

Doc level: Trustwide
Code ref: 7.02

Access to Health Employee Records Policy

Lead executive	Director of Finance
Authors details	Health Records & Information Governance Manager

Type of document	Policy
Target audience	All Trust staff and patients
Document purpose	This policy details how North Staffordshire Combined Healthcare NHS Trust will meet its legal obligations under Data Protection legislation and NHS requirements concerning individual's right to access their information.

Approving meeting	PCD Trust Board	Meeting date	10 th September 2018 26 th September 2018
Ratification date	30 th September 2018	Review date	30 th September 2021

Trust documents to be read in conjunction with	
Document code	Document name
7.03	Information Security and Data Protection Policy
7.01	Confidentiality of Patient and Employee Personal Information Policy

Document change history		Version	Date
What is different?	<ul style="list-style-type: none"> – This policy has been revised in line with legislation changes under the Data Protection Law. – It has been renamed from the Access to Health & Employee Records. – The policy has been streamlined as we do not differentiate the procedure between employee and patient subject access requests – Timescales have been amended in line with the new legislation 		
Appendices / electronic forms	–		
What is the impact of change?	<ul style="list-style-type: none"> – Making all staff aware of changes in legislation which impact on individual's rights of access to their information; – Ensuring that the Trust is compliant with its legal requirements under Data Protection and other associated legislation. 		

Training requirements	There are no specific training requirements for this document. Data Protection training is covered under the Data Security Awareness national training tool
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Document consultation	
Directorates	
Corporate services	
External agencies	

Financial resource implications	No
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External references	
1. Data Protection Bill	
2. General Data Protection Regulations (GDPR)	

Monitoring compliance with the processes outlined within this document	Timescales of dealing with subject access requests will be reported and monitored to the Clinical Records & System Design group
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Equality Impact Assessment (EIA) - Initial assessment	Yes/No	Less favourable / More favourable / Mixed impact
Does this document affect one or more group(s) less or more favorably than another (see list)?		
– Age (e.g. consider impact on younger people/ older people)	No	
– Disability (remember to consider physical, mental and sensory impairments)	No	
– Sex/Gender (any particular M/F gender impact; also consider impact on those responsible for childcare)	No	
– Gender identity and gender reassignment (i.e. impact on people who identify as trans, non-binary or gender fluid)	No	
– Race / ethnicity / ethnic communities / cultural groups (include those with foreign language needs, including European countries, Roma/travelling communities)	No	
– Pregnancy and maternity, including adoption (i.e. impact during pregnancy and the 12 months after; including for both heterosexual and same sex couples)	No	
– Sexual Orientation (impact on people who identify as lesbian, gay or bi – whether stated as ‘out’ or not)	No	
– Marriage and/or Civil Partnership (including heterosexual and same sex marriage)	No	
– Religion and/or Belief (includes those with religion and /or belief and those with none)	No	
– Other equality groups? (may include groups like those living in poverty, sex workers, asylum seekers, people	No	

with substance misuse issues, prison and (ex) offending population, Roma/travelling communities, looked after children, local authority care leavers, and any other groups who may be disadvantaged in some way, who may or may not be part of the groups above equality groups)		
If you answered yes to any of the above, please provide details below, including evidence supporting differential experience or impact.		
Enter details here if applicable		
If you have identified potential negative impact: - Can this impact be avoided? - What alternatives are there to achieving the document without the impact? Can the impact be reduced by taking different action?		
Enter details here if applicable		
Do any differences identified above amount to discrimination and the potential for adverse impact in this policy?	No	
If YES could it still be justifiable e.g. on grounds of promoting equality of opportunity for one group? Or any other reason	N/A	
Enter details here if applicable		
Where an adverse, negative or potentially discriminatory impact on one or more equality groups has been identified above, a full EIA should be undertaken. Please refer this to the Diversity and Inclusion Lead, together with any suggestions as to the action required to avoid or reduce this impact. For advice in relation to any aspect of completing the EIA assessment, please contact the Diversity and Inclusion Lead at Diversity@northstaffs.nhs.uk		
Was a full impact assessment required?	No	
What is the level of impact?	Low	

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1. Introduction

This policy outlines how North Staffordshire Combined Healthcare NHS Trust will meet its legal obligations and NHS requirements concerning individual's access to their information. The requirements within this policy are based upon the current Data Protection legislation and Access to Health Records Act, as they are the key pieces of legislation covering rights to personal information, although other relevant legislation and guidance may be referenced. The legislations listed below also refer to issues of security of personal confidential data:-

- Freedom of Information Act 2000
- Regulation of Investigatory Powers Act 2000
- Crime and Disorder Act 1998
- Computer Misuse Act 1990
- Criminal Justice and Immigration Act 2008
- Health and Social Care Act 2012

Where individuals are applying for access to a deceased person's records the Access to Health Records Act 1990 will be followed.

2. Definitions

- Personal Data means any information relating to an identifiable living person who can be identified, directly or indirectly.
- Data Subject is defined as a living individual who is the subject of personal data.
- Health record is a record which consists of information relating to the physical or mental health or conditions of an individual and has been made by or on behalf of a health professional in connection with the care of that individual.
- Employee record contains personal data which relates to a living individual who can be identified from that data and which is recorded as part of a relevant filing system.
- Filing system means any structured set of personal data which are accessible according to specific criteria, whether centralised, decentralised or dispersed on a functional or geographical basis.

3. Entitlement Rights

The data subject's rights give entitlement to:

- Be informed whether personal data concerning them is being processed, and where that is the case, access to the personal data
- Data subjects have a right to access all records relating to them, regardless of the age of the record, if the data is held by the Trust then it is accessible

- Access to the records will be provided to the applicant within one calendar month of receipt. This can be extended by a further two months where requests are complex or numerous. If this is the case, the data subject must be informed within one month of the receipt of the request and explain why the extension is necessary.
- The Trust will ensure that staff have the necessary training to ensure that they understand the nature and existence of the data subjects rights
- Right to rectification, if the data subject feels that information recorded on their record is incorrect; they should first make an informal approach to the author concerned to discuss the situation in an attempt to have the records amended. Where both parties agree that information is factually inaccurate it should be amended to clearly display the correction whilst ensuring that the original information is legible. An explanation for the correction should also be added. Where the author and data subject disagree about the accuracy of the entry, the Department of Health recommends that the Trust should allow the data subject to include a statement within their record to the effect that they disagree with the content.
- An individual has the right to refer their case direct to the Information Commissioner to assess whether the legal requirements of Data Protection legislation have been met.

The Information Commissioner can be contact at:

Address: Wycliffe House Water Lane Wilmslow Cheshire SK9 5AF	Telephone:	0303 123 1113
	Website:	www.ico.org.uk

4. Exemptions to Access rights

Exemptions to data subject's access rights under Data Protection legislation include:

- Information which relates to or identifies a third party – Where disclosing the personal data would reveal information which relates to and identifies another person (e.g. information provided by a relative – unless that person has consented to the disclosure). These provisions do not apply where the person to be identified is a health or other professional who has either compiled or contributed to the record.
- In the case of personal data consisting of information about the physical or mental health or condition of an individual (i.e. health records) Data Protection legislation provides exemptions from the subject access rights in 2 situations:
 - **Disclosure could cause serious harm to the physical or mental health or condition of the data subject or any other person** – Where permitting access to the data would be likely to cause serious harm to the physical or mental health or condition of the data subject or any other person.
 - **Third Party application** - Where the request for access is made by another person on behalf of the data subject, such as a parent for a child, access can be refused if the person to whom the information relates has either:

- Provided the information in the expectation it would not be disclosed to the applicant or had indicated it should not be so disclosed;
- If the data was obtained as a result of any examination or investigation to which the individual consented on the basis that information would not be disclosed.

5. Determining whether exemptions apply

- 5.1** As part of processing an application for access to a record, the author of the record will be asked whether they believe that providing access would cause distress or serious harm to the applicant or to a third party mentioned in the record.
- 5.2** Where the application for access to a record is from a third party, the author of the record will be asked whether the individual to whom the record relates gave that information in the expectation that it would not be disclosed.
- 5.3** Where the record being accessed has entries from numerous authors and therefore it would not be feasible to obtain authorisation from all authors, the relevant lead clinician/manager will be asked to provide the opinion on behalf of their colleagues on whether the exemptions to access rights apply.

6. Records relating to deceased patients

- 6.1** The Access to Health Records Act 1990 remains in force for records of the deceased. The duty of confidentiality survives death. The Act makes provision that an application for access to a health record, or to any part of a health record of a deceased person, may be made by:
- The patient's personal representative or
 - Any person who may have a claim arising out of the patient's death, unless the record includes a note, made at the patient's request that they did not wish access to be given on such an application.
- 6.2** The personal representative is the only person who has an unqualified right of access to a deceased patient's record and need give no reason for applying for access to a record. Individuals other than the personal representative have a legal right of access under the Act only where they can establish a claim arising from a patient's death.
- 6.3** There is less clarity regarding which individuals may have a claim arising out of the patient's death. Whilst this is accepted to encompass those with a financial claim, determining who these individuals are and whether there are any other types of claim is not straightforward. The decision as to whether a claim actually exists lies with the Trust. In cases where it is not clear whether a claim arises the Trust will seek legal advice.
- 6.4** Where an application is being made on the basis of a claim arising from the deceased's death, applicants must provide evidence to support their claim. Personal representatives will also need to provide evidence of identity.
- 6.5** When one or more of the deceased's relatives ask for access to the record, but other relatives oppose the application, the Trust cannot refuse access to the records to any

person entitled to see them. It is good practice to ask those who are asking for access if the application is in accordance with the wishes of other interested parties.

7. Records relating to young people

7.1 Young people aged 16 or 17 are regarded as adults for the purposes of consent to treatment and are therefore entitled to the same duty of confidence as adults. Access to their records should not be provided to a third party, including those with parental responsibility, without the consent of the young person to whom the record relates.

7.2 Children under 16 who have the capacity and understanding to take decisions about their own treatment are entitled also to decide whether personal information may be passed on and generally to have their confidence respected. In assessing capacity clinicians must follow a process consistent with legal requirements and record this process clearly in the notes. For children under 16 where the capacity and understanding mentioned previously do not exist, then access to the record will normally be provided to a person having parental responsibility for the child. There may be occasions where the professional view is that providing access to the parent may not be in the best interests of the child. Under such circumstances, advice should be sought from the Trust Legal Manager.

7.3 There may be occasions where the consent of the child is withheld but that the clinical opinion is that the information should be shared with the parents. In such cases, it will be essential to demonstrate the justification for providing the information to the third party and that the decision to grant access is documented in the child's record.

8. Requests for access from third parties

The data protection legislation provides access rights only for the individual to whom the record relates. The person to whom the record relates can authorise another person to make an application of their behalf. Any application for access to a record by a third party will only be processed if the necessary valid consent of the individual to whom the record relates has been provided.

9. Capacity to give valid consent for third party access

9.1 As the law stands, nobody is empowered to give consent on behalf of an adult. However, if a person is unable to give valid consent due to their mental or physical condition, decisions to provide access will in practice usually be made:

- **For patients:** By the senior health professional concerned
- **For employees:** By the Head of Department/Senior Manager.

Such decisions will be made taking into account the person's best interests and the views of relatives, carers and employees.

9.2 Where incapacity to consent exists, access to an individual's records by a third party should only be given to a person with a Lasting Power of Attorney, or who has been appointed Receiver, or on a direction of the court itself. Where a request for access is submitted by a person acting in a Receiver capacity, the Trust will seek to determine the purpose of the access request.

9.3 An earlier refusal to particular information being passed on, given while a person had the capacity to decide, would, unless there are overriding considerations to the contrary, be regarded as decisive in circumstances similar to those envisaged by the individual to whom the information relates

10. Requests for access from Solicitors

A request for records, particularly from a solicitor, can be the earliest indication of a potential claim against the organisation. Access to the records will be provided to the applicant within one calendar month of receipt, this can be extended by a further two months where the request is complex or where there are numerous requests. If this is the case, the data subject must be contacted within one month of the receipt of the request and explain why the extension is necessary. It is essential that any department in receipt of a request for records from a solicitor should forward immediately to the relevant person:-

- All subject access requests – Access to Health Records Administrator

The relevant person to deal with the request should ascertain whether the applicant is contemplating legal action against the Trust. The procedure for Handling Claims against the Trust (policy 4.8) must be followed. If the request does involve legal action against the Trust then the Trust's Legal Manager must be notified.

11. Requests for access to records held by other NHS organisations

If records including notes from other NHS Trusts are contained within the North Staffordshire Combined Healthcare record and the applicant wishes access to this information, the applicant must make a separate application to the relevant organisation.

12. Charges associated with subject access requests

The Trust will provide a copy of the personal data with no charge. For any further copies requested by the data subject the Trust may charge a reasonable fee based on administrative costs.

13. Request is manifestly unfounded or excessive

Where requests are manifestly unfounded or excessive, in particular because they are repetitive you can:

- Charge a reasonable fee taking into account the administrative costs of providing the information; or
- Refuse to respond

Where you refuse to respond to a request, you must explain why to the individual, informing them of their right to complain.

14. How information should be provided

The identity of the person making the request must be verified using reasonable means.

If the request is made electronically the Trust should provide the information in a commonly used electronic format. The applicant must be asked in what media they would like the information provided.

15. Roles and responsibilities

15.1 Caldicott Guardian – will support the work to enable effective processing of subject access requests and will advise on options for lawful and ethical processing of information.

15.2 Access to Health Records Administrator – will be responsible for:

- Receiving and logging all subject access requests
- Process health record requests or
- Forward employee or ex-employee subject access requests to the relevant manager for them to process in line with the requirements of this policy and supporting procedure.
- Ensure they are familiar with the requirements of the Data Protection legislation
- Maintain a database of subject access requests
- Report to the Clinical Records & Systems Design Group on a regular basis the number and status of subject access requests.

15.3 All Staff – should ensure that:

- They are aware of their responsibility to support subject access requests and where in the organisation such requests are ultimately handled
- Comply with this subject access request policy and procedures
- Personal confidential data and records relating to individuals are kept secure, accurate, relevant and up to date.

14. Process for applicants who are dissatisfied with the processing of their request

Applicants have the right to refer their case direct to the Information Commissioner as per section 3 of this policy. Individuals may also apply to the Court if they believe that the Trust has breached the requirements of the Data Protection Law.

It is the Trust's aim, however, that it will do all it can to resolve any dissatisfaction an applicant may have with the processing of their application, locally as a first stage rather than the applicant referring direct to the Information Commissioner or the Court. There are two options that a dissatisfied applicant can pursue internally with the Trust.

- Refer their case in writing to the Chief Executive who will nominate a suitable senior clinician/manager to undertake a review of the case
- Pursue their case via the Trust's complaint procedure

Section Two

Procedure for making a subject access requests

A request for access must be made in writing or the applicant can complete the electronic request form on the Trust website. If a person makes an informal request to a member of staff then the member of staff should provide the person with a subject access request application form (appendix 1), refer them to the electronic form available on the Trust website or to contact the Information Governance Team.

Section three

Procedure for responding to a subject access request

1. Within 48 hours of receipt of the written request the Access to Health Records Administrator, will send a letter of acknowledgement to the applicant. (appendix 2)
2. On receipt of a completed subject access request the Access to Health Records Administrator will:
 - Verify that the person submitting the application is the person to whom the record relates (or the third party is authorised by the person to whom the record relates).
 - Log the receipt of the application to monitor the timescales
 - For health record requests contact the lead clinician to determine whether any exemptions to access rights apply
 - For employee records forward the application to the appropriate manager for them to process the request in line with this policy. The manager must confirm back to the Access to Health Records Administrator when the information has been supplied, so they can update the log and record the timescales that have been met in dealing with the request
3. Check if there is any information within the record that identifies a third party. Where an individual seeks access to a record which includes information about others as well as information about themselves there are two equally legitimate but conflicting interests which come into play. Firstly there is the interest of the subject having a full and transparent picture of the information which applies to them and the interests of the other party who features in the record in maintaining their privacy. In determining that balance it will be important to consider what the person to whom the record relates is likely to know, or will be able to ascertain. Where third party information is identified within the record, obtain the necessary consent for disclosure from the third party.
4. Where all the above have been satisfactorily determined and it is deemed that no exemptions apply and formal approval has been provided and recorded the Access to Health Records Administrator will obtain the health record relevant to the applicant and provide a copy in an appropriate media. For employee records the appropriate manager will obtain all the relevant records and provide a copy in an appropriate media to the applicant.

5. Having received access to their record, the applicant will be requested to sign the acknowledgement form (appendix 3) and once signed this should be filed in the applicants' record together with the completed application form and any other related correspondence associated with the access request.
6. Where grounds for refusal of access to the record have been identified the Access to Health Records Administrator will write to the applicant in relation to a health record request or the appropriate manager for an employee request giving a full explanation as to the reason/s of the refusal (appendix 4). The letter of refusal must be filed on the file relating to the person on the application.
7. If access to the record cannot be provided with the 1 calendar month timescale due to complexity of the request, then the Access to Health Records Administrator for patient requests or the appropriate manager of employee records must write to the applicant within the 1 calendar month timescale giving a full explanation of the reasons for the delay and provide an indication of when they can expect access to the record. The applicant must be kept up to date with any delays.
8. Viewing of records – on occasions applicants wish to view a record with a member of staff rather than have copies. In these circumstances it is the responsibility of the care co-ordinator/lead clinician for patient records or the appropriate manager for employee records, to sit with the applicant at a mutually convenient time and place, notified in writing to the applicant. This person will chaperone the viewing of the record and is not expected to be knowledgeable about the contents of the record. If during the inspection of the record the applicant raises any queries on the contents of the record, then a note of the queries



North Staffordshire Combined Healthcare

NHS Trust

Application form for a Subject Access Request

Details of the Applicant			
Name		Title (e.g. Mr, Mrs etc.)	
Address			
Telephone Number			
E-mail address			
Details of whom the record relates (if different from above)			
Name			
Address			
Date of Birth		NHS number for patient request	
		Employee number for staff request	
Relationship of applicant to the person whom the record relates			
Do you have the written consent of the person to whom the record relates for access?	Yes <input type="checkbox"/> (please attach original written consent)	No <input type="checkbox"/> (please provide a reason why you do not have consent below)	
Have you made a previous request to access this record?	Yes <input type="checkbox"/> If yes when was the request made:	No <input type="checkbox"/>	
Details of the record(s) you wish to have access to			
It will make it easier and speedier if you could provide some details of the records you wish to have access to:			
Details of the type of access required			

View record only <input type="checkbox"/>	Copy of record <input type="checkbox"/>	If you require a copy please state preferred format e.g. (paper copies, memory stick, electronic e-mail etc.)
Reason for requesting access to the record (optional)		
Any additional information that you may wish to provide		
Signed:	Date:	

Please return the completed form to: The Information Governance Team, Health Records Department, Lawton House, Bellringer Road, Trentham, Stoke-On-Trent, ST4 8HH.

Appendix 2

Example of acknowledgement of receipt for a subject access request application

I am writing to acknowledge receipt of your application for access to your personal information.

The Trust is committed to provide you with access to your records without undue delay.

Under Data Protection legislation we have a statutory requirement to provide access to your record within 1 calendar month, this can be extended by a further month if your application is multiple or complex. We will contact you within the first month if there is going to be a delay and provide a full explanation as to the reason for any delay.

The Trust will write to you again once your information is available to arrange appropriate access to the information.

If you have any queries please do not hesitate to contact me.

Yours sincerely

Author signature

Appendix 3



Acknowledgement of access to the information

Please read and sign this form to confirm that you have been given access to the information requested.

Details of the applicant			
Name		Title (e.g. Mr, Mrs etc.)	
Address			
Telephone Number			
E-mail address			
Details of the person to whom the record relates (if different from the applicant)			
Name		Title (e.g. Mr, Mrs etc.)	
Address			
Date of Birth		NHS number for patient requests	
		Employee number of staff requests	
Details of access provided			
Date access provided			
Details of records provided			
Format of how records have been provided (e.g. viewed, paper copies, memory stick)			
Signed		Date	

Please return the signed form to: Information Governance Team, Health Records Department, Lawton House, Bellringer Road, Trentham, Stoke-On-Trent, ST4 8HH.

Appendix 4

Example letter of refusal to grant access to a full or part of a record due to exemptions under Data Protection legislation

Dear

Further to your recent application for access to your personal information held by the Trust, I confirm that the relevant professional/Trust manager* has been contacted as part of the application process and requested to provide their opinion on whether any exemptions to access rights apply under the Data Protection legislation.

I am writing to advise you that it is the opinion of **(enter relevant name)** that access to your information should be refused for the following reasons:

(Give reasons)

I hope that having considered the reason(s) for refusal of access given above, you understand why such a decision has been taken. If, however you are dissatisfied with the explanation given, then there are a number of options open to you in pursuing your application further.

You have the right to refer your case direct to the Information Commissioner who is an independent officer who reports directly to Parliament. The Commissioner will investigate your case and write to you direct with the outcome. Their contact details are:

Information Commissioners Office, Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF, Telephone number 0303 123 1113, Website: www.ico.org.uk

It is the Trust's aim, however, to do all it can to resolve your concerns locally before you feel it is necessary to refer your case to the Information Commissioner. There are two options open to you to pursue your concerns with the Trust:

- Refer your case in writing to the Chief Executive, Lawton House, Bellringer Road, Trentham, Stoke-On-Trent, ST4 8HH, who will nominate an appropriate senior clinician/manager to undertake a review of your case.
- **Pursue your case via the Trust's formal complaints procedure – an information leaflet is attached to this letter.
- **Pursue your case via the Trust's Grievance Procedure (Policy No. 3.2)

Please do not hesitate to contact me if you require any further information or clarification on any of the points which I have covered in this letter.

Yours sincerely

Author signature

*Delete as appropriate

**This letter will need to be tailored as appropriate for employee or patient