

SUBJECT ACCESS POLICY

The purpose of the Subject Access Policy is to ensure there is a systematic approach to the management and the process of access that is understood by all staff.

Version 4

DOCUMENT NUMBER	STHK0180
APPROVING COMMITTEE	Clinical Governance Board
DATE APPROVED	27 February 2017
DATE IMPLEMENTED	27 February 2017
NEXT REVIEW DATE	01 February 2020
ACCOUNTABLE DIRECTOR	Director of Nursing, Midwifery and Governance
POLICY AUTHOR	John Culshaw, Head of Complaints & Legal Services
TARGET AUDIENCE	All staff involved in communication and provision regarding health records
KEY WORDS	Information, Sharing, Data Protection

Important Note:

The Intranet version of this document is the only version that is maintained.

Any printed copies should therefore be viewed as “uncontrolled” and, as such, may not necessarily contain the latest updates and amendments.

Contents

1	SCOPE.....	3
2	Introduction	3
3	Statement of Intent.....	3
4	Definitions	4
5	Duties Accountabilities and Responsibilities	5
6	Process	7
7	TRAINING	18
8	MONITORING COMPLIANCE WITH THIS DOCUMENT	19
9	REFERENCES AND BIBLIOGRAPHY.....	20
10	RELATED POLICIES AND PROCEDURES	20
11	APPENDIX 1.....	21

1 SCOPE

The Trust is committed to providing an effective Access to Health Record Service which deals sensitively and appropriately with requests for Data Access.

This policy sets out the importance, procedures and duties of the Trust and its staff in achieving the policy aim. This policy was developed in conjunction with the guidance outlined in the Access to Health Records Act 1990, Data Protection Act 1998 and Subject Access Code of Practice – Information Commissioners Office 2013.

2 INTRODUCTION

Trust management of Access to Health Records is provided by the Legal Services Department. The Head of Complaints & Legal Services is responsible for the conduct and control of data subject requests and the documentation to record and audit such requests.

This policy has been produced to ensure the Hospital Trust meets its obligations regarding requests for Access to Health Records.

The Access to Patient Health Records Policy, for the St Helens & Knowsley Teaching Hospitals NHS Trust, sets out the requirements of its staff including responsibilities. Staff should treat this Policy as guidance based on best practice for managing access to health records requests

The unauthorised passing on of patient personal information by staff is a serious matter and will result in disciplinary action and the risk of legal action by others.

Staff must not allow personal details of patients to be passed on or sold for fund-raising or commercial marketing purposes.

The Trust recognises that through systematic management of access to health record activities, supports the Trust's risk management process and in doing so is of benefit to patients the Trust and staff.

3 STATEMENT OF INTENT

This Policy is intended to:

- Introduce a formal method of control for access to the Hospital Trusts Patient Health Records.

- Ensure the Trust complies with the requirements for access to Health Records the Data Protection Act, therefore avoiding the cost penalties associated with non-compliance;
- Ensure that staff are clear about the process for managing access requests, including their responsibilities in relation to this;
- Develop and implement procedures that informs staff of their responsibilities in the management of access to health records requests;
- Ensure staffs adhere to the principles of being open in line with the Trust's Being Open policy in matters relating to health records;
- Ensure that Internal Audit plans include periodic reviews in compliance with local and NHS security policies regarding Access to Patient Health Records. Assure the Trust and external stakeholders that Subject Data Access Management within the Trust is systematically managed in line with good risk management practice successful risk management measures and effective communication.

4 DEFINITIONS

An Access to Health records request is any request for personally identifiable data and can be made by the data subject or other, as a live data request or deceased data request.

4.1 Access to Health Records Definitions

There are certain definitions given in the Act. These are:

An **application** means an application in writing

A **Health record** is defined as information relating to the physical and / or mental health of an individual who can be identified from that Information and which has been made by, or on behalf of a Healthcare Professional, in connection with the care of that individual.

The **holder** of the record is the Hospital Trust by which, or on whose behalf, the record is held.

The **patient** is the individual in connection with whose care the record has been made.

The **Healthcare Professional** can be one or more of the following registered professions:

- Medical practitioner
- Dentist
- Optician
- Pharmaceutical chemist

- Nurse
- Midwife
- Health visitor
- Osteopath
- Chiropractor
- Podiatrist
- Dietician
- Occupational therapist
- Orthoptist
- Physiotherapist
- Clinical psychologist
- Child psychotherapist
- Speech therapist
- An art or music therapist employed by the Health Service
- Any other registered member of a Profession Supplementary to the Medicines Act 1960
- A scientist employed by the Health Service as a head of department

5 DUTIES ACCOUNTABILITIES AND RESPONSIBILITIES

5.1 Roles Responsibilities/Duties

This policy applies to all those working within the Trust, in whatever capacity. A failure to follow the requirements of the policy may result in investigation and management action being taken, in line with the Trust's Human Resources disciplinary policy and procedure 16.3.2016.

Directors/Heads of Service must make their staff aware of the Subject Access Policy at the earliest possible opportunity.

Trust employees: and other action in relation to other workers, which may result in the termination of an assignment, placement, secondment or honorary arrangement.

5.2 Trust Board

The Trust Board has a duty to assure itself that appropriate mechanisms are in place for the management of access requests.

5.3 The Chief Executive

The Chief Executive has overall accountability to ensure effective data request management processes are in place within the trust. She/he will receive data access request data, as required or at least annually.

5.4 The Director of Nursing, Midwifery and Governance

The Director of Nursing, Midwifery and Governance is the Executive Director responsible for ensuring that sound systems are in place for access request management within the Trust.

The Director of Nursing, Midwifery and Governance has responsibility to ensure the Trust Board is appraised of all person access request data via Board reporting on at least an annual basis, or more frequently as necessary by exception reporting.

The Director of Nursing, Midwifery and Governance has responsibility to ensure that any risks to the organisation identified through subject data requests are incorporated within the Trust Board Assurance Framework.

5.5 What are the responsibilities of the Trust Directors and Senior Managers?

Directors and managers must give their full backing to all the guidelines and procedures as set out and agreed. They must ensure that their staff are aware and adhere to the policy requirements.

5.6 The Caldicott Guardian

The Caldicott Guardian is responsible for ensuring that the Trust processes satisfy the highest practical standards for handling patient information and provide advice and support to Trust staff as required. The Caldicott Guardian is responsible for ensuring that patient identifiable information is shared appropriately and in a secure manner. The Senior Information Risk Owner (SIRO) and the Caldicott Guardian will liaise where there are reported incidents of person identifiable data loss or identified threats and vulnerabilities in Trust information systems to mitigate the risk.

5.7 Head of Complaints & Legal Services

The Head of Complaints & Legal Services has operational responsibility for the handling of all personal data access requests and will liaise with the Executive Directors, Trust Managers, Caldicott Guardian and the Trust's Health Records Department as appropriate.

It is the Head of Complaints & Legal Services responsibility to proactively identify any Trust issues with the potential to proceed to a claim and ensure all necessary relevant documentation is collated.

5.8 Access Lead/Administrators

The Access Lead/Administrators will provide full support to the Head of Complaints & Legal Services as appropriate. They will communicate to the Head of Complaints & Legal Services any problems relating to the non-compliance for requests for records.

5.8 All Staff

It is the responsibility of all staff to co-operate in a timely manner (within 4 weeks) with requests for information from the Legal Services Department, regarding the investigation of access requests. In cases of non-compliance outstanding reports from staff will be pursued on request by the Head of Complaints & Legal Services

6 PROCESS

The Trust recognises that staff may find the process of personal access request stressful and acknowledges that it is important that staff are appropriately supported. Any member of staff who has concerns or wishes to receive support or guidance in respect of their involvement in the access process should contact the Head of Legal Services, their Line Managers or senior Clinical Staff who will be available to provide or arrange support as appropriate.

There are certain formalities, which must be observed when applying to see records under the Act. It may seem a rather complicated process but it is of vital importance to make sure that the records are released only to the right person, because the confidentiality of records calls for the greatest safeguards.

- Any member of staff receiving a formal request for access, either verbally or in writing must advise the person to obtain an application form from the Legal Services Department, Access & Disclosure Section, Nightingale House, Whiston Hospital, 0151 430 1549
- If access to records is granted, proof of identity will be required in order to avoid any possible breach of confidentiality. This can be a passport, driving licence, utility bill or birth certificate.
- In order to ensure that we meet the terms of the Act, the administration will be co-ordinated by a named individual (Access Lead/Administrators), who will send the applicant an information leaflet and application form, requesting that the completed application form be returned to them. Any application forms received by others must re-direct them to the Legal Services Department, Access & Disclosure Section.
- If the application form does not contain sufficient information to identify the record(s) to be accessed, a request for further details must be issued to the applicant within 14 days.
- If arrangements are made for the medical notes to be viewed, the viewing would normally be in the presence of the Head of Complaints & Legal Services Department or the Access Lead.

6.1 RIGHTS OF ACCESS

Subject Access is most often used by individuals who want to see a copy of the information an organisation holds about them. However, subject access goes further than this and an individual is entitled to be:

- Told whether any personal data is being processed;
- Given a description of the personal data, the reasons it is being processed and whether it will be given to any other organisation or people;
- Given a copy of the personal data;
- Given details of the source of the data.

Who Has A Right to Apply?

- The patient
- Any person authorised in writing, to apply on behalf of the patient.
- In England and Wales, the person having parental responsibility for a child under 16 if the child agrees.

If the child is competent of understanding the application, his/her consent is needed to allow access to the records, unless, in exceptional circumstances, the record holder considers that it is in the child's best interest to allow access without their consent i.e. There is a real justification for allowing access without consent. If the child is not capable of understanding the application, the person with parental responsibility has a right of access, subject to the usual safeguards/examples.

- A child (a person under the age of 16 years) who, in the view of the appropriate Healthcare Professional, is capable of understanding what the application is about can prevent a parent from having access to the record. If the child is not capable of understanding the application, the person with parental responsibility has a right of access, subject to the usual safeguards/examples, unless, in the view of the appropriate Healthcare Professional this would not be in the child's best interest, then the holders of the records are entitled to deny access (see below also).
- Any person appointed by the Court, to manage the affairs of a patient of any age, who is deemed to be incapable (see below also).
- Where a patient has died, the patient's next-of-kin, personal representative, or any person having a claim arising from the death. Where the patient has died, disclosure would be subject to the recorded wishes of the deceased patient (see below also).
- Where the applicant is not the patient, the applicant should have access to only the information which would otherwise have been available to the patient, unless access to further information is deemed justifiable in the circumstances, other

than in exceptional circumstances such circumstances may arise, which, exceptionally, would justify disclosure. **Where the applicant is not the patient, access is not permitted**

- **Where the holders of the records are of the opinion that the patient gave the information or underwent the examination / investigation in the expectation that the information would not be divulged to the applicant.**
- The applicant must declare that they are entitled to apply for access to the health records referred to. The applicant may also give their authority to a solicitor or anyone else they choose, to obtain copy records of the patient, on behalf of the applicant.

Further enquiries may be needed to confirm the bona fides of applicants other than the patient before access is given. *NB proof of identification may be required for access.*

If the applicant is acting on the patient's behalf then it must be established in what capacity they are making the application:

Records of Patients under the Age of 16

The applicant must have parental responsibility. This will be by way of one of the following:

- The applicant is the child's natural mother (and there is no resident or other Court Order to the contrary). We have to take the applicants / solicitors written word for this at face value. This is often referred to as *acting in loco parentis* and is where the patient is under age 16 and is incapable of understanding the request.

Also

Where the patient is under age 16 but is mature enough to understand the meaning of the application and giving authority (termed as being Gillick/Fraser Competent) and has consented to the applicant making this request, the authorisation of the patient and / or mother should be given. Again, we have to take the applicants / solicitors written word for this at face value.

- The applicant is the child's natural father and was married to the child's natural mother at the time of conception or birth of the child. NB the father does not necessarily still have to be married to the child's natural mother. He could be legally separated or divorced from her. Also, this whole point only applies providing that there is no residence or other Court Order to the contrary. We can accept Solicitors written confirmation of this. Marriage / Divorce papers are not necessary.

- The applicant is the child's natural father but was not married to the child's natural mother at the time of conception or birth of the child, but there is an agreement between both parents, which has been passed by a Court of Law, expressly giving the natural father parental responsibility. Documentation will exist if this is the case, and a photocopy of it should be obtained. Since December 2003, if the mother agrees, an unmarried father has parental rights if the child was registered together and the father's name goes on the Birth Certificate.
- The applicant has parental responsibility by way of a Residence Order. This could be the child's natural father, a grandparent or other relative. Documentation will exist if this is the case, and a photocopy of it should be obtained. NB a Residence Order is not time limited – up to their sixteenth birthday unless discharged.

If the applicant does not satisfy any of the above criteria, then access to the records will be denied, unless the applicant can provide the written authority of someone who has got parental responsibility.

Records of Patients over the Age of 16

- Patients capable of managing their own affairs - the applicant must have the written authority of the patient if they are capable of managing their own affairs.
- Patients incapable of managing their own affairs - the applicant must have proof that they have the authority to act on behalf of the patient. This will be by way of one of the following:
 - a. They have been appointed by the Court to manage the patient's affairs. Documentation will exist if this is the case, and a photocopy of it should be obtained.
 - b. They are the deceased patient's personal representatives.
 - c. Documentation will exist if this is the case, and a photocopy of it should be obtained.

Considerations for the release of records without consent

A Healthcare Professional has also got the discretion to release records to an applicant if they consider it to be in the best interests of the patient at that time and there is an overriding public interest why the records should be released without the authority of the person entitled to access the records as they would be responsible

for their clinical judgement. A good example of this would be in a case of child sexual abuse.

The only other overriding rule would be if a solicitor or the Police gained a Court Order for the organisation to release the records to the Court. The organisation would then have no choice in the matter and the Judge would decide whether or not the records should go to the solicitor / Police / applicant.

When access to Health Records may be denied or partially excluded.

Within the Act there is provision for some information to be withheld:

- The patient does not have to be told that information has been withheld because that in itself could be damaging to them.
- The patient is not, however, prevented from asking the practitioner whether the full record has been made available, and may apply to the Courts if they are dissatisfied with the answer.
- The fact that a record has not been prepared in anticipation that it might be opened is no justification for denying access. Also, fear of legal action is not a reason for denying access.
- Healthcare Professionals are advised that records should be compiled on the assumption that they will be opened to patients and / or the Courts.
- Access shall not be given unless the holders are satisfied that the applicant is capable of understanding the nature of the application and the meaning of the authorisation.
- Where a patient has died, access should not be given to the information, which in the opinion of the holders is not relevant to any claim arising out of the death. Also, if the patient has died and the record includes a note made at the patient's request that he / she did not wish access to be given to their personal representative or to any person having a claim arising from their death, access will be refused.
- Access can be denied if the disclosure of information would cause serious harm to the physical or mental health or condition of the patient or any other person or if disclosure would go against the wishes of the patient unless, in exceptional circumstances, disclosure is justified even though it may go against the patient's wishes. Such circumstances would be very exceptional.
 - This generally refers to severe mental illness, malignancy and degenerative neurological conditions.

- Where information that is adjudged to be harmful is withheld, an appointment should be made for the applicant to inspect the remainder of the record with the Healthcare Professional.
- Where the records contain personal information relating to third parties, unless the third party is a doctor or other Healthcare Professional who has compiled or contributed to the record or has been involved in the care of the patient in his/her capacity as a Healthcare Professional, unless their consent has been given, access shall not be given, e.g. a family member (see below also).
- Where the application is on behalf of a child or a person incapable of managing his or her own affairs or where a patient has died, access may not be given if the patient has expressly indicated it should not be disclosed to that person.
- Information, as a result of examination or investigation, where the expectation was that the information would not be disclosed.

Third Party Information

Where the third party has consented to the disclosure to the person making the request, the Head of Complaints & Legal Services is obliged to comply with the request and disclose the third party information.

However, consent may not have been given for one or more reasons, examples of which are:

- Consent has not been sought;
- It is not possible to obtain consent because the third party's whereabouts are unknown;
- The third party does not have legal capacity to consent;
- The third party declines to consent.

Where consent has not been given (for whatever reason), the Head of Complaints & Legal Services is nevertheless required by the subject access provisions to comply with the request and disclose third party information if it is reasonable in all the circumstances to disclose without consent. However, to avoid falling foul not only of the Act, but other provisions of law, e.g. confidentiality, disclosure without consent should not be made until proper consideration has been given to all relevant factors. The Act highlights some of the factors to be taken into account in deciding this, but the list is not exhaustive:

- Any duty of confidence owed to the third party;

- Any steps taken by the Head of Complaints & Legal Services to seek the consent of the third party;
- Whether the individual is capable of giving consent;
- Any express refusal of consent by the other individual.

The Head of Complaints & Legal Services may at the very least need to take steps to seek consent in order to demonstrate that it was reasonable in the circumstances to make the disclosure without consent.

Timescale for Access

The Act imposes very specific duties upon us, which have to be carried out within a very tight timescale.

From receipt of the application form, **14 days are allowed if the record holder needs more information**, either to identify the record(s) asked for, or to check the identity of the person applying for access.

The information is to be supplied within 40 days from the date of the request for access or within 40 days from the date you have sufficient information to enable you to satisfy yourself as to the identity of the person making the request and to locate the information requested.

The Department of Health states that National Health Service bodies should endeavour to comply with subject access requests within 21 days. The Information Commissioner has also stated that requests should be complied with within 20 working days in accordance with the Freedom of Information Act.

Failure to comply gives the applicant a right of action in the County Court or High Court. It is therefore essential that all applications be processed as a matter of priority, thereby minimising risk to the organisation.

Charging for Subject Access

A maximum fee of £50 may be charged for granting access to manual records, or to a mixture of manual and electronically held records, where the request for subject access will be granted by supplying a copy of the information in permanent form. However, for granting access to health records that are electronically processed, or that are recorded with the intention that they be so processed, a fee of £10 may be charged. If the records have been updated within 40 days no fee is required.

A charge of 35p per photocopied side of paper would be reasonable, plus any postage costs. It should be noted that there is no express provision for any fee to be charged for copying or despatching copies of records.

No fee may be charged where the access request is to be complied with other than by supplying a copy of the information in a permanent form, i.e. by allowing the applicant to inspect the record. This provision only relates to requests for access to non-automated manual records, at least some of which were made after the beginning of the period of 40 days immediately preceding the date of the request. This provision broadly replicates the provision of the Access to Health Records Act 1990 that, in effect, allows patients to look at recently created records for free.

Mistakes or Inaccuracies

If the applicant considers that there are mistakes or inaccuracies in the record they can ask the record holder for a note to be made in the records stating their opinion. If the practitioner agrees that the information is inaccurate, he / she should make the correction. Care must be taken not to simply obliterate information, which may have significance for the future care and treatment of the patient, or for litigation purposes.

If he /she do not agree, a note recording why the applicant considers the information to be inaccurate must be made in the relevant part of the record. Consideration should also be given to whether it is appropriate to **note any associated records, e.g. computer records. It should be understood that in Law nothing may be erased from a paper health record but a correction may be added.**

A copy of any correction or note should be supplied to the patient. No fee may be charged for this.

Complaints Concerning Application

If the applicant feels that they have not been fairly treated and that the holder of the record has not complied with the Act, then they should first complain in writing to the Chief Executive of the Hospital Trust. If they are still unhappy after this, the patient has the right to apply to Court if necessary. The Court can order that the applicant be given access to the records if it is satisfied that the complaint is justified.

6.2 SUBJECT ACCESS REQUEST

A Subject Access Request (SAR) is any request made by an individual or an individual's representative for information held by the Trust about that individual. A SAR must be in writing; however, the requestor does not need to mention the Data Protection Act 2000 or state that they are making a SAR for their request to be valid. They may even refer to other legislation, for example, the Freedom of Information Act 1998, but their request should still be treated according to this Policy. The Legal Services Department can provide a form to a requestor to submit a subject access request. A copy of this can be found by the following link [Application Form](#) and [Information Leaflet](#)

6.3 REQUEST FOR DECEASED RECORDS

The Access to Health Records Act 1990 provides certain individuals with a right of access to the health records of a deceased individual. These individuals are defined under section 3(1)(F) of that Act as, *'the patients' personal representative and any person who may have a claim arising out of the patient's death'*. A personal representative is the Executor or administrator of the deceased person's estate. Apart from statutory bodies, only the deceased patient's legitimate and legal representative has a statutory right to have a copy of the medical records. They do not need to state why they are making the request but they do need to provide evidence that they are the legal representative.

Key issues for consideration include any preference expressed by the deceased prior to death, the distress or detriment that any living individual might suffer following the disclosure, and any loss or privacy that might result and the impact upon the reputation of the deceased. The views of surviving family and the length of time after death are also important considerations. Another important consideration is the extent of the disclosure. Disclosing a complete health record is likely to require a stronger justification than a partial disclosure of information abstracted from the records. If the point of interest is the latest clinical episode or cause of death, then disclosure, where this is judged appropriate, should be limited to the pertinent details.

On making a request for information, the requester should be asked to provide authenticating details to prove their identity and their relationship with the deceased individual. They must also provide a reason for the request including explaining that they have a claim arising out of the patients' death if they are not the personal representative. [Application Form](#) and [Information Leaflet](#)

6.4 THIRD PARTY REQUESTS

The Trust deals with requests for Access from third parties including solicitors, Insurance Companies and Benefit Agencies. This is received in writing and appropriate consent form enclosed with applicant signature or litigation friend (a person who can conduct the proceedings on another's behalf)

6.4 REQUESTS FROM POLICE

The Trust can release confidential information if the patient has given his/her consent (preferably in writing) and understands the consequences of making that decision. There is, however, no legal obligation to disclose information to the police unless there is a court order or this is required under statute (e.g. Road Traffic Act).

The Practice does, however, have a power under the DPA and Crime Disorder Act to release confidential health records without consent for the purposes of the prevention or detection of crime or the apprehension or prosecution of offenders.

The release of the information must be necessary for the administration of justice and is only lawful if this is necessary:

- to protect the patient or another person's vital interests, or
- for the purposes of the prevention or detection of any unlawful act where seeking consent would prejudice those purposes and disclosure is in the substantial public interest (e.g. where the seriousness of the crime means there is a pressing social need for disclosure).
- "Under data protection law the police or other enforcing public agencies must present a form called a 'DPA29 notice'. If an enforcing agency serves a DPA29 notice then:
- The notice must specify a crime being detected or prevented (being a missing person isn't a crime)
- The notice must be signed by a suitably authorised officer (Sergeant or above) Note that it is still the Trust's decision at its risk whether to disclose, it isn't compulsory. If the request is about any other matter or if in doubt contact the Legal Department before providing any information."

Only information, which is strictly relevant to a specific police investigation, should be considered for release and only then if the police investigation would be seriously prejudiced or delayed without it. The police should be asked to provide written reasons why this information is relevant and essential for them to conclude their investigations.

POLICE REQUESTS FOR SEXUAL HEALTH RECORDS

This pathway is designed to be used in conjunction with Trust policies for requesting medical records. Please refer to the Trust intranet.

If a legal representative or the police request sexual health records, the request must:

- Be in writing, on headed paper, and signed by either a legal representative or a police officer;
- Describe the nature of the information which is required;
- Describe the nature of the investigation (e.g. citing any relevant statutory authority to obtain the information);
- Certify that the information is necessary for the investigation;
- The request must contain the patients full name, address, date of birth and details of attendance;

- The request must state sexual health records. Request for general health records are not sufficient for sexual health records to be released.

Once the request has been received it should be sent straight to Gary Barker, Lead Nurse, Sexual Health, via scan attached to an email to prevent delay with paper copies forwarded in the post. Legal and police request should not be scanned into Lillie.

The request will be forwarded to the legal department for approval to release records.

Once the legal department have approved the records to be released medical records will be retrieved and passed to Dr Esti Acha, Clinical Director, for checking. If the medical records contain the name of anyone else i.e. friend, partner then these should be removed from the copies using a black marker pen.

Medical records can then be sent to the requester. A record of all legal and police requests will be maintained by the service manager.

6.5 INPATIENT REQUESTS

There is nothing in the Act to prohibit the Healthcare Professional in charge of clinical care to voluntarily allow patients to see their records during or at the end of an episode of care, subject to the exemptions outlined in the policy. Healthcare Professionals already have the discretion to open records to their patients and the principles underlying the Act encourage these arrangements. Such a request will not constitute an application under the Act.

The appropriate Healthcare Professional is the practitioner who has clinical responsibility for the particular episode of treatment in the record to which the applicant seeks access. This practitioner may wish to seek the views of other Healthcare Professionals who have had a significant input to the patient's care. If the appropriate Healthcare Professional is not available or has not had clinical responsibility for the patient, the holders would seek the advice of the Healthcare Professional who seems most appropriate to advise on the application.

Applicants do not have to give a reason for requesting access to records. The applicant's motives in requesting the records are irrelevant. Further help and support can be obtained from the Legal Services Department.

6.6 ADULTS WITHOUT CAPACITY

Mental capacity means being able to understand and make decisions. If you don't have capacity to ask for your records then someone else may do this for you.

Mental disorders do not equate with mental incapacity and many persons suffering from the mental disorder have sufficient capacity to enable them to deal with their

own affairs. The patient's clinician(s) will make a decision, if necessary in conjunction with their colleagues within mental healthcare, about the appropriateness of releasing records.

Patients with learning difficulties, depending on their individual circumstances may have enough capacity to understand the process, albeit with support. The Legal Department will advise in these situations.

6.7 POLICY EXCLUSIONS

- Duplicate records provided to other health care providers;
- Duplicate individual letters provided directly to patients by consultants/medical secretaries ;
- Medical reports that are completed by consultants for the benefit of the courts, insurance companies and the Police are outside the scope of this Policy as they do not constitute health records;
- Access data that is anonymised. The Trust will manage requests for anonymised or pseudonymised information under the Freedom of Information Policy;
- The provision of original records for court purposes, however the Trust will take a paper copy of these records prior to release;
- Adopted children with new names are outside the scope of this policy. There is one national register of old and new names of adopted children held by the Department of Health whom these adopters will need to apply.

7 TRAINING

Awareness training in Access to Health Records Management will be delivered to staff as and when requested or a knowledge deficit is identified.

8 MONITORING COMPLIANCE WITH THIS DOCUMENT

8.1 Key performance Indicators of the Policy

Describe Key Performance Indicators (KPIs) Must reflect	Frequency of Review	Lead
Policy is adhered to IG Toolkit compliance	Annual Audit	Head of Complaints & Legal Services
	IG Toolkit Annual Audit	Head of Complaints & Legal Services

8.2 Performance Management of the Policy

Aspect of compliance or effectiveness being monitored	Monitoring method	Individual responsible for the monitoring	Frequency of the monitoring activity	Group / committee which will receive the findings / monitoring report	Group / committee / individual responsible for ensuring that the actions are completed
Policy Compliance	Audit File Review	Head of Complaints & Legal Services	Annual	Patient Safety Council	Head of Complaints & Legal Services
Policy Compliance	Client Satisfaction Questionnaire	Head of Complaints & Legal Services	Annual	Patient Safety Council	Head of Complaints & Legal Services
Policy Compliance	IG Toolkit	Head of Complaints & Legal Services	Annual	Patient safety Council	Head of Complaints & Legal Services

9 REFERENCES AND BIBLIOGRAPHY

Health Records – Requests for Access Health Service Circular 1998 / 203
by Patients and their Representatives

Health Service Circular 1998 / 217 - Guidance for GP Medical Records

Health Service Circular 1999 / 053 – For the Record

Protecting and Using Patient Information – A Manual for Caldicott
Guardians (Department of Health) 1999

HSC 2000/009: Data Protection Act 1998: Protection and Use of Patient
Information

Controls Assurance Standards – ‘Record Management’ 2002

Audit Commission - Setting the Records Straight – A study of Hospital
Medical Records, 1995

The Caldicott Committee Report on the Review of Patient-Identifiable
Information –December 1997 (Department of Health)

Confidentiality - NHS Code of Practice, November 2003

The British Medical Association – Access to Health Records

The British Medical Association – Access to Health Records by Patients

Supporting Staff Involved in an Incident, Complaint or Claim

10 RELATED POLICIES AND PROCEDURES

[Complaints & Concerns Policy 15/07/2015](#)

[Being Open Policy 15/07/2015](#)

[Data Protection Act 1998](#)

[Access to Health Records Act 1990](#)

[Freedom of Information Act 2000](#)

[Access Personal Files](#)

[Managements of Health Records Policy](#)

[Mental Capacity Act](#)

11 APPENDIX 1

Equality Analysis Stage 1		
Title of Policy	Subject Access	
Policy Author (s)	Head of Complaints & Legal Services	
Lead Executive	Director of Nursing, Midwifery & Governance	
Policy Sponsor	Director of Nursing, Midwifery & Governance	
Target Audience	Director of Nursing, Midwifery & Governance	
Document Purpose	Effective Communication	
Please state how the policy is relevant to the Trusts general equality duties to: <ul style="list-style-type: none"> • Eliminate discrimination • Advance equality of opportunity • Foster good relations 	Policy to ensure consistency and continuity of all data access request	
List key groups involved or to be involved in the policy development (e.g. staff side representatives, service users, partner agencies) and how these groups will be engaged	Patients and staff by utilisation of patient and public involvement.	
N.B. Having read the guidance notes provided when assessing the question below you must consider: <ul style="list-style-type: none"> • Be very conscious of any indirect or unintentional outcomes of a potentially discriminatory nature • Will the policy create any problems or barriers to any protected group • Will any protected group be excluded because of this policy • Will the policy have a negative impact on community relations 		
If in any doubt please consult with the Patient and Workforce Equality Lead		
Does the policy significantly affect one group less or more favourably than another on the basis of: answer 'yes/no' (please add any qualification or explanation to your answer particularly if you answer yes)		
	Yes/No	Comments/Rationale
• Race/ethnicity	No	
• Disability (includes learning disability, physical or mental disability and sensory impairment)	No	
• Gender	No	
• Religion / belief (including non-belief)	No	

• Sexual orientation	No	
• Age	No	
• Gender reassignment	No	
• Pregnancy and maternity	No	
• Marriage and civil partnership	No	
• Career status	No	
Will the policy affect the human rights of any of the above protected groups?	No	
If you have identified potential discrimination, and there are any exceptions valid, legal and or justifiable?	N/A	
If you have identified a negative impact on any of the above protected groups, can the impact be avoided or reduced by taking different action?	N/A	
How will the effect of the policy be reviewed after implementation?	N/A	
If you have entered 'yes' in any of the above boxes you <i>must</i> contact the Patient and Workforce Equality Lead (ext 7609) to discuss the outcome and ascertain whether a Stage 2 Equity Analysis Assessment must be completed		
Name of the manager completing assessment: (must be one of the authors)	J Culshaw	
Job title of manager completing the assessment	Head of Complaints & Legal Services	
Date of completion	February 2017	