

Subject Access (Access to Health Records) Policy

Version No: 6

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

Document status	Approved
Document type	Policy
Document number	STHK0180
Approving body	Claims Governance Group
Date approved	21 September 2021
Date implemented	21 September 2021
Review date	<i>30 September 2024</i>
Accountable director	Director of Nursing, Midwifery and Governance
Policy author	Head of Complaints and Legal Services
Target audience	All Staff

The intranet version of this document is the only version that is maintained. Any printed copies should therefore be viewed as “uncontrolled”, as they may not contain the latest updates and amendments.

Title: Subject Access (Access to Health Records) Policy		
Document No: STHK0180	Date Approved: 21.09.21	Version No: 6
Status: Approved	Next Review Date: 30.09.24	Page: 1 of 19

Document Control

Section 1 – Document Information	
Title	Subject Access (Access to Health Records) Policy
Directorate	Legal Services
Brief Description of amendments	
Full review and updating of existing policy/change to identity of sexual health nurse	
Does the document follow the Trust agreed format?	Yes
Are all mandatory headings complete?	Yes
Does the document outline clearly the monitoring compliance and performance management?	Yes
Equality Analysis completed?	Yes

Section 2 – Consultation Information*			
*Please remember to consult with all services provided by the Trust, including Community & Primary Care			
Consultation Completed		<input type="checkbox"/> Trust wide <input type="checkbox"/> Local <input type="checkbox"/> Specific staff group	
Consultation start date	Not applicable – update of existing policy	Consultation end date	Not applicable

Section 3 – Version Control		
Version	Date Approved	Brief Summary of Changes
6	21/09/2021	Full review and updating of existing policy/change to identity of sexual health nurse
5	July 2018	Updating policy to reflect new Data Protection Legislation

Section 4 – Approval – To be completed by Document Control			
Document Approved		<input checked="" type="checkbox"/> Approved <input type="checkbox"/> Approved with minor amendments	
Assurance provided by Author & Chair		<input checked="" type="checkbox"/> Minutes of Meeting <input type="checkbox"/> Email with Chairs approval	
Date approved	21/09/2021	Review date	30/09/2024.

Section 5 – Withdrawal – To be completed by Document Control	
Reason for withdrawal	<input type="checkbox"/> No longer required <input type="checkbox"/> Superseded
Assurance provided by Author & Chair	<input type="checkbox"/> Minutes of Meeting <input type="checkbox"/> Email with Chairs approval
Date Withdrawn:	Click here to enter a date.

Title: Subject Access (Access to Health Records) Policy		
Document No: STHK0180	Date Approved: 21.09.21	Version No: 6
Status: Approved	Next Review Date: 30.09.24	Page: 2 of 19

Contents

Document Control	2
1. Scope	4
2. Introduction.....	4
3. Statement of Intent	4
4. Definitions.....	5
5. Duties, Accountabilities and Responsibilities.....	6
6. Process	8
7. Training	17
8. Monitoring Compliance.....	17
8.1 Key Performance Indicators (KPIs) of the Policy	17
9. References/Bibliography	18
10. Related Trust Documents.....	18
11. Equality Analysis Form.....	19

Title: Subject Access (Access to Health Records) Policy		
Document No: STHK0180	Date Approved: 21.09.21	Version No: 6
Status: Approved	Next Review Date: 30.09.24	Page: 3 of 19

1. Scope

The Trust is committed to complying with the General Data Protection Regulations (“GDPR”) 2016 and the Data Protection Act (“DPA”) 2018.

This policy was developed in line with this legislation and the Information Commissioner’s Guide. It provides a framework for the Trust to ensure compliance with GDPR 2016 and DPA 2018.

This policy sets out the importance, procedures and duties of the Trust and its staff in achieving the policy aim.

This policy deals with the rights of data subjects whereby individuals can request access to their personal data and applies to the handling of all personal data that is used within the Trust held on all media, including dictaphone, computer system, mobile device or manual records.

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

2. Introduction

This policy has been produced to ensure the Trust meets its obligations regarding subject access request including request for health records. Staff should treat this policy as guidance based on best practice for managing subject access requests and access to health records requests.

The unauthorised passing on of patients’ 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 third party’s personal data to be passed on or sold for fund-raising or commercial marketing purposes. Failure to comply with this policy may result in disciplinary action in line with the Trust’s Disciplinary Policy.

The Trust recognises that the systematic management of subject access requests and access to health record activities supports the Trust’s risk management processes 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 subject access requests including access to the patient’s health records
- Ensure the Trust complies with the requirements for subject access requests including requests for health records, therefore avoiding the cost penalties associated with non-compliance

Title: Subject Access (Access to Health Records) Policy		
Document No: STHK0180	Date Approved: 21.09.21	Version No: 6
Status: Approved	Next Review Date: 30.09.24	Page: 4 of 19

- Ensure that staff are clear about the process for managing access requests, including their responsibilities in relation to this
- Develop and implement procedures that inform staff of their responsibilities in the management of subject access requests including health records requests
- Ensure staff adhere to the principles of being open in line with the Trust's Being Open Policy in matters relating to health records whilst at the same time ensuring there are robust measures in place to ensure patient confidentiality
- Ensure that Internal Audit plans include periodic reviews of compliance with local and NHS security policies regarding subject access requests and 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.

An **application** means an application in writing or verbally.

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 information is most commonly recorded in electronic form, however some records are in a manual form or a mixture of both. 'Information' covers expressions of opinion about individuals as well as facts.

Health records may include notes made during consultations, correspondence between health professionals such as referral and discharge letters, results of tests and their interpretation, X-ray films, videotapes, audiotapes, photographs and tissue samples taken for diagnostic purposes. They may also include reports written for third parties such as insurance companies.

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.

Personal data means any information relating to an identified or identifiable individual.

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

- Medical practitioner
- Dentist
- Optician
- Pharmaceutical chemist
- Registered Nurse

Title: Subject Access (Access to Health Records) Policy		
Document No: STHK0180	Date Approved: 21.09.21	Version No: 6
Status: Approved	Next Review Date: 30.09.24	Page: 5 of 19

- 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

A **subject access request** is a request from a person asking an organisation to provide them with information relating to that person which is held or processed by the organisation.

5. Duties, Accountabilities and Responsibilities

5.1 Trust Board

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

5.2 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 subject access request data as required.

5.3 The Director of Nursing, Midwifery and Governance

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

The Director of Nursing, Midwifery and Governance has responsibility for ensuring the Trust Board is apprised of all person access request data via Board reporting on at least an annual basis. This information will be passed on via the formal Trust governance processes.

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

5.4 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.

Title: Subject Access (Access to Health Records) Policy		
Document No: STHK0180	Date Approved: 21.09.21	Version No: 6
Status: Approved	Next Review Date: 30.09.24	Page: 6 of 19

5.5 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 Information Governance Team will support the Caldicott Guardian by offering advice and support to staff members on a day to day to basis, this will include the Legal Services Manager and Administrators who are responsible for processing the requests.

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.

5.6 Data Protection Officer (“DPO”)

The Data Protection Officer will:

- Inform and advise the organisation and its employees of their data protection obligations under the GDPR
- Monitor the organisation’s compliance with the GDPR and internal data protection policies and procedures. This will include monitoring the assignment of responsibilities, awareness training and training of staff involved in processing operations and related audits
- Advise on the necessity of data protection impact assessments (DPIAs), the manner of their implementation and outcomes
- Serve as the contact point for the data protection authorities for all data protection issues, including data breach reporting

The DPO will be independent and an expert in data protection, adequately resourced, and report to the Chief Executive and/or Trust Board in respect of all data protection issues. The DPO will be the Trust’s point of contact with the Information Commissioner’s Office.

5.7 Head of Complaints & Legal Services

The Head of Complaints & Legal Services has operational responsibility for ensuring that the Trust fulfils its obligations in respect of requests for disclosure of health records 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 Legal Services Manager (Access Lead)

The Legal Services Manager (Access Lead) is responsible for ensuring that the Trust fulfils its obligations in respect of requests for disclosure of copy health records pursuant to the GDPR 2016 and DPA 2018.

5.9 Legal Services Administrator

Title: Subject Access (Access to Health Records) Policy		
Document No: STHK0180	Date Approved: 21.09.21	Version No: 6
Status: Approved	Next Review Date: 30.09.24	Page: 7 of 19

The Legal Services Administrators shall assist the Legal Services Manager (Access Lead) in fulfilling his/her obligations regarding disclosure as outlined in paragraph 5.8 above.

5.10 Complaints Manager

The Complaints Manager has responsibility for ensuring all subject access requests relating to complaints are actioned.

5.11 Managers

All Managers must ensure that their staff are aware of this policy and know how to deal with requests for personal/patient information.

5.12 Head of Operations, Health, Work & Wellbeing

The Head of Operations, Health, Work & Wellbeing is responsible for responding to requests by employees or ex-employees for copies of their occupational health file. Where the request is received from an external source the Request for Occupational Health records SOP is followed. Where the request is made by a current member of staff the requestor is directed to make their request in writing to HWWB.admin@sthk.nhs.uk

5.13 All Staff

It is the responsibility of all staff to co-operate in a timely manner (no later than 14 days) 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.

In terms of **record keeping**, health records must be clear, accurate, factual, legible and should be contemporaneous. They must include all relevant clinical findings, the decisions made, information given to patients and drugs or treatment prescribed.

Personal views about the patient's behaviour or temperament should not be included unless they have a potential bearing on treatment or it is necessary for the protection of staff or other patients. Health records should not be altered or tampered with, other than to remove or correct inaccurate or misleading information. Any such amendments must be made in a way that makes it clear what has been altered, who made the alteration and when it took place.

Doctors and other clinical staff should ensure that their manner of keeping records facilitates access by patients if requested. It may be helpful to order, flag or highlight records so that when access is given, any information which should not be disclosed, (such as those which identify third parties) is readily identifiable. If patients express views about future disclosure to third parties, this should be documented in the records. Doctors may wish to initiate discussion about future disclosure with some patients if it seems foreseeable that controversial or sensitive data may be the issue of a future dilemma, for example after the patient's death.

6. Process

The Trust recognises that staff may find the process of responding to personal access requests stressful and acknowledges that it is important that staff are appropriately

Title: Subject Access (Access to Health Records) Policy		
Document No: STHK0180	Date Approved: 21.09.21	Version No: 6
Status: Approved	Next Review Date: 30.09.24	Page: 8 of 19

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 Complaints & Legal Services, their Line Manager 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 information, leaflet and application form, requesting that the completed application form is 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 patient's 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
- Where patients request the medical record to be emailed to them, the response must be encrypted. If the patient requests that their data is sent unencrypted, they must respond that they accept the risks that their data could be intercepted. Alternatives to emailing should also be considered, if the patient agrees a CD can be used as an alternative encrypted electronic format. For requests which are not made electronically a paper copy should be provided

6.1 Timescale for Disclosure

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

The information is to be supplied within 1 month from the date of the request for access or 1 month 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.

For complex or numerous requests to access the same records the Trust can extend the timescale by a further 2 months. Applicants will be informed immediately.

6.2 Charges

The Trust must provide a copy of records free of charge. However, where requests are manifestly unfounded or excessive in particular or are repetitive the Trust can

Title: Subject Access (Access to Health Records) Policy		
Document No: STHK0180	Date Approved: 21.09.21	Version No: 6
Status: Approved	Next Review Date: 30.09.24	Page: 9 of 19

charge a reasonable fee taking into account the administration costs of providing the information. This is capped at £10.00.

If the Trust has refused to respond to a request we should provide an explanation to the patient as to why the request has been refused. The Trust will inform the requester of their right to complain to the Information Commissioner's Office and their right to a judicial remedy.

If a request is 'manifestly unfounded or excessive', for example, because it is repetitive, access can be refused (or a fee can be charged, see below). There is little explanation from the legislation as to when a request might be considered as 'manifestly unfounded or excessive'. However, the threshold must be set fairly high and, therefore, requests should be refused on this basis only where the facts are particularly extreme.

Where access has been refused on this basis, the patient must in any event be given an explanation as to why access has been refused and they must also be informed that they have the right to complain to the ICO.

6.3 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, however, care must be taken not to obliterate information, which may have significance for the future care and treatment of the patient, or for litigation purposes. If he/she does 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.

6.4 Patient Requests/Inpatient Request

Patient requests for health records should be in writing or via a form obtained from the Legal Services Department, Access & Disclosure Section. The patient should provide enough evidence to verify his or her identify.

Where patients are inpatients in the Trust, there is nothing in the Act to prohibit the Healthcare Professional in charge of clinical care voluntarily allowing 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 advice on the application.

Title: Subject Access (Access to Health Records) Policy		
Document No: STHK0180	Date Approved: 21.09.21	Version No: 6
Status: Approved	Next Review Date: 30.09.24	Page: 10 of 19

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.

6.5 Records of Patients under the age of 16

Children under 16 in England, Wales and Northern Ireland must demonstrate that they have sufficient understanding of what is proposed in order to be entitled to make or consent to a SAR. However, children who are aged 13 or over are generally expected to have the competence to give or withhold their consent to the release of information from their health records. When assessing a child's competence, it is important to explain the issues in a way that is suitable for their age.

Where, in the view of the appropriate health professional, a child lacks competency to understand the nature of his or her SAR application, the holder of the record is entitled to refuse to comply with the SAR.

Where a child is considered capable of making decisions about access to his or her medical record, the consent of the child must be sought before a parent or other third party can be given access via a SAR.

Where an applicant requests records on behalf of a child, they 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 applicant's /solicitor's 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 13 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 applicant's/solicitor's written word for this at face value
- The applicant is the child's natural father or 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 a Solicitor's 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

Title: Subject Access (Access to Health Records) Policy		
Document No: STHK0180	Date Approved: 21.09.21	Version No: 6
Status: Approved	Next Review Date: 30.09.24	Page: 11 of 19

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

6.6 Records of Patients over the age of 13

- Where a patient is capable of managing their own affairs the applicant must have the written authority of the patient
- Where the patient is incapable of managing their own affairs, the applicant must have proof that they have the authority to act on behalf of the patient. If they have been appointed by the court to manage the patient's affairs, documentation should be provided, if this is the case
- Where patients have temporary incapacity and may recover, there is no right of access for relatives to patient's notes. Patient confidentiality must be adhered to.

Please contact the Trust Caldicott Guardian if you need further advice in this area.

6.7 Court Representatives

A person appointed by the court to manage the affairs of a patient who is incapable of managing his or her own affairs may make an application for health records.

Documentation will exist if this is the case and a photocopy of it should be obtained.

6.8 Patient Representatives

A patient can give written consent for a person (for example relative or solicitor) to make an application on their behalf for disclosure of their health records. Before disclosure of such documents, the Trust must be satisfied that the person making the request on behalf of the patient is authorised to do so. The Trust will require either written consent from the patient or a copy of the general power of attorney (Legal Power of Attorney for Health and Welfare) in the case of a patient who no longer has the mental capacity to manage their own health.

6.9 Lasting power of attorney and an incapacitated patient's records

A Lasting Power of Attorney (LPA) authorises another person appointed by the patient to make decisions about their property and finances and/or health and welfare, which could include decisions about healthcare. However, it does not give an automatic right to see a patient's notes. The reason for this is that patients may have issues recorded in their notes that they may not wish others to see (even LPAs), for example unknown relationships, sexuality and so on and/or sensitive health issues such as termination of pregnancy, HIV status, sexually transmitted diseases, etcetera. Patient confidentiality is paramount here.

Therefore always check the following before releasing a patient's records if they are incapacitated and have an LPA:

- The person applying for access must apply formally as per the policy for a subject access *and*
- The LPA must explicitly give permission for healthcare decisions for the named patient *and*

Title: Subject Access (Access to Health Records) Policy		
Document No: STHK0180	Date Approved: 21.09.21	Version No: 6
Status: Approved	Next Review Date: 30.09.24	Page: 12 of 19

- It must be registered and there must be proof of registration with the Office of the Public guardian *and*
- The consultant in charge must check the notes and establish whether if it is thought to be in the patient's best interests and if any information should be withheld

Contact the Trust Caldicott Guardian if further advice is needed as this is a patient confidentiality issue

6.10 Deceased Patients

Where a request is being made in respect of a deceased patient, the applicant must be the deceased personal representative or any person who may have a claim arising from the patient's death. The applicant must provide evidence to establish a link with the deceased. A copy of the death certificate, a copy of the letter of administration and a description as to the relationship with the applicant with a valid reason for the request will be required before disclosure of the health records.

Please note that being the deceased next-of-kin does not give the applicant any automatic rights to be granted access to the deceased records.

In the following circumstances, access will not be given to the record of the deceased:

- (a) Where a note is included that the patient did not wish access to be given
- (b) Where the patient had given the information and would not have expected it to be disclosed
- (c) It will disclose information that is not relevant to any claim.

6.11 Patients Living Abroad

Former patients of the Trust living outside the UK and who once had treatment for their stay here can apply for access to the UK health records. Such a request should be dealt with as someone making an access request from within the UK.

6.12 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 Trust does, however, have a power under the DPA 2018 Exemptions in Schedule 2 Part 1 (2) to release confidential health records without consent for the purposes of the prevention or detection of certain serious crimes 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)

Title: Subject Access (Access to Health Records) Policy		
Document No: STHK0180	Date Approved: 21.09.21	Version No: 6
Status: Approved	Next Review Date: 30.09.24	Page: 13 of 19

Under data protection law the police or other enforcing public agencies must present an appropriate DPA form. If an enforcing agency serves a DPA Exemption notice then:

- The notice must specify a crime being detected or prevented (being a missing person is not 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 is not 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.

6.13 Police Requests for Sexual Health Records

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 patient's 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 the Lead Nurse, Sexual Health, via scan attached to an email to prevent delay with paper copies forwarded in the post.

The request will be forwarded to the Legal Services Department for approval to release records.

Once the Legal Services Department have approved the records to be released medical records will be retrieved and passed to the 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.

6.14 Disclosure required by statute

- Under the Mental Capacity Act 2005, Independent Mental Capacity Advocates (IMCAs) have rights of access to health/clinical records relating to the patient they are representing. The Trust is required to give access to relevant records

Title: Subject Access (Access to Health Records) Policy		
Document No: STHK0180	Date Approved: 21.09.21	Version No: 6
Status: Approved	Next Review Date: 30.09.24	Page: 14 of 19

requested by an IMCA under S.35 (6) (b) of the Act. The rights of the IMCA include the right to examine and take copies of any records

- The Mental Health Act (2007) gives Independent Mental Health Advocates (IMHA) the right to access information relating to some individuals who are subject to the Mental Health Act
- The Medical Act 1983 gives the General Medical Council (“GMC”) powers under S.35A for taking action when questions arise about fitness to practise. As part of a fitness to practice investigation, the GMC may request access to medical records. The Trust must comply with this request and have 14 days to process and provide copies of the information held
- The Criminal Appeal Act 1995 gives the criminal Cases Review Commission the right to access clinical records requested. Consent from the service user is not required in the circumstances
- The Coroner and Justice Act 2009 gives Coroners the power to request any documents including health records. As part of the investigation into a deceased death, the coroner might request health records and the Trust will be obliged to disclose these to the coroner

6.15 Considerations for the release of health 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.

6.16 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

Title: Subject Access (Access to Health Records) Policy		
Document No: STHK0180	Date Approved: 21.09.21	Version No: 6
Status: Approved	Next Review Date: 30.09.24	Page: 15 of 19

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. Circumstances in which information may be withheld on the grounds of serious harm are extremely rare and this exemption does not justify withholding comments in the records because patients may find them upsetting. Where there is any doubt as to whether disclosure would cause serious harm, an appropriate health professional will discuss the matter anonymously with an experienced colleague such as the Data Protection Officer, or the Caldicott Guardian.
- The Trust will redact, or block out any exempt information. Depending on the circumstances, the response will include an explanation to the requestor around how it has applied the relevant exemption. However, such steps should will not be taken if, and insofar as, they would in effect cut across the protections afforded by the exemptions. In some cases even confirming the fact that a particular exemption has been applied may itself be unduly revelatory (e.g. because it reveals the fact that the information sought is held where this revelation is itself unduly invasive of relevant third party data privacy rights). There is still an obligation to disclose the remainder of the records. While the responsibility for the decision, as to whether or not to disclose information, rests with the Trust, advice about serious harm will be taken by the Trust from the appropriate health professional before the records are disclosed. This is usually the health professional currently or most recently responsible for the clinical care of the patient in respect of the matters which are the subject of the request. If there is more than one, it should be the person most suitable to advise. If there is none, advice should be sought from another health professional who has suitable qualifications and experience
- 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 deemed Gillick competent, or a person no longer capable 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

In all cases above the exemptions should be discussed with the Head of Complaints and Legal Services before they are deemed to apply to the request.

Title: Subject Access (Access to Health Records) Policy		
Document No: STHK0180	Date Approved: 21.09.21	Version No: 6
Status: Approved	Next Review Date: 30.09.24	Page: 16 of 19

6.17 Complaints Concerning Subject Access Request

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 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.

6.18 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 or pseudonymised which cannot identify the individual
- 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
- Freedom of Information Request under the Freedom of Information Request Act 2000

7. Training

All staff will be made aware of the Trust's Subject Access Policy during local induction. Additional guidance and bespoke training will be provided as required for those directly involved

8. Monitoring Compliance

8.1 Key Performance Indicators (KPIs) of the Policy

No	Key Performance Indicators (KPIs) Expected Outcomes
1	90% of requests responded to within 30 days of receipt of appropriate consent form.
2	Quarterly update to Information Governance Steering Group
3	All requests entered into the Datix system.
4	
5	
6	

8.2 Performance Management of the Policy

Minimum Requirement to be Monitored	Lead(s)	Tool	Frequency	Reporting Arrangements	Lead(s) for acting on Recommendations
-------------------------------------	---------	------	-----------	------------------------	---------------------------------------

Title: Subject Access (Access to Health Records) Policy		
Document No: STHK0180	Date Approved: 21.09.21	Version No: 6
Status: Approved	Next Review Date: 30.09.24	Page: 17 of 19

Policy Compliance as it relates to Access to Health Records Requests	Head of Complaints and Legal Services	Reports	Quarterly	Information Governance Steering Group	Legal Services Manager – Access & Disclosure
Policy Compliance	Head of Complaints and Legal Services	IG Toolkit Annual Audit	Annually	Information Governance Steering Group	Legal Services Manager – Access & Disclosure

9. References/Bibliography

No.	Author	Year	Title	Edition	Place of Publication	Publisher
	HMSO	2018	Data Protection Act	2nd	London	HMSO
	Official Journal of the European Union	2016	General Data Protection Regulations	1st	European Union	HMSO
	HMSO	2000	Freedom of Information Act		London	HMSO

10. Related Trust Documents

No.	Related Document
1.	Access to Personal Files Policy
2.	DPA Policy
3.	Freedom of Information Act Policy
4.	Management of Health Records Policy

Title: Subject Access (Access to Health Records) Policy		
Document No: STHK0180	Date Approved: 21.09.21	Version No: 6
Status: Approved	Next Review Date: 30.09.24	Page: 18 of 19

11. Equality Analysis Form

The screening assessment must be carried out on all policies, procedures, organisational changes, service changes, cost improvement programmes and transformation projects at the earliest stage in the planning process to ascertain whether a full equality analysis is required. This assessment must be attached to all procedural documents prior to their submission to the appropriate approving body. A separate copy of the assessment must be forwarded to the Patient Inclusion and Experience Lead for monitoring purposes. Cheryl.farmer@sthk.nhs.uk. If this screening assessment indicates that discrimination could potentially be introduced then seek advice from the Patient Inclusion and Experience Lead. A full equality analysis must be considered on any cost improvement schemes, organisational changes or service changes which could have an impact on patients or staff.

Equality Analysis			
Title of Document/proposal /service/cost improvement plan etc:	Subject Access Policy		
Date of Assessment	10/09/2021	Name of Person completing assessment /job title:	Tom Briggs
Lead Executive Director			Head of Complaints & Legal Services
Does the proposal, service or document affect one group more or less favourably than other group(s) on the basis of their:		Yes / No	Justification/evidence and data source
1	Age	N	
2	Disability (including learning disability, physical, sensory or mental impairment)	N	
3	Gender reassignment	N	
4	Marriage or civil partnership	N	
5	Pregnancy or maternity	N	
6	Race	N	
7	Religion or belief	N	
8	Sex	N	
9	Sexual Orientation	N	
Human Rights – are there any issues which might affect a person’s human rights?		No	Justification/evidence and data source
1	Right to life	N	
2	Right to freedom from degrading or humiliating treatment	N	
3	Right to privacy or family life	N	
4	Any other of the human rights?	N	
Lead of Service Review & Approval			
Service Manager completing review & approval		Anne Rosbotham-Williams	
Job Title:		Deputy Director of Governance	

Title: Subject Access (Access to Health Records) Policy		
Document No: STHK0180	Date Approved: 21.09.21	Version No: 6
Status: Approved	Next Review Date: 30.09.24	Page: 19 of 19