

Standard Operating Procedure

Responding to Requests for Personal Information (Data Protection Act 1998 and Access to Health Records 1990)

Subject Access Requests

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1 Introduction

This Standard Operating Procedure sets out what staff should do when receiving a request for personal information, in line with the Data Protection Act (DPA)1998 and/or the Access to Health Records Act (AHRA)1990.

Under almost all circumstances these requests will be received and processed centrally by the Information Governance Team. However, there may be occasions when in the interests of patient safety, or expediency this may not be possible/necessary. Typically this would apply for service areas out of normal office hours.

This Standard Operating Procedure provides examples of the rare occasions when requests can be processed by staff not working in the Information Governance Team. However, it must be recognised that these occasions will be infrequent . Similarly it is prudent to note that no single Standard Operating Procedure can cover every eventuality and as such, where staff are unsure they must liaise with the Information Governance Team who will provide professional advice and assistance.

Regardless of who processes a request for information, the correct procedure must be followed in order to ensure compliance with relevant legislation.

It is important that all staff are familiar with this Standard Operating Procedure as any member of Trust staff may be the first point of contact for a request for personal information and they must understand and be able to articulate the correct process to follow, and be able to provide advice to others, including patients, service users and their carers.

It is prudent to note that under the DPA 1998, requests for access to records must be met within 40 calendar days, however, where possible requests should be processed more quickly, therefore it is imperative that any request is dealt with as expediently as possible.

2 On Receiving a Request for Personal Information Direct from the Applicant (not by the Information Governance Team)

The majority of requests for personal information will be received by the Information Governance (IG) Department, who have specific qualifications and specialist expertise and are therefore equipped to process these requests, ensuring adherence with legislative requirements. On average the Information Governance Team process circa 1000 requests per annum, around 700 of which are paid for Subject Access Requests, a further 300 are unpaid requests often from other statutory bodies. Staff in the Information Governance Department, are fully versed in the legislation surrounding requests for personal information in order to provide assurance to the Trust that requests are processed lawfully and legislation is not being breached. Therefore it is important that this team are utilised where requests have been made.

Therefore should staff receive a request directly, they must ensure that they direct the individual making the request to the Information Governance Department promptly. Advice on how to make requests for information, can be found on the Trust website at www.iow.nhs.uk/Patients-and-Visitors/access-to-records/access-to-records.htm

However, under certain and very specific circumstances, it may be appropriate for requests to be processed within the team receiving the request, where this is not the IG team. If this is within office hours, any decision to process such a request must be discussed and authorised by the Information Governance Team. Out of hours (where there is an urgent

requirement which cannot wait until the next working day), the same discussion and authorisation must initially be with the Bed Manager who will escalate further if required to the Senior Manager on Call (SMOC) or the Executive Director on Call (EDOC) where required.

Please note where a member of staff requests certain information through the Human Resources team, the Human Resources Team process for responding to requests for records for employees Standard Operating Procedure (HR SAR SOP) must be followed. Where other teams receive requests for records from employees they should share with the employee any information that they would have received anyway, for example Job Descriptions, Supervision notes, Appraisal information, but all other requests must be dealt with by the Information Governance team as a Subject Access Request.

In addition to the above, examples of where requests should be complied with by the department receiving the request rather than the Information Governance Team include:-

- Where the patient (known to the service, and known to have capacity) requests a copy of their latest clinical letter in accordance with their rights/entitlement under the NHS Constitution, or one that was previously supplied to them as they have misplaced their copy/copies.
- The Diagnostic Imaging department will provide individual patient imaging and reports as an electronic copy in Disc format under the following circumstances:-
 - Images/examination taken on the day - no report yet available.
 - Images/examination taken previously and a report available.
 - More than one examination if the events are clinically related with reports (this will be at the discretion of the Superintendent Radiographer or other delegated officer)
 - Should a patient request a report at a later date after having received their disc directly from the Diagnostic Imaging department than this will be provided by Diagnostic Imaging as a paper copy as part of the original request
 - Any other situation where the clinical information is felt necessary for a patient's care pathway - to be a clinical judgement made by a Head of Service on a case by case basis.
 - The following exclusions apply:-
 - Where a patient's request for their full imaging history- this will need to be requested via Information Governance through a full Subject Access request process.
- This must be undertaken in accordance with the Subject Access provisions of the DPA 1998 a charge of £10 will be made for the disc. All relevant documentation in relation to the request will be completed and retained within the Diagnostic Imaging department, and shared with the Information Governance dept for completeness.

Where the person making the request is not the patient themselves, it is the Trust policy that any request for information should be processed by the Information Governance Department to ensure compliance with the legislation. However, any urgent requests made out of hours should be directed to the Bed Manager for consideration.

Any request authorised for release out of hours outside of the Information Governance Team must be notified the next working day to the Information Governance team. The Information Governance team will be responsible for maintaining a central log of all such requests for monitoring and reporting purposes.

3 On Receiving a Request for Information from the Information Governance Department.

As indicated above the majority of requests will be processed by the Information Governance team. However, for them to be able to process such requests they need the full support and cooperation of staff working across the Trust.

Where a request for assistance is received by a staff member they must complete the following steps:-

1. Ensure that they have clarity on the information being requested and timescales for disclosure.
2. Ensure that all information requested is supplied to the Information Governance Team as soon as possible upon receipt of the request, either through hard copies from the originals or where possible through electronic records being shared directly with the IG team.
3. Please note all requests for records relating to Trust employees must be dealt with in line with the Human Resources Team process for responding to requests for records from employees Standard Operating Procedure available on the Trust intranet.

4 Information Governance Team - Processing Requests for Personal Information

As indicated above the majority of requests will be completed by the Information Governance team in line with the steps set out below. NB the IG team may be notified of a request at any point in the process from another department and must seek to support them in complying with the correct steps in the process as below.

1. Ensure that the request has been made in writing (either by letter or by completing the Access to Records – Application Form).
2. Ensure that the application form/letter is date stamped on receipt to ensure there is a valid audit trail.
3. Once a request is received a formal record must be **created** to log the request, this should be completed on the appropriate 'Control Sheet' (Appendix B, C & D as appropriate) and must be completed with the following information as a minimum initially:-
 - Patient Name
 - Previous Name(s) where applicable
 - Date of Birth
 - Applicant Name (if different from the patient)
 - Applicant's Reference if provided
 - Information Requested – including specific treatment/accident dates when provided
 - If Consent is given and is valid
 - Date application received

Whilst the request is being processed, the hard copy control sheet is to be filed in the 'Valid Requests' concertina file located within the Information Governance Specialists' (IGS) office. This office is locked when not in use and no records are left unattended in view of the clear desk approach across the Trust. The office is located along a corridor which is locked at all times. The door requires a security code for entry.

Once the request has been completed, the control sheet is then filed in the 'Completed Requests' lockable filing cabinet located within the locked corridor.

4. Ensure the request is a valid request, taking into account any consent issues, the identity of the applicant and seeking clarity on the extent of the request and clearly record this on the control sheet. Provide advice to the applicant as appropriate if they are unsure as to the extent of the information they require.
 - Consent :- Identify whether the consent provided is clear and explicit and provides the correct authority for the release of the requested records. Consider whether the applicant is legally able to make the request, i.e. is the applicant the patient to whom the record(s) relates and if so do they have the capacity to make the request, or does the applicant have the correct Lasting Power of Attorney in place and has it been registered with the Office of the Public Guardian in order for them to legally make the application. If consent is insufficient, circle 'No' on the control sheet and identify what other information is required to validate the request.
 - Identity of Applicant:- Consider whether there is sufficient evidence to confirm the identity of the applicant. If satisfactory evidence of ID has not been provided, circle 'No' and note down the reason.
 - Sufficient information to enable location of information requested:- Ensure there is clarity regarding what information has been requested and why? Where necessary it may be appropriate to support the applicant in determining what records they need to be provided with in order to undertake the activity they require. Complete the 'Information Requested' section in full
5. Register the request on the appropriate Log of Requests, using the following **naming convention: patient name, year of request, next sequential index number, followed by a symbol chosen at random** this unique identifier creates an encryption code which must be used in all correspondence. White and Pink Control Sheet (refer to Appendix B & C as mentioned above) requests must be entered onto the Subject Access Log of Requests, and filed within the paper record as above. The log is saved within the Trust network, located on the 'Access to Information' secure drive. Access to this drive is limited to members of the Information Governance team only.
6. Green Control Sheet (refer to Appendix D as mentioned above) requests must be entered onto the Non-Subject Access Log of Requests (also located within the secure drive above), and filed within the paper record as above.
7. Record the encryption code on the control sheet.
8. Ascertain whether records are held in relation to the patient.
 - Log into the relevant electronic system e.g. Patient Centre, Symphony, E-Care Logic, PARIS
 - Search for patient using necessary identifiers, e.g. surname, Christian name, date of birth. Select correct patient and write patient's IW number onto Control Sheet. At this point, note any previous names onto the Control Sheet.
 - Identify what records are held in relation to the time period of records requested and write the date requested against each category of information on the Control Sheet. If no specific time periods of records are requested, treat as an 'All Records' request and complete all relevant boxes on the Control Sheet.
9. Identify if a fee is due and record this onto the Control Sheet.
 - £10 – if the records are held electronically only

- £50 – if the records are held manually or a mixture of manual and electronic.
10. Prepare the appropriate response letter to the applicant by addressing to the applicant, completing Data Subjects name in the header, adding applicants reference, adding Trust Reference, which should consist of sender's initials, patients IW Number and patient initials e.g. LS/IW12345/AB. Amend Acknowledgement/Charge letter to request any additional information required as already identified, i.e. appropriate consent, evidence of identity, further information to enable location of records
 11. If the appropriate fee was enclosed with the application then prepare an 'Acknowledgement Letter'
 12. If the appropriate fee needs to be requested, then prepare a 'Charge Letter'
 13. Record the number of new requests received onto the Statistics log which is saved within the Trust network, located on the 'Access to Information' secure drive.
 14. Record Payment received date onto the Control Sheet.
 15. Calculate 40 calendar day statutory deadline using the Calculator stored in Subject Access Daily Tasks folder and add these dates to the Control Sheet.
 16. Add the request to the Daily Tasks log in date order, including Name, Date of Expiry and the records that have been requested. Also, colour code the final column.
 - Red – Awaiting records.
 - Clear – Records received and ready to scan
 - Amber – Ready to third party
 - Green – Ready to send
 17. Write a receipt for the payment and keep the top copy of the receipt in the application wallet. Write the receipt number onto the Control Sheet. Write the receipt number on the back of the cheque and keep the cheque/cash inside the receipt book, which must be kept in a locked drawer/filing cabinet.
 18. Update Log of Requests and Statistics with payments received on relevant date and amount received.
 19. Request all records, using the appropriate template email. If Symphony records are required then access the relevant record and print this off and keep in the wallet ready for scanning. When Mental Health files are required, request the records from Sevenacres Medical Records Team, complete and attach a Consultant Review memo asking for it to be printed and sent with the file to the relevant MH Consultant/Senior Clinician for completion and onward forwarding to Information Governance. If name of MH Consultant/Senior Clinician is known, record this on the Control Sheet together with date sent.
 20. When records are received, note the date received onto the relevant column on the Control Sheet. If a small set of original records are received, e.g. physio, scan these on the same day and return originals to the relevant department. Once scanned, date and initial the relevant box on the Control Sheet. If small sets of copy records are sent, then these must be kept in the back of the Control Sheet wallet. Large sets of records should be kept in the locked Information Governane secure records cupboard, until they can be scanned and returned to the relevant department. NB no originals should be retained once the records have been scanned, these must be returned to the relevant department. Should a department require a record be returned to them prior to scanning due to a clinical need, this must be recorded on the control sheet and complied with expediently.
 21. When the MH Consultant/Senior Clinician has reviewed the file and completed the Review Document and sent the file back, the date of receipt must be added to the Control Sheet and the file placed in the cupboard.

22. Records must be scanned in order of the date of expiry detailed on the Daily Tasks list, in accordance with Scanning Guidelines (separate document) unless there is a specific reason why not to do this. Professional judgement must be used at all times to ensure the department is able to comply with the highest number of requests and maintain patient safety, whilst also preventing financial or reputational damage to the Trust.
23. After each record is scanned, date and initial the relevant box on the Control Sheet.
24. Once all records have been received and scanned, prepare two envelopes and place behind the control sheet in preparation for send out. One envelope must be addressed to Information Governance and the other must be addressed to the recipient of the records. This must be stamped with 'Recorded Delivery' on the left hand side. The recipient's envelope must also have the last three digits of the encryption code written on the bottom left hand corner as an identifier.
25. Place the request pack on the 'Third Party' shelf in the lockable cupboard located within the IGS' officeready to be reviewed by the IGS. Complete the date on the Control Sheet in the relevant box.
26. IGS will review the request and if any redactions are identified these will be noted on the relevant section on the reverse of the Control Sheet. The IGS will complete the relevant boxes on the control sheet and place on the relevant section on the shelf.
27. Any redactions noted on the Control Sheet are undertaken by the IG Assistant and then handed back to the relevant IGS for checking. When this action has been completed, the IGS will initial the relevant section on the Control Sheet. Once this is complete, the request is then placed on the relevant section of the shelf.
28. Select relevant files and encrypt them using 7Zip and the allocated encryption code. Burn the files onto a CD. Prepare send out letter using the appropriate template.
29. Place the CD, Xray images, letter and envelopes with the Control Sheet. The IGS will quality check all correspondence and CDs using the allocated encryption code and then seal this into the self-addressed envelope, which is then double wrapped into the recipient envelope.
30. A Recorded Delivery log is created and will be sent with the post.
31. Enter the date of completion onto the Log, Statistics and remove the entry from the Daily Tasks list. When this is completed, tick the relevant box on the Control Sheet. If the request had any misfiles this must be put onto the log as well. Files can then be returned to Medical Records and the relevant box on the Control Sheet can be ticked.
32. When the Recorded Delivery log is received back from the Post Room, the allocated numbers must be entered on to the log where they are saved for tracking purposes. Once the recorded delivery numbers have been entered on to the log, the Recorded Delivery sheet from the post room can then be confidentiality destroyed.
33. The Control Sheets must be filed in the filing cabinet in alphabetical order.
34. In line with the Records Management Code of Practice for Health and Social Care 2016, all records relating to Subject Access Requests will be destroyed after 3 years of closure of the Subject Access Request, unless a complaint or appeal has been received. Where a complaint or appeal has been received, records will be retained for 6 years from the date of closure of the appeal/complaint. This relates to all electronic records, which must be deleted as per the above timescales, and also any paper records which must be destroyed by disposing within either a confidential waste bin or confidential waste bag, as per the Trust contract with an approved supplier.