPA even where a breach is shown. Factors include:

- Is there a **more appropriate route** to the information (e.g. disclosure in legal proceedings);
- the nature and gravity of any breach (triviality favours refusing relief);
- the **reason for the request** — absence of a legitimate reason bears on the discretion, even though a collateral litigation purpose is not a bar;
- whether the application is an **abuse of rights** (e.g. litigation pursued merely to burden the controller);
- whether the **real quest is for documents** rather than personal data;
- whether the data are of **no real value** to the requester; and
- whether the data have already been provided.

(*Ittihadieh & Rudd v Bridle* [2019] EWHC 893 (QB)

Lees v Lloyds Bank Plc [2020] EWHC 2249 (Ch)

- numerous and repetitive abusive DSARs, the real purpose being to obtain documents rather than personal data, a collateral purpose (resisting possession proceedings), and the data being of no benefit to the requester.

- Requester's strategy *"a clear abuse of the process of the court"*

Summary

- Don’t refuse on motive (albeit that a collateral litigation purpose can be a factor showing that a request is manifestly unfounded or excessive).
- Identify the personal data. The duty is to disclose information not documents.
- Redact source/third-party identifiers by default.
- In the case of journalistic purposes, consider Sch 2, para 26 exemption and signpost the Norwich Pharmacal route.
- In the case of sources generally, where in a mixed data case a balancing exercise is required, carefully conduct and record it.
- Consider conditional disclosure on undertakings.
- Treat repetitive/threatening follow-ups as manifestly unfounded or excessive.