

Subject Access / Access to Health Records Policy

Policy Number	IG/PoI/011
Target Audience	All Staff including Bank, Temporary and Contractors
Approving Committee	Policy Approval Group
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Policy Author	Head of Information Governance
Version Number	1

Applicable Statutory, Legal or National Best Practice Requirements	Regulation (EU) 2016/679 [EU General Data Protection Regulations] Department of Health (2010) Guidance for Access to Health Records Request
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The Trust is committed to an environment that promotes equality, embraces diversity and respects human rights both within our workforce and in service delivery. This document should be implemented with due regard to this commitment.

This document can only be considered valid when viewed via the Trust's intranet. If this document is printed into hard copy or saved to another location, you must check that the version number on your copy matches that of the one online.

Version Control Sheet

Version	Date	Reviewed By	Comment
0.1	February 2018	Jan McCartney	New document combining IG/Pol/008 and IG/Proc/002
0.2	February 2018	Jan McCartney	Comments received and amended
0.3	11/4/18	Jan McCartney	Comments received and amended
0.4	May 2018	Policy Approval Group	Approved subject to amendments and chair approval
0.5	May 2018	S. Edwards	Statutory box updated
1	May 2018	S. Arkwright	Approved by chair action

Equality Impact Assessment completed	By: Jackie McKay	Date: April 2018
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1 Introduction

Bridgewater Community Healthcare NHS Foundation Trust (the Trust) as Data Controller processes personal data about patients (health records) and staff. It also holds records of deceased patients. Such persons are entitled to certain rights under the Data Protection Act and General Data Protection Regulation (GDPR) to view and / or obtain a copy of all personal data that the Data Controller holds about them.

Requests for information relating to living individuals are known as Subject Access Requests (SARs) and requests for information related to deceased persons are made under the Access to Health Records 1988.

1.1 Objective

The purpose of this policy is to set out how the Trust will support the exercise of the rights of access and ensure that staff are aware of their responsibilities in recognising, handling and processing SARs and requests for records of deceased persons.

1.2 Scope

This policy applies to all requests received from patients and staff for access to personal data which the Trust holds about them regardless of the format in which that data is held in. It also applies to requests received from others for access to personal data of the deceased.

2 Definitions

The definitions applicable to this policy are as follows:

Health Records	<p>A health record is a record consisting of information relating to the physical or mental health or condition of an identified individual made by or on behalf of a health professional in connection with the care of that individual.</p> <p>A Health Record may be recorded in computerised or manual form or in a combination of both. It may include hand written clinical notes, letters, laboratory reports, radiography and other images i.e. Xrays, photographs, videos and tape recordings.</p>
The Data Subject	An individual who is the subject of the information (service user or staff member).
The Data Controller	A person (organisation) who determines the purposes for which and the manner in which personal data, is processed
Subject Access Rights	The right of the Data Subject to have access to their own personal data.

3 rd Party	A person identified in the health record other than the data subject or a health professional.
Service users Personal Representative	Defined as the executor or administrator of the deceased estate.
Caldicott Guardian	A Caldicott Guardian is a senior person responsible for protecting the confidentiality of people's health and care information and making sure it is used properly. All NHS organisations and local authorities which provide social services must have a Caldicott Guardian.
Statutory Gateway	Permits disclosure of information
Access to Health Records Act 1990	The Act that provides rights of access to deceased person's health records in certain circumstances.
General Data Protection Regulation (GDPR)	GDPR is a regulation by which the European Parliament, the Council of the European Union and the European Commission intend to strengthen and unify data protection for all individuals within the European Union (EU). It also addresses the export of personal data outside the EU. The GDPR aims primarily to give control back to individuals over their personal data.
Freedom of Information Act 2000	An Act to make provision for the disclosure of information held by Public Authorities.
Access To Medical Reports Act 1988	An Act to make provision for the individual to access medical reports written by a health professional for the provision of a service.
Non Health Records	This could be a Human Resource (HR) record.
Parental Responsibility	Parental responsibility is defined in the Children Act 1998 as 'all the rights, duties, powers, responsibilities and authority which by law a parent of a child has in relation to the child and his property.' A person with parental responsibility is defined in law and by reference to the circumstances of each child and any legal proceedings or lawful processes affecting persons who may be in a parent role for that child.
Personal Data	Data which relate to a living individual who can be identified from those data, or from those data and other information which is in the possession of, or is likely to come into the possession of the data controller.

3 Abbreviations

The abbreviations applicable to this policy are as follows:

SAR	Subject Access Request
GDPR	General Data Protection Regulation
FOI	Freedom of Information Act
HR	Human Resources
ICT	Information and Communication Technology
IG	Information Governance
SIRO	Senior Information Risk Owner
ID	Identification
ICO	Information Commissioners Office
AHRA	Access to Health Records Act

4 Other Relevant Procedural Documents

This policy should be read in conjunction with the following documents:

- Safe Haven Policy
- Information Governance Policy
- Data Protection Policy
- Freedom of Information and Environment Information Regulations Policy
- Information Governance Policy
- Health Records Policy
- Acceptable use (IT) Policy

5 Roles and Responsibilities

5.1 Chief Executive

The Chief Executive as the Accountable Officer has ultimate responsibility for this policy and ensures that the Trust complies with Government Legislation and with its responsibilities as a Data Controller under the GDPR.

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5.2 Caldicott Guardian

The Trust Caldicott Guardian is responsible for the confidentiality of person identifiable information as designated in the Caldicott Report and for the Information Governance agenda which incorporates Data Protection legislation. In the Trust this role is held by the Medical Director.

5.3 Head of Information Governance

The Head of Information Governance is responsible for ensuring that this policy and the processes to ensure compliance are in place. They provide the Trust with IG expertise and will support the Caldicott Guardian and SIRO with the management of risk and identified or potential threats to person identifiable information.

5.4 Service Managers

Service Managers will monitor compliance with IG standards within their work areas to ensure the culture of IG is embedded within their teams. They will actively seek guidance from and provide feedback to the IG team.

Identified incidents or risks within their department will be reported through the Trust incident reporting procedures and they will fully cooperate with any subsequent investigation. Service Managers will ensure that staff are allowed time to participate in and complete designated mandatory IG training.

5.5 All Staff

It is the responsibility of all staff to adhere to this policy. Instruction and direction will be provided via a number of sources, including:

- Annual mandatory training
- Policies and procedures
- Staff bulletin
- Team brief
- Team meetings and via line manager
- Intranet
- Corporate emails.

Staff must also ensure they use the IT systems appropriately and adhere to the Acceptable use (IT) Policy.

The IG Staff Handbook provides a brief introduction to Information Governance and summaries of the key user obligations that support this policy. The Handbook is available on the Trust intranet (the Hub).

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6 Equipment List

Not applicable.

7 Subject Access including Access to Health Records

7.1 Subject Access Request – Living Individuals

The Trust will accept written requests, including e-mail, from a data subject in the provision of subject access to health records or non-health records. The Trust will make a standard access form available on the Bridgewater website to the public to assist service users and on the Trust Intranet “The Hub” for staff. However, the data subject is not obliged to use the form. A request is stored in the record.

Receipt of a subject access request should be acknowledged within two working days of the request being received. The request will be acknowledged in the format received.

The Trust will require applicants to provide proof of identity prior to access, unless the individual picks the records up in person and their identification can be verified without identification (ID). Where an application is made on behalf of another service user, the Trust will confirm that the consent of the individual had been obtained prior to release.

Where an individual has not specified the information that they require the Trust may ask the applicant to provide further information to refine the request.

Where an access request has previously been met and a subsequent identical or similar request is received, the Trust will assess if a reasonable time interval has elapsed before providing the information. This will vary depending on the type and frequency of contacts made with the data subject. Further advice can be obtained from the IG team.

The Trust can refuse to provide information where doing so would involve disproportionate effort. Difficulties throughout the process (from finding, analysing and providing the data) can be taken into account.

However, the Trust must be able to show that they have taken all reasonable steps to comply with the request and, as the ICO Code notes, “*should be prepared to make extensive efforts to find and retrieve the requested information.*”

7.2 Provision of Copies/Viewing Health Records

The Trust will require the health professional to consider the following prior to releasing copies of or viewing of health records:

- Any serious harm to the physical or mental health or condition of the patient or any other person

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- The consent of any third party where the content relates to that third party who is not a health professional
- If it is reasonable to disclose without the consent of a third party.

7.3 Medical Terminology

The service will where required make provision for a health care professional to respond to questions relating to any medical terminology in the health record during viewing or following release of copies.

The service may provide a designated lay administrator to oversee the viewing of a health record where a health professional is not required.

7.4 Access to Health Records – Deceased Individuals

Access to Health Records Act 1990 (AHRA) regulates the processing, including the disclosure, of information about identifiable individuals that are deceased.

The Act states that only two groups of people may access the patient’s health records:

- The patient’s representative (executor or administrator of the estate)
- Anyone with a claim arising out of the patient’s death.

In order to show that the applicant has been appointed as the personal representative the Trust will ask for a copy of the Grant of Probate or Letters of Administration. A note will be made on the record stating these documents have been viewed, but there is no requirement to keep a copy of them and they should be confidentially destroyed.

The personal representative need not give a reason for applying for access to a record. However, disclosure to a personal representative is prohibited if there is a statement in the patient’s records that they do not wish disclosure to be made to that person.

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. Their right is restricted to information “relevant to the claim”.

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 record holder. In cases where it is not clear whether a claim arises the Trust will seek legal advice.

7.5 Access to Children Records

Even if a child is too young to understand the implications of subject access rights, data about them is still their personal data and does not belong to anyone else, such as a parent or guardian. In the case of young children these rights are likely to be exercised by those with parental responsibility for them.

Where an adult requests a child's data, proof of parental responsibility will be required. A note will be made on the record stating these documents have been viewed, but there is no requirement to keep a copy of them and they should be confidentially destroyed.

The Trust considers that a person with parental responsibility is able to apply for access to their child's healthcare record where a health professional has made due regard to the duty of confidence owed to the child before disclosure.

The Trust acknowledges that the law regards young people aged 16 or 17 to be adults in respect to their rights to confidentiality. The Trust will pay due regard to children under the age of 16 who have the capacity and understanding to take decisions about their own treatment and access to records.

7.6 Information Provided to Other Organisations

Where the Trust has legitimately shared identifiable information with other NHS organisations and that organisation maintains its own records the Trust considers that subject access requests should be made directly to that organisation.

Where a Trust employee legitimately accesses and enters information into another organisations system subject access requests relating to that information will be referred to that organisation.

7.7 Application by Solicitors, Insurances Companies or Attorney

Where a legal, financial or other professional or company requests access on behalf of a client they are representing they must provide the signed consent of their client. The request will be dealt with in the same way as if it had come direct from the requestor or nominated person.

We will rely on the legal representative or insurance company to obtain proof of identity of their client. The Data Subject's signed consent will be required.

If there is a reasonable doubt about the validity of the consent, the request will not be processed until the Trust is satisfied that it is a valid request. Further advice can be obtained from the IG team.

Where a request is made by a person acting under a Power of Attorney a copy of the signed and valid document creating the power will be required.

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7.8 Disclosures in Absence of a Statutory Requirement

The Trust will consider applications for access where there is no statutory requirement to comply on a case by case basis and with due consideration to the rights of the data subject. The Trust recognises that in all cases the public interest in disclosure must outweigh the duty of confidentiality owed to the deceased before any disclosure is approved.

7.9 Timeframe for compliance

The Trust will comply with subject access requests following the GDPR Principles of recommendation of one calendar month. The Trust will inform applicants of any refusal to comply with requests as soon as is possible within the given timeframe.

7.10 Request Log

The service will maintain a secure log of all subject access requests for health records and non-health records to make provision for corporate monitoring reports.

7.11 Amendments to Health Records

The Trust recognises that an opinion or judgment recorded by a health professional, whether accurate or not, should not be deleted from a medical record.

Where a data subject requests amendments to information in health records a health professional will be consulted. Amendments will be made where both parties agree but the original information will be left visible. An explanation will be added to the record with the date time and signature of the person authorising the amendment.

Where a health professional considers disputed information to be accurate the Trust will ensure that a note recording the service users disagreement be added to the record.

Information may only be deleted from a health record with the express permission of the Caldicott Guardian.

7.12 Service Users Living Abroad

The Trust will provide previous service users who have left the UK, with rights of access under GDPR where the records of treatment are still held by the organisation.

The Trust will not provide original health records for transfer abroad. A copy or summary of treatment will be provided upon request. If you are asked to transfer personal data outside the UK, please contact the IG team who will provide advice and guidance.

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7.13 Freedom of Information Act 2000

The Trust will consider any requests for information which constitutes personal information to be exempt from disclosure under the Freedom of Information Act 2000 if:

- Disclosure would contravene Data Protection principles
- Where information has been provided in confidence
- Where a duty of confidentiality is owed to the deceased.

7.14 Access to Medical Reports Act 1988

The Trust will consider applications to view insurance or employment Medical Reports with regard to the Access to Medical Reports Act 1988.

7.15 Fees

The Trust will not be able to charge for complying with a request unless the request is 'manifestly unfounded or excessive'. The Trust may charge a reasonable administrative-cost fee if further copies are requested.

Excessive requests: if a request is 'manifestly unfounded or excessive' the Trust can charge a fee or refuse to respond but will need to be able to provide evidence of how the conclusion that the request is manifestly unfounded or excessive was reached.

Electronic access: it must be possible to make requests electronically (e.g. by email). Where a request is made electronically, the information should be provided in a commonly-used electronic form, unless otherwise requested by the individual.

8 Consultation

Key individuals/groups involved in the development of the document to ensure it is fit for purpose once approved.

Name	Designation
Information Governance	Information Governance Sub Group
Anne Webb	Library and Knowledge Services Manager
Stephen Edwards	Librarian (E-resources)

9 Dissemination and Implementation

9.1 Dissemination

The Head of Information Governance will disseminate this policy to staff via the Trust Intranet (the Hub), global e-mail, team brief and team leaders.

9.2 Implementation

All Trust staff will be made aware of their personal and organisational responsibilities regarding health records, through the Trust health records training program, and local induction and monitoring audits.

New employees will be made aware of this policy through the Induction process.

10 Process for Monitoring Compliance and Effectiveness

The core aspects outlined within the policy are monitored through the Trusts health record keeping audit program and the clinical audit programme.

Quality of information both for electronic and paper health records are monitored through a suite of reporting channels, both internally and externally to the Trust.

Examples of the monitoring requirements are: relevant IG Toolkit, commissioning requested information both for performance and quality aspects and national and local clinical audits.

11 Standards/Key Performance Indicators

Key Performance Indicator	Evidence Required	Frequency	Committee or responsible person
Information Governance Toolkit	Number of SAR compliant in the time scale	Quarterly	Information Governance Sub Committee

12 References

Access to Health Records Act 1990 c.23 [online]. Available at:
<https://www.legislation.gov.uk/ukpga/1990/23/contents>

Access to Medical Reports Act 1988 c.28 [online] Available at:
<https://www.legislation.gov.uk/ukpga/1988/28/contents>

Department of Health (2010) Guidance for Access to Health Records Requests [online] Available at:
http://webarchive.nationalarchives.gov.uk/20130103005001/http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_112916

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Information Commissioners Office (ICO) (2017) Subject Access Code of Practice version 1.2 [online] Available at: <https://ico.org.uk/media/for-organisations/documents/2014223/subject-access-code-of-practice.pdf>

Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and the free movement of such data [2016] OJ L119, 4.5.2016. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32016R0679>

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