Doncaster and Bassetlaw Hospitals NHS
NHS Foundation Trust

Please Note: This policy is currently under review and is still fit for purpose.

Police Requests for Information and Evidence

This procedural document supersedes: CORP/ICT 13 v.3 – Police Requests for Information and Evidence

Parties to the agreement

- Doncaster & Bassetlaw Hospitals NHS Foundation Trust
- The Police

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The Trust discourages the retention of hard copies of policies and can only guarantee that the policy on the Trust website is the most up-to-date version. **If, for exceptional reasons, you need to print a policy off, it is only valid for 24 hours.**

Name and Title of author/reviewer	Roy G Underwood, Information Governance Manager
Date revised	March 2015
Approved by (Committee/Group)	Information Governance Group
Date of approval	24 March 2015
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Next review date	January 2018 **– extended to June 2020**
Target Audience	Trust-wide

Amendment Form

Version	Date Issued	Brief Summary of Changes	Author
Version 4	1 April 2015	• Tri-Annual review • Policy Reformat • Amendments to Monitoring arrangements	Roy G Underwood
Version 3	February 2012	• Title amendment in line with proposed alphabetical storage of policies to: "Police Requests for Information and Evidence" • Subject Access to Patients - and their admission's information - coming into the Trust through A&E, by the Police, especially relating to out of hours • Major changes to Section 4: Defined Purposes and its reference to Appendix A • Equality Impact Assessment (EIA) summary	Roy G Underwood Michelle Veitch Julie Robinson DS D Mayfield
Version 2	March 2009	• Title change • Amendment form and contents page added. • Minor changes made to the format and numbering • Changed throughout....Clinical Records Manager/Clinical Nurse Advisor (CNA) to Medical Records Manager/Matron or the Senior Nurse on duty	Roy G Underwood
Version 1	May 2004	• To include references to Nottinghamshire Police. Police contacts: Chief Inspector P Martin (for South Yorkshire and DC P Cumberpatch (for Nottinghamshire)	Dr E W Jones – Caldicott Guardian/ Roy G Underwood

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1. OBJECTIVES

The Objectives of this protocol are:

- To set the parameters for the sharing of Patient sensitive information[1] with The Police.
- Personal data must be processed fairly and lawfully and, in particular, shall not be processed unless:-
  - At least one of the conditions in Schedule 2[2] is met, and
  - In the case of sensitive personal data, at least one of the conditions of Schedule 3[1] is also met.
- To define the purposes for processing personal information by The Police.
- To define how this personal information should be held, and who should have access to this information.

2. GENERAL PRINCIPLES

- It is important that patients and their carers can trust that personal information will be kept confidential and that their privacy will be respected.
- All Trust employees have an obligation to safeguard the confidentiality of personal information. This is governed by law[1], contracts of employment, and by professional codes of conduct[2].
- It is neither practicable nor necessary to seek an individual's specific consent each time that information needs to be passed on for a particular purpose, provided that:
  - the purpose has been defined within this protocol
  - individuals have been fully informed
- Clarity about the purposes to which personal information is to be put is essential, and only the minimum identifiable information necessary[1&2] to satisfy that purpose will be available.
- If an individual wants information about themselves to be withheld from someone, or some agency, which might otherwise have received it, the individual's wishes should be respected unless there are exceptional circumstances. The exceptional circumstances which override an individual's wishes arise when the information is required by statute or court order, where:
  - there is a serious public health risk or,
  - risk of harm to other individuals or,
  - for the prevention, detection or prosecution of serious crime

In these cases the decision to release information should be made by the Caldicott Guardian or an appointed deputy. It may be necessary to take legal or other specialist advice.

3. SETTING PARAMETERS

- The Police's Liaison Officers, the Caldicott Guardian and the Information Governance Group will be responsible for agreeing amendments to the protocol, monitoring its operation, and ensuring compliance.
- Personal information should be transferred freely between the Trust and the Police in compliance with this protocol, for the purposes it defines
- Specific consent by individuals is usually required prior to personal information being transferred for purposes other than those defined in this protocol, unless there are exceptional circumstances as outlined above.
- Where individuals are unable to give consent, the decision should be made on the individual's behalf by those responsible for providing care, with the patient's best interests being paramount. The reasons for the final decision and the names of those responsible for that decision should be recorded in the patient's notes.

4. DEFINED PRUPOSE

- **Access to Patients by the Police -** the following guidance should be applied when information or action with regards to an individual patient is requested by the Police.
- **This section must be read** in conjunction with the Schematic flow diagram at **Appendix A** which has been negotiated and agreed with The Police with particular attention being paid to the Notes as follows:

Police Request Considerations:

1. The starting point should always be the patient's consent where possible; the police will secure and evidence this unless the patient is still in A&E, where they should then gain consent - wherever possible - through the patient's clinician. Valid consent avoids all subsequent arguments (remember some of these matters will be domestics followed by reconciliation).

2. If consent isn't appropriate (eg lack of capacity / seeking it will be prejudice to the police inquiry) DPA section 29 is relevant, but staff need to consider the Police request carefully when deciding (and create a proper audit trail) if there is an agreement to disclose without consent. It is for the police to convince staff that disclosure should still be made without consent. If staff are still unsure, contact the Hospital Manager on call.

S29(3) exempts the Trust (as data controller) from the normal non-disclosure provisions (which are more onerous for “sensitive personal data” [which includes medical records] than other “personal data”). However this is ONLY if the disclosure is to prevent/detect crime or apprehend/prosecute offenders.

AND - Application of the usual non-disclosure provisions would be LIKELY to prejudice the police investigation [s29(3)(b)].

Hence **where there is no possibility of consent**, the police must convince staff why the individual case non-consensual disclosure is necessary to avoid prejudice to their investigation. Be careful where the patient has capacity (especially in relation to records of suspects rather than victims, where a real on-going risk of further serious offences can make the decision more straightforward).

4.1 Any member of staff receiving a request from the Police for information or action in regards to an individual patient must, in the first instance, bring this to the attention of their immediate line manager.

4.2 The line manager will, in all cases excepting Accident & Emergency (A&E), direct the Police enquirer on to their sites Clinical Records Manager. In the case of A&E enquiries, the Matron or the Senior Nurse on duty will act as the Incident Manager. If none of these is available then best advice and appropriate action should be taken by the 'Executive on call or Hospital Manager' who can be contacted through the Main Switchboard.

4.3 The Medical Records Manager/Matron or the Senior Nurse on duty will ensure that all information/actions are fully documented and a summary report provided.

4.4 The Medical Records Manager/Matron or the Senior Nurse on duty will ensure he/she obtains the full name and rank of the enquiring Police Officer/s.

4.5 The Medical Records Manager/Matron or the Senior Nurse on duty will ascertain the information and/or action required and why - in the Polices' opinion - there is a need for this information.

4.6 In conjunction with the patient's Consultant or nominated deputy, a decision is to be made as to the clinical appropriateness to liaise and discuss the request for information with the patient. Where the patient agrees to give information to the police, this will be carried out at the earliest opportunity and in the patient's best interest.

4.7 The Medical Records Manager/Matron or the Senior Nurse on duty will ensure that the patient has the offer to have a member of staff accompany them during the interview or to facilitate and arrange for a significant other to be present at the patient's request.

4.8 Where the patient refuses to give their consent for information and/or actions, then the police will be informed of this decision by the Medical Records Manager/Matron or the Senior Nurse on duty.

4.9 Any further action in relation to the request will be at the instigation of the police, i.e. through their own criminal or legal recourse.

4.10 Support and advice can be sought from the Trust's Head of Information Governance and/or the Trust’s Legal Services Department during normal office hours. Out of hours the 'Executive on call' can be contacted through the Switchboard.

4.11 All actions and information taken must be clearly documented in the medical/professional notes which are timed, dated and signed with name printed. The Medical Records Manager/Matron or the Senior Nurse on duty will ensure a 'Adverse Incident' form is completed.

N.B. Under <u>special circumstances</u> however, under Section 168 of the Road Traffic Act 1968, where the driver of a vehicle who is alleged to have committed an offence has not been identified, a doctor can be <u>required</u> to give information to a police officer that is in his power to give, which may lead to the identification of the driver. The disclosure to the police of such information involves balancing the public duty to assist the police against the duty of patient confidentiality and the requirements of Section 168.

- **<u>Patient's Evidence in Legal Proceedings</u>**
  - **Evidence required from a Patient**
  - **This section must be read** in conjunction with the Schematic flow diagram at **Appendix A** which has been negotiated and agreed with The Police
    - Where a patient, whether he/she is a suspect or a witness, is seriously ill, then due consideration and priority must be given to their clinical state and any hindrance to the recovery process. The decision to allow an interview with the police, solicitor or other concerned person is the ultimate responsibility of the Consultant-in-charge of the case.
    - The Consultant-in-charge in making this decision will have proper regard to the distress which the questioning may cause the patient who may or may not be beyond the hope of recovery.
    - All actions and information taken must be clearly documented in the medical/ professional notes which are timed, dated and signed with name printed. The Medical Records Manager/Matron or the Senior Nurse on duty will ensure a 'Adverse Incident' form is completed.
    - The Medical Records Manager/Matron or the Senior Nurse on duty will ensure that they obtain and record the full name and rank of the police officer/s concerned.

  - The Medical Records Manager/Matron or the Senior Nurse on duty will ascertain the information and/or action required and why - in the polices' opinion - there is a need for this information.

- **Evidence of Sick Persons**

  - **This section must be read** in conjunction with the Schematic flow diagram at **Appendix A** which has been negotiated and agreed with The Police

  - When a patient, be they a suspect or merely a witness, is seriously ill, then the desirability from the point of view of the patient's possible recovery of allowing, hindering or facilitating the interview with the police, solicitor or other person concerned must be considered.

  - The ultimate responsibility will be with the Consultant-in-charge of the case who in making the decision will have proper regard to the distress which questioning may cause the patient, who may or may not be beyond the hope of recovery.

  - The police interviewing a patient would be no less concerned to know that the responsible Consultant-in-charge believes the patient to be capable or not of understanding and answering questions.

  - The Medical Records Manager/Matron or the Senior Nurse on duty will ensure that they obtain and record the full name and rank of the police officer concerned.

  - The Medical Records Manager/Matron or the Senior Nurse on duty will ascertain the information and/or action required and why - in The Police's opinion - there is a need for this information.

  - All actions and information taken must be clearly documented in the medical/ professional notes which are timed, dated and signed with name printed. The Medical Records Manager/Matron or the Senior Nurse on duty will ensure a 'Adverse Incident' form is completed.

- **Dying Declarations of Evidence**

  - It is a general rule that hearsay evidence is inadmissible in court and under this ban fall most attempts to testify to particular facts, not of one's own knowledge, but as having heard a third party assert their knowledge of the matter in question.

  - This ban ordinarily remains even though the original witness to the facts/information is dead and so cannot be called as a witness. One particular exception is made, **viz** in trials of a homicide statement made, where a Judge will make an order for the production of special procedure material. However, these are the Judges ultimate powers and it is unlikely that the police would be obliged to go to this length against a Trust.

  - If it is known that the police can ultimately seek an order for disclosure, then it will be Trust policy to co-operate.
  - The Medical Records Manager/Matron or the Senior Nurse on duty will ensure that they obtain and record the full name and rank of the police officer/s concerned.
  - The Medical Records Manager/Matron or the Senior Nurse on duty will ascertain the information and/or action required and why - in The Police's opinion - there is a need for this information.
  - All actions and information taken must be clearly documented in the medical/professional notes which are timed, dated and signed with name printed. The Medical Records Manager/Matron or the Senior Nurse on duty will ensure a 'Adverse Incident' form is completed.
  - Where a member of Trust staff is aware or believes that they have been in receipt of a dying declaration which may be required as evidence, then they must inform their line manager straight away.
  - As soon as is practical to do so, they must write out as detailed as possible an account of the declaration that they have heard. The professional and or their line manager will contact the Trust's Legal Services Manager or 'Executive on call' to explain the situation and ask for advice.

- **Police Visiting Hospital Environment**

  - A police officer seldom has authority to enter private premises other than in execution of a search warrant, or indeed to remain there without permission, except in the following circumstances:
    - in execution of a warrant to arrest a criminal
    - in pursuit of a criminal or suspect, who can be arrested without warrant
    - and excepting always war emergency legislation
  - Generally, hospital Trusts put no obstacle in the way of police enquiries even when there is no legal obligation to facilitate this.
  - Generally, hospitals facilitate the task of the police who require to be on-hand near a patient to obtain evidence from the victim of a serious crime or perhaps to be at the bedside of a criminal or suspect for the patient's own personal protection.
  - Where this request is made, the Ward manager, in liaison with Consultant-in-charge and other staff in the Ward area, will ensure that there is minimal disruption to the clinical area and that the police's close proximity does not interfere with the patients clinical care and treatment.

- The Medical Records Manager/Matron or the Senior Nurse on duty will ensure that they obtain and record the full name and rank of the police officer/s concerned.
- The Medical Records Manager/Matron or the Senior Nurse on duty will ascertain and record why - in The Police's opinion - there is a need for this action.
- All actions and information taken must be clearly documented in the medical/ professional notes which are timed, dated and signed with name printed. The Medical Records Manager/Matron or the Senior Nurse on duty will ensure a 'Adverse Incident' form is completed.

5. HOLDING INFORMATION, ACCESS AND SECURITY

- Access to personal information should be on a 'need-to-know basis'[2], in order to perform their duties in connection with one or more of the purposes defined above. Personal details should only be available to those Officers nominated by South Yorkshire & North Notts Police Services.
- The Police should take reasonable care and safeguards to protect both the physical security of the data and mediums on which they are held. IT Systems should be effectively password protected, and Users will not pass on their password nor leave systems active whilst absent.
- All personal files and confidential listings provided by the Trust must be kept secure and be locked away when not in-use.

6. MONITORING

The revised protocol arrangements will be audited 6 monthly to ensure successful compliance.

What is being Monitored	Who will carry out the Monitoring	How often	How Reviewed/ Where Reported to
The Police always request access to information and to staff or patients for interview through the agreed channels	IG Group, especially Medical Records for access to Patient related data	Twice annually	To the Trust IG Group through the appropriate standards in the IG Toolkit

7. EQUALITY IMPACT ASSESSMENT

An Equality Impact Assessment (EIA) has been conducted on this procedural document in line with the principles of the Equality Analysis Policy (CORP/EMP 27) and the Fair Treatment For All Policy (CORP/EMP 4).

The purpose of the EIA is to minimise and if possible remove any disproportionate impact on employees on the grounds of race, sex, disability, age, sexual orientation or religious belief. No detriment was identified. (See Appendix B).

8. REFERENCES

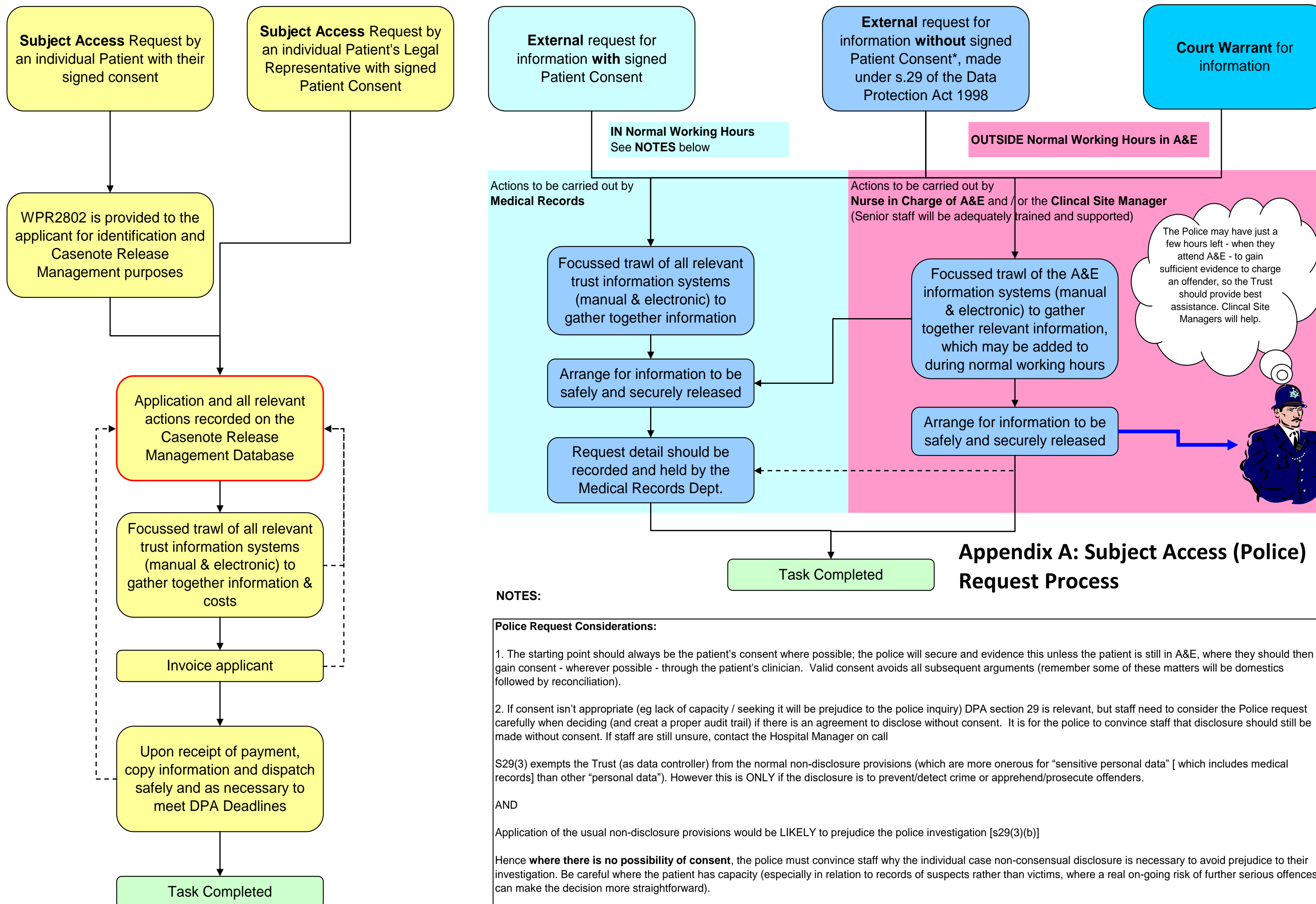
[1] Data Protection Act 1998

[2] DoH, The Caldicott Committee: Report on the Review of Patient-Identifiable Information. (1997)

[3] Confidentiality, NHS Code of Practice - November 2003

[4] Section 168 of the Road Traffic Act 1968

APPENDIX A – SUBJECT ACCESS (POLICE) REQUEST PROCESS



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APPENDIX B – EQUALITY IMPACT ASSESSMENT - PART 1 INITIAL SCREENING

Service/Function/Policy/Project/ Strategy	CSU/Executive Directorate and Department	Assessor (s)	New or Existing Service or Policy?	Date of Assessment
Police Requests for Information & Evidence	Finance & Infrastructure	Head of Information Governance	Existing Policy	24/3/2015

1) Who is responsible for this policy? Name of Care Group/Directorate: Finance & Infrastructure

2) Describe the purpose of the service / function / policy / project/ strategy? To ensure compliance with the DPA & Patient Confidentiality

3) Are there any associated objectives? Data Protection Act 1998/DH Records Management Code of Practice

4) What factors contribute or detract from achieving intended outcomes? IG Training

5) Does the policy have an impact in terms of age, race, disability, gender, gender reassignment, sexual orientation, marriage/civil partnership, maternity/pregnancy and religion/belief? NO

- **If yes, please describe current or planned activities to address the impact** [e.g. Monitoring, consultation]

6) Is there any scope for new measures which would promote equality? NO

7) Are any of the following groups adversely affected by the policy? NO

Protected Characteristics	Affected?	Impact
a) Age	No	
b) Disability	No	
c) Gender	No	
d) Gender Reassignment	No	
e) Marriage/Civil Partnership	No	
f) Maternity/Pregnancy	No	
g) Race	No	
h) Religion/Belief	No	
i) Sexual Orientation	No	

8) Provide the Equality Rating of the service / function /policy / project / strategy – tick (✓) outcome box

Outcome 1 ✓	Outcome 2	Outcome 3	Outcome 4

If you have rated the policy as having an outcome of 2, 3 or 4, it is necessary to carry out a detailed assessment and complete a* **Detailed Equality Analysis form in Appendix 4

Date for next review: February 2015

Checked by: Head of Information Governance **Date:** 24/3/2015