Subject Access Requests Policy

This Policy provides guidance on the processes that are to be followed when dealing with requests for access to personal information under section 7 of the Data Protection Act 1998.

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<th>Key Words:</th>
<th>Access, health records, subject, data, personal, employee, HR files</th>
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<tbody>
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<td>Records &amp; Information Governance Group</td>
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<td>Clinical</td>
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## CONTRIBUTION LIST

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<table>
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Version Control and Summary of Changes

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<tr>
<td>4.0 Draft version 1</td>
<td></td>
<td>Significant changes to extend policy from access requests for health records to include all subject access requests. Appendices amended New checklist added</td>
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**For further information contact:**
Records Transformation and Information Governance Manager Tel: 0116 2950997

**Equality Statement**
Leicestershire Partnership NHS Trust (LPT) aims to design and implement policy documents that meet the diverse needs of our service, population and workforce, ensuring that none are placed at a disadvantage over others.

It takes into account the provisions of the Equality Act 2010 and promotes equal opportunities for all.

This document has been assessed to ensure that no one receives less favourable treatment on the protected characteristics of their age, disability, sex (gender), gender reassignment, sexual orientation, marriage and civil partnership, race, religion or belief, pregnancy and maternity.

In carrying out its functions, LPT must have due regard to the different needs of different protected equality groups in their area.

This applies to all the activities for which LPT is responsible, including policy development and review.
Due Regard
The Trust’s commitment to equality means that this policy has been screened in relation to paying due regard to the Public Sector Equality Duty as set out in the Equality Act 2010 to eliminate unlawful discrimination, harassment, victimisation; advance equality of opportunity and foster good relations.

A due regard review found the activity outlined in the document to be equality neutral because the principles of the Data Protection Act 1998 are universal and all individuals have rights of access under Section 7 of the Data Protection Act – Subject Access.

Core Principles of the NHS Constitution

The NHS will provide a universal service for all based on clinical need, not ability to pay.
The NHS will provide a comprehensive range of services

| Shape its services around the needs and preferences of individual patients, their families and their carers | ✓ |
| Respond to different needs of different sectors of the population | ✓ |
| Work continuously to improve quality services and to minimise errors | ✓ |
| Support and value its staff | ✓ |
| Work together with others to ensure a seamless service for patients | ☐ |
| Help keep people healthy and work to reduce health inequalities | ☐ |
| Respect the confidentiality of individual patients and provide open access to information about services, treatment and performance | ✓ |
### Definitions that apply to this Policy

<table>
<thead>
<tr>
<th>Access</th>
<th>The availability of or permission to consult records.</th>
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<tbody>
<tr>
<td>Caldicott Guardian</td>
<td>Senior person in an NHS organisation responsible for protecting the confidentiality of patient and service-user information and enabling appropriate information-sharing.</td>
</tr>
<tr>
<td>Data Controller</td>
<td>A person who (either alone or jointly or in common with other persons), or organisation that, determines the purposes for which and the manner in which any personal data are, or are to be, processed. Under the provisions of the Data Protection Act 1998, this Trust is a data controller.</td>
</tr>
<tr>
<td>Data Processor</td>
<td>Any person (other than an employee of the Data Controller), or organisation, that processes personal data on behalf of the Data Controller.</td>
</tr>
<tr>
<td>Data Subject</td>
<td>A living individual who is the subject of the personal data.</td>
</tr>
<tr>
<td>Due Regard</td>
<td>Having due regard for advancing equality involves:</td>
</tr>
<tr>
<td></td>
<td>• Removing or minimising disadvantages suffered by people due to their protected characteristics.</td>
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<td></td>
<td>• Taking steps to meet the needs of people from protected groups where these are different from the needs of other people.</td>
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<tr>
<td></td>
<td>• Encouraging people from protected groups to participate in public life or in other activities where their participation is disproportionately low.</td>
</tr>
<tr>
<td>Health Professional</td>
<td>• A registered medical practitioner – also includes any person who is provisionally registered under Sections 15 or 21 of the Medical Act 1983 and is engaged in such employment as is mentioned in subsection (3) of the section.</td>
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<tr>
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<td>• A registered dentist as defined by Section 53(1) of the Dentists Act 1984</td>
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<td>• A registered optician as defined by Section 36(1) of the Opticians Act 1989</td>
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<td>• A registered pharmaceutical chemist as defined by Section 24(1) of the Pharmacy Act 1954 or a registered person as defined by Article 2(2) of the Pharmacy Act (Northern Ireland) Order 1976</td>
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<td></td>
<td>• A registered nurse, midwife or health visitor</td>
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<td>• A registered osteopath as defined by Section 41 of the Osteopaths Act 1994</td>
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<td>• A registered chiropractor as defined by section 43 of the Chiropractors Act 1994</td>
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<td></td>
<td>• Any person who is registered as a member of a profession to which the Professions Supplementary to Medicine Act 1960 for the time being extends</td>
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<tr>
<td></td>
<td>• A clinical psychologist, child psychotherapist or speech therapist</td>
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<tr>
<td></td>
<td>• A music therapist employed by a health service body, and</td>
</tr>
<tr>
<td></td>
<td>• A scientist employed by such a body as a head of department</td>
</tr>
<tr>
<td>Health Record</td>
<td>A record consisting of information about the physical or mental health, or condition, of an individual, made by, or on behalf of, a health professional, in connection with the care of that individual.</td>
</tr>
<tr>
<td><strong>Personal Data</strong></td>
<td>A health record can be computerised and/or manual form. It may include such documentation as handwritten clinical notes, letters to and from health professionals, laboratory reports, X-rays and other imaging records, printouts, photographs, video and audio recordings.</td>
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| **Record** | Data which relate to a living individual who can be identified:  
- from those data, or  
- from those data and other information which is in possession of, or is likely to come into the possession of, the data controller,  
including any expression of opinion about the individual and any indication of the intentions of the data controller or any other person in respect of the individual.  
Recorded information in any format (e.g. digital or physical) of any type, in any location (e.g. central database server, standalone PC, filing cabinet, archive store) which is created, received or maintained by the organisation in the transaction of its activities or the conduct of its affairs, and kept as unique evidence of such an activity. |
| **Redact** | To remove information that is subject to an exemption under legislation such as the Data Protection Act 1998 or the Freedom of Information Act 2000. |
| **Relevant filing system** | Any set of information relating to individuals to the extent that, although the information is not processed by means of equipment operating automatically in response to instructions given for that purpose, the set is structured in such a way that specific information relating to a particular individual is readily accessible. |
| **Third Party Request** | A subject access request from anyone other than the data subject, data controller, or data processor, e.g. solicitor, data subject’s representative acting on their behalf. |
| **Third Party Information** | Information relating to anyone other than the data subject, data controller, or data processor, examples include:  
- A parent may apply for access to their 14 year old child’s health records. The child may have made some reference to his/her parent(s), sibling(s), friends etc (the third party), which is recorded within the health record and that the child does not want disclosing. The clinician may therefore decide to withhold this information from the child’s parent.  
- A son (the third party) visits the doctor because he is concerned about his elderly mother, who is having problems with memory loss and self care. The doctor makes a note in his mother’s health record of the visit. If subsequently, for whatever reason, the mother decides to apply for access to her health records. The doctor may withhold any information within her records leading to the identity of her son’s visit, unless the son gave his consent to do so.  
- An employee makes a request to his/her employer for a copy of his/her human resources file. The file contains information identifying managers and colleagues (third parties) who have contributed to (or are discussed in) that file. |
1.0 Summary
This policy relates to requests for access to all records containing personal information held by the Trust recorded either in manual filing systems that form part of a relevant filing system or in electronic form. Section 7 of the Data Protection Act 1998 gives individuals the right of access, with certain exceptions, to be:

- told whether any personal data is being processed
- given a description of the data, the reasons it is being processed, and whether it will be given to any other organisations or people
- given a copy of the information comprising the data\(^1\), subject to certain exemptions
- given the details of the source of the data (where available).

It is consistent with the Data Protection Act 1998, the Access to Health Records Act 1990, in so far as it relates to the disclosure of health records of deceased patients and the Subject Access code of practice published by the Information Commissioner’s Office (ICO) in August 2013.

It is important that staff understand their responsibilities in relation to the requirements of this legislation and guidance in supporting the Trust’s compliance with its legal obligations.

2.0 Introduction
The Data Protection Act 1998 became effective from 1\(^{st}\) March 2000 and superseded the Data Protection Act 1984 and the Access to Health Records Act 1990. The exception to this is the health records of deceased persons, which are still governed by the Access to Health Records Act 1990.

Written requests for access to personal information, known as Subject Access Requests, are handled under the appropriate legislation and in accordance with the ICO’s Subject Access code of practice.

3.0 Purpose
This policy has been written as guidance for Leicestershire Partnership NHS Trust (LPT) in dealing with both formal (written requests for copies) and informal (requests to view) applications to access personal records to ensure the Trust meets with its legal compliance when managing requests for personal information. It is the preferred option that applications from data subjects to access their own personal records are, wherever possible, dealt with on an informal basis; further guidance for managing informal requests can be found in section 8 of this policy.

The Subject Access Requests Policy and associated procedures will apply to all Leicestershire Partnership NHS Trust (LPT) employees (permanent, temporary and contract staff) and to Non-Executive Directors. Staff working for the Trust must make every effort to comply with this policy.

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\(^1\) Subject access provides a right to see the information contained in the personal data, rather than a right to see the documents that include that information.
4.0 Justification for Document
This policy has been developed to provide guidance for LPT staff to ensure compliance by the Trust in its statutory obligations in meeting the rights of data subjects under section 7 of the Data Protection Act 1998. It has been written in accordance with the ICO’s Subject Access Code of Practice.

5.0 Duties within the Organisation

5.1 Trust Board
The LPT Trust Board has a legal responsibility for Trust policies and for ensuring they are carried out effectively.

5.2 Caldicott Guardian
The Caldicott Guardian is responsible for the strategic management of confidentiality within the organisation and for providing advice on confidentiality issues. The Caldicott Guardian, as guardian of patient data, must approve each new or changed agreement to share personal data with bodies such as acute hospitals, social services, police, prisons and private health care. The Caldicott Guardian is responsible for determining a relevant clinician when needed, as well as providing trained resource for screening records when required.

5.3 Quality and Professional Practice Directorate
The Information Requests Team within the Records Transformation and Information Governance team and the wider Quality and Professional Practice Directorate are responsible for supporting the administration of subject access requests including:

- The provision of advice and guidance for staff across LPT in the handling of subject access requests
- Processing the management of formal subject access requests centrally and in a legally compliant manner
- Ensuring potential problems are escalated in line with the LPT incident reporting procedures
- Ensuring that consent forms and all associated documentation is held securely and confidentially in line with the Records Management and Data Protection Policies.

5.4 Divisional Directors and Heads of Service
Divisional Directors and Heads of Service are responsible for ensuring staff within their area of responsibility are aware of this policy and that they comply with its requirements in relation to both formal and informal requests, ensuring they are dealt with in a legally compliant manner and supporting the Information Requests Team in meeting statutory timescales. Furthermore, it is their responsibility to ensure that the contents of this policy are disseminated and discussed, e.g. at staff meetings, and that possible implications for service delivery are identified and acted upon.
5.5 Managers and Team Leaders
Managers and team leaders are responsible for ensuring that staff within their area of responsibility are informed of the contents of this policy and their requirements within it, to ensure records are screened appropriately and information disclosable under the legislation is clearly identified and provided in a timely fashion.

5.6 Relevant Clinician/Health Professional
The relevant clinician is normally the health professional who is responsible, or was responsible, for the clinical care of the patient during the period to which the subject access request refers. In the case of deceased patients’ records, or when there is no current clinician involved, this should be the health professional that was last involved in the care of the patient. Where this is not possible the Divisional Clinical Director, and ultimately the Caldicott Guardian, will delegate a health professional to undertake this role. The relevant clinician has the following responsibilities:

For third party access requests:
- Assess the capacity of the patient to consent to disclosure of their health records to that third party;
- Check whether the patient has at any time indicated a wish not to give access to all or part of their record

For all requests:
a) Check if any part of the record, if disclosed, is likely to cause serious harm to the physical or mental health of the data subject or any other person;
b) Check if any part of the record discloses information relating to an individual other than the data subject, who can be identified from the entry (unless that person has consented to disclosure, is a health professional involved in the care of the patient, or it is reasonable to assume the person would have no objection to their personal data being disclosed, e.g. LPT manager’s name);
c) To clearly mark for redaction any information identified in a) and/or b) above.
d) To sign off the record as being fit to provide to the requester

5.7 Responsibility of all Employees
All employees, whether permanent, temporary, contract or Non-executive Directors, should be aware of this policy and understand their responsibilities within its requirements.

All staff are responsible for:
- Ensuring records are maintained to the highest standards; that content is complete, accurate, relevant, accessible, contemporaneous and legible, in accordance with Records Management and Record Keeping policies and guidance.
- Maintaining awareness, undertaking training as appropriate, of confidentiality and record keeping standards, including patients’ rights of access to their health records and the implications this has on current record keeping practices.
5.8 Responsibility of Records and Information Governance Sub-group
The Records and Information Governance Sub-group has the responsibility to approve this policy and forward to the relevant committees/board for information, as well as monitoring compliance with this policy.

6.0 Rights of Access
The Data Protection Act 1998 gives individuals the right to be:

- told whether the Trust is holding or processing information about them, told whether any personal data is being processed
- given a description of the data, the reasons it is being processed, and whether it will be given to any other organisations or people
- given a copy of the information comprising the data, subject to certain exemptions
- given the details of the source of the data (where available).

Applicants also have the following rights:

- to be given an explanation of any terms in the records they do not understand, e.g. technical language or terminology
- to ask for correction to be made to inaccurate personal information in the record, and to request a copy of the corrections. This does not apply to clinical opinions they do not agree with, although their objection should be noted, but rather to factual inaccuracies.

An individual other than the data subject does not have the right to access information about that person, unless they are an authorised representative, have parental responsibility, or are acting on behalf of the data subject.

The Trust is not required to respond to requests for accessing health records, unless it is provided with sufficient details to enable the location of information and to satisfy itself as to the identity of the individual making the request and their right to access the information.

Individuals are entitled to apply for access to their personal record as it stands at the time the request was received. However, the information provided in response to the request may take into account any amendment or deletion that was made to the record in the intervening period between the request being received and responded to, which would have been made regardless of the request.

If a patient feels information on their record is incorrect then they should firstly make an informal approach to the health professional responsible for their records to have the records amended. If this is unsuccessful they should make a formal complaint following the normal complaints process.

6.1 Types of Requester

6.1.1 Data Subject

2 subject access provides a right to see the information contained in the personal data, rather than a right to see the documents that contain the information
A data subject, e.g. patient or member of staff, does not need to give a reason for requesting access to their personal data, but they do need to give sufficient information to enable the Trust to locate the records and confirm their identity and also, to pay any fee applicable under the Data Protection (Subject Access) (Fees and Miscellaneous Provisions) Regulations 2000.

6.1.2 A person acting on the data subject's behalf
A person acting on the behalf of the data subject, e.g. a relative, a carer, a solicitor, may apply for a copy of the data subject’s records, but must have obtained informed, explicit and written consent from the data subject, have lasting Power of Attorney, or be an Independent Mental Capacity Advocate (IMCA). Such a request should be dealt with in exactly the same way as a request from the data subject themselves. The applicant should be given access only to the information and explanation that would otherwise have been made available to the data subject.

If there is any doubt as to whether the data subject has the mental capacity to give consent, the Trust must refer to the Mental Capacity Act 2005. The mental capacity assessment and outcome must be recorded. If the data subject is assessed as lacking mental capacity to give consent, the record holder and the Caldicott Guardian must then jointly consider whether:

- Releasing the information would be lawful, seeking legal advice if necessary
- The applicant is acting in the best interests of the data subject

If a decision is taken to release the information, then:

- The reasons leading to the decision must be recorded
  The minimum amount of personal information to satisfy the purpose for which it is being requested should be released

6.1.3 A person with Parental Responsibility for a child
Parental responsibility for a child is defined in the Children Act 1989, amended in the Adoption and Children Act 2002, 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”.

Children under 16 years of age:
When a person with parental responsibility applies for access to the health records of a child under 16 years of age, access will only be granted where:

- The child is deemed capable of understanding what the application is about and consents to it
- The child is not capable of understanding the nature of the application and giving access would be in his/her best interests

The relevant health professional will decide on the child’s capacity to understand the application, seeking legal advice if necessary.

Young people aged 16 and 17 years of age:
The law regards young people aged 16 and 17 to be adults for the purposes of consent to treatment and the right to confidentiality. If they are judged competent to
make a decision about their own medical treatment, then they have the right to deny parental access to their health records.

Good practice dictates that, in the case of children and young people deemed competent, they should be encouraged, but not required, to involve parents or other legal guardians in any treatment or consent.

Any reasons for denying parental access to part or all of a child or young person’s health records must be recorded.

6.1.3.1 Who has parental responsibility (www.gov.uk):

A mother automatically has parental responsibility for her child from birth.

A father usually has parental responsibility if he’s:

- married to the child’s mother, or is listed on the birth certificate (after a certain date, depending on which part of the UK the child was born in)

**Births registered in England and Wales**

If the parents of a child are married when the child is born, or if they’ve jointly adopted a child, both have parental responsibility. They both keep parental responsibility if they later divorce.

**Unmarried parents**

An unmarried father can only get legal responsibility for his child in 1 of 3 ways:

- jointly registering the birth of the child with the mother (from 1 December 2003)
- getting a parental responsibility agreement with the mother
- getting a parental responsibility order from a court

**Births registered in Scotland**

A father has parental responsibility if he’s married to the mother when the child is conceived, or marries her at any point afterwards.

An unmarried father has parental responsibility if he’s named on the child’s birth certificate (from 4 May 2006).

**Births registered in Northern Ireland**

A father has parental responsibility if he’s married to the mother at the time of the child’s birth.

If a father marries the mother after the child’s birth, he has parental responsibility if he lives in Northern Ireland at the time of the marriage.

An unmarried father has parental responsibility if he’s named, or becomes named, on the child’s birth certificate (from 15 April 2002).

**Births registered outside the UK**

If a child is born overseas and comes to live in the UK, parental responsibility depends on the UK country they’re now living in.

**Same-sex parents:**

**Civil partners**
Same-sex partners who were civil partners at the time of the treatment will both have parental responsibility.

**Non-civil partners**

For same-sex partners who aren’t civil partners, the 2nd parent can get parental responsibility by either:

- applying for parental responsibility if a parental agreement was made
- becoming a civil partner of the other parent and making a parental responsibility agreement or jointly registering the birth

### 6.1.4 Individuals other than parents with Parental Responsibility

Individuals other than parents can acquire parental responsibility by:

- **Adoption Order** – this confers full parental responsibility upon adoptive parents and that formerly held by their birth parents is extinguished
- **Appointment of a Guardian (after a parent’s death)** – this gives guardians all the parental responsibility that the parent would have had
- **Residence Order** – parental responsibility is shared with the parent, and is subject to the limitation that the person with the order cannot withhold consent to adoption or appoint a guardian (limitation may not be relevant for the policy)
- **Parental Order** – full and permanent responsibility is conveyed to a married couple of a child born in surrogacy, where at least one member of the couple is the genetic parent

Parental Responsibility is also acquired by local Authorities – and is shared with the parents, using the following orders:

- **Emergency Protection Order**
- **Interim Care Order**
- **Full Care Order**

### 6.1.5 A patient living abroad

When a patient moves abroad, their health records will be retained by the Trust for the recommended period specified in Records Management: NHS Code of Practice, before the record holder reviews them for permanent archival or destruction.

Patients who move outside the UK are not permitted to take their health records with them – however, they are entitled to request a copy of their records, and then take a copy abroad with them. The record holder should provide the patient with a summary of the patient’s treatment to take to their new healthcare professional.

### 6.1.6 Inpatients

If a current inpatient requests access to records, providing the Health Professional has reviewed the information and decided they can be disclosed, the Trust recommends managing this as an informal request, where the patient can view the records providing a member of the medical or nursing team, or a senior manager is present.
6.2 Requests by third party organisations (e.g. Police, Court Order, Pensions and Benefits Office, Research organisations)

Various organisations and agencies are likely to request access to personal information. Unless it is in the vital interests of the data subject or another person and consent cannot be obtained, or there is an overriding public interest or statutory requirement to do so, staff must not share any personal information without the data subject’s consent that is not directly related to the his/her healthcare.

6.2.1 Police

Section 29 of the Data Protection Act 1998 allows (but does not require) personal data to be disclosed to assist in the prevention or detection of crime and the apprehension of prosecution of offenders. Sufficient information must be provided by the Police to enable location of information relevant to the enquiry, disclosure of which will be considered under Data Protection and Caldicott principles to ensure only the minimum amount of information necessary pertaining to the investigation is disclosed.

Where possible the data subject should be asked for their informed, explicit and signed consent to disclose the information, unless this would prejudice the enquiry or court case. Any request by the Police for access to personal information must be accompanied by the relevant Section 29 Form signed by the requesting police officer and countersigned by a senior officer within the requesting police force.

The Crime and Disorder Act 1998 also allows (but does not require) the Trust to disclose information to the police, local authority, probation service, or health authority for the purposes of preventing crime and disorder. For the Trust to consider releasing any information without consent, the access request must relate to a serious crime in line with the Crime and Disorder Act 1998 (e.g. murder, rape, etc), otherwise the Police should be asked to obtain a Court Order or written approved signed consent.

6.2.2 Court and Coroners

A Court may order disclosure of records (e.g. under the Civil Procedure Rules, the Data Protection Act 1998). Unlike a request from a solicitor, a Court Order should be obeyed unless there is a robust justification to challenge it, in which case the Trust, may challenge the order through the Court. The Court’s decision is law, unless the Trust decides to appeal the order and take the case to a higher Court in an attempt to override the Court's decision. Legal advice should always be sought before challenging a Court Order.

Courts and Coroners are entitled to request original records. If they do, copies of the records must be retained by the Trust. Coroners normally give sufficient notice for copies to be made, but they do have the power to seize original records at short notice, e.g. if there has been a sudden death, which may leave little or no time to take copies. Police acting on behalf of the Coroner should explain that they are acting in this capacity and require the original records. However, they will usually offer staff the opportunity to copy the records under their supervision before they remove them and staff should always take this opportunity to do so. A receipt signed by the police officer should be obtained for any evidence, including records, that is removed.
6.2.3 Pensions and Benefits Office
Section 29 of the Data Protection Act 1998 allows (but does not require) personal data to be disclosed to assist in the assessment or collection of any tax or duty. Any request by the Department of Works and Pensions for access to personal information must be accompanied by the relevant form.

6.2.4 Research Organisations
Although research is considered an important factor in the improving of healthcare, the Information Commissioner does not consider it an essential element in the provision of healthcare.

If personal identifiable or pseudonymised information is required, informed, explicit and signed consent must be obtained. Patients and service users are generally aware and supportive of research, but it is not reasonable to assume that they are aware of, or likely to consent to, each and every research subject or proposal.

If it is sufficient for the purposes of the research to use anonymised data, consent is not required, but patients should be informed, e.g. by posters and/or leaflets how their information may be shared.

All research projects require the approval of the local ethics committee, which will determine the format of the data and whether consent is required.

7.0 A flowchart for the processing of requests can be found at Appendix 2

Applications to Access Personal Information – Formal

7.1 General principles
In general the Data Protection Act allows any person to apply for access to information held about them, irrespective of when it was created.

A valid request for access under the Act will:

- Be made in writing (it does not have to be on a specific application form). This includes fax & email with consideration given to the Disability Discrimination Act 1995. If a telephone request is received, an explanation of the process should be given and the applicant either directed to the Trust website for details on how to apply or an application form sent.
- Be received by the organisation, even if not the individual/team responsible for dealing with the request
- Contain sufficient information to identify and locate the information
- Provide proof of identity
- Provide proof of consent, or lawful basis for disclosure
- Be accompanied by a fee, if required

Note: Any **requests that may involve a claim being made against the Trust** should be notified to the claims department.
7.2 Third Party Data
Third party data refers to information relating to anyone other than the data subject, data controller, or data processor.

Any contributory information provided by another source that forms part of the Trust’s records is considered third party information. Whilst the health professional may choose to seek consent from the third party who provided the information it remains their responsibility whether or not to disclose this information. They cannot refuse to disclose personal data about the data subject simply because it was obtained from a third party.

The rules about withholding third party data apply to personal data which includes information about the individual who is the subject of the request, i.e. the data subject, and information about someone else, i.e. the third party.

7.2.1 The basic rule
Responding to a subject access request may involve providing information that relates both to the requester and another individual.

For example: An employee makes a request to his/her employer for a copy of his/her human resources file. The file contains information identifying managers and colleagues who have contributed to (or are discussed in) that file. This will require reconciling the requesting employee’s right of access with the third parties’ rights in respect of their own personal data.

The Data Protection Act 1998 says a data controller does not have to comply with a subject access request if to do so would mean disclosing information about another individual who can be identified from that information, except where:

- the other individual has consented to the disclosure; or
- it is reasonable in all the circumstances to comply with the request without that individual’s consent.

Decisions about disclosing third-party information should be made on a case-by-case basis.

7.2.2 Three-step approach to dealing with information about third parties

Step 1 – Does the request require the disclosure of information that identifies a third party?

Step 2 – Has the third-party individual consented?

Step 3 – Would it be reasonable in all the circumstances to disclose without consent?

Further details can be found in the ICO’s Subject Access code of practice.

7.3 Exemptions and restrictions to access rights
The Data Protection Act 1998 (DPA) recognises that in some circumstances there might be a legitimate reason for not complying with a subject access request, so it provides a number of exemptions (see Appendix 4) from the duty to do so. Certain restrictions (similar to exemptions) are also built into the Act’s subject access provisions. Exemptions and restrictions most relevant to this organisation are:
7.3.1 Confidential references
The DPA distinguishes between references you give and references you receive. References you give are exempt from subject access if you give them in confidence and for the purposes of an individual’s education, training or employment or the provision of a service by them.

There is no such exemption for references you receive from a third party. If a subject access request is received relating to such a reference, the usual principles about subject access must be applied to decide whether to provide some or all of the information contained in the reference.

7.3.2 Publicly available information
If an enactment requires an organisation to make information available to the public, any personal data included in it is exempt from the right of subject access. The exemption only applies to the information that the organisation is required to publish. If it holds additional personal data about an individual, the additional data is not exempt from the right of subject access even if the organisation publishes it.

7.3.3 Crime and taxation
Personal data processed for certain purposes related to crime and taxation is exempt from the right of subject access. These purposes are:

- the prevention or detection of crime;
- the capture or prosecution of offenders; and
- the assessment or collection of tax or duty.

7.3.4 Management information
Personal data that is processed for management forecasting or management planning is exempt from the right of subject access to the extent that complying with a request would be likely to prejudice the business or other activity of the organisation.

7.3.5 Negotiations with the requester
Personal data that consists of a record of your intentions in negotiations with an individual is exempt from the right of subject access to the extent that complying with a request would be likely to prejudice the negotiations.

7.3.6 Legal advice and proceedings
Personal data is also exempt from the right of subject access if it consists of information for which legal professional privilege could be claimed in legal proceedings.

7.3.7 Health Records
The exemptions and restrictions that apply to other types of personal data also apply to personal data included in a health record, such as:

- Disclosing the information could reveal information that identifies a third party. The rules about third party data (see section 6.2) must be considered before disclosure.

In addition, special rules apply to health records where:
• Providing subject access to about an individual’s physical or mental health or condition would be likely to cause serious harm to them or to another person’s physical or mental health or condition. The relevant health professional who is responsible for the clinical care of the individual concerned must be consulted before deciding whether the exemption applies. This requirement to consult does not apply if the individual has already seen or knows about the information concerned.

• The request is made by a third party who has a right to make the request on behalf of the individual, such as the parent of a child or someone appointed to manage the affairs of an individual who lacks capacity, and the individual has made clear they do not want it disclosed to that third party.

• Deceased Persons Health records:
  The request is made by a third party who has a right to make the request, and the individual has made clear prior to their death that they do not want the information disclosed to that third party.

7.4 Repeat of earlier request
The Data Protection Act does not limit the number of subject access requests an individual can make to any organisation. However, it does allow some discretion when dealing with requests that are made at unreasonable intervals.

The organisation is not obliged to comply with an identical or similar request to one dealt with, unless a reasonable interval has elapsed between the first request and any subsequent ones.

The Act gives some help in deciding whether requests are made at reasonable intervals and requires consideration to be given to:

• The nature of the data – this could include considering whether it is particularly sensitive.

• The purposes of the processing – this could include whether the processing is likely to cause detriment to the individual.

• How often the data is altered – if information is unlikely to have changed between requests, you may decide that you are not obliged to respond to the same request twice.

7.5 Disproportionate effort
The Trust is not obliged to supply a copy of the information in permanent form if it would involve disproportionate effort to do so.

However, it should be noted that this qualification to the right of subject access only applies in respect of supplying a copy of the relevant information in permanent form. The Trust cannot refuse to deal with a subject access request just because locating the information in the first place would involve disproportionate effort.

This provision should only be relied upon in the most exceptional of cases.
7.6 Time limit
The organisation must legally comply with a subject access request ‘promptly’ and in any event within 40 calendar days of the date on which the request is received or (if later) the day on which the following is received:

- the fee (if any);
- any requested location information
- any information requested to confirm the requester’s identity

However, the Department of Health recommends compliance within 21 calendar days and the Trust supports this recommendation.

In exceptional circumstances only, where the time limit cannot be complied with the applicant should be advised of this as soon as is practicable. Failure to comply gives the applicant the right of action in the County Court or High Court. It is therefore essential that all applications be processed as a matter of priority, thereby minimising risk to the organisation.

7.7 Fees
There is no requirement to process a subject access request before the fee is received. However, in the interests of providing a prompt and helpful service, organisations may choose to request and collect the fee during the 40 day process.

The Data Protection (Subject Access) (Fees and Miscellaneous Provisions) Regulations 2000 sets out the fees a patient may be charged to view their records or to be provided with a copy of them. These are summarised below:

To provide copies of records the maximum costs (incl. postage and packaging) are:

- £10 - Non-health records
- £10 - Health records held wholly electronically
- £50 - Health records held wholly or partly in non-electronic format. If the health records in question fall into this category (i.e. they are not exclusively electronic records) and they have been created or added to during the 40 days preceding receipt of the request, the requester must be offered the opportunity to inspect the manual records free of charge, rather than being provided with a permanent copy of them. Individuals may tailor their SARs so that they relate only to information to which this right of free inspection applies.

To view health records (see S7. Informal Requests) the maximum costs are:

Where an applicant is permitted to view their health record the Trust makes no charge for them to do so:

- Free of charge – Records held wholly or partly in non-electronic format whether or not they have been created or added to during the 40 days preceding receipt of the request.

If a person wishes to view their health records and then wants to be provided with copies the £50 maximum fee applies (as above).
In many cases the fee charged for dealing with a request will not cover the administrative costs of doing so. The request must be complied with regardless of this fact.

For fees to access deceased persons’ records see section 8.3.

7.8 Sending copies of records

7.8.1 External post
Copies of records sent externally in the post should be:

- In a sealed tamper-proof envelope
- Addressed to a named person, marked ‘To be opened by Addressee only’
- Marked ‘Private and Confidential’
- Sent by special delivery only

7.8.2 Fax and Email
Copies must not be sent via fax or email unless using a suitably secure means of electronic transfer approved by the Information Governance Manager, e.g. NHS mail.

The NHSmail service is a secure service; this means that NHSmail is authorised for sending sensitive information, such as clinical data, between NHSmail and:

1. NHSmail addresses (i.e. from an ‘*.nhs.net’ account to an ‘*.nhs.net’ account),
4. Ministry of Defence secure email domains (*.nhs.net and *.mod.uk),

7.8.3 Internal post
Copies of records sent internally should be:

- In a sealed tamper-proof envelope, or Trust approved sealed box/crate
- Addressed to a named person
- Marked ‘Private and Confidential’
- Sent by via the Internal Secure Courier

7.9 Sending original records
Original records must not be sent to any applicant (including solicitors) because of the potential detriment to the individual and the Trust if the records are lost. The main exception to this is a Court Order or request from the Coroner, in which case the originals may be sent, but copies must be retained by the Trust.
8.0 Applications to Access Personal Health Records – Informal Request
The same rules will apply for informal as for formal requests e.g. consent, proof of identity and records to be checked for anything that should not be disclosed, such as third party data etc. (see Section 6).

Minor requests for personal information such as a confirmation of dates of attendance or inpatient stays for claims purposes should be handled by the service itself without the need to process the request formally.

Where a patient wishes to view their health records held wholly or partly in non-electronic format it is the responsibility of the health professional in charge of the applicant’s care to organise an appropriate viewing. The applicant should not be allowed to view their health records on his/her own, or to take original records away from Trust property. The health professional should arrange suitable representation for the patient to help understand any technical language or medical terminology in the records they do not understand.

The Trust makes no charge for the viewing only of records. However, if copies are subsequently required, charges as in section 6.7 above will apply.

9.0 Applications to Access Personal Health Records – Deceased Patients
Whilst the Data Protection Act relates solely to applications relating to ‘living’ individuals, it refers applications relating to information held about deceased patients back to the Access to Health Records Act 1990.

The Trust remains responsible for the confidentiality of patient information after a patient’s death. It should be remembered that the rules of consent remain in such cases with the Trust in the absence of the patient’s consent.

The Access to Health Records Act 1990 restricts access to records compiled on or after the 1st November 1991. There remains, therefore, no right of access to information compiled prior to this date.

The 1990 Act provides for an application to be submitted by:
- the patient’s personal representative, and
- by any person who may have a claim arising out of the patient’s death.

9.1 The personal representative
The personal representative is the only person who has an unqualified right of access to a deceased person’s record and need give no reason for applying to access that record.

He/she will either be an executor for the estate of a deceased person who left a Will, or the administrator of a deceased person who died intestate (without a Will). In either case a court will issue "letters testamentary", "letters of administration" or "letters of representation" stating that an executor or administrator has been appointed. This proof of authority plus a copy of the deceased’s death certificate will be required prior to processing such a request, together with the proof of identity of the personal representative is required.
9.2 Claim arising out of a patient’s death
Where an application is being made on the basis of a claim arising out of the patient’s death, applicants must provide evidence to support their claim.

Determining whether applicants have a claim is not straightforward, but is likely to include those with a financial claim. If it is not clear, the decision as to whether a claim actually exists should be made in conjunction with the Caldicott Guardian and seeking legal advice, as appropriate.

Where it is determined a legal claim exists, only information from the deceased’s records pertaining to that claim should be disclosed.

A health professional will need to inspect records taking into account the following:
- If it is known whether the deceased patient did not wish for their records to be disclosed to the applicant
- The records contain information that the deceased patient expected to remain confidential
- If the release of the information is likely to cause serious harm to the physical or mental health of any individual

Note: A request for access to the health records of a deceased person must also be considered (according to a judgement made in August 2007 by the Information Commissioner) under section 41 of the Freedom of Information Act, which relates to information provided in confidence.

9.3 Fees
Where an applicant is permitted to view the deceased person’s health record the Trust makes no charge for them to do so.

However, if copies are required the following charges may be applied:
- £10 plus disbursements (costs of copying, printing, postage)

There is no upper limit, but charges should be reasonable and justifiable and not result in a profit for the organisation.

10.0 Access to CCTV footage
Subject access rights extend to images captured on CCTV and the Trust may receive requests to disclose footage. Any images that either identifies an individual, or which gives away information about them (for example, as car number plates) could be requested. CCTV footage may also be a valuable resource to Police when investigating a crime.

Normal exemption rules apply and it is particularly important to consider the increased sensitivity of releasing third party images depending on the location of the cameras (images of a Trust waiting room would be considered more sensitive than images taken in a more public space).
Refer to the Trust’s CCTV policy and the ICO CCTV Code of Practice for further information.

11.0 Access to Audio or Digital Images
An individual may listen to an audio tape or view a digital recording if it contains personal information about them. There should be in place arrangements to provide transcripts or CDs of the recorded information. Normal exemptions rules would apply.

12.0 Mistakes or Inaccuracies
The fourth data protection principle requires personal data to be accurate. Where it is inaccurate, the individual concerned has the right to apply to Court for an order to rectify, block, erase or destroy the inaccurate information. Compensation can be awarded by the court. This right also applies to personal data that contains an expression of opinion based on inaccurate personal data.

When corrections are made care must be taken not to simply obliterate information, which may have significance for future care and treatment of the patient, or for litigation purposes. A copy of any correction or note should be supplied to the patient. No fee may be charged for this.

It should be understood that in Law nothing may be erased from a paper health record but a correction may be added.

If, however, the clinician disagrees that a correction is required, a note recording why the applicant considers the information to be inaccurate must be made in the relevant part of the record. Consideration should be given to whether it is appropriate to note any associated records, e.g. computer records.

13.0 Complaints
If the applicant feels that they have not been treated fairly and that the holder of the record has not complied with the Act, then they should first complain through the Trust’s formal complaint process, the outcome of which will be communicated to the applicant.

If they are still dissatisfied, the applicant has the right to apply to Court or directly to the Information Commissioner if necessary. Both the Court and the Information Commissioner can order that the applicant be given access to the records if it is satisfied that the complaint is justified.

14.0 Training
There is a need for training identified within this policy. In accordance with the classification of training outlined in the Trust Learning and Development Strategy this training has been identified as mandatory within the basic information governance training, role development training (subject specific) and personal development training.

The course directory e-source link below will identify: who the mandatory training applies to, delivery method, the update frequency, learning outcomes and a list of available dates to access the training.
http://www.leicspart.nhs.uk/Library/AcademyCourseDirectory.pdf

A record of the event will be recorded on uLearn.

The governance group responsible for monitoring the training is Learning and Development.

Staff should be aware of their responsibilities in relation to an individual’s rights under the Data Protection Act to have access to information that the Trust holds about them. The Trust Induction course provides training in relation to the Data Protection principles and this training is also included in the mandatory training programme.

Further topic specific training is available via the Health and Social Care Information Centre’s IG Training Tool in the form of the eLearning module ‘Access to Health Records’. This is recommended training for staff who actively manage subject access requests and is available as personal development training for other LPT staff.

Members of the Records and Information Governance Sub-group are responsible for ensuring staff within their areas of responsibility are aware of this policy, have a working knowledge of the process in place to manage subject access requests, and provide clear guidance on how to support the process within their areas to ensure the Trust meets its compliance.

15.0 Dissemination
All staff will be notified of a new or reviewed Policy via e-Source and the weekly Newsletter.

Copies of this Policy will be made available to all staff via the Policy Files found on the Information Governance Web-pages of the Intranet.

Further guidance and access to training materials in relation to Subject Access Requests will be made available through the Information Governance Training Portfolio.

This document will be included in the Trust’s Publication Scheme in compliance with the Freedom of Information Act 2000.

16.0 Monitoring Compliance and Effectiveness
The following process should be followed as a minimum, in terms of monitoring staff compliance with the policy and its effectiveness:

- Regular reports regarding compliance in managing requests for information received by the Trust and subject access requests in particular, will be presented to the Records Information Governance Sub-group six-monthly.

- Monitoring of the policy against staff compliance will be achieved through the process of reporting against Trust compliance within the statutory time frame.

- It is the responsibility of the Records Transformation & Information Governance department in conjunction with the Divisional Governance leads to ensure that this compliance is met.
• An audit in the form of a staff questionnaire will also be used to monitor staff understanding and implementation/compliance with the policy.

17.0 Review
This Policy will be reviewed every 2 years by the Records and Information Governance Sub-group or as and when significant changes make earlier review necessary.

18.0 Standards/Key Performance Indicators
This policy supports the requirements of CQC Outcome 21 - Records, the Information Governance Toolkit requirement 205, NHS Confidentiality Code of Practice and the Records Management NHS Code of Practice.

Key performance Indicators:
• There are documented procedures in place for handling subject access requests.
• All staff are aware of the need to support subject access requests and where they should be directed.
• The procedures are implemented effectively to meet statutory timescales.

19.0 References
• Access to Health Records Act 1990
• Adoption and Children Act 2002
• Children Act 1989
• Crime and Disorder Act 1998
• Data Protection Act 1998
• Freedom of Information Act 2000
• Mental Capacity Act 2005
• Records Management: NHS Code of Practice
• NHS Confidentiality Code of Practice
• ICO Subject Access Code of Practice

20.0 Associated Documentation

The following LPT policies and procedures should be referred to in conjunction with this Subject Access Requests Policy:

• Data Protection, Caldicott and Confidentiality Policy
• Information Lifecycle and Records Management Policy
• Freedom of Information Policy
• Record Keeping and Management of the Quality of Health Records Policy
• Disclosure of Information to the Police Procedure
APPENDIX 1

Checklist for the Review and Approval of Procedural Document

To be completed and attached to any document which guides practice when submitted to the appropriate committee for consideration and approval.

<table>
<thead>
<tr>
<th>Title of document being reviewed: Subject Access Requests Policy</th>
<th>Yes/No/Not Applicable</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>Will any sections of this Policy satisfy one or more criteria of the NHSLA Risk Management Standards?*</td>
<td>No</td>
<td></td>
</tr>
<tr>
<td>If Yes – Have you attached the relevant self-assessment(s) for those criteria as an appendix?*</td>
<td>Not applicable</td>
<td></td>
</tr>
<tr>
<td>* for further guidance consult the Trust Lead for Corporate Risk Assurance: <a href="mailto:Richard.Apps@leicspart.nhs.uk">Richard.Apps@leicspart.nhs.uk</a></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

1. Title:

   Is the title clear and unambiguous? Yes

   Is it clear whether the document is a guideline, policy, protocol or standard? Yes

2. Key Points / Changes to the Policy

   This policy provides guidance on the processes that are to be followed when dealing with requests for access to health records, under section 7 of the Data Protection Act 1998. It is consistent with the Data Protection Act 1998, the guidance provided by the Department of Health to NHS organisations in February 2010, and the Access to Health Records Act 1990, in so far as it relates to the disclosure of health records of deceased patients.

3. Rationale

   Are reasons for development of the document stated? Yes Section 4

4. Development Process

   Does the front page include a sentence which summarises the contents of the policy? Yes Front sheet

   Is the method described in brief? Yes

   Are people invited in the development identified? Yes Contribution list

   Do you feel a reasonable attempt has been made to ensure relevant expertise has been used? Yes Contribution list

   Is there evidence of consultation with stakeholders and users? (with representatives from all relevant protected characteristics) Yes

5. Content

   Is the objective of the document clear? Yes Section 3

   Is the target population clear and unambiguous? Yes Front cover

   Are the relevant CQC outcomes identified? Yes Front cover

   Are the intended outcomes described? Yes

   Are the statements clear and unambiguous? Yes

6. Evidence Base
<table>
<thead>
<tr>
<th>Title of document being reviewed:</th>
<th>Subject Access Requests Policy</th>
<th>Yes/No/Not Applicable</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>Is the type of evidence to support the document identified explicitly?</td>
<td>Yes</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Are key references cited?</td>
<td>Yes</td>
<td>Section 19</td>
<td></td>
</tr>
<tr>
<td>Are the references cited in full?</td>
<td>Yes</td>
<td>Section 19</td>
<td></td>
</tr>
<tr>
<td>Is there evidence to show that there has been due regard for equality legislation? (include equality statement setting out summary of evidence to support public sector equality duty ‘due regard’ has taken place)</td>
<td>Yes</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Are supporting documents referenced?</td>
<td>Yes</td>
<td>Section 20</td>
<td></td>
</tr>
</tbody>
</table>

### 7. Approval

- Does the document identify with committee/group will approve it? **Yes**  | Front cover |
- If appropriate have the joint Human Resources/staff side committee (or equivalent) approved the document? **NA** | |

### 8. Dissemination and Implementation

- Is there an outline/plan to identify how this will be done? **Yes** | Section 15 |
- Does the plan include the necessary training/support to ensure compliance? **Yes** | Section 14 |

### 9. Document Control

- Does the document identify where it will be held? **No** | |
- Have archiving arrangements for superseded documents been addressed? **Yes** | |

### 10. Process to Monitor Compliance and Effectiveness

- Are there measurable standards or KPIs to support the monitoring of compliance with and effectiveness of the document? **Yes** | Section 18 |
- Is there a plan to review or audit compliance with the document? **Yes** | |

### 11. Review Date

- Is the review date identified? **Yes** | Section 17 |
- Is the frequency of review identified? If so it is acceptable? **Yes** | Section 17 |

### 12. Overall Responsibility for the Document

- Is it clear who will be responsible for co-ordinating the dissemination, implementation and review of the document? **Yes** | |

#### Individual Approval

If you are happy to approve this document, please sign and date it and forward to the chair of the committee/group where it will receive final approval.

<table>
<thead>
<tr>
<th>Name</th>
<th>Sam Kirkland</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Signature</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

#### Committee Approval

If the committee is happy to approve this document, please sign and date it and forward copies to the person with responsibility for disseminating and implementing the document and the person who is responsible for maintaining the organisation’s database of approved documents.

<table>
<thead>
<tr>
<th>Name</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Signature</td>
<td></td>
</tr>
</tbody>
</table>
SUBJECT ACCESS REQUESTS FLOWCHART

REQUEST FOR PERSONAL INFORMATION RECEIVED

- REQUEST TO VIEW ONLY: Managed locally by the Service as an INFORMAL REQUEST
- VERBAL REQUEST: Provide an application form and information on how to apply in writing
- WRITTEN REQUEST: This must include the applicant’s name and address, together with sufficient details of the information being requested to enable the Trust to identify and locate the information. This is handled as a FORMAL REQUEST

REGISTER THE REQUEST

- Enter the request onto the Trust’s electronic 'Safeguard' system and obtain a REF no.
- Set up a new REF numbered Outlook folder on the LPT SAR Request email account
- Set up a new REF numbered folder in the 'Access to Records' folder on the 'S' drive and scan/save the request into it
- Set up a 'Checklist' to manage the request through the process
- Until the 'Validation' section of the 'Checklist' is complete, stop the clock on Safeguard

ACKNOWLEDGE THE REQUEST

- Acknowledge receipt of the request, including as appropriate:
  - Request for clarification of information being requested
  - Request for fee and/or ID
  - Ensure either consent is obtained or there is a legal basis for disclosure

PROCESS THE REQUEST

- Follow the 'Checklist' until records have been processed as follows:
  - Locate, retrieve and scan/save records into electronic folder, as appropriate
  - Obtain permission from the responsible clinician/medical officer/manager on what records are to be disclosed/redacted
  - Scan, redact as appropriate and prepare records for disclosure in either printed or electronic format
- Disclose via secure means or withhold the records as above within 40 calendars days (excluding 'stopped clock' days)
- Return original hardcopy records to archive and/or service, and send fee to Finance, as appropriate
- Close the request on Safeguard and transfer paper and electronic folders to relevant 'Completed' storage
## APPENDIX 3

### SUBJECT ACCESS REQUEST CHECKLIST

<table>
<thead>
<tr>
<th>REF NO:</th>
<th>Date Received:</th>
</tr>
</thead>
<tbody>
<tr>
<td>SURNAME:</td>
<td>NHS Number:</td>
</tr>
<tr>
<td>First Name(s):</td>
<td>Date of Birth:</td>
</tr>
</tbody>
</table>

#### VALIDATION

1. **Is the requestor:**
   - asking for their own information
   - someone acting on behalf of the data subject
   - a third party
   - Solicitor/Relative/Other: Details:

2. **Do we have sufficient proof of the data subject’s ID?**

3. **Do we have consent to disclose the information?**

4. **If consent is not required, do we have a lawful basis on which to disclose?**

5. **Is it clear what information is being requested?**
   - All health records
   - Personnel file
   - Other, state details

6. **Have we received the fee?**

#### PROCESS

7. **Has the request been acknowledged?**

8. **Have the relevant records been located?**
   - Have they been requested from off-site?
   - Are they held in-house?
   - Have the records retrieved from off-site been scanned?

9. **Has an email been sent to notify the Responsible Clinician/ Medical Officer/ Manager, with a copy of the ‘permission to disclose’ letter?**

10. **Has a follow-up email been sent to the Responsible Clinician/ Medical Officer/ Manager requesting an indicated response date?**

11. **Has the Responsible Clinician/ Medical Officer/ Manager returned the records and completed the permission to disclose letter?**

12. **Have in-house records been scanned?**

13. **Have redactions been completed?**

14. **Have the records been printed/ saved onto a memory stick, as appropriate?**

#### COMPLETION

16. **Have ALL the conditions above been met?**

17. **Have the records been sent by secure transfer/collected in person?**
   - Details:

18. **Have original records been returned to C&V (archived records) and/or Site (current records)?**

19. **Has the Fee been sent to Finance**

20. **Has Safeguard been updated as ‘Closed’ and the number of days to respond checked?**

---

Subject Access Requests Policy Final V4.1 January 2015
APPENDIX 4

Full details can be found in the Data Protection Act 1998

<table>
<thead>
<tr>
<th>EXEMPTIONS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Section 28 National Security</td>
</tr>
<tr>
<td>Section 29 Crime and Taxation</td>
</tr>
<tr>
<td>Section 30 Health, Education and Social Work</td>
</tr>
<tr>
<td>Section 31 Regulatory activity</td>
</tr>
<tr>
<td>Section 32 Journalism, Literature and Art</td>
</tr>
<tr>
<td>Section 33 Research, History &amp; Statistics</td>
</tr>
<tr>
<td>Section 34 Publicly available by any enactment</td>
</tr>
<tr>
<td>Section 35 Required by Law/Proceedings</td>
</tr>
<tr>
<td>Section 36 Domestic Purposes</td>
</tr>
</tbody>
</table>

**Schedule 7** **Miscellaneous Exemptions**

- Confidential references
- Legal privilege
- Armed Forces
- Judicial appointments and Honours
- Crown employment and Crown or Ministerial Appointments
- Corporate Finance
- Negotiations
- Exam marks/Scripts
- Management forecasts
Duties outlined in this Policy will be evidenced through monitoring of the other minimum requirements

<table>
<thead>
<tr>
<th>Reference</th>
<th>Minimum Requirements</th>
<th>Self assessment evidence</th>
<th>Process for Monitoring</th>
<th>Responsible Individual / Group</th>
<th>Frequency of monitoring</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Clinicians review records for third party information and if any exemptions apply</td>
<td>Section 5.6</td>
<td>Requests for Information Reports</td>
<td>Records &amp; Information Governance group</td>
<td>Quarterly</td>
</tr>
<tr>
<td></td>
<td>Legal compliance with the statutory time limit of 40 calendar days</td>
<td>Section 7.6</td>
<td>Scorecard</td>
<td>Finance &amp; Performance</td>
<td>Monthly</td>
</tr>
</tbody>
</table>
### Policy Training Requirements

The purpose of this template is to provide assurance that any training implications have been considered.

| Training topic: | Information Governance Training  
<table>
<thead>
<tr>
<th></th>
<th>Subject Access Training</th>
</tr>
</thead>
</table>
| Type of training: | x Mandatory (must be on mandatory training register) – Information Governance Training  
|                 | x Role specific – Subject Access Training  
|                 | x Personal development – Subject Access Training |
| Division(s) to which the training is applicable: | x Adult Learning Disability Services  
|                 | x Adult Mental Health Services  
|                 | x Community Health Services  
|                 | x Enabling Services  
|                 | x Families Young People Children  
|                 | x Hosted Services |
| Staff groups who require the training: | All Staff for the Information Governance  
|                 | Staff responding to requests for records – Subject Access Requests |
| Update requirement: | IG – Annually  
|                 | Subject Access – adhoc and on request from services one off |
| Who is responsible for delivery of this training? | IG – Learning and Development through ULearn e-learning  
| Information Governance Team |
| Have resources been identified? | Yes |
| Has a training plan been agreed? | Yes |
| Where will completion of this training be recorded? | x Trust learning management system  
|                 | ☐ Other (please specify) |
| How is this training going to be monitored? | IG – Monthly reports to managers  
|                 | Subject Access – RIGG reporting |
Due Regard Screening

**Section 1**

<table>
<thead>
<tr>
<th>Name of activity/proposal</th>
<th>Subject Access Request Policy</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date Screening commenced</td>
<td>28 November 2014</td>
</tr>
<tr>
<td>Directorate / Service carrying out</td>
<td>Information Governance</td>
</tr>
<tr>
<td>the assessment</td>
<td></td>
</tr>
<tr>
<td>Name and role of person undertaking</td>
<td>Sam Kirkland</td>
</tr>
<tr>
<td>this Due Regard (Equality Analysis)</td>
<td>Records Transformation &amp; Information Governance Manager</td>
</tr>
</tbody>
</table>

**Give an overview of the aims, objectives and purpose of the proposal:**

**AIMS:** To meet the Trust’s obligations under Section 7 of the Data Protection Act 1998 to ensure that Data Subjects rights of access are met appropriately.

**OBJECTIVES:** To ensure that the Trust meets its obligations to deal with requests from data subjects within the expected timeframe and in an appropriate manner.

**PURPOSE:**

To ensure that meeting the requirements of Section 7 of the Data Protection Act 1998 does not impact on the privacy rights of staff and patients/service users.

**Section 2**

<table>
<thead>
<tr>
<th>Protected Characteristic</th>
<th>Could the proposal have a positive impact</th>
<th>Could the proposal have a negative impact</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Yes or No (give details)</td>
<td>Yes or No (give details)</td>
</tr>
<tr>
<td>Age</td>
<td>Yes – the Act applies to all individuals</td>
<td>No – the Act applies to all individuals</td>
</tr>
<tr>
<td>Disability</td>
<td>Yes – the Act applies to all individuals</td>
<td>No – the Act applies to all individuals</td>
</tr>
<tr>
<td>Gender reassignment</td>
<td>Yes – the Act applies to all individuals</td>
<td>No – the Act applies to all individuals</td>
</tr>
<tr>
<td>Marriage &amp; Civil Partnership</td>
<td>Yes – the Act applies to all</td>
<td>No – the Act applies to all</td>
</tr>
<tr>
<td></td>
<td>Yes – the Act applies to all individuals</td>
<td>No – the Act applies to all individuals</td>
</tr>
<tr>
<td>----------------</td>
<td>----------------------------------------</td>
<td>----------------------------------------</td>
</tr>
<tr>
<td>Pregnancy &amp; Maternity</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Race</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Religion and Belief</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sex</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sexual Orientation</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other equality groups?</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Section 3**

Does this activity propose major changes in terms of scale or significance for LPT? For example, is there a clear indication that, although the proposal is minor it is likely to have a major affect for people from an equality group/s? Please tick appropriate box below.

<table>
<thead>
<tr>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

High risk: Complete a full EIA starting click [here](#) to proceed to Part B

Low risk: Go to Section 4.

**Section 4**

If this proposal is low risk please give evidence or justification for how you reached this decision:

The principles of the Data Protection Act 1998 are universal and all individuals have rights of access under Section 7 of the Data Protection Act – Subject Access.