

Title: **SUBJECT ACCESS POLICY**
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Author: Information Governance Manager
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Policy Sponsor: Information Governance Steering Group
Ratified and Approved by: Governance & Quality Committee
Distribution: All staff
Compliance: Mandatory for all permanent & temporary employees, contractors & sub-contractors of NHS North Yorkshire and York
Equality & Diversity Statement: Compliant

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CHANGE RECORD			
DATE	AUTHOR	NATURE OF CHANGE	VERS No
16/01/2009	IG Manager	Draft of new Policy	0.01
10/05/2009	IG Manager	Rework prior to IGSG	0.02
20/05/2009	IG Manager	Approved by IGSG	0.03
19/06/2009	Legal Services Manager	Changes Made	0.04
22/06/2009	IG Manager	Re-work of Policy	0.05
09/09/2009	IG Manager	Re-work of Policy	0.06
09/09/2009	IG Manager	Separating Policy from procedures	0.07
09/09/2009	IG Manager	Review of Policy	0.08
02/10/2009	Legal Services	Changes Made	0.09
02/10/2009	IG Team	Final for approval	1.00
14.12.2011	IG Team	Amendments to reflect the new organisational structure	2.00



Preface

This Policy is made between North Yorkshire and York Primary Care Trust (NYY PCT; “the PCT”) and the recognised staff side organisations, using the mechanism of the Joint Negotiation and Consultative Committee (JNCC) and Local Negotiating Committee (LNC). It will remain in force until superseded by a replacement Policy, or until terminated by either management or staff side, giving no less than six months notice. The purpose of the notice to terminate the Policy is to provide the opportunity for both parties to renegotiate a replacement Policy. Withdrawal by one party, giving no less than six months notice, will not of itself invalidate the agreement. If agreement cannot be reached on a revised policy, then the matter will be dealt with through the PCT’s Grievance Procedure.

Document Objectives

This policy sets out the approach taken within the PCT to provide a policy for compliance with the rights of patients under the Data Protection Act 1998 in relation to their health records, and dealing with requests for access to and/or copies of records held.

It does not apply to any other form of request. Therefore, for requests made under the Freedom of Information Act 2000, the relevant policy should be consulted and the Freedom of Information Officer contacted. Requests for personal information cannot be made under the Freedom of Information (FOI) Act 2000. Medical records can never be released under the FOI Act.

Intended Recipients

All staff.

1 Introduction

- 1.1 NHS North Yorkshire and York (The PCT) is required under Section 7 of the Data Protection Act 1998(The Act) to respond to individual's requests to access or obtain copies of the information the PCT holds about them, these are known as 'Subject Access Requests'.
- 1.2 This policy sets out the PCT's approach to responding to such requests should be read in conjunction with the Subject Access Request Procedures which guide staff on how to recognise and process a subject access request.

2 Scope of the Policy

- 2.1 This document sets out the PCT's policy on dealing with subject access requests, under the Data Protection Act 1998, the Data Protection (Subject Access Modification) (Health) Order 2000, the Access to Health Records Act 1990, and on dealing with requests for the amendment of inaccurate personal data within an individuals health records.

2.2 Whilst the vast majority of requests are dealt with by Managers, Local Team Leaders and Supervisors there will be occasions when other staff will be involved. This is a PCT Policy and therefore the principles set out should be followed by all staff. A record of all requests received and processed must be forwarded to the Information Governance team for logging to monitor compliance with the 40 calendar day legal time frame (although the Government has indicated that where possible NHS Organisations should provide the information within 21 days) and to provide guidance with the Act where appropriate

3 Roles and Responsibilities

- 3.1 **Chief Executive.** The Chief Executive has overall responsibility for compliance with the Act and thereby responding to Subject Access Requests within the PCT. As Accountable Officer is responsible for the management of the organisation and for ensuring appropriate mechanisms are in place to support service delivery and continuity. The PCT has a particular responsibility for ensuring that it corporately meets its legal responsibilities, and for the adoption of internal and external governance requirements.
- 3.2 **Caldicott Guardian.** The PCT's Caldicott Guardian has a particular responsibility for reflecting patients' interests regarding the use of patient identifiable information. They will oversee disclosures of patient information with particular attention being paid to extraordinary disclosures (those which are not routine) in accordance with the NHS Confidentiality Code of Practice (November 2003) and the Data Protection Act 1998.
- 3.3 **Director of Standards** The PCT's Director of Standards has delegated accountability for ensuring legal compliance in relation to Subject Access Requests.
- 3.4 **Information Governance Steering Group / Information Governance Manager.** The PCT's Information Governance Steering Group and Information Governance Manager are responsible for ensuring that this policy is

implemented and that Subject Access systems and processes are developed, co-ordinated and monitored.

- 3.5 **Legal Services Manager.** In complex cases or if there is any doubt relating to a request advice can be sought from the Legal Services Manager. Advice should always be sought in cases where litigation is ongoing.
- 3.6 **Managers / Local Team Leaders / Supervisors.** Managers, Local Team Leaders and Supervisors will ensure that all staff are:
 - 3.6.1 Aware of the Subject Access Policy and updates in regard to any changes in the Policy.
 - 3.6.2 Undertake appropriate training.
 - 3.6.3 Have access to all systems and procedures to support the Policy.
 - 3.6.4 Respond to requests for personal/patient identifiable information in accordance with this Policy.
 - 3.6.5 Inform the Information Governance Team within two days of receipt of each subject access requests, and of response date on completion.
- 3.7 **All Staff.** All PCT staff, whether clinical or administrative, who create, receive and use records in relation to any individual (Data Subject) have Subject Access responsibilities. All staff will be expected to:
 - 3.7.1 Adhere to this Policy and all related systems and processes to implement the Data Protection Act.
 - 3.7.2 To undertake training as appropriate.
- 3.1 **Contractors and Support Organisations.** Service Level Agreements and contracts the PCT is party to must include responsibilities for Information Governance, Subject Access, Data Protection, Freedom of Information, Information Security, Confidentiality and Records Management as standard.

4 What is a Record

- 4.1. A subject access request provides the right for an individual to access their records, subject to certain exemptions. The PCT recognises that the term 'record' for this purpose is defined as information relating to an individual that allows that individual to be identified irrespective of the media it is held in.

4.2. A Health Record

A health record is defined as:

- consisting of information relating to the physical, mental health or condition of an individual, and
- has been made by or on behalf of a health professional in connection with the care of that individual.

5 What is a subject access request

- 5.1 Where an individual is making a routine enquiry e.g. requesting confirmation of an appointment, this should be dealt with as business as usual and answered without the need for a formal written request being submitted.
- 5.2 Where an individual is requesting access to or copies of information held about them then they must make a formal request in writing to the PCT, giving sufficient detail to enable the information to be identified and located.

6 Subject Access Requests – the rights of individuals

- 6.1 Section 7 of the Act provides that individuals who request access to their records should:
 - be informed whether or not they are the subject of any data being processed by or on behalf of the PCT, and
 - be supplied with an understandable copy of the information held about them
 - be told the purposes for which the information is being processed,
 - be told the recipients to whom information is or may be disclosed.

7 Who can make a Request

- 7.1 Subject access requests can be made by:
 - 7.1.1 The individual themselves.
 - 7.1.2 Those who have parental responsibility (if requesting a child's records) Section 9 of the Subject Access Request Procedures.
 - 7.1.3 A representative nominated by the individual to act on their behalf such as solicitors or a relative, although there must be valid informed written and signed consent by the individual granting this authority.
 - 7.1.4 In certain situations a person appointed as an attorney or deputy by the Court of Protection on behalf of an adult who is incapable of consenting.
 - 7.1.5 A Litigation Friend is defined as a person who acts in legal proceedings on the behalf of a minor (under 18 years) or a person who is deemed mentally incapable of acting for themselves and is appointed by a court to act on their behalf in civil proceedings. The Official Solicitor is a government official who is often appointed to act as the litigation friend of an incapacitated adult.
 - 7.1.6 The Police under limited circumstances.
 - 7.1.7 Where a Court has ordered the release of medical records, although there are limitations on a Court's ability to order disclosure and legal advice must be sought from the Legal Services Manager.
 - 7.1.8 A personal representative of a deceased person or a person making a claim arising out of the death of a person.
- 7.2 In all cases where a written Subject Access Request is received, there must be sufficient information to be sure of the requester's identity. For example, if a

person with whom you have regular contact sends a letter from their known address it may be safe to assume that they are who they say they are. If you have cause to doubt the requester's identity ask them to provide any evidence you reasonably need to confirm it. (See Annex B of the Subject Access Request Procedures.). A copy of the written request and sufficient evidence to confirm their identity must be retained on the individual's record.

8 Requests made on behalf of others.

- 8.1 Under this principle it is possible for an individual's representative (once the identity of the individual has been verified see 7.2) to request access to or copies of information held about that individual. In such circumstances the PCT will obtain and retain sufficient evidence to show that the representative is legally acting on behalf of the other person.

9 Non-disclosure of Information.

- 9.1 The Data Protection Act lists a number of exemptions under which information is not to be released, the exemptions most relative to the NHS being:

- Information that if released would cause serious harm to the physical or mental well being of the individual to whom the information relates, or any other individual.
- Information relating to, or provided by, a third party.

A full list of the exemption categories is detailed in the working procedures

10 Providing the Information

- 10.1 All records requested must be inspected by a suitably senior and qualified member of staff before the records are released to ensure that they are understandable and that all exempt information is removed.
- 10.2 Wherever possible the information will be provided in the format requested by the applicant, this may be as simple as allowing sight of the record to supplying copies. Under no circumstances should the original record be given.

11 Deadlines

- 11.1 All subject access requests will be responded to within 40 Calendar days of receipt of the request or receipt of any fees and sufficient information required to allow the request to be processed, which ever is the later.

12 Fees

- 12.1 The Data Protection Act allows a fee to be charged for an individual to view or be supplied with a copy of records. The Act specifies the fees which are set out below:

- To view a record: up to a maximum of £10, unless the record has been added to in the last 40 days then no charge will be made.
- Supplying copies of records:
 - Records held totally on computer: up to a maximum of £10,
 - Records held part on computer and part manually: up to a maximum of £50,
 - Records held totally manually: up to a maximum of £50.

13 Amending Records

- 13.1 If an individual believes that there are inaccuracies held within their records they may request to have an amendment made to their record.
- 13.2 The Healthcare Professional responsible for the preparation or maintenance of that record must be consulted as to whether the amendment should be made. This may involve discussions with the individual to whom the record relates. If it is agreed the original record is inaccurate, then it should be amended and the amendment dated and signed by the professional making it. No part of the record originally made can be deleted or obscured – instead, the original record must clearly state that it has been amended and reference made to the document which amends or replaces it, if it is not immediately apparent.
- 13.3 If the professional decides that it is not appropriate to amend the record or any part of the record, a note must be added to the record that a request has been made for amendment and that the professional has refused to do so and on what basis.
- 13.4 Every Healthcare Professional has a duty to ensure that records are accurate and complete. A failure to do so may be regarded as professional misconduct by a professional body.
- 13.5 It is important to ensure that where requests for amendments to records are made the requirements of consent are fully met.
- 13.6 Where an individual has had their request for amendment refused they should be referred to the PCT's complaints procedure.

14 Deceased Patients

- 14.1 The right of access to information under the Data Protection Act only extends to living individuals. Requests for records relating to the deceased are covered by the Access to Health Records Act 1990. A request can only be made by:
- The Patient's personal representative, this is either an executor of the will or administrator of the estate. Appropriate evidence must be obtained and a copy taken and held on the individual's record to evidence the validity of the applicant to receive the information requested, or
 - A person who may have a claim arising out of the patient's death. In these circumstances disclosure must be the minimum necessary to process the claim.
- 14.2 The same level of confidentiality and scrutiny of the record must be applied as is applied to the record of a living individual. Therefore records must be

reviewed as per a subject access request by a living individual and exemptions as per the Data Protection Act applied.

15 Complaints

15.1 Complaints relating to a Subject Access Request may be regarding:

- Failure to meet the timescale for responding.
- Inaccuracy of information.
- Incomplete information.
- Issues over the information contained in the records.

15.2 Complaints should be addressed to:

The Complaints Team

NHS North Yorkshire and York

The Hamlet

Hornbeam Park

Harrogate

North Yorkshire

HG2 8RE

Telephone: 01423 815150

Fax: 01423 859600

16 Further Information

16.1 Advice on subject access and related matters can also be obtained from the Information Governance or Legal Services Teams:

NHS North Yorkshire and York

Legal Services

The Hamlet

Hornbeam Park

HARROGATE

HG2 8RE

Tel: 01423 815150

NHS North Yorkshire and York

Information Governance Team

The Hamlet

Hornbeam Park

HARROGATE

HG2 8RE

Tel: 01423 815150

Or e-mail: enquiries@nyypct.nhs.uk

16.2 The Information Commissioner

Website: <http://www.informationcommissioner.gov.uk/>

They can be contacted at the following address:

The Information Commissioner
Wycliffe House
Water lane
Wilmslow
Cheshire
SK9 5AF

Tel: 01625 545700

16.3 The Department of Health

Website: <http://www.dh.gov.uk/Home/fs/en>

at the Patient confidentiality and Caldicott Guardian of the Information Technology section.

17 Training and Awareness

17.1 Information on Subject Access Requests and the Data Protection Act, points of contact for advice and training will be available to all staff via the PCT Intranet.

17.2 Staff will be made aware of this policy via line management.

17.3 The policy will be available to all staff via the PCT Intranet.

17.4 References to this policy will be included in mandatory and induction training sessions, and form the basis of related education and training sessions.

18 Consultation, Approval and Ratification Process

16.1 The Policy Author will be responsible for ensuring that the relevant committees and groups, service users and carers and stakeholders are consulted about the draft policy and procedures. Where local procedures are necessary these should be developed in collaboration with local forums.

16.2 The draft policy and all relevant procedures, Equality Impact Assessments and Policy Submission Forms will be presented to the Information Governance Committee ('IGSG') for quality review prior to approval and ratification.

16.3 The IGSG will agree submission of the draft policy to the PCT Governance & Quality Committee for approval and ratification. The Governance & Quality Committee is responsible for ensuring policy and procedures comply with all legal requirements and national guidance, as well as the requirements of the PCT Policy on Policies and are assured that they are capable of being implemented within the allocated resource before signing off the Policy.

19 Dissemination and Implementation

The Policy will be distributed to all staff using the standard PCT method.

20 Document Control including Archiving Arrangements

- 20.1 The standard PCT version control method will be used for this policy.
- 20.2 All previous version of this policy will be retained by the Information Governance Team and may be obtained upon request.
- 20.3 All version of this policy will be retained in line with the Records Management: NHS Code of Practice (Department of Health, 2009) retention schedules.

21 Equality and Diversity

The PCT recognises the diversity of the local community and those in its employ. Our aim is therefore to provide a safe environment free from discrimination and a place where all individuals are treated fairly, with dignity and appropriately to their need, regardless of age, disability, race, nationality, ethnic or national origin, gender, religion, beliefs, sexual orientation, gender reassignment or employment status. The PCT recognises that equality impacts on all aspects of its day to day operations and has produced an Equality and Human Rights Strategy and Equal Opportunities Policy to reflect this. All strategies, policies and procedures are assessed in accordance with the Equality & Diversity Assessment Toolkit, the results for which are monitored centrally.'

22 Data Protection Act 1998

The Data Protection Act 1998 protects personal data, which includes information about staff, patients and carers. The NHS relies on maintaining the confidentiality and integrity of its data to maintain the trust of the community. Unlawful or unfair processing of personal data may result in the PCT being in breach of its Data Protection obligations.

23 Freedom of Information Act 2000

Any recorded information which is held by, or on behalf of, the PCT may be subject to disclosure under the Freedom of Information Act 2000 and Environmental Information Regulations 2004.

24 The Public Interest Disclosure Act 1998

The Act allows a worker to breach his duty as regards confidentiality towards his employer for the purpose of 'whistle-blowing'. A disclosure qualifying for protection under this Act is known as a 'qualifying disclosure'. The circumstances under which disclosure is allowed are limited. Employees should ensure they are aware of and comply with the specific the PCT policy. Professional staff may also

choose to contact their professional, regulatory or indemnifying bodies for specific guidance.

25 Records Management

Records provide evidence and information about the business activities of the PCT and are corporate assets of the PCT. This policy should therefore be retained in line with the PCT's Records Management Policy and the DoH – Records Management: NHS Code of Practice (2009). Compliance with these will ensure that the PCT's records are complete, accurate and provide evidence of and information about the PCT's activities for as long as is required.

26 Review

This policy will be reviewed annually. Earlier review may be required in response to exceptional circumstances, organisational change or relevant changes in legislation or guidance.

27 Monitoring

27.1 Breaches to this policy will be reported via the PCT's incident reporting mechanisms and may be subject to investigation.

27.2 The Information Governance Steering Group will develop a routine audit programme to monitor the adequacy of systems and policies and provide reports to the Governance & Quality Committee.

28 Discipline

Breaches of this policy may be investigated and result in the matter being treated as a disciplinary offence under the PCT's disciplinary procedure.

29 References

Department of Health (2009). Records Management: NHS Code of Practice. [Online] [08.01.09]. Available from World Wide Web www.dh.gov.uk

Department of Health (2003). Confidentiality: NHS Code of Practice. [Online] [07.11.03]. Available from World Wide Web www.dh.gov.uk

Department of Health (2007). Information Security Management: NHS Code of Practice. [Online] [24.04.07]. Available from World Wide Web www.dh.gov.uk

Office of Public Sector Information (1998). The Data Protection Act 1998. [Online]. Available from World Wide Web www.opsi.gov.uk

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Office of Public Sector Information (2000). The Freedom of Information Act 2000. [Online]. Available from World Wide Web www.opsi.gov.uk

Office of Public Sector Information (2004). The Environmental Information Regulations 2004. [Online]. Available from World Wide Web www.opsi.gov.uk

Annex A

Power of Attorney

1. Please note there is no such thing in law as next-of-kin. A relative or friend may have a Lasting Power of Attorney or Enduring Power of Attorney or be classified as a Litigation Friend to act on the behalf of another person. They may also have a Court Order to act instead of a Power of Attorney.

There are two distinct types of Power of Attorney: the Lasting Power of Attorney and the Enduring Power of Attorney.

a. Lasting Power of Attorney (LPA):

The LPA is a legal document that a person (the Donor) makes using a special form.

The Donor may choose someone (the Attorney) to make decisions on their behalf at a time in the future when they either lack mental capacity or no longer wish to make those decisions themselves.

There are two types of LPA, a Property and Affairs LPA and a Personal Welfare LPA.

The Property and Affairs LPA permits an Attorney to manage the finances and property of the donor. The Donor can permit the Attorney to manage their affairs while they have capacity, or may restrict the LPA to some point in the future where they do not have capacity to deal with their affairs.

The Personal Welfare LPA can only be used where a person lacks capacity to make decisions for themselves. It allows the Attorney to make decisions about personal welfare; such as healthcare and social care.

To be valid an LPA must be registered with the Office of the Public Guardian and will bear the impressed Seal of the Court.

The Attorney must (in welfare instances) obtain medical evidence and satisfy the Office of the Public Guardian that the donor has become incapacitated before an LPA can be registered.

The Attorney would only have entitlement to records of the Donor in the case of a Personal Welfare LPA or in limited circumstances an Attorney with a Property and Affairs LPA, where they are to make a decision about a person's care. Advice should always be sought as to whether it is appropriate to release records to an Attorney holding a Property and Affairs LPA.

The Attorney is only entitled to such information as is relevant to the decision they have to make.

b. Enduring Power of Attorney (EPA):

An Enduring Power of Attorney applies where a person (the Donor) has handed to someone else (the Attorney) the power to decide what is done with their financial affairs and property.

The Donor may give this power to the Attorney straight away, or may restrict its use until sometime in the future when they become mentally unable to manage their affairs.

An EPA only applies to decisions relating to a Donor's financial and property affairs. It must be registered with the Office of the Public Guardian and does not extend to personal welfare.

EPAs are only valid if executed prior to the LPA regime coming into force on 1 October 2007. A person can no longer apply for an EPA.

If the donor of an EPA is incapacitated, it must be registered with the Office of the Public Guardian as discussed above.

Annex B – Subject Access Request Exemptions

Category	Exemption
Crime and Taxation	Section of the personal information contained in the records, or individual records that relate to the prevention and detection of crime or the apprehension or prosecution of offenders
Health, Education and Social Work	<p>Health exemptions are mentioned in section 7</p> <p>Social work records exemptions comes under the Data Protection (Subject Access Modification)(Social Work) Order 2000 relates to personal information used for social work purposes: Where release of information may prejudice the carrying out of social work by causing serious harm to the physical or mental condition of the data subject or others.</p> <p>Certain third party's information can be released if they are a "relevant person " (a list is contained in the order) as long as release of the information does not cause serious harm to the relevant person's physical or mental condition, or with the consent of the third party</p>
Research, history statistics	Where the personal data is used solely for research purposes and as long as resulting statistics are not made available which identify the person.
Human fertilisation and embryology	Personal information can be withheld in certain circumstances where it relates to human fertilization and embryology.
Legal Professional Privilege	Any correspondence to or from or documentation prepared for or by the Trust's internal or external legal advisors may be exempt from disclosure and advice should always be sought relating this class of information.
<p>The full list of subject areas where exemptions as designated by the Freedom of Information Act 2000 may apply:</p> <ul style="list-style-type: none"> • National security • Crime and taxation • Health, education and social work • Regulatory activity • Journalism, literature and art • Research, history and statistics • Information made available to the public or by under enactment • Domestic purpose • Confidential references • Armed forces • Judicial appointments 	

- Crown employment
- Management forecasts
- Negotiations
- Examination marks
- Examination scripts
- Legal professional privilege
- Self incrimination
- Crown appointments
- Human fertilisation and embryology, and adoption records and reports