Leeds and York Partnership
NHS Foundation Trust

Medical Records Subject Access Request Procedure

The key messages the reader should note about this document are:

1. Sets out the procedure under which service users may request access to their medical records, and the processing of those requests by the Trust
2. Aligns the Subject Access Request Procedure to the Data Protection Act (2018)
3. States the statutory timescale for compliance of 1 calendar month
4. Removes the latitude to charge for requests (including solicitors), unless the request is manifestly unfounded or excessive
5. Provides clarity on requests defined as manifestly unfounded or excessive and a recommended approach for repetitive requests

This policy/procedure may refer to staff as qualified/registered/professional or other such term to describe their role. These terms have traditionally referred to individuals in a clinical role at band 5 or above. Please note that the use of these terms **may or may not** include nursing associates or associate practitioners (band 4). For clarification on whether a nursing associate or associate practitioner is an appropriate person to take on the identified roles or tasks in this policy/procedure please refer to the job description and job plan for the individual, or local risk assessment.

DOCUMENT SUMMARY SHEET
ALL sections of this form must be completed.

Document title	Medical Records Subject Access Request Procedure
Document Reference Number	IG-0008
Key searchable words	Medical Records Subject Access Request Procedure
Executive Team member responsible (title)	Chief Financial Officer
Document author (name and title)	Carl Starbuck, Head of Information Governance
Approved by (Committee/Group)	Information Governance Group
Date approved	22 July 2021
Ratified by	Policy and Procedure Group
Date ratified	10 August 2021
Review date	10 August 2024
Frequency of review	*At least every three years*

Amendment detail

Version	Amendment	Reason
0.1	First draft for review	Re-drafted into NHSLA format.
0.2	Minor tweaks: actions on billing, access on site accompanied by staff	Second draft – review by Annette Booth
1.0	Ratified	Ratified by Executive Team 15/03/2011
2.0	Health Records Manager contact update	Lynda Clapham – 15/01/2012
3.0	Updated SAR form	Permission to update from SIRO & Caldicott Guardian – IGSSG 17/04/2013
3.1	Reviewed and updated	Periodic review date reached
4.0	Ratified	Ratified 14th August 2014 – confirmed by SIRO. Caldicott Guardian & CIO present at approving meeting
	Extension of review deadline	Agreed Policy and Procedure Group 31/5/17 to extend from 1/9/17 to 25/5/18
4.1	Reviewed and updated	Large scale re-author to align with the EU General Data Protection Regulation – for approval by the Information Governance Group 26/04.2018
5.0	Ratified	Policy and Procedure Group – 29 August 2018
5.1	Reviewed and updated. For approval by IG Group 22/07/2021	Procedure due for update. Revisions are:- Reflect Brexit impact on GDPR / DPA 2018 Update key contacts Revise timescale section aligned to DPA 2018 Revise definitions of AHP and serious harm test aligned to DPA 2018
6.0	Ratified	Policy and Procedure Group – 12th August 2021

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1. Medical Records Subject Access Request Procedure

1.1 Flowchart of Procedure

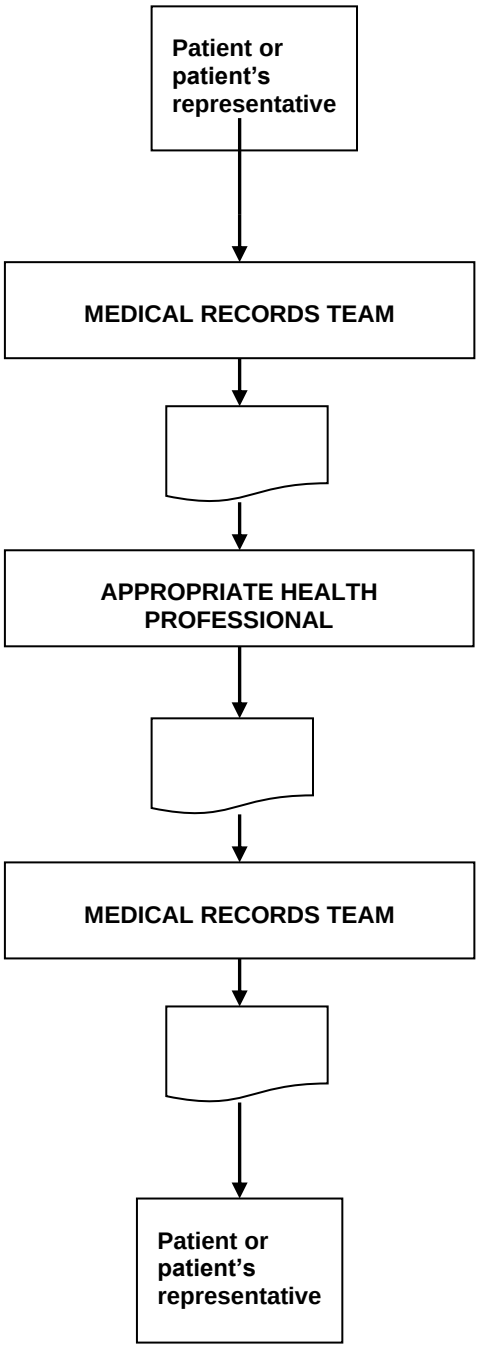
Requests can be made verbally or in writing by the patient or their representative. Representatives are simply those helping the patient make the request, whether relatives, legal appointees, solicitors, the police, etc. What distinguishes a subject access request is that it is made with the consent of the patient. Requests should always be directed to the Medical Records Team where they are recorded and monitored.

The Medical Records Team will locate the records and ensure they are made available to the Appropriate Healthcare Professional

The Appropriate Healthcare Professional reviews the record and advises of any contents they believe should be redacted to avoid potential serious harm or to preserve third-party confidence

Using the advice of the Appropriate Healthcare Professional, and from other sources as appropriate, the Medical Records Team collates which parts of the record are to be released and either copies and sends the material itself or advises the local team in doing this

The subset of the records agreed for release are sent to the patient or their representative.



1.2 Receiving and Recording Subject Access Requests

A Subject Access Request can be made verbally or in writing. Written requests can take the form of a letter, fax, or e-mail.

The data subject must provide enough information to allow the Trust to process the request. Standard forms – such as the example at Appendix A – can be issued to requestors but it should be noted that a subject is under no obligation to use our forms. The forms are provided to aid the process and assist both the subject and staff in specifying the request. When requests are made verbally, they should be transcribed to our SAR form, gathering sufficient detail to process the request efficiently. Although requests may be made verbally, adequate proof of identity and / or authority must still be provided in recognition of the confidentiality of personal / special category data.

Details of Subject Access Requests will be logged by the Medical Records Team, which will include but not be limited to:

- SAR Case Reference Number
- Name of Requestor
- Date of Request
- Confirmation of Identity

An MS-Excel SAR tracking tool has been built to record all relevant information and to track performance against KPIs, as well as providing reporting metrics for the Information Governance Group.

SAR performance is reported to the Information Governance Group, where compliance with statutory timescales are monitored, along with any additional matters of interest / concern.

1.3 Fees

The Trust will not ordinarily charge service users for providing access to information held about them. The Trust extends this principle to those acting on behalf of the service user – including solicitors, insurers or other bona fide legal proxies such as parents, carers, or those with appropriate Power of Attorney.

The Trust reserves the right to recover reasonable costs (e.g. printing / copying at retail rates and postage costs) should a request be deemed ‘manifestly unfounded or excessive’, however we will always endeavour to uphold the right of free Subject Access by providing appropriate support to requestors. One interpretation of ‘excessive’ subject access would be repeated requests. The Trust will manage this by offering only that content which has been added to records since the last request for free, with content previously provided chargeable at the Trust’s discretion.

1.4 Timescales

Subject Access Requests must be dealt with and sent to the requestor within **1 calendar month** of the date of request. This means that requests received on the 10th of the month must be responded to by the 10th of the subsequent month. When requests are received on the last day / days of the month and the following month is shorter, then the due date will be the last day of the subsequent month, as follows:-

- Request received 29th, 30th or 31st January; due date = 28th or 29th February
- Request received on 31st March; due date = 30th April etc.

The calculation of due dates is strictly as above. No allowance is made for requests whose timeline straddles days designated as a public holiday – other than for requests received on a public holiday or adjacent day – as below.

Requests are deemed to be received within the standard working day (Mon-Fri 9am to 5pm). Requests received outside these times are deemed to have been received on the next working day. E.g. a request received by e-mail after 5pm on Friday will be deemed to have been received on the following Monday, or next working day if the Monday is a public holiday.

Requests may be placed 'on hold' where either clarification, identification, or proxy right of access needs to be established, with the timescale paused from the point at which further information is requested, and restarted on receipt of the requested information.

When it is likely that requests may breach the statutory timescale, the requestor will be informed and a dialogue maintained until completion. Options including a 'staged' delivery of larger record sets, especially given the requirement for clinician review prior to disclosure, will be offered.

The ICO states that a tolerance of up to 2 additional months is permissible in exceptional circumstances, but our aim and our reporting KPIs reflect the 1 month statutory timescale.

1.5 Processing Requests

Medical Records will request the information from whoever holds it and check that all requested parts of the record have been located. Once found, the information requested must be checked to ensure that:

- An Appropriate Healthcare Professional has reviewed the record to ensure that none of the content is likely to cause serious harm to the physical or mental health of any individual. This is known as the 'serious harm test' for health data.
- Any information provided by, and the identities of, any third parties to whom a duty of confidence is owed have been redacted, or consent for disclosure from the third parties has been obtained.

Any course of action identified as a result of the Subject Access Request must be followed through – including any request from the subject to exercise additional data protection rights. This should be discussed with the Head of Information Governance.

1.6 The Serious Harm Test

The expectation is that redactions for serious harm will be made when the Appropriate Healthcare Professional has a positive belief that disclosure is likely to cause *serious harm* to the *physical* or *mental health* of any individual. This is known as the 'serious harm test' for health data. In considering the potential for serious harm, it may also be necessary to consider which has the potential for causing greater harm – the content itself, or the delivery of a partial SAR due to redaction, which the subject then has concerns about.

Decisions on redaction on the grounds of serious harm are subjective and can be difficult to arrive at. The Head of Information Governance is available to discuss these issues and will provide support in the form of a framework for the decision to be made, although ultimately this is a decision to be made – in law – by the Appropriate Healthcare Professional.

1.7 Appropriate Healthcare Professional

The Data Protection Act (2018), Schedule 3, Part 2, paragraph 2(1) defines the Appropriate Healthcare Professional as:-

(a) the health professional who is currently or was most recently responsible for the diagnosis, care or treatment of the data subject in connection with the matters to which the data relates,

(b) where there is more than one such health professional, the health professional who is the most suitable to provide an opinion on the question, or

(c) a health professional who has the necessary experience and qualifications to provide an opinion on the question, where -

(i) there is no health professional available falling within paragraph (a) or (b)

1.8 Sending Information

Subject Access Requests will normally be delivered by mail, using the Royal Mail 'Signed For' delivery service. Increasingly, scanning and e-mailing documents to requestors is an option. This must only be done if the requestor asks or agrees, and if we are confident the information can be sent securely in accordance with the Trust's Safe Haven Guidance and the E-Mail Use Policy.

If the subject would prefer to collect the information in person, then proof of identity is required. Alternatively the records may be viewed on site by the requester, facilitated by an appropriate member of staff.

1.9 Duties & Responsibilities

The duties within the organisation are as follows:

Staff group	Duties
All staff	All staff have a duty to identify incoming Subject Access Requests, route them to an appropriate Subject Access practitioner within the Trust and co-operate with the assembly and disclosure of information required to assist the Subject Access practitioner to comply with the request within the statutory timescale.
Medical and clinical staff	Under the Data Protection Act (2018), it is a duty of a person identified as the Appropriate Healthcare Professional to review records and consider redaction under the serious harm test. As non-professional 3rd party information (e.g. information received from family members, carers etc.) may not be known to the subject and be particularly likely to cause distress, this should also be removed as part of this process.
Medical Records Team	The Medical Records Team will receive Subject Access Requests either directly from subjects or re-routed by internal recipients and ensure that requests are complied with within the appropriate timescales. They will liaise with and assist clinical teams in dealing with Subject Access Requests.
Head of Information Governance / Data Protection Officer	Has a duty to oversee subject access provisions and act as the first line of expertise relating to Subject Access Requests, assisting with any difficulties in processing requests. As Trust Data Protection Officer, the post holder has powers under Article 39 to liaise with the ICO as appropriate on any breaches of the Act's provisions and any complaints received from the ICO as the UK's Data Protection regulatory body.
Medical Director / Caldicott Guardian	The Caldicott Guardian serves the Trust as the final arbiter of disclosure decisions relating to service users and will provide expertise and input where required on subject access cases if such escalation is appropriate.

1.10 Training

Compliance with Subject Access Requests is an aspect of the annual information governance training that all Trust staff are required to complete. Staff who process

Subject Access Requests will undertake specific NHS e-Learning training on this aspect of their work.

2 Appendices

Appendix A – Subject Access Request Form – Health Records
(available on Staffnet – Policies & Procedures, IG section)

PART B

3 IDENTIFICATION OF STAKEHOLDERS

The table below should be used as a summary. List those involved in development, consultation, approval and ratification processes.

Stakeholder	Level of involvement
Information Governance Group (comprising) • Data Protection Officer • IG Support Officer • Chief Information Officer • ICT Service Desk Manager • ICT Support Analyst • Network Manager	Consultation
Staffside representative	Consultation
Information Governance Group	Approval
Policy & Procedure Group	Ratification

4 REFERENCES, EVIDENCE BASE

- Data Protection Act (2018)

5 ASSOCIATED DOCUMENTATION (if relevant)

- IG-0001 – Information Governance Policy
- IG-0002 – Health Records Policy
- IG-0010 – Data Protection Policy
- IG-0009 – Safe Haven Guidance

- IT-0003 – Email Use Policy

6 STANDARDS/KEY PERFORMANCE INDICATORS (if relevant)

The Key Performance Indicator is the 1 month statutory deadline for the Trust to process Subject Access Requests under the Data Protection Act (2018).

Performance against statutory timescales will be reported monthly to the Information Governance Group.

The Head of Information Governance will also report any complaints relating to the performance, quality, completeness or other issues to the IG Group for consideration. Complaints may be received from data subjects, the Information Commissioner's Office or other regulatory bodies.

7. EQUALITY IMPACT

The Trust has a duty under the Equality Act 2010 to have due regard to the need to eliminate unlawful discrimination, advance equality of opportunity and foster good relations between people from different groups. Consideration must be given to any potential impacts that the application of this policy/procedure might have on these requirements and on the nine protected groups identified by the Act (age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion and belief, gender and sexual orientation).

Declaration: The potential impacts on the application of this policy/procedure have been fully considered for all nine protected groups. Through this process I have not identified any potential negative impacts for any of the nine protected groups.

Print name: Carl Starbuck

Job title: Information & Knowledge Manager

Date: 17/06/2021

If any potential negative impacts are identified the Diversity Team must be contacted for advice and guidance: email; diversity.lypft@nhs.net.

CHECKLIST

To be completed and attached to any draft version of a procedural document when submitted to the appropriate group/committee to support its consideration and approval/ratification of the procedural document.

This checklist is part of the working papers.

	Title of document being newly created / reviewed:	Yes / No/
1.	**Title**	
	Is the title clear and unambiguous?	✓
	Is the procedural document in the correct format and style?	✓
2.	**Development Process**	
	Is there evidence of reasonable attempts to ensure relevant expertise has been used?	✓
3.	**Content**	
	Is the Purpose of the document clear?	✓
5.	**Approval**	
	Does the document identify which committee/group will approve it?	✓
6.	**Equality Impact Assessment**	
	Has the declaration been completed?	✓
7.	**Review Date**	
	Is the review date identified?	✓
	Is the frequency of review identified and acceptable?	✓
8.	**Overall Responsibility for the Document**	
	Is it clear who will be responsible for co-ordinating the dissemination, implementation and review of the document?	✓

Name of the Chair of the Committee / Group approving			
If you are assured this document meets requirements and that it will provide an essential element in ensuring a safe and effective workforce, please sign and date below and forward to the chair of the committee/group where it will be ratified.			
Name	*Carl Starbuck*	Date	*22 July 2021*
Name of the chair of the Group/Committee ratifying			
If you are assured that the group or committee approving this procedural document have fulfilled its obligation please sign and date it and return to the procedural document author who will ensure the document is disseminated and uploaded onto Staffnet.			
Name	*Cath Hill*	Date	*10 August 2021*