

GDPR in employment tribunals

- Why SMEs are vulnerable

Whatever the size of your business, if you employ people the relationship may not end well. Unsuccessful candidates, internal discipline, termination, redundancy - all can lead to complaint, tribunals and legal costs. And the first thing any employment lawyer will advise their client? To use GDPR 'data subject access requests' ('SARs') to go on a fishing expedition, hoping to uncover incriminating evidence. The unthinking email. The embarrassing social media post.

To quote a leading UK lawyer, in his online instructional video, employees should use SARs because *"in many cases it is enough to bring a negotiation to a conclusion"* and that *"the information obtained could include "emails, text messages, social media and more. You can imagine what this may reveal"*.

Tribunals – the facts

- Employees do not have to pay fees to bring claims. 'No win – no fee' lawyers are plentiful;
- Case numbers have surged;
- Even if defended successfully, costs are rarely recovered.

What is a GDPR 'SAR'?

We all, as data subjects, have the legal right to obtain copies of data about us that organisations process. This is ensure they remain transparent and fair, and that the data is accurate. When it comes to employees, the company is the data controller and must provide those copies. If an employer receives a formal SAR request, there will be very few grounds to avoid complying with it, regardless of how awkward the process or how incriminating its outcome.



Lawyers are well versed in casting their net as widely as possible, using broad language such as *"all internal communications that relate to me, including emails and other electronic documents throughout the period of my employment"*. They will also sometimes ask for information to which the applicant isn't actually entitled, in the hope that an ill-informed employer will simply comply.

How do I respond to a SAR?

With all of this in mind, should you ever receive a subject access request, you need to consult – immediately - someone with good knowledge of both the law and its practical application. It is very unlikely that your company's regular solicitor can provide these capabilities.

You need to decide;

- What data is in scope of the request and, crucially, what you can take out-of-scope;
- Whether you need to redact documents to protect the privacy rights of others;
- How you can search for the data and prove you have done so effectively.

And if, despite your well-intentioned efforts, the employee decides to escalate the matter with a complaint to the regulator (also a common tactic), you will need the right advice to respond effectively and avoid sanction.

With over seventeen years experience dealing with SARs in a corporate setting, I know the pitfalls and I am confident my fees will be considerably lower than a specialist privacy lawyer. If you would like to have a free, no-obligation discussion about this, or other GDPR risks, please get in touch.

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[Back](#)