



McDermott  
Will & Emery

Episode 3:

## DSAR vs FOI Requests:

How to service those requests efficiently  
with Office 365



**Dana Simberkoff**

Chief Risk, Privacy & Information Security Officer, AvePoint



**Ashley Winton**

Technology & Cyber Law Attorney, McDermott Will & Emery LLP



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14:00 BST

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## Discussion Topics

- DSARs v FOI
- DSARs and FOIR post Schrems
- Not all DSARs are equal
- Key threshold questions
- Legal and Litigation Privilege
- Determining Risk Factors
- Responding to DSARs and FOIs
- Top tips for avoiding mis-steps
- How can Microsoft and AvePoint technology help you retrieve data for FOIs and DSARs



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# ASHLEY WINTON

Formerly a computer designer, Ashley focuses his practice on global privacy and cybersecurity, with particular emphasis on data protection. Ashley has a wealth of experience in corporate investigations, lawful interception of data and international litigation arising from data breach. Ashley advises corporations, government entities, trade associations and charities across issues relating to data privacy and information governance. Ashley has a strong background advising on the impact of privacy and information security law on telecommunications, cloud services and international data transfer.

Ashley is a fellow of the Ponemon Institute and current Chairman of the UK Data Protection Forum, the leading data protection association in the UK.

Partner

London

+44 20 7577 6939

+44 7788 676663

[awinton@mwe.com](mailto:awinton@mwe.com)

[www.linkedin.com/in/ashleywinton](https://www.linkedin.com/in/ashleywinton)

College of Law,

**1993**

City University, Law,

**1992**

Manchester University,  
BSc, (Hons), M.Eng.,

**1991**

Admission to The  
Law Society of England  
and Wales





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Dana Simberkoff  
CHIEF RISK, PRIVACY AND  
INFORMATION SECURITY OFFICER,  
AVEPOINT



# DSARs vs FOI

- A freedom of information request is a request to gain information, **not about you**
- A subject access request is a request to gain information, **about you**

Question	Freedom of Information Request	Subject Access Request
<b><i>What data are you requesting?</i></b>	Public information, or information not related to myself	Information that is about myself
<b><i>Will it cost?</i></b>	In some cases yes. Particularly if the request requires a fair bit of admin.	Generally no (unless the request is excessive, or unfounded)
<b><i>When will I get a reply?</i></b>	20 calendar days from receiving the request (some cases they can extend but must state why)	30 calendar days from receiving the request (in some cases they can extend but must state why)
<b><i>Will I always get the information I want?</i></b>	Not always. Some information can be withheld for a number of reasons. Mainly to protect the government and the public.	Generally, they should send you all your personal data. Companies can redact info about other citizens or refuse if the request is excessive.
<b><i>Do I have to be a UK citizen to make a request?</i></b>	No. You can be any nationality.	No. GDPR applies for all of the EU citizens, and data captured within the EU.
<b><i>What countries does the act represent?</i></b>	England, Wales and Northern Ireland, and UK-wide public authorities based in Scotland. Scotland has its own version of the act.	All citizens of the European Union. This includes all 44 nation-states.
<b><i>Can I complain if I'm not happy with my response?</i></b>	Yes. You can make a complaint to The Information Commissioner's Office (ICO).	Yes. You can <a href="#">make a complaint</a> to The Information Commissioner's Office (ICO).



# DSARs and FOIR post Schrems

## Schrems II is a landmark judgement by the highest European Court ("CJEU")

- ❖ It ruled that the "Privacy Shield" a mechanism for permitting the transfer of personal data from the EU to the US is invalid.
- ❖ It also ruled that the most popular alternative "Standard Contractual Clauses" are only permitted if an individual case by case analysis is done on each transfer of personal data from the EU to the US.
- ❖ This analysis must include a detailed consideration as to whether the personal data transferred to the US could be in the hands of a electronic communications provider, a telecoms provider or a cloud provider.
- ❖ Both the method of getting the data to the US must be checked, as must any sub-processors or transferees of the US based recipient.
- ❖ Although the case was specifically about transfers to the US, it also applies equally to other countries outside the EEA which have strong lawful interception laws.
  - Candidates include Russia, China, South Korea, India and, after Brexit, the UK.

It is very likely that the number of requests from individuals asking companies and public authorities about their international data transfer practices will increase.





# Not all DSARs are equal

*Although many DSARs look similar, and many come into the organisation in the same way, experience shows that the effort in dealing with them is not the same in each case.*

## Easy to deal with:

- Narrow focussed DSARs
- Unfocussed DSARs from individuals whose data sits on limited platforms
- DSARs exercised through online tools which automate the DSAR process

## Moderate: more difficult to deal with

- DSARs that don't look like DSARs
- DSARs from individuals whose data sits on large number of platforms
- DSARs from individuals whose data is mixed with a lot of third party personal data and potentially privileged information
- Unfocussed DSARs from individuals that have an additional complaint or concern
- Divisive DSARs i.e. a claim for a right or access to one division, after an earlier right to have data deleted was sent to another division

## Red flag DSARs:

- DSARs from employees who are leaving in contentious circumstances
- DSARs from individuals who could be "fishing" in the lead up to litigation
- DSARs who are seeking information which could itself breach of a confidentiality obligation or libel

# Key threshold questions

Have I received a DSAR?

For unfocussed DSARs where there are multiple repositories: Where do I search?

- Email (exchange)
- Document storage
- SharePoint
- Customer Relationship Management
- Invoices and billing
- Mailing lists
- Door access systems
- CCTV
- Backup tapes
- Web site logs
- Payroll and benefits systems
- System access logs

Is this DSAR in the context of litigation?



## Legal Advice Privilege

- Protects communications between the client and their lawyer for the purposes of giving or obtaining legal advice
- May not cover the work of a forensic provider or other third party engaged to obtain information responsive to a DSAR
- Does not protect underlying facts



## Litigation Privilege

- Protects communications between the client and/or the client's lawyer and a third party where civil or criminal investigation is anticipated or underway
- Does not protect underlying facts



## Legal & Litigation Privilege

### Legal and Litigation Privilege

- The information covered is confidential
- Does not form part of the information responsive to a DSAR
- Is not required to be produced in any follow on litigation
- Privilege can be lost if the information is given to a third party.
  - All the documents should be subject to restricted circulation lists.



For Red Flag Requests, ensure that your DSAR/FOI process involves a lawyer at the earliest possible moment to ensure that Legal or Litigation privilege can be established.



# Determining Risk Factors

1

From an initial search, what do you know about the individual?

- Employee, Prior Employee or Interviewee?
- Have they made any DSARs/FOIRs before?

2

What do you know about the circumstances of the request?

- Is there any related or unrelated dispute or complaint
- What could be the motive behind this DSAR/FOIR?

3

What do you know about the request itself?

- What is their response to any request for better ID documentation?
- What is their response to a DSAR scope request?
- Does their DSAR/FOIR appear to follow a standards form template?
  - And is this template available on the internet, if so where?

4

What do you know from your DSAR/FOIR dashboard?

- Are there any prior trends which can help you determine the risk factors for this DSAR/FOIR?
- Do requests to certain parts of your organisation take longer than usual?
- Is the information that is being retrieved from the request older than should be kept under your Document Retention Policy?

5

In contentious circumstances you may wish to do this Risk Factor analysis under Legal Privilege.

# Responding to DSARs and FOIs (1)

Follow the document process!

Ensure requests to all parts of the organisation go into the process

You do not want the HR department to be helpful by responding to employee or ex employee requests outside of the process

Consider whether the process should be modelled around a standard such as ISO 27701

The CNIL have endorsed this global standard which is an extension to ISO 27001 and helps create a Privacy Information Management System

Ensure there is clarity around when you need to ask for additional ID, so you know when the 1 month time limit begins to run

Be careful of request made by third parties "on behalf of" the data subject. There is now an industry around making data subject requests, and to some extent FOI requests.

Ensure that the process has documented the full range of exemptions that are available.

- See <https://ico.org.uk/for-organisations/guide-to-data-protection/guide-to-the-general-data-protection-regulation-gdpr/exemptions/>
- See <https://ico.org.uk/for-organisations/guide-to-freedom-of-information/refusing-a-request/>
- Rudd v Bridle [2019] EWHC 893 (QB) <https://www.baillii.org/ew/cases/EWHC/QB/2019/893.html>

# Responding to DSARs and FOIs (2)

For DSARs, you do not just provide a copy of the information, you must also provide:

- the purposes of your processing;
- the categories of personal data concerned;
- the recipients or categories of recipient you disclose the personal data to;
- your retention period for storing the personal data or, where this is not possible, your criteria for determining how long you will store it;
- the existence of their right to request rectification, erasure or restriction or to object to such processing;
- the right to lodge a complaint with the ICO or another supervisory authority;
- information about the source of the data, where it was not obtained directly from the individual;
- the existence of automated decision-making (including profiling); and
- the safeguards you provide if you transfer personal data to a third country or international organisation

When providing the information responsive to the request, the default is not to simply redact all third party personal data:

- Third party personal data can be disclosed if the individual has given consent; or
- it is **reasonable** to comply with the request without that individual's consent.



# Responding to DSARs and FOIs (3)

When providing the information responsive to the request, the default is not to simply redact all third party personal data:

- Third party personal data can be disclosed if the individual has given consent; or
- it is **reasonable** to comply with the request without that individual's consent.

In determining whether it is reasonable, consider amongst other things the context and:

- the type of information that you would disclose;
- any duty of confidentiality you owe to the other individual; and
- any steps you have taken to seek consent from the other individual.

Keep an audit trail.

# Top tips for avoiding mis-steps

## Process and Procedures are key



- Ensure that you have detailed procedures that anyone can follow
- If possible, have procedures that are built into your workflow.

## Difficult questions like search depth



Can only be answered if you have appropriate search tools to show you what is readily available and if you have identified appropriate risk factors.

## If you want to use legal or litigation privilege, then this decision should be made at the outset



And you should all follow the correct process to ensure that privilege and confidentiality is maintained

## Auto redaction tools



Can be helpful but at law, the default should not be simple redaction of all third party personal data. Some personal data should remain

## Audit trail



All the work undertaken in doing DSARs and FOIRs should be subject to an audit trail. This information if fed back into a DSAR/FOIR dashboard can provide invaluable information to ensure that future requests can be performed more efficiently.

# AvePoint Compliance Guardian & DSAR



Data Subject Access Requests (DSAR) are an individual right under the EU General Data Protection Regulation (GDPR). Rights like these empower individuals to control the information related to themselves or receive information in the context of non-data protection disputes with data controllers.

AvePoint Compliance Guardian can help organizations respond to DSAR requests by automating and streamlining the process from logging, tracking and task management, through discovery, redaction/pseudo-anonymization and extraction of the information (providing copy of the files to the data controller/data subject). This is also similar to the process of responding to a “Freedom of Information Act Request” or even data discovery for a litigation hold.

**Data Subject Access Requests** allow individuals to control the information related to themselves or receive information in the context of non-data protection disputes with data controllers.

When an individual submits a Data Subject Access Request to a data controller there are a number of tasks that follow:

An individual sends a DSAR to a data controller

The controller validates that the request includes a reasonable explanation/amount of information relating to the situation

A data controller may need more information from the individual in order to process the request

Once the data controller has all the needed details from the individual, the controller has a time limit to respond within

## Automating the end-to- end process of DSAR



# ERM

AvePoint logs the Data Subject Access Request in the System where it is assigned to an appropriate team for follow up

General Information ⓘ

\* Incident Name

DSAR

\* Priority

High

Description

[stephen.smith@contoso.com](#) - Mr. Smith wants to delete all information related to him within our systems

\* Incident Type

Select 1 item

Incident Date

05/08/2019

Discovery Date

\* Incident Owner

privacy@avepoint.com X

\* Incident Reviewer

John X

Tier-2 Reviewer

DSAR Workflow ⓘ

Source

Select 1 item

Proof of Identity Required

Yes

DSAR Type

Data Deletion

Sales Ops Data

Select 1 item

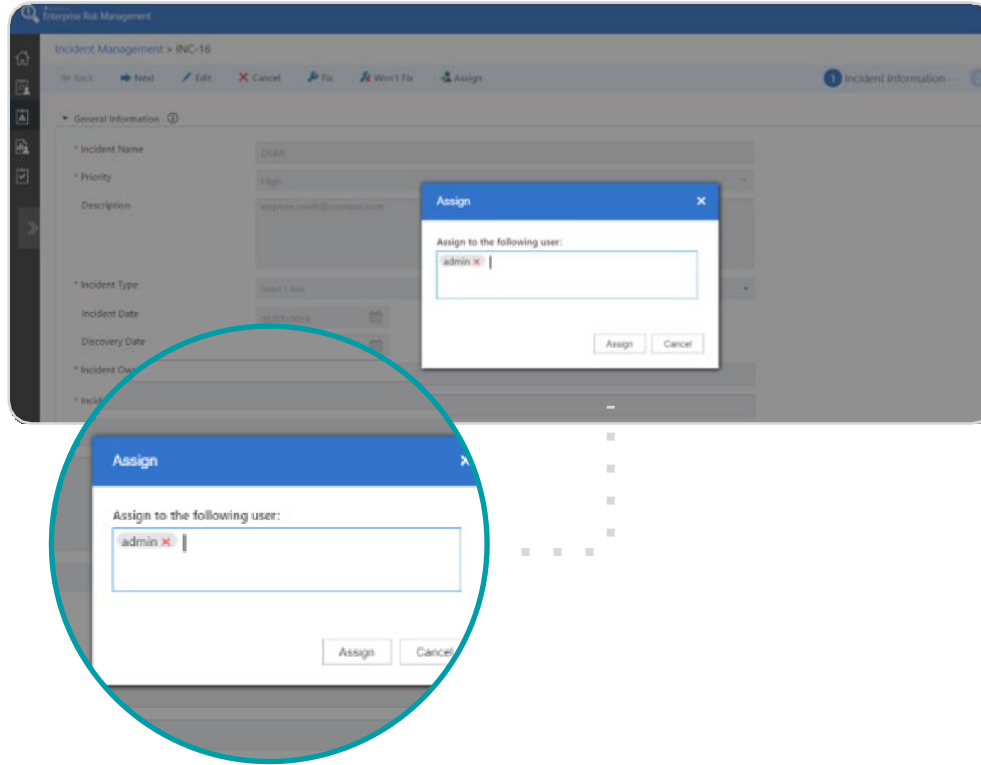
IT Data

Select 1 item

HR Data

None



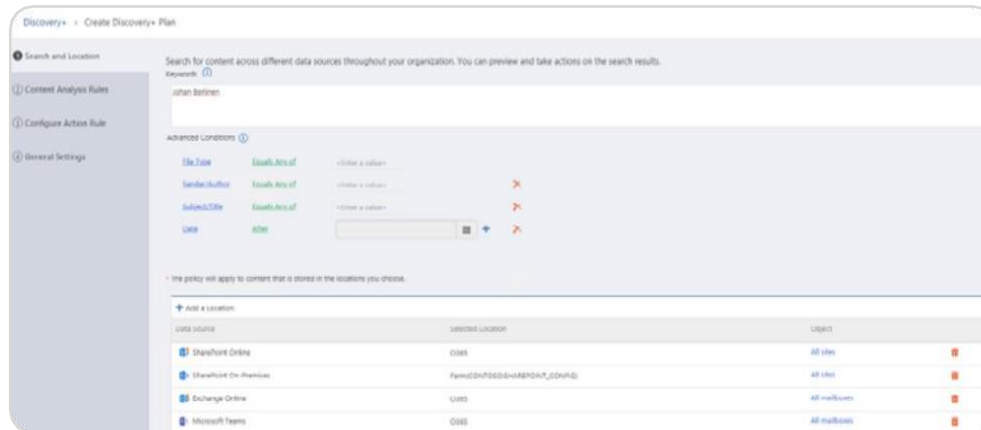


## ERM

A team member is assigned to investigate the DSAR

# Discovery+

To respond for Data Subject Access Requests (DSAR) or Freedom of Information Act Requests (FOIA) using SharePoint, in this example Search Index



## Discovery+ Supported Systems

SharePoint Online

Exchange Online

SharePoint On-premises

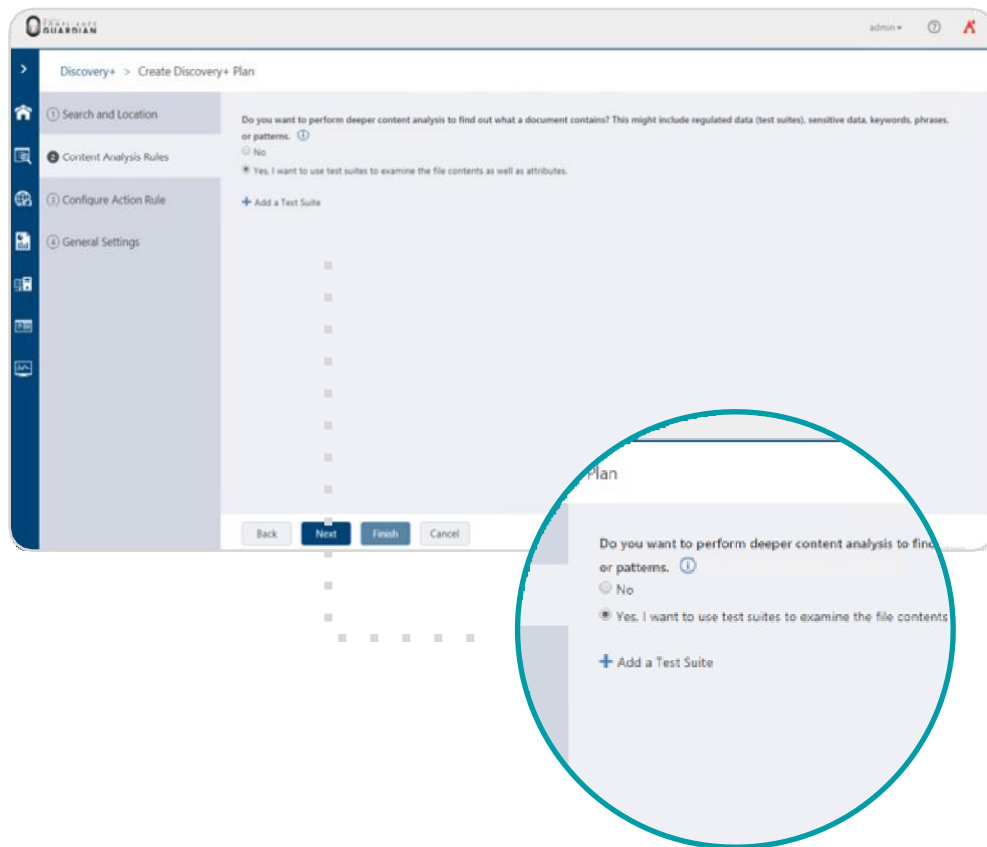
Exchange On-premises

Microsoft Teams

File Shares

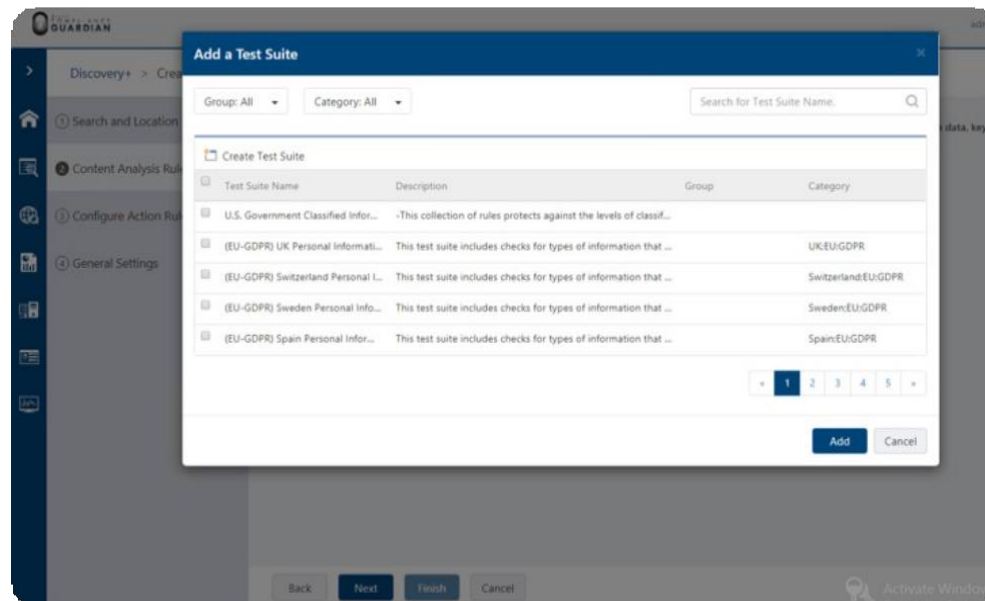
# Deeper Content Analysis

Search parameters may also be further refined here if necessary



# Deeper Content Analysis

Search parameters may also be further refined here if necessary



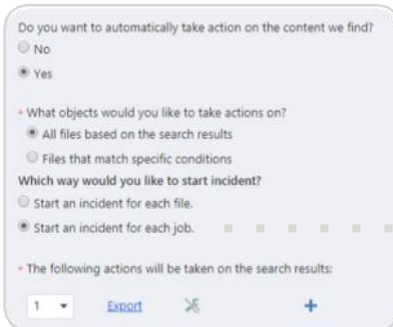
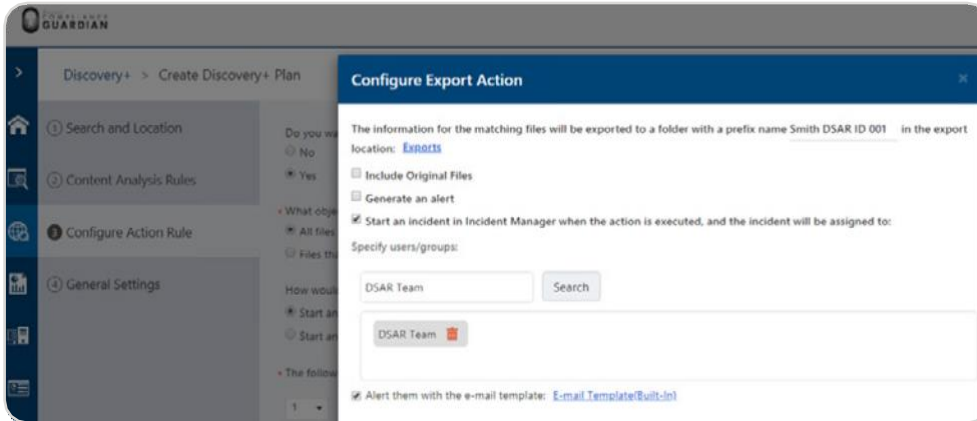
# Discovery+

Results can be:

Exported  
(DSAR/FOIA)

Redacted  
(right to rectification)

Deleted  
(right to be forgotten/  
erasure)



Results can be reviewed individually or all together as one job/file plan.

The DSAR Search is performed by Compliance Guardian and relevant data is captured and assigned for review via workflow

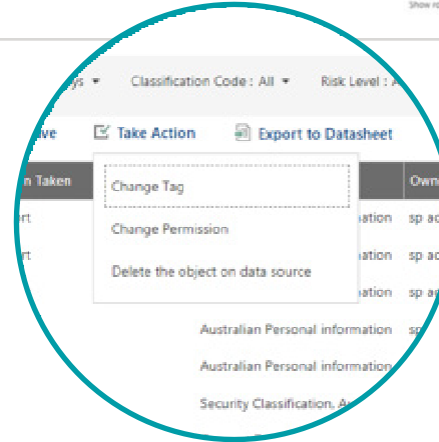
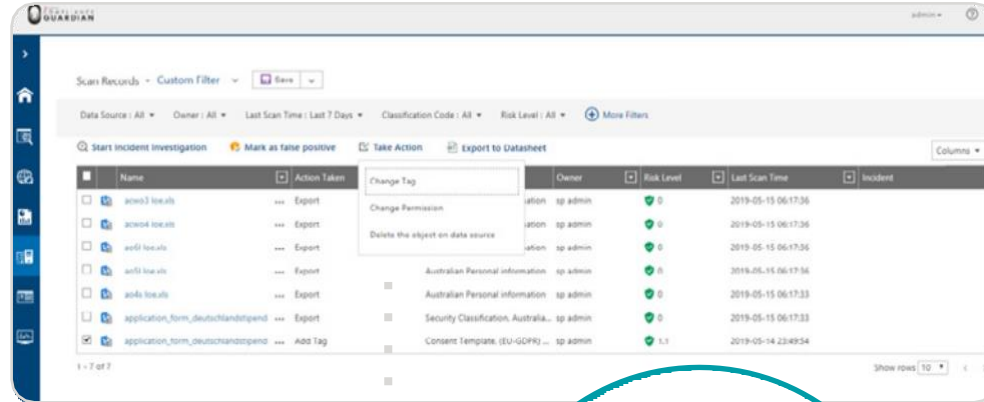
# Discovery+

Results can be:

Exported  
(DSAR/FOIA)

Redacted  
(right to rectification)

Deleted  
(right to be forgotten/  
erasure)





## Bulk Incidents

The user reviews the data to ensure that there is no information that should be excluded from the response (note that the search parameters may also be further refined here if necessary)

### My Tasks

43 incidents assigned to me

Show All ▶

- IMS-43 data subject access request (1/9/2019 4:06:01 am)
- IMS-42 application\_form\_deutschlandstipendium\_062015 (7).docx

My Tasks > Data Subject Access Request (1/9/2019 4:06:01 AM)

Resolve Dismiss Escalate Reopen

Summary File Details Comments History

Data Source : All Owner : All Last Scan Time : Last 7 Days Classification Code : All Risk Level : All More Filters

Mark as false positive Take Action Export to Datasheet

	Name	Action taken	Test Suite	Owner	Risk Level	Last Scan Time	Incident
<input type="checkbox"/>	application_form_deutschlandstipendium_06	Export	Department Consent	sp admin	0	2019-01-09 04:36:05	IMS-43
<input type="checkbox"/>	application_form_deutschlandstipendium_09	Export	Department Consent	sp admin	0	2019-01-09 04:36:01	IMS-42
<input type="checkbox"/>	application_form_deutschlandstipendium_06	Export		sp admin	0	2019-01-09 04:09:05	IMS-43
<input type="checkbox"/>	aods loc.xls	Export		sp admin	0	2019-01-09 04:09:02	IMS-43

## Two-Step Action (Redaction)

The data to be returned is redacted by Compliance Guardian to prevent inappropriate sharing of otherwise sensitive information

**Configure the Redact Action**

When does this action take place?

- ☐ Redact the data automatically
- ☒ I would like to review it first before taking the Redact action

Please define the redaction condition:

- ☐ Please define keywords. The content that Contains the following keywords will be redacted.
- ☐ Please define a regular expression. The content that matches the regular expressions will be redacted.

What would you like to deal with the matching content?

- ☒ Delete the failed content immediately.
- ☐ Replace the matching content.

Do you want to redact all versions?

- ☒ No, only redact the current version
- ☐ Yes, all versions

Comment:

By default, CG will add comment "the original version is from 'versions'" to sharepoint items which are redacted.

☐ Redact with alert

☐ Start an incident in Incident Manager when the action is executed, and the incident will be assigned to:

Review before taking  
action (redaction)

Scan Records - Custom Filter Save

Data Source: All Owner: All Last Scan Time: Last 7 Days Classification Code: All

Start Incident Investigation Mark as false positive Take Action

	Name	Action Taken
<input type="checkbox"/>	water - copy.docx	Redact(Pending)
<input type="checkbox"/>	value_measuring_methodology_cost_to_value_matr	Redact(Pending)
<input type="checkbox"/>	value_measuring_methodology_cost_to_value_matr	Redact(Pending)
<input type="checkbox"/>	understanding policy enforcer slides - copy.pptx	Redact(Pending)
<input type="checkbox"/>	understanding policy enforcer slides.pptx	Redact(Pending)

Scan Records - Custom Filter Save

Data Source: All Owner: All Last Scan Time: Last 7 Days Classification Code: All Risk Level: All

Start Incident Investigation Mark as false positive Take Action Export to Datasheet

	Name	Action Taken
<input checked="" type="checkbox"/>	water - copy.docx	Redact

Delete the object on data source

# Data Export

The data can be exported so that it is returned to the user

### Configure Export Action

The information for the matching files will be exported to a folder with a prefix name Smith DSAR ID 001 in the export location: [Exports](#)

☐ Include Original Files

☐ Generate an alert

☒ Start an incident in Incident Manager when the action is executed, and the incident will be assigned to:

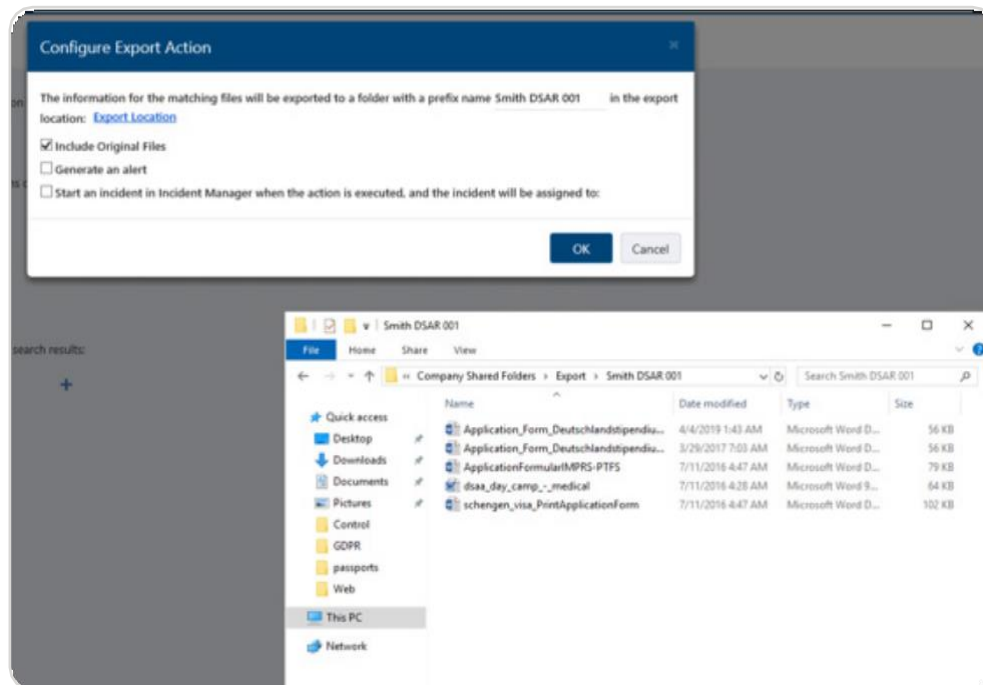
Specify users/groups:

DSAR Team

☒ Alert them with the e-mail template: [E-mail Template\(Built-In\)](#)

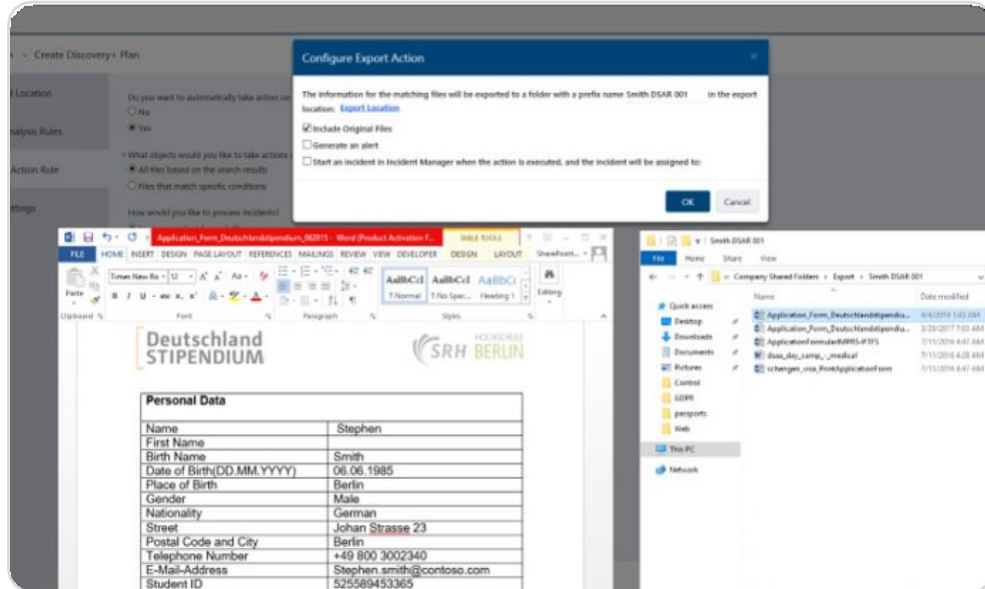
# Data Export

The data can be exported so that it is returned to the user



# Data Export

The data can be exported so that it is returned to the user





# Key Takeaway – What's Important

Technology can  
help create a data  
trail to service  
DSARs & FOIR

Not all DSARS are the  
same.

Qualify DSARs to  
ensure you are putting  
in the right effort

Looking to  
improve your  
DSAR process?

Let us help you



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Dana Simberkoff

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## Respond to DSARS with a great internal user experience and improved Citizen satisfaction

- Review current DSARS & FOI process & identify challenge and/or blockers.
- Explore current process vs where automation can enhance your data trail to service & respond to DSARs
- Putting it all Together: A conclusive report providing practical next steps and guidance for how to implement effective management and response to DSARs.

Contact us:  
[marketing\\_uk@avepoint.com](mailto:marketing_uk@avepoint.com)



Q & A

# CONTACT US



+44 (0) 207 421 5199



[www.AvePoint.com](http://www.AvePoint.com)



[Nigel.Cottam@avepoint.com](mailto:Nigel.Cottam@avepoint.com)

# thank you

Gracia  
s

Hvala

Ahsant  
e

Cám ơn

நன்றி

谢谢

תודה

ευχαριστώ

Obrigado

Teşekkürler

شکریہ

Köszönöm

Tack

多謝晒

Danke

Kiitos

متشکرم

Terima Kasih

ありがとう  
ございます

Mulțumesc

дякую

Grazie

شكراً

Salamat Po

Dank u Wel

ආචාර්ය

спасибо

Ďakujem

благодаря

Tak

감사합니다

Děkuji

Dziękuję

Merci