



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

Processing Requests for Access to Health Records Procedure

This procedural document supersedes: CORP/REC 3 v.4 – Processing Requests for Access to Health Records Procedure



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Date revised:	March 2019
Approved by (Committee/Group):	Policy Approval and Compliance Group
Date of approval:	26 March 2019
Date issued:	31 May 2019
Next review date:	March 2022
Target audience:	Trust-wide

Amendment Form

Brief details of the changes made:

Version	Date Issued	Brief Summary of Changes	Author
Version 5 (partial revision 23 May 2018)	31 May 2019	<ul style="list-style-type: none"> • Overhaul of the policy. Please read. • Change of application to SAR form • Production of guidance for applicants. • Change in the way the data is presented and analysed. <ul style="list-style-type: none"> • Policy updated throughout to reflect new Data Protection Regulations: the Data Protection Act (DPA) 2018 and the General Data Protection Regulation (GDPR) May 2018. • Removal of Appendix C - Letter to Health Professional. • Appendix A & B to be removed from the policy itself, due to the new application form and guidance. 	<p>Liam Wilson, Head of Patient Safety & Experience, Roy Underwood, Trust IG Lead/DPO</p> <p>Gail Lakin, Case Note Release Supervisor Mim Boyack, Case Note Release Manager Roy Underwood, Trust IG Lead/DPO</p>
Version 4	23 May 2016	<ul style="list-style-type: none"> • Change of author/reviewer. • Updated link to the Guidance for Access to Health Records Requests – February 2010. • 6.1 a search fee of £10 will be added to each request. • Application for Access to Health Records for a Deceased Patient added at Appendix B. 	<p>Julie Robinson Case Note Release & Overseas Visitors Manager</p>
Version 3	June 2012	<ul style="list-style-type: none"> • Title amended. • New style template used as per CORP/COMM 1 • Introduction revised. • Detailed reference to The Department of Health document Guidance for Access to Health Records Requests - February 2010 • Roles and responsibilities clarified. • Minor updates throughout • Monitoring and compliance included • Other Associated Trust procedural documents included • References included • Appendix B – Revised letter to Health Professional 	<p>Christine Coates, Medical Records Project Manager.</p> <p>Julie Robinson Health Records Manager</p>

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1 INTRODUCTION

Individuals have a right to apply for access to health information held about them and, in some cases, information held about other people. However, there are distinct processes which family (or relatives) need to go through to do so. Ultimately the physical notes belong to the Secretary of State for Health and Social Care, the Trust (DBTH) is the guardian of these notes. They are about the patient, but do not belong to the patient. Therefore access is controlled; access is gained via consent from the patient for either:

- A discussion/meeting with the medical/nursing teams (and documented in the medical notes)
- A subject access request.

The main legislative measures that give rights of access to health records are:

- **Current Data Protection Legislation (GDPR and the Data Protection Act 2018)** – rights for living individuals to access their own records. The right can also be exercised by an authorised representative on the individual's behalf. The Information Commissioners Office (ICO) is the UK's independent public body that is responsible for governing GDPR and Data Protection compliance.
- **The Access to Health Records Act 1990** – rights of access to deceased patient health records by specified persons.
- **Access to Medical Reports Act 1988** – right for individuals to have access to reports, relating to themselves, provided by medical practitioners for employment or insurance purposes.

2 GUIDANCE

The guidance document to assist with completing the Access to Health Records application is saved to the Trust website. Please [click here](#) for access.

3 ROLES AND RESPONSIBILITIES

To ensure that requests for access to health records that are received by this organisation are processed in a manner which is compliant with legislative requirements all requests for subject access should be made in writing and directed to the Health Records Manager.

As applications for subject access to health records will always involve access to personal data, there is no need to refer to the Freedom of Information Act 2000.

3.1 Case Note Release Team

On receipt of a request, the Case Note Release Team on behalf of their Manager must:

- Forward to the applicant, within 5 working days, an application form for Subject Access to Health Records. The form is also available in an electronic format on the Trust website. However, a requester has no obligation to complete the form. In this instance, the Case Note Release Clerk will complete the form on behalf of the requester to ensure a detailed request, mitigating future delays.
- On receipt of an application form, the Case Note Release Team will arrange to check the validity of the application (saving the application request to the shared drive), ie, identification, signature and appropriate consent to release, and will arrange payment of the fee, if applicable.
- Take all reasonable steps to identify all sources of records that are relevant to the patient's application and request copies of these as appropriate.
- Scan the records as sending out photocopies not the original, save the copies to shared drive and send original notes back to medical records.
- Send copies of notes to applicant. (Following receipt of any fee, if relevant).
- Where allowed or where limited to specific sections, Ensure that the request that for subject access is filed in the notes,

3.2 Lead or Appropriate Health Professional/s

Lead health professionals should advise the Case Note Release Manager in circumstances where advice has been sought on whether access should be denied / limited:

- To prevent the disclosure of seriously harmful information regarding a third party or which might identify third party individuals;
- In connection with an application for access to a child's record¹, whether the child is capable of understanding the nature and purpose of the application;
- As the information to be accessed would cause serious harm to the physical or mental health of the patient or other individual.

*In such circumstances the Health Professional **must** provide the Health Records Manager with written details of why subject access should be withheld.*

3.3 Heads of Departments

Heads of Department are responsible for ensuring that their staff that handle patient records understand their legal responsibility, are conversant and adhere to this document and other associated Trust Policy documents.

4 TIME LIMITS FOR PROVIDING SUBJECT ACCESS TO HEALTH RECORDS

Requests for subject access to health records will be processed in a prompt and efficient manner, copies must be provided within a period of:

¹ GDPR Article 8 Rec. (38)

- 30 days (1 month) following receipt of a request (or receipt of payment if applicable). This time limit can be extended by a further two months if necessary and by agreement.
- or
- 30 days of receipt of any additional information requested to identify the patient, or to satisfy authentication of the person(s) seeking access.

5 SUBJECT ACCESS FEES

Subject Access Requests are generally free of charge however, the Case Note Release Team are allowed under current data protection legislation to charge a fee² for some subject access to health records requests where the request is deemed to be ‘manifestly unfounded or excessive’, or where the request is for a copy of records previously provided on or after the 25/5/2018. Alternatively, we can refuse to comply with the request where it is deemed to be manifestly unfounded or excessive.

Any proposed viewings or charges will be agreed at the time of the request.

5.1 Access to Health Records

The Access to Health Records application form and the guidance document which assists the completion of this are found on the Trust website. This covers both live and deceased patients, is available by contacting Case Note Release on 01302 642234 or 642235, or by visiting the relevant webpage on the trust website: <https://www.dbth.nhs.uk/about-us/our-publications/uk-data-protection-legislation-eu-general-data-protection-regulation-gdpr/>

6 SUBSEQUENT ACTION

6.1 Complaints

The organisation has procedures in place to enable complaints to be addressed - see **CORP/COMM 4** –Complaints, Concerns, Comments and Compliments: Resolution and Learning.

Please contact the Patient Advice and Liaison Service (PALS) team if a complaint is to be made.

6.2 Requests to Rectify/Delete Data

Pass any verbal or written request received for rectification of health records deemed to be inaccurate for the immediate attention of the Health Records Manager.

² GDPR Article 15 and DPA 2018 s.53

- Inaccuracies in health records reported by the applicant will be noted and corrected only subject to agreement by the lead health professional.
- An indication of the amendment must be made in the health record and must be signed and dated. Do not obliterate information that may have significance for the future care and treatment of the patient, or for litigation purposes.
- The Health Records Manager will ensure that the applicant receives, without charge, a copy of the corrected record where applicable.

7 REQUESTS FROM THE DEPARTMENT FOR HEALTH & SOCIAL SECURITY

Health Service Circular 1999/001 provides for requests for the disclosure of patient information by or on behalf of the Department of Work and Pensions.

Such requests for copies of patient health records and / or X-rays should be passed immediately to the Case Note Release Manager for appropriate action.

Requests for factual clinical reports should be dealt with directly by the lead health professional concerned. In either case, the following rules apply:

- If the request does not specify a particular consultant or episode of care, the form must be returned immediately to the DWP with a request for further information.
- Copies of records and the provision of factual reports should be supplied free of charge.
- Only copies of original records should be supplied
- All requests for copy records or factual reports should be dealt with within 10 working days

8 REQUESTS TO DISCLOSE PATIENT RECORDS FOR RESEARCH, CLINICAL TRIALS

Requests for patient information required for the purpose of research and development, clinical trials should be referred to the Ethics Committee for approval, via the Clinical Audit/Research Coordinator.

In all instances, such requests for information will require the explicit consent of the patient before the information can be released. Any requests that raise any concerns regarding breach of patient confidentiality must be referred to the Caldicott Guardian for the Trust.

9 HEALTH RECORDS REQUESTED FOR CONTINUATION OF CARE BY OTHER PROVIDERS

Original records should not normally leave the hospital site, unless for the provision of clinical care by employees of the Trust, or where the requirement for treatment is so urgent that any delay in photocopying would be harmful to the patient.

The Case Note Release Team on behalf of the Manager will deal with requests received from other providers for health records required for continuation of clinical care. The identity of the requester must be established and authenticated.

Outside normal working hours, the Duty Manager should be made aware of a request, where practical; only **copy health records** will be released, and ideally they must be checked for 3rd party data content which must be consented before release or it must be redacted fully.

In an emergency situation, the transfer of the patient must not be delayed until the records have been copied. In this instance, the original records should be released and the transfer recorded on the CaMIS System. For the convenience of non CaMIS users, all of the Trust medical records departments have a 24 hour telephone answer phone service in operation for recording case note requests and transfers.

A case note tracking code 'OHOS' (other hospital other site) may be used by CaMIS users in the absence of an appropriate hospital tracking code. The receiving hospital / ward / consultant / requesters telephone number should be recorded in the transfer comment field.

10 REQUESTS FOR PATIENT INFORMATION BY THE POLICE

Where it is probable that a crime has been committed or where the police are acting to prevent a crime, the police may seek access to relevant information³. If the patient cannot give consent (because they are unconscious for example), or refuses to disclose information or to allow health professionals to do so, information can still be disclosed if there are grounds for believing that this is justified in the public interest or disclosure is required by law. Disclosures in the public interest are justified where:

- failure to disclose information may put the patient, or someone else, at risk of death or serious harm
- disclosure would be likely to assist in the prevention, detection or prosecution of a serious crime and failure to disclose would be prejudicial to those purposes

If there is any doubt about whether disclosure is justified, the decision to disclose information without consent should be made by, or with the agreement of, the consultant in charge, the Trust's Caldicott Guardian or Senior Information Risk Officer (SIRO). Wherever practicable seek the patient's consent to the disclosure or inform them that a disclosure has been made unless for example, that it:

- may put you or others at risk of serious harm, or
- would be likely to undermine the purpose of the disclosure, by prejudicing the prevention, detection or prosecution of a crime

The reasons for disclosure should be recorded in the patient's notes.

³ GDPR Article 23 1 (d) & DPA 2018 Schedule 11 s.2 (a) & (b)

11 CLINICAL NEGLIGENCE AND EMPLOYER/PUBLIC LIABILITY CLAIMS/PRE-ACTION PROTOCOL FOR THE RESOLUTION OF CLINICAL DISPUTES

The procedure for the provision of patient health records for the above is covered within policy **CORP/RISK 5** – Claims Handling Policy, which should be referred to before any disclosure takes place.

12 IDENTIFICATION

For security purposes the Trust requests identification to formally confirm the individual's identity.

Documents the Trust will accept as evidence of formal identification.

A request must include:

- One form of identification as proof of your name, and
- One as proof of your name linked to your address.

One form of identification cannot be used for both name and address. For example, if you provide your driving licence as proof of your name you must provide another form of identification for your address, such as a utility bill. The guidance document to assist with completing the Access to Health Records application is saved to the Trust website. Please [click here](#) for access.

13 TRAINING AND EDUCATION

The training and educational requirements of Case Note Release and relevant staff will be identified through a training needs analysis. Role specific education will be delivered by the service lead.

14 MONITORING COMPLIANCE

The timely disclosure of requests for access to health records received by the Case Note Release Manager is a key performance standard reportable to the Information Governance Group on an annual basis. The Information Governance Group will receive periodic and an annual report from the Case Note Release Manager.

What is being Monitored	Who will carry out the Monitoring	How often	How Reviewed/ Where Reported to
Key Performance Indicators: <ul style="list-style-type: none"> ▪ Numbers of requests received ▪ Numbers of requests serviced within the legal timescales ▪ Compliance with deadlines met 	The Trust Data Protection Officer and the Case Note Release Manager (Head of Patient Safety & Experience)	Monthly	Board, Patient Experience and Engagement Committee and the Trust IG Group

15 EQUALITY IMPACT ASSESSMENT

The Trust aims to design and implement services, policies and measures that meet the diverse needs of our service, population and workforce, ensuring that none are disadvantaged over others. Our objectives and responsibilities relating to equality and diversity are outlined within our equality schemes. When considering the needs and assessing the impact of a procedural document any discriminatory factors must be identified.

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 1).

16 ASSOCIATED DOCUMENTS

This policy should be read in conjunction with the following policy documents:

- CORP/ICT 7** - Data Protection Policy
- CORP/ICT 8** - Safe Haven Guidelines
- CORP/ICT 10** - Confidentiality - Code of Conduct
- CORP/RISK 5** - Claims Handling Policy
- CORP/COMM 4** - Complaints, Concerns, Comments and Compliments: Resolution and Learning
- PAT/PA 19** - Mental Capacity Act 2005 - Policy and Guidance, including Deprivation of Liberty Safeguards (DoLS)
- CORP/REC 5** - Clinical Records Policy
- CORP/EMP 4** - Fair Treatment for All Policy
- CORP/EMP 27** - Equality Analysis Policy

It is the contractual responsibility of every member of staff to adhere to organisational approved procedural documents.

17 DATA PROTECTION

Any personal data processing associated with this policy will be carried out under 'Current data protection legislation' as in the Data Protection Act 2018 and the General Data Protection Regulation (GDPR) 2016).

For further information on data processing carried out by the trust, please refer to our Privacy Notices and other information which you can find on the trust website:

<https://www.dbth.nhs.uk/about-us/our-publications/uk-data-protection-legislation-eu-general-data-protection-regulation-gdpr/>.

18 REFERENCES

- Data Protection Act 2018
 - General Data Protection Regulations (GDPR) 2018
 - Access to Medical Reports Act 1988
 - Access to Health Records Act 1990
- HSC 1999/001: The provision of patient information by NHS Trusts to the Department of Social Security requests for information used for benefit assessment purposes (Accessed at:
https://webarchive.nationalarchives.gov.uk/+http://www.dh.gov.uk/en/Publicationandstatistics/Lettersandcirculars/Healthservicecirculars/DH_4004381)

APPENDIX 1 – EQUALITY IMPACT ASSESSMENT - PART 1 INITIAL SCREENING

Service/Function/Policy/Project/ Strategy	Division/Executive Directorate and Department	Assessor (s)	New or Existing Service or Policy?	Date of Assessment
Subject Access Requests	Nursing, Midwifery & AHP's	Liam Wilson	Existing	March 2019
1) Who is responsible for this policy? Nursing & Quality				
2) Describe the purpose of the service / function / policy / project/ strategy? To provide guidance and process in relation to subject access requests				
3) Are there any associated objectives? Data Protection Act 2018 & GDPR				
4) What factors contribute or detract from achieving intended outcomes?				
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				
<ul style="list-style-type: none"> • If yes, please describe current or planned activities to address the impact 				
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?				
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	
<i>*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</i>				
Date for next review: March 2022				
Checked by: Cindy Storer			Date: March 2019	