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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 It will remain in force until superseded by a replacement Policy, or until terminated by either management or staff side, giving no less than six months notice.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 procedure is to facilitate compliance with the rights of living individuals under the Data Protection Act 1998 in relation to health records, staff records and any other records held about an individual, 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 Act 2000. Medical records can never be released under the Freedom of Information Act.

Intended Recipients

All staff.

1 Introduction

1.1. Individuals have the right under the Data Protection Act 1998, subject to certain exemptions, to have access to their personal records that are held by the PCT. This is known as a 'subject access request'. This will include information held both electronically and manually and will therefore include personal information recorded as photographs, x-rays, audio recordings and CCTV images etc.

1.2. These procedures must be read in conjunction with the Subject Access Request Policy.

1.3. In order for the PCT to supply the requested information it must receive:

- a request in writing
- any fee levied
- proof of identity of the applicant and/or the applicant representative, and proof of right of access to another persons personal information
- sufficient information to be able to locate the record/information requested.

All such requests must be responded to within 40 calendar days of receipt of the above although the Government has indicated that where possible NHS Organisations should provide the information within 21 days.

1.4. This procedure sets out the processes to be followed to respond to a subject access request.

2. Who can make a subject access request

2.1. Subject access requests can be made by:

- 2.1.1. The individual themselves,
- 2.1.2. Those that have parental responsibility (if requesting a child's records), (See 8.2)
- 2.1.3. 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.
- 2.1.4. 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 (see Annex A).
- 2.1.5. 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. (See Annex A)
- 2.1.6. The Police under limited circumstances. (See section 10)
- 2.1.7. Where a Court has Ordered the release of medical records, although there are limitations on a Court's ability to order disclosure and advice must be sought from the Legal Services Manager.
- 2.1.8. A personal representative of a deceased person or a person making a claim arising out of the death of a person. (See section 6)

2.2. Where a Subject Access Request is received a copy of the request must be retained on the individuals file. Where there is cause to doubt the identity of the requestor, then appropriate documentation must be seen to verify this (See Annex B). In addition where a request is made on behalf of an individual, the validity of both the individual and the representative to access the information requested must be verified. In such circumstances the PCT will obtain and retain sufficient evidence to verify the identity of the individual and to show that the representative has a legal right to act on behalf of the other person.

3. Recognising a Request.

3.1. Minor requests for personal information such as a confirmation of dates of an appointment or confirmation of dates of an inpatient stay for claim purposes should normally be handled by the department as business as usual and not a Subject Access Request. However the

same rules continue to apply e.g. obtaining the consent of the individual to release the information.

- 3.2. A Subject Access Request is where an individual requires sight of or copies of records that relate to them and must meet the criteria detailed in 1.3 above.
- 3.3. Where a request is received verbally the applicant should be requested to complete the Subject Access Request (SAR) form at Annex C and send it to the relevant health care team or organisation.

4. Dealing With a Request.

4.1. Receipt

4.1.1. Validating the request.

A satisfactory written request is where:

- There is enough information, complying with all the requirements above at 1.3, to allow the PCT to locate the information to process the request. If insufficient information has been received to allow the records to be identified and located the applicant must be contacted in order to obtain the required information.
- The PCT is satisfied as to the identity of the person making the request, where the individual is requesting their own records (see 4.1.3 below and Annex B for acceptable evidence of proof of identity)
- Where someone is requesting records on behalf of another individual, there is a valid consent from either:
 - The individual themselves
 - The person with parental responsibility if the request relates to a child
 - A person who has been granted the appropriate Power of Attorney (see section 8.3 and Annex A)

If the person making the request is not the subject and does not have Power of Attorney or parental responsibility this will suspend any request until proof of ability to act for the person has been provided. Only the original documentation should be accepted.

4.1.2. Logging the request

On receipt of a subject access request a record must be made in a departmental register and the Information Governance Team must be notified of receipt of the request.

Details to be recorded are:

- Date the request was received
- Name or identifier of the individual whose notes are being requested
- The name of the individuals representative (if applicable)
- The information required
- Date by which the response must be made
- Who reviewed the records to be released to the applicant.

- Information released
- Information withheld and the reasons.
- Date when request was completed
- Any fee details

The Information Governance Team must be notified of the date of the completion and release of requested information.

4.2. Processing the Request

- 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) A copy of the written request and sufficient evidence to confirm their identity must be retained on the individuals record.
- Verify the identity of the requester and their authority to view or receive copies of the records requested. Keep a copy of the evidence seen on file to show that authority to see or receive the records has been verified. (See 2.2 above)
- Review the request to ensure that sufficient information has been received to enable the information requested to be identified and located.
- Send a confirmation that the request has been received and is being processed to the applicant. Where a fee is to be levied a fee request must be sent with the acknowledgement.

Note the 40 day time limit to respond to subject access requests does not start until sufficient information to enable the records to be located and all fees applicable have been received.

- Locate the information requested
- Ensure the records are reviewed by a suitably qualified and senior member of staff to assess whether they are to be released. The key points to be considered are as follows:
 - Are the records written so that the applicant will understand them i.e. is there any jargon, terminology or abbreviations that will need to be explained.
 - Is there any information that should not be released, there are specific exemptions under the Data Protection Act 1998 where information should be withheld (See section 4 Information exempt from being released)

Note this does not mean information can be removed because it is poorly recorded or embarrassing to the organisation

- Determine if the record contains any information provided by or about third parties that should be removed or anonymised. (See sections 4&5)
- Prepare the response and release it to the applicant, within 40 calendar days.

5. Information Exemption from Being Released

The Data Protection Act 1998 specifies a number of exemptions under which information is not to be released, the two main ones that usually apply in the health setting are:

- Information that if released would cause serious harm to the physical or mental well being of the patient, or any other individual, and
- Third party information (this is information received from or about someone other than the person to whom the record relates, and information recorded by another agency e.g. social services). Consideration must be given to whether the information can be anonymised, where this is not possible consent must be obtained from the third party to release third party information, although consideration must be given to releasing information without consent in certain circumstances (See obtaining consent to release third party information section 5)

There are other exemptions under which refusal to release information can be made. A full list of exemptions from releasing information can be found at Annex D

6. Obtaining Consent to Release Third Party Information

Where records contain information that relates to an identifiable third party, that information may not be released unless:

- The third party is a health professional who has compiled or contributed to the health records or who has been involved in the care of the patient. However where it is deemed that disclosure of the health professional's information may result in serious harm to that health professional or any other person then it may be restricted.
- The third party, if not a health professional, gives their consent to the release of that information
- Where the identity of the third party can be protected by anonymising their personal information. When considering this take into account any information it can reasonably be believed the person making the request may have or have access to that may identify the third party.

- Where it is not possible to seek consent to disclose because the third party :
 - is deceased; or
 - their whereabouts are unknown; or
 - they lack capacity; or
 - they have refused consent
 then it is appropriate to consider all of the circumstances including those where the individuals right to know the information outweighs the third parties right to refuse access to it, if it is deemed reasonable to comply with the request without the consent of the third party a record must be made of both the disclosure and the reasons why it was decided to disclose the information.

- Where letters, reports or notes contained within a record are from another agency, person or NHS organisation the professional inspecting the record must consider whether there is a need to approach those agencies / persons to obtain agreement for the release of those records. Factors to consider are whether the other agency's information is already recorded in the PCT records and whether the professional reviewing the record considers that the other agency professionals would be in agreement with the release of the record. If in doubt check with the other agency.

7. Deceased patient records

7.1. The rights of access under the Data Protection Act 1998 extend only to living individuals. Requests for deceased patient's records come under the Access to Health Records Act 1990. Requests can only be made by:

7.1.1. The patient's personal representative (the 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

7.1.2. A person who may have a claim arising out of the patient's death - disclosure of any information will only be the minimum necessary to process their claim.

Note the PCT must afford the same level of confidentiality to a deceased patient's records as they do for living ones.

7.2. The documentary evidence of a person's status as a personal representative can be shown by providing a Grant of Probate or Letters of Administration. A Grant of Probate officially recognises a Will as valid. Within a Will, it details those people appointed to be executors of the estate. Letters of Administration are issued in circumstances where a person dies intestate, or without a Will, and appoint a person to act as an administrator of the deceased's estate (or in cases where there is no estate to formally recognise the appointee as a personal representative).

7.3. A Grant of Probate or Letters of Administration can be applied for at the Principle Registry Office of the Family Division of the High-Court or any District Probate Registry or Sub-Registry.

7.4. If a person is making a request for records because they are making a claim that arises from the death of a patient they can apply to the Court for it to make an Order for the PCT to disclose the records, if this is deemed necessary for those proceedings.

It is not possible to release records of deceased patients on the basis that the person is able to confirm that they are next-of-kin.

7.5. If the death is to be considered at a Coroner's Inquest the Legal Services Manager should be informed and any request in relation to access to records should be directed to:

Legal Services,
The Hamlet,
Hornbeam Park,
Harrogate,
HG2 8RE.

7.6. Under the Access to Health Records Act 1990 there are a number of instances in which the PCT may refuse access to the records, or part of the records. A health professional should review the notes taking into account the instances where refusal may be made, which are explained below:

7.6.1. Full refusal:

If the patient has requested that the records are not be released upon death and this is documented within the notes the records will not be released.

7.6.2. Partial refusal:

Partial refusal will result in the information falling into the below categories being withheld from release:

- The health professional has reviewed the notes and considers that the notes are likely to cause serious harm to the physical or mental health of any individual.
- There is information within the notes provided by an individual other than the patient, and they can be identified by that information.
- The records were made before the 1st November 1991 (unless the health professional considers that to refuse access would make un-intelligible any part of the record that has been requested).
- Any information that is held within the records that is not relevant to the claim being made.
- Any information given by the patient with the expectation, at the time, that it would not be released to the applicant.
- Any information obtained during examination or investigation to which the patient consented with the expectation that the information would not be disclosed.

Partial refusal affects only the information falling within the above categories and not the entire record. Other parts of the records can be released unless it falls within the exemption for full refusal. Partial refusal to release notes does not have to be communicated to the person making the request.

8. Individuals Living Abroad

Patients or individuals who used to live in the UK who have records held by the PCT will still have the right to make a subject access request. The same procedure would apply as for an individual living in the UK.

9. Consent Issues

9.1. In most cases the consent to access personal information will be provided by the individual whose information has been requested, however, there may be cases where the individual is unable to consent or the individual is a child. Issues surrounding this and when consent is required are discussed below.

If you are in any doubt about who can consent to the disclosure of personal information following a subject access request please contact the Information Governance Team.

9.2. Children

9.2.1. Generally in law, consent for children below the age of 16 (see 8.2.5) will be the responsibility of those who have parental responsibility. This will allow those with parental responsibility to request access to their children's records. Disclosure of the information is normally done in the best interests of the child. Those who have parental responsibility are:

9.2.1.1. The mother, to include either the birth mother, or adoptive mother.

9.2.1.2. The father, if the parents are married. If one parent is granted a Residence Order (previously known as "custody"). This does not take away parental responsibility from the other parent. The order merely determines who a child is to live with.

9.2.1.3. For births after 1st December 2003 the father (where the parents are not married) if included on the birth certificate.

9.2.1.4. If the parents are not married and the birth was before the 1st December 2003, the father will only have parental responsibility by virtue of a court order, or because the mother and father of the child have entered into a formal parental responsibility agreement. This agreement is drawn up through a solicitor.

9.2.1.5. If parents marry after the child's birth the father automatically obtains parental responsibility by virtue of this event.

- 9.2.1.6. The local authority if the child is subject to a Care Order – in this event the parents and local authority share parental responsibility.
- 9.2.1.7. Adults in receipt of a Special Guardianship Order (Children and Adoption Act 2000) in respect of the child.
- 9.2.2. Where the child is considered “competent” and is able to fully understand the full consequences and process of a subject access request, then they should be able to make a subject access request themselves. This competence can be defined as:
- “Sufficient understanding and intelligence to enable him or her to understand fully what is proposed.”
- 9.2.3. Additionally, where the child is deemed competent and those with parental responsibility make a subject access request to see their child’s notes, the child should be approached to see if they are in agreement with the disclosure of their records. The decision on whether a child is competent should be made by that health professional who is currently responsible for providing their clinical care, failing that, a health professional who has the necessary skills and experience and is most suitable to advise on such matters.
- 9.2.4. Where a child has given information specifically on the basis it should not be disclosed to those with parental responsibility, then it should not be disclosed if the parents make a request for that child’s records.
- 9.2.5. For children aged 12 to 16 who do not have the capacity (as per the Fraser Guidelines) to consent it may be that the responsibility of consent still remains with those of parental responsibility. This will apply to the right to access records.

9.3. Adults who lack capacity

- 9.3.1. There will be instances where a request is made where the patient’s capacity to consent to the disclosure is at issue.
- 9.3.1.1. This area is subject to the provisions within the Mental Capacity Act 2005 and all related secondary legislation, along with the Mental Capacity Act 2005 Code of Practice.
- The Code of Practice states:
- ‘...a person’s capacity (or lack of capacity) refers specifically to their capacity to make a particular decision at the time it needs to be made.’
- 9.3.1.2. Therefore, it cannot be assumed that, for example, a patient who may not have capacity to make decisions relating to their overall care does not have capacity to consent to release of their medical records.
- 9.3.1.3. The general legal assumption should always be that the person has capacity, unless it is shown that the person does not have capacity to consent to disclosure. It may be the case that the person has previously given consent (whilst they still had capacity) for someone to see their records in the future.

Furthermore, if the person's capacity changes from time to time, it may be more appropriate to wait until the person has capacity to give consent.

9.3.1.4. It is important to note that no person, in the absence of an Lasting Power of Attorney or Enduring Power of Attorney or a Court Order, is able to consent or refuse consent on behalf of another adult regardless of any relationship between them. Spouses and/or partners have no special rights in this respect

9.3.1.5. Decisions, however, can be made to disclose a patient's information (where the patient can't consent) to relatives or carers by health professionals where it can be justified. This should be verified with the Caldicott Guardian. This is done in the patient's best interests and only the necessary information released to support their care. Decisions should be made on a case by case basis taking into account impact on the patient and relatives, any known views of the patient when they were able to consent, and their health needs.

See Annex E for specific guidance

10. Police Requests for Records:

In some circumstances, the police may be able to access specific parts of an individual's medical records where this is absolutely necessary for the prevention or detection of serious crime. These requests should always be passed to the Legal Services Manager.

11. Sending Copies of Records

11.1. Copies of records sent in the post should be:

- In a sealed envelope
- Addressed to a named person
- Marked private and confidential
- The above should then be placed inside a second sealed envelope
- Addressed to a named person above
- Sent by recorded delivery

11.2. Copies should not be sent via fax, and not by e-mail unless the PCT has a suitably secure means of electronic transfer in place – i.e. NHS authorised encryption facility.

12. Requests to amend records

12.1. If a patient believes that there are inaccuracies held within their medical records they may apply to have an amendment made to their notes.

12.2. 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

- 12.3. 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 an amendment and that the professional has refused to do so and on what basis.
- 12.4. 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.
- 12.5. It is important to ensure that where requests for amendments to records are made the requirements of consent are fully met.
- 12.6. If a person has had their request for amendment of notes refused they should be referred to the PCT's complaints procedure.

13. Fees

13.1. The following fees shown below relate to where copies of the records have been provided, where an individual is to view their records, a maximum charge of £10 can be made unless the records has been added to in the last 40 days. If this is the case no charge will be made.

13.1.1. Health records

- £50 maximum for exclusively paper records
- £50 maximum for a mixture of computerised and paper records
- £10 maximum for exclusively computerised records

13.1.2. Other records

- £10 maximum

13.1.3. Deceased patient records

- £10 fee (+ cost of postage and cost to photocopy the records up to a maximum of £50)

All of these maximum charges include postage and packing costs. These are maximum costs and any charges for access requests should not be seen to make a financial gain.

14. Deadlines

- 14.1. Once the PCT is certain as to the identity of the requester, has received the relevant information to be able to process a request and has received any fee levied it will have 21 days to process the request, though in exceptional circumstances can take up to 40 days.
- 14.2. With deceased patient records where further information is required in order for the PCT to be able to process the request, this must be requested within 14 days of receiving the request. The deadline starts from when full information is received.

15. Complaints

15.1. Complaints arising out of the Subject Access Request should be addressed to:

The Complaints Team
NHS North Yorkshire and York
The Hamlet
Hornbeam Park
Harrogate
HG2 8RE

Tel: 01423 815150

Fax: 01423 859600

15.2. Complaints relating to the Subject Access Request may be regarding:

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

Annex A – Power of Attorney

NB: - Please see Annex E for further information on consent and capacity.

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 it's 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- Registration & Authentication Examples of Documentary Evidence

Please supply one from each of the following categories (copies only).

Personal identity

- current signed passport
- residence permit issued by Home Office to EU Nationals on sight of own country passport
- current UK photocard driving licence
- current full UK driving licence (old version) – old style provisional driving licences are not acceptable
- current benefit book or card or original notification letter from the Department for Work & Pensions confirming the right to benefit
- building industry sub-contractor's certificate issued by the Inland Revenue
- recent Inland Revenue tax notification
- current firearms certificate
- birth certificate
- adoption certificate
- marriage certificate
- divorce or annulment papers
- Application Registration Card (ARC) issued to people seeking asylum in the UK (or previously issued standard acknowledgement letters, SAL1 or SAL2 forms);
- GV3 form issued to people who want to travel in the UK but do not have a valid travel document
- Home Office letter IS KOS EX or KOS EX2
- police registration document
- HM Forces Identity Card

Active in the Community

“Active in the Community” documents should be recent (at least one should be within the last six months unless there is a good reason why not) and should contain the name and address of the registrant.

- record of home visit
- confirmation from an Electoral Register search that a person of that name lives at that address
- recent original utility bill or certificate from a utility company confirming the arrangement to pay for the services at a fixed address on prepayment terms (note that mobile telephone bills should not be accepted as they can be sent to different addresses and bills printed from the internet should not be accepted as their integrity cannot be guaranteed)
- local authority tax bill (valid for current year)
- current UK photo card driving licence (if not used for evidence of name)
- current full UK driving licence (old version) (if not used for evidence of name)
- bank, building society or credit union statement or passbook containing current address
- recent original mortgage statement from a recognised lender
- current local council rent card or tenancy agreement
- current benefit book or card or original notification letter from the Department for Work & Pensions confirming the rights to benefit
- court order

1.1 Annex C – Subject Access Request Form



North Yorkshire and York

Request for Access to Health Records under the Data Protection Act or Access to Health Records Act (deceased patients only)

Section 1 - Details of records to be accessed

Title	_____	Date of Birth	_____
Surname	_____	Address	_____
Forename	_____		_____
Former Name	_____	Postcode	_____

Section 2 - Details of person making the application

Title	_____	Address	_____
Surname	_____		_____
Forename	_____	Postcode	_____

Section 3 - Details of which sections of the records to be accessed

<input type="checkbox"/> All Health records dated from (date) _____	<input type="checkbox"/> All Health records relating to the following: _____
<input type="checkbox"/> Xrays /test results as detailed below _____	<input type="checkbox"/> All information contained on my health record _____

Section 4 - Declaration

I declare that information given by me is correct to the best of my knowledge and that I am entitled to apply for access to the health record referred to above, under the terms of the Data Protection Act 1998 or Access to Records Act 1990 (for access to records of a deceased patient).

- I am the patient
- I have been asked to act by the patient and attach the patient's written authorisation.
- I have parental responsibility/legal guardianship for the patient who is under age 16
- I am the deceased patient's personal representative **and attach confirmation of my appointment¹**.
- I have a claim arising from the patient's death and wish to access information relevant to my claim – the information will support my claim for the following reasons:

I am aware that a charge may be payable (£10.00 for an electronic copy; and up to £50.00 for a copy of manual records or a combination of electronic and manual records which includes the cost of copying and postage).

Signed _____ Date _____

Please Note:

- It will be necessary to provide suitable evidence of identity (i.e. Driving License).
- If there is any doubt about the applicant's identity or entitlement, information will not be released.

Please send the completed document to:

NHS North Yorkshire and York, The Hamlet, Hornbeam Park, HARROGATE. HG2 8RE.

¹ Please provide copy of Letter of Administration or section of Will showing you to be the Executor

1.2 Annex D – Subject Access Request Exemptions

Category	Exemption
National Security	Personal information that is held in respect of the maintenance of national security is exempt from disclosure.
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>
Regulatory activity	Personal data processed by the PCT for the purposes of discharging its functions are exempt if the release of such information would prejudice the proper discharge of those functions.
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.

Note this is not an exhaustive list.

Annex E: Patients who lack the capacity to consent to disclose of their personal information

1. Where the patient lacks capacity:

- A.** If someone lacks capacity to give consent a Deputy or Attorney may be able to request the records to the extent necessary for them to fulfil their function.
- B.** An Attorney acting under a Personal Welfare Lasting Power of Attorney that that has been registered with the Office of the Public Guardian can request records.
- C.** If a Deputy requests records the authority to do so must be provided by the Court of Protection.
- D.** Attorneys and Deputies may only ask for information that will help them make a decision they need to make on behalf of the person who lacks capacity. They must demonstrate that they have authority to request records by showing, for example, proof of identity and proof of appointment.
- E.** An Attorney or Deputy may only act in the best interests of a patient.
 - NB.** The PCT may be ordered by a Court to provide medical records in relation to a person who lacks capacity.

2. Other considerations:

- A.** The release of records is subject to the exemptions within the Data Protection Act 1998.
- B.** Staff dealing with a subject access request for notes of a patient who lacks capacity must only release information where it is in the best interests of the patient to do so.
- C.** They must only release as much information as is necessary to ensure that the decision can be made.
- D.** In dealing with the subject access request the following check list is recommended by the Code of Practice:
 - Does the PCT have the information?
 - Is the PCT satisfied that the person concerned lacks capacity to agree to disclosure?
 - Does the person requesting the information have any formal authority to act on behalf of the person who lacks capacity?
 - Is the PCT satisfied that the person making the request:
 - Is acting in the best interests of the person concerned?
 - Needs the information to act properly?
 - Will respect confidentiality?
 - Will keep the information for no longer than necessary?

This policy only applies to subject access requests and does not affect any arrangements between organisations for the sharing of information when working in the best interests of a patient who lacks capacity.

3. The Act and Code of Practice generally encourages sharing of information where a health professional is consulting relevant people when working out the best interests of a patient lacking capacity. Again, this is subject to the requirements of only releasing such information as is strictly necessary to permit a decision to be made and that the wishes and feelings of the patient are taken into account.