

Records Management Policy Practice Guidance Note

Access Requests in accordance with The Data Protection Act 1998 (DPA 1998) for Health Records – **V03**

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1 Introduction

- 1.1 The Data Protection Act 1998 mandates that Subject Access Requests are dealt with in the statutory timeframes of a maximum of 40 days. The following Practice Guidance Note (PGN) is intended to direct staff on the procedure to be followed in the event that a request to access health records is received by the Trust.

2 Background

- 2.1 The main legislative measures that give rights of access to health records include:
- 2.1.1 **The Data Protection Act 1998 (DPA)** – the right for living individuals to access their own records. The right can also be exercised by an authorised representative on the individual's behalf.
- 2.1.2 **The Access to Health Records Act 1990 (AHRA)** – the right of access to deceased patients' health records by specified persons.
- 2.1.3 **The Medical Reports Act 1988** – the right for individuals to have access to reports, relating to them, provided by medical practitioners for employment or insurance purposes.

3 Scope

- 3.1 This Practice Guidance Note applies to any access to health records requests by, or on behalf of, an existing or former patient or their representative. This note also applies to requests for access to a deceased patient's health records.
- 3.2 This Practice Guidance Note is to instruct the Disclosure Team and Clinicians of the process that will be followed.

4 Implementation and Awareness

4.1 Living Patients

- 4.1.1 **Receiving an access request under the Data Protection Act (DPA) 1998**
- 4.1.1.1 A request for Access to Health Records can be made in many ways including by letter, e-mail or telephone call. (Please see full process under point 6).

- 4.1.1.2 Former patients living outside of the UK who had treatment in the UK have the same rights under the DPA to apply for access to their UK Health Records and these applications will be considered within the parameters of the Trust's Data Protection Act notifications.
- 4.1.1.3 Normally a person with parental responsibility will have the right to apply for access to their child's health record. However, in exercising this right a health professional should give careful consideration to the duty of confidentiality owed to the child before disclosure is given.
- 4.1.1.4 Parental responsibility means the legal rights, duties, powers, responsibilities and authority a parent has for a child and their property. A person who has parental responsibility for a child has the right to make decisions about their care and upbringing. Important decisions in the child's life must be agreed with anyone else who has parental responsibility.
- 4.1.1.5 The law regards young people aged 16 or 17 to be adults in respect of their rights to confidentiality. Children under the age of 16 who have the capacity and understanding to take decisions about their own treatment are also entitled to decide whether personal information may be passed on, and generally to have their confidence respected.
- 4.1.1.6 Good practice dictates that the child should be encouraged to involve parents or other legal guardians in their healthcare.

4.2 Deceased Patients

4.2.1 Receiving a request under the Access to Health Records Act (AHRA) 1990

- 4.2.1.1 An initial request for Access to Health Records can be made either by letter, e-mail or telephone call. (Please see full process under point 6).
- 4.2.1.2 The Access to Health Records Act (AHRA) 1990 provides certain individuals with a right of access to the Health Records of a deceased individual. These individuals are 'The patient's personal representative and any person who may have a claim arising out of the patient's death'. A personal representative is the executor or administrator of the deceased person's estate.
- 4.2.1.3 The same procedure used for disclosing a living patient's record should be followed when there is a request for access to a deceased patient's record.

4.3 Request made by or on behalf of an Adult Lacking Mental Capacity

- 4.3.1 Mental disorder does not equate with mental incapacity and many persons suffering from the former may have sufficient capacity to deal with their affairs. Requests for access by a person with a mental disorder will require a judgement in respect of their capacity.

If they have capacity to manage their affairs and have sufficient understanding of their condition and its treatment, they are entitled to have access under the Data Protection Act to their records.

- 4.3.2 If a person lacks capacity to manage their affairs, only a person acting under an order of the Court of Protection or acting within the terms of registered Enduring/Lasting Power of Attorney which specifies they have access to health information for the data subject can request access on his or her behalf. Under changes to the Mental Capacity Act 2007, data subjects may have an appointed guardian to manage their affairs where there is no Power of Attorney. In these circumstances advice will be sought on a case by case basis from the Caldicott Guardian.

4.4 Access should not be given if:-

- 4.4.1 The appropriate health professional is of the view that this information is likely to cause serious harm (when interpreting this phrase in the context of the DPA the Administrative Court decided that the question is whether there 'may very well' be a risk of harm to health even if the risk falls short of being more probable than not) to the physical or mental health of the data subject or another individual.
- 4.4.2 In the case of deceased patients, the health record contains a note made at the request of the patient before his / her death that he / she did not wish access to be given on application (if whilst still alive, the patient asks for information about his/her right to restrict access after death, this should be provided together with an opportunity to express this wish in the note).
- 4.4.3 The holder is of the opinion that the deceased person gave information or underwent investigations with the expectation that the information would not be disclosed to the applicant.
- 4.4.4 The Trust considers that any part of the record is not relevant to any claim arising from the death of the patient.
- 4.4.5 The records contain information relating to or provided by an individual (other than the patient or a health professional) who could be identified from that information, unless that individual has consented or can be anonymised.

5 Fees to Access and Copy Health Records Under DPA / AHRA

- 5.1 The DPA states that fees for a subject access request should be paid in advance. Northumberland, Tyne and Wear NHS Foundation Trust will request a standard administration fee. All other fees will be requested at the release stage of the access request.
- 5.2 Information requested by Solicitors, and information from other requesters where deemed appropriate, will only be released once relevant fees have been paid.

- 5.3 The Data Protection (Subject Access) (Fees and Miscellaneous Provisions) Regulations 2000 sets out the fees a patient may be charged to view his / her health records or to be provided with a copy of them.
- 5.4 The Trust has adopted these charges for requests under the Access to Health Records Act (AHRA).
- 5.5 **If the person requesting access/copies is receiving benefits and can provide proof, then the fees will be waived. Also, if the records requested have been created or added to during the 40 days preceding the request, a copy of the preceding 40 days of the health record can be requested free of charge.**
- 5.6 To provide **copies** of patient health records the **maximum** costs are:
- Standard £10 administration fee on application;
 - Health records held totally electronically: up to a maximum £10 charge;
 - Health records held in part electronically and in part on other media (paper, x-ray film): up to a maximum £50 charge;
 - Health records held entirely on other media: up to a maximum £50 charge.
- 5.7 **All these maximum charges include postage and packaging costs. These are the maximum costs and any charges for access requests should not be seen to make a financial gain.**
- 5.7.1 To allow patients to **view** their health records (where no copy is required) the maximum costs are:
- Health records held electronically: a maximum of £10 charge;
 - Health records held in part electronically and in part on other media: a maximum of £10 charge;
 - Health records held entirely on other media: up to a maximum £10 charge.
- 5.7.2 **Note:** If a person wishes to view their health records and then wants to be provided with copies, this would still come under the one access request. The £10 standard administration fee for viewing would be included within the £50 maximum fee for copies of health records, held in part electronically and in part on other media. The Trust charge is 25p per photocopy.

6 Responsibilities and Process for Access to Health Records Under The Data Protection Act (DPA) 1998 and Access to Health Records (AHRA) 1990

- 6.1 An informal approach to access health records is encouraged at the point of service delivery where a service user/patient expresses a wish to access their own health records to their Appropriate Health Care Professional. A record of this should be made within the patient's record, whether paper or electronic, by the person allowing informal access.
- 6.2 If the informal approach is deemed to be unacceptable or possibly inappropriate, or the service user/patient wishes to make a formal request, then an application must be made to the Disclosure Team. Formal applications can also be made by the service users / patient's representative which may include solicitors etc.
- 6.3 The Disclosure Team will facilitate the administrative process of formal requests to health records under the provisions of Section 7 of the Data Protection Act 1998 and Access to Health Records Act 1990. The Disclosure Team will maintain a record of all requests received and related activity as set out in this PGN.
- 6.4 Support and guidance will also be provided by the Trust's Information Governance Team and the Caldicott and Legal Affairs Team. This will especially be relevant when the Disclosure Team or the Appropriate Health Care Professionals deem the request to be of a complex nature or have an issue of concern. The Disclosure Team and the Appropriate Health Care Professionals should seek immediate assistance and guidance in such cases.
- 6.5 All personal information disclosure requests should go to the:

Disclosure Team
St Nicholas Hospital
Jubilee Road
Gosforth
Newcastle upon Tyne
NE3 3XT

E-mail: Disclosures@ntw.nhs.uk
Secure E-mail: NTAWNT.disclosures@nhs.net
Tel: 0191 2466896
Fax: 0191 2232205

6.6 Disclosure Team

- 6.6.1 The access to health records process begins when the requester contacts the Disclosure Team via, telephone / letter / e-mail, other medium, to access their health records.

- 6.6.2 If not provided, the Disclosure Team should ask for the person's full name and postal address to ensure that an application form is correctly addressed (Appendix 2).
- 6.6.3 A covering letter and Guidance must be sent with the Application Form to include the following (Appendix 1 a or b). Clear instructions on what information needs to be completed on the application form, e.g. other names.
- 6.6.4 Guidance on what documents should be provided as proof of identity.
- 6.6.5 Charges for access to the health records and instructions if the requestor is in receipt of benefits
- 6.6.6.1 Once the completed application form has been returned, along with the standard administration fee of £10, if applicable, the Disclosure Team must check the form and any attached documents to ensure that the application is valid e.g. identification of requestor and proof of receipt of benefits, if applicable. The receipt of the completed form and fee, if applicable, marks the start of the formal disclosure period of 40 days.
- 6.6.6.2 No fee will be charged where direct viewing of records is made; there is no photocopying required and where at least part of the record was updated within 40 days of the initial access request. The Trust may also be able to waive fees if the patient is receiving benefits.
- 6.6.7 The Disclosure Team will enter the application details onto the Safeguard System which will then generate a unique identification number for this request. This number must be used as the identifier on all further correspondence internally and externally relating to this access request.
- 6.6.8 The Disclosure Team will require clear instruction on what health records are being requested and if this is unclear the Disclosure Team will contact the applicant for clarification (this could be on time-frames, professional input, etc.)
- 6.6.9 The Disclosure Team will then check IAPTus, Patient Document Tracking (PDT) and NTW Patient Index on the RiO System, in order to identify whether the Trust holds any electronic or paper health records for the particular request.
- 6.6.10 The Disclosure Team will send an Acknowledgement Letter to the requester (Appendix 3a – Appendix 3c)
- 6.6.11 If no health records can be located then the requester must be contacted in writing by the Disclosure Team, to be informed of this outcome (Appendix 3d), and any fee already received at this stage must be returned. The Safeguard System must be updated and the application closed.

- 6.6.12 If the application proceeds, all subsequent activity in relation to the application must be entered onto the Safeguard System, monitored for timely completion and closed at the completion of the access request. The Disclosure Team must enter the details onto the Safeguard System. The Safeguard reference number must be included in the progress note to enable easy cross referencing, if required.
- 6.6.13 Using the NTW Patient Index facility, the Disclosure Team will establish who the Appropriate Health Care Professional is who will be responsible for authorising and redacting the disclosure of information for the requestor. If identification of the Appropriate Health Care Professional is not apparent or proving difficult to establish then the Disclosure Team must immediately seek help from the Disclosure Team lead who will assist or escalate the matter further. The responsibility will be allocated to an appropriate healthcare professional identified by a Group Director / Group Medical Director. In circumstances where the Group Medical Director perceives the request to be of a particularly complex or sensitive nature, then the request should be discussed / forwarded to the Deputy Caldicott Guardian / Caldicott Guardian via the Caldicott and Legal Affairs Team.
- 6.6.14 Once the Appropriate Health Care Professional is identified the Disclosure Team will contact them by telephone in the first instance to advise them of the application and timescales involved, etc. The Disclosure Team will follow up this personal contact with an e-mail within 24 hours. The Appropriate Health Care Professional will be asked if there are any factors that may make this disclosure potentially complex – see paragraph 6.6.18 if the Appropriate Health Care Professional highlights potential complexity
- 6.6.15 The Disclosure Team will co-ordinate, identify and collate all of the records for the application.
- 6.6.16 The Disclosure Team should ensure that all the electronic records are printed from RiO / IAPTus. A thorough check of entries on RiO / IAPTus should be undertaken. [Appendix 7](#) defines the list of electronic information stored.
- 6.6.17 The Disclosure Team will print any electronic records and collate a bundle (all relevant printed and paper records) for delivery to the Appropriate Health Care Professional within 7 working days of the application being accepted and processed. At this stage the Disclosure Team will also provide the Appropriate Health Care Professional with a clinical response form, guidance on redaction and risk and the timeframes to work within along with the Disclosure Team contact details.
- 6.6.18 The Disclosure Team will seek a further update on the complexity of the application following the Appropriate Health Care Professional assessment of the notes and the request in terms of risk and past history. The Disclosure Team will record any issues/complexity identified by the Appropriate Health Care Professional on the Safeguard System and offer the relevant help or guidance to support the application process.

The Disclosure Team will also inform the Information Governance Department and the Caldicott and Legal Affairs Team of any perceived risks / complexities / issues so that they may also offer help and assistance to the Appropriate Health Care Professional and assess whether a multi-disciplinary approach to the disclosure is appropriate, or what additional support may be required by the Appropriate Health Care Professional. The Safeguard System will be updated with this information.

- 6.6.19 The Appropriate Health Care Professional may delegate their responsibility for the access process to another appropriate team member, such as the Care Co-ordinator, if they feel this is appropriate and inform the Disclosure Team of this action. However, responsibility for the clinical disclosure remains with the Appropriate Health Care Professional.
- 6.6.20 Any 'historic' request, where there is no Appropriate Health Care Professional apparent, may need to be escalated to the Group Medical Director. This should only be considered when all other avenues of identification have been explored. As the Disclosure Team must ensure that statutory timescales are adhered to, escalation should not be delayed in such cases. In extreme/unusual circumstances this may be escalated to the deputy Caldicott Guardian/Caldicott Guardian.
- 6.6.21 The Disclosure Team will closely monitor the legal timeframes for access throughout the process. The Disclosure Team will contact the Appropriate Health Care Professional at 7 day intervals to ensure that the request is being processed accordingly. The Disclosure Team will be responsible for recording this feedback on the Safeguard System. At the earliest opportunity the Appropriate Health Care Professional should make the Disclosure Team aware of any issues/problems that may cause a breach of the timeframes, so that assistance and a resolution can be sought. If problems arise which cannot be resolved, the Disclosure Team will escalate the matter to the Disclosure Team lead for further action, including notifying the Caldicott and Legal Affairs Team and the Group Medical Director, if necessary.
- 6.6.22 The requestor will be updated [in writing by the disclosure team](#) if timescales are likely to be exceeded, if we require an extension or in the event of a breach of timescales ([Appendix 5a – Appendix 5c](#)).
- 6.6.23 The Disclosure Team will provide the Group Medical Directors with a weekly report detailing all live requests, e.g. date application began, Appropriate Health Care Professional involved, days left until deadline, identification of complex or routine request and an issue log. Report will contain all live cases. ([Appendix 8](#)).

6.7 Processing Records to send to the Appropriate Healthcare Professional (AHCP)

- 6.7.1 The Appropriate Health Care Professional is the clinician that is currently or has been the most recently responsible for the clinical care of the service user / patient.

This will usually be the current Consultant Psychiatrist, Doctor or Approved / Responsible Clinician. Where there is more than one healthcare professional involved the wider care group / MDT may wish to be involved in the disclosure decision and this is actively encouraged, though the decision will still need to be signed off by one identified clinician.

6.7.2 The following guidance will be followed when processing health records to be sent to the Appropriate Health Care Professional.

- If the full record is required, The Disclosure Team will send ALL originals of paper records and the electronic records printed from RiO;
- If only electronic records are required, the Disclosure Team will print these from RiO / IAPTus and send to the Appropriate Health Care Professional;
- If a selection of paper/electronic records is required i.e. related to a specific time period, the Disclosure Team will print off from RiO / IAPTus and also send the relevant original paper records;
- If a large amount of records are to be reviewed by the Appropriate Health Care Professional, records are to be sent as they become available rather than waiting until they are all collated to avoid prolonging the process and consequently reducing the time that the Appropriate Health Care Professional has to review and redact the records.

6.7.3 Prior to sending any records to the Appropriate Health Care Professional, the Disclosure Team will check them to ensure that all the documents relate to the person requesting access or the individual of whom the request has been made and not any other individuals. This covers both paper and electronic records.

6.7.4 When sending the records to the Appropriate Health Care Professional, the Disclosure Team will also enclose guidance on redaction, the timescales involved, advice on risk issues and a clinical response form ([Appendix 4](#)) for the Appropriate Health Care Professional to complete and return. The health records should be recorded on the Trust's electronic Patient Document Tracking (PDT) module within RiO and sent in a safe and secure manner in line with Trust Policy NTW(0)09.

6.7.5 The Disclosure Team will allocate the Appropriate Health Care Professional 14 working days from the date of the clinical response letter to process the request for disclosure.

- 6.7.6 The Disclosure Team will contact the Appropriate Health Care Professional by telephone on the 7th working day in order to establish if the disclosure will be ready within the timescales already outlined. An e-mail will also be sent by the Disclosure Team to the Appropriate Health Care Professional after this call, to ensure an auditable timeline.
- 6.7.7 If the Appropriate Health Care Professional is unable to complete the request within the time scale, then they will need to [ask the Disclosure Team](#) for an extension to the time allocated. The Appropriate Health Care Professional will also need to provide a reason for this extension request, e.g. due to the volume of records that need to be reviewed. Any identified delay must also be escalated to the Disclosure Team Lead and the Group Medical Director for resolution and recorded on the Safeguard System by the Disclosure Team.
- 6.7.8 If the original deadline date is to be exceeded, then the Disclosure Team will contact the requestor, by telephone if possible or in writing if necessary to inform them of the delay and where feasible notify them of when the records will be ready for release. If no date is known then the Disclosure Team will keep in weekly contact with the requestor until the records are ready for release. The contacts made and all outcomes must be recorded onto the Safeguard system to provide an audit trail of actions.
- 6.7.9 If there are any other issues in relation to the disclosure and clinical sign off then the relevant Group Medical Director must be informed and assistance requested to complete the process.
- 6.7.10 All actions / communications with any party [by the Disclosure Team](#) must be recorded on the Safeguard System.
- 6.8 Responsible Appropriate Health Care Professionals (AHCP)**
- 6.8.1 Once identified as being the appropriate person to authorise the disclosure, the Appropriate Health Care Professional will receive electronic printouts from RiO / IAPTus and the original paper health records, as applicable, for review.
- 6.8.2 The Appropriate Health Care Professional will receive the health records along with a clinical response form, guidance on redaction and risk and the timeframes to work within, along with the Disclosure Team contact details.
- 6.8.3 If the circumstances of the individual requesting access to their health records / or the person whose health records have been requested are deemed by the Appropriate Health Care Professional to be complex or have other issues of concern, then the Disclosure Team should be notified as soon as possible in order to seek help, advice and guidance.

- 6.8.4 If the disclosure is identified as a complex case by the Appropriate Health Care Professional then he / she may wish to consult with other members of the individual's clinical team or request input from the Trust's Information Governance Department or the Caldicott and Legal Affairs Team. The Appropriate Health Care Professional should contact these parties directly at the earliest opportunity to provide a brief of their assessment and to seek expert advice. It will be for each individual Appropriate Health Care Professional to decide on the level of complexity and they will hold responsibility for escalating this through the organisation and updating the Disclosure Team. The Disclosure Team will in turn update the Safeguard System.
- 6.8.5 If in extreme circumstances the Appropriate Health Care Professional feels that due to the volume of health records or another reason they may not be able to meet the timescale they must notify the Disclosure Team who will in turn update the requestor and provide help and assistance to the Appropriate Health Care Professional where possible. [See paragraphs 6.7.8 and 6.7.9.](#)
- 6.8.6 On receipt of the health records the Appropriate Health Care Professional must review the records and identify types of information that must be redacted [by the Disclosure Team](#). They are as follows; (see Appendix 4 for further guidance).
- Any information about or from someone other than the patient or a person involved with the patient's care, is known as third party information.
 - Any information that might cause serious harm to the physical and mental health of the patient or another person
 - All information in relation to Multi Agency Public Protection Arrangement (MAPPA), Multi Agency Risk Assessment Conference (MARAC), Safeguarding and Child Protection
- 6.8.7 If information is to be removed from the record then it should be clearly marked. (The use of post-it notes assists the Disclosure Team in locating the information to be removed) and a description detailed on the clinical response form. The entry should also clearly state the reason and the justification of why the redaction should be made.
- 6.8.8 A guide to redaction is attached to this PGN (Appendix 4)
- 6.8.9 The Disclosure Team will remain in regular contact with the Appropriate Health Care Professional (at least every 7 days) to ensure the statutory timeframes are adhered to. This will also allow the requestor to be kept up to date by the Disclosure Team.

- 6.8.10 On completion of the review of the health records and the request, the Appropriate Health Care Professional should return them, along with the clinical response form to the Disclosure Team. Health Records transit must be made in compliance with Trust Policy NTW(0)09.
- 6.8.11 If the Appropriate Health Care Professional decides not to disclose some or all of the personal information, the applicant must be told in writing by the Disclosure Team. The Appropriate Health Care Professional must provide the Disclosure Team with the reasons for any non-disclosure of information [via the clinical response form](#).
- 6.8.12 The Appropriate Health Care Professional should be aware that the Disclosure Team may contact them again for clarification on the redaction of information from the health records.
- 6.8.13 If the Appropriate Health Care Professional has any concerns about the redaction of information covered by the exemptions then they should contact their Group Medical Director [or Clinical Line Manager](#).

6.9 Receipt of Health Records by the Disclosure Team from the appropriate Healthcare Professional

- 6.9.1 Once the health records and Clinical Response Form are returned to the Disclosure Team, this must be recorded on the Safeguard System.
- 6.9.2 The Disclosure Team will then identify what information needs to be removed, based on the clinical response form completed by the Appropriate Health Care Professional. If there are any queries with information being identified to be redacted or information that has not been identified for redaction but falls into categories not to be disclosed then the Appropriate Health Care Professional must be contacted as soon as reasonably possible but at least within 5 days of the records return.
- 6.9.3 Redaction should clearly identify non-disclosures to the requestor, for example phrasing such as 'third party information removed' or 'this information has been identified as likely to cause serious harm' should be apparent in the redacted health records / information. The exception to this is where the Appropriate Health Care Professional has indicated that in doing this, serious harm is likely to be caused.
- 6.9.4 Where original records / images have been identified to be redacted the Disclosure Team will proceed as follows:
- Originals – if full pages are to be redacted, these should not be photocopied, [however, a page should be inserted in their place stating the reason for redaction](#);
 - RiO scanned images and assessments – these should be removed;

- Originals / RiO scanned images and assessments – if only sections of the page are to be redacted, photocopy the page, redact using a tippex mouse or black marker and photocopy the page again. On the second photocopy, where possible write 'Third Party information removed';
 - For progress notes – If these are in electronic form within word, remove the relevant sections and enter 'Third Party information removed'.
- 6.9.5 The Disclosure Team will check that a full and accurate, legible copy has been made of the relevant information to be disclosed.
- 6.9.6 Once the redaction has been completed and copies made, a further check will be carried out against the clinical response form from the Appropriate Health Care Professional to ensure all information to be redacted has been removed from the requestor's copy.
- 6.9.7 Before release of the health record copies to the requester, the Disclosure Team should check with the Finance Department that there are no problems with the initial administration fee that has been received. Remembering that no fee will be charged where direct viewing of records is made; there is no photocopying required and where at least part of the patient's record was updated within 40 days of their initial access request. The Trust may also be able to waive fees if the patient is receiving benefits.
- 6.9.8 If there is any discrepancy regarding payment then the records should be retained until the financial position is clarified and any issues resolved. Advice from the Disclosure Team Lead should be sought if the situation cannot be resolved and the requestor should be contacted by the Disclosure Team and informed of the issue. The requestor should be fully informed if records are being retained due to payment issues.
- 6.9.9 Once the health records have been photocopied and information redacted where appropriate, the redacted copies will need to be copied again. These copies can then be released to the requester.
- 6.9.10 If necessary, the Disclosure Team should prepare a letter based on the reasons provided by the Appropriate Health Care Professional, to be included with the copy of the health records explaining if any information has been removed.
- 6.9.10.1 If the requester has chosen to have the record posted: the Disclosure Team will gather the copies of the health records together and these should be packaged in a durable plastic envelope correctly addressed and marked 'Private and Confidential' and sent in line with Trust Policy NTW(0)09 by Recorded Delivery unless otherwise stated. (Appendix 6a / 6b).

- 6.9.10.2 If the Clinical Response states that they would like the requester to be supported on receipt of the record: the Disclosures Team will send a letter to the requester detailing this arrangement (Appendix 6c)
- 6.9.10.3 If the requester has chosen to view the record: the Disclosure Team will send a viewing arrangement letter to the requester (Appendix 6d)
- 6.9.11 The Disclosure Team will then close the application on the Safeguard system.

7 The Following may also Request Access to Information and the Disclosure Team will facilitate Access as described as above

7.1 Solicitor's Requests

- 7.1.1 Written requests for health records / information from solicitors should be forwarded to the Disclosure Team for processing as outlined in paragraphs 6.1 to 6.3 of this Practice Guidance Note. Written authority from the service user / patient, to be provided by the solicitor, will be required for the request to be processed.
- 7.1.2 Where there is litigation contemplated against this Trust the Disclosure Team will inform the Claims Department, based at St Nicholas House, St Nicholas Hospital.

7.2 Independent Mental Health Advocate (IMHA) Requests

- 7.2.1 Written requests for health records / information from an IMHA should be forwarded to the Disclosure Team for processing as outlined in Sections 6.1 to 6.9 of this PGN.
- 7.2.2 The Trust may not withhold information from IMHAs simply because it would not be disclosed to the service user / patient under the provisions of the Data Protection Act 1998, either because it relates to a third party or because it would risk serious harm to the patient and / or others. Exceptionally, there may be special circumstances in which confidential third party information should not be disclosed.
- 7.2.3 An IMHA should make it clear to the Trust that they wish / do not wish to see information in health records which would not be disclosed to the patient under DPA. The IMHA should also make it clear to the Trust what information they require access to.
- 7.2.4 The Trust must tell IMHAs if they provide any information which would not have been disclosed to the patient because of a risk of serious harm and furthermore specify what information this applies to. Where a duty of confidentiality arises, IMHAs should not pass on information about or relating to third parties without their consent, however, this will depend on the individual case.

7.2.5 IMHAs must not pass on information which would not have been disclosed to the patient because of a risk of serious harm.

7.3 Independent Mental Capacity Advocate (IMCA) Requests

7.3.1 Written requests for health records/information from an **IMCA** should be forwarded to the Disclosure Team accompanied by an appropriate consent mandate from the service user / patient for processing as outlined in Sections 6.1 to 6.9 of this PGN.

7.3.2 IMCA is a statutory form of advocacy that provides safeguards for people who lack capacity to make decisions about:

- Serious medical treatment or
- Moving into, or between, care settings (including hospital).

7.3.3 It is not normally available to people who have family or close friends who can be consulted about the decision, unless they are subject to Protection of Vulnerable Adult Procedures.

7.3.4 The advocate's role is to give an independent report on the person's current or past wishes, culture, beliefs and known needs to help the professionals making the decision to ensure that they are working in the person's best interests.

7.3.5 People who need an IMCA are likely to be facing a crisis. IMCAs will therefore work as quickly as possible to establish the wishes and needs of the person, and the views of those who care for them.

7.3.6 IMCAs have several powers under government guidance. They may:

- Ask to see the person they are representing in private;
- Ask for access to the person's medical and health records, and to take copies from these;
- Request further medical opinions

7.4 Second Opinion Doctors (SOADs)

7.4.1 Second Opinion Doctors commonly known as, SOADs are entitled to access the service user / patient's full clinical notes and it is the duty of the Trust to ensure these are available for inspection. SOADs have a right to access records without the patient's consent, but only those records relating to the treatment of the patient in the hospital that they are being examined in. Ward staff or the Appropriate Health Care Professional can facilitate this without recourse to the Disclosure Team, however, if they have concerns then they should speak to the Disclosure Team for guidance and assurance.

A record should be made in the progress notes regarding the SOAD's access and the provision of any documentation.

THE PROCESS FOR SECTIONS 7.5 TO 8.5 IS THE SAME AS OUTLINED BY THE DISCLOSURE TEAM HOWEVER FACILITATED BY DIFFERENT TEAMS – E.G. POLICE AND COURT REQUESTS ARE FACILITATED BY THE CALDICOTT AND LEGAL AFFAIRS TEAM AND CORONERS REQUESTS ARE FACILITATED BY THE SAFETY TEAM.

7.5 Care Quality Commission (CQC) Inspectors

- 7.5.1 The CQC does have the right to examine health records during an inspection without first obtaining each patient's consent as they have a statutory power to do so. This power comes from Section 64 of the Health and Social Care Act 2008. This particular section gives the CQC the power to require documents and information which the Commission considers necessary or expedient to have for the purpose of any of its regulatory functions.
- 7.5.2 The CQC's 'Code of Practice on Confidential Personal Information' states at paragraph 4.13 that the CQC will not seek the prior consent of relevant persons as refusal would prejudice their ability to properly discharge their regulatory functions.
- 7.5.3 Where a patient has specifically indicated that they do not wish for the CQC to have access to their health records, the Trust should inform the CQC of this and withhold the records pending the CQC inspector's response, or alternatively provide anonymised health records so that the patient's identity is protected. However, if the CQC inspector feels that access to the health records without anonymising is necessary in order to properly discharge their regulatory functions, then their statutory power will prevent the Trust from withholding the records.
- 7.5.4 For assistance during office hours contact the Caldicott and Legal Affairs team. For assistance out of hours contact the Point of Contact or the on-call [Senior Manager](#).

8 Police and Court Requests

- 8.1 There will also be occasion when the Police or Courts request information from the Trust. In these cases the Caldicott and Legal Affairs Team must be notified.
 - 8.1.1 If they are unavailable, the on call Director will need to be consulted for advice and guidance. This activity is to be recorded onto the Safeguard system.

8.2 Requests from the Police

- 8.2.1 The Police do not have automatic rights of access to information. All requests for health records / information received into the Trust from Police ([including Section 29 DPA requests](#)) should be directed to the Caldicott and Legal Affairs Team.

Caldicott and Legal Affairs
St Nicholas House
St Nicholas Hospital
Jubilee Road
Gosforth
Newcastle upon Tyne
NE3 3XT

Tel: 0191 245 6687
Fax 0191 223 2380

- 8.2.2 The Caldicott and Legal Affairs Team will require a written request from the Police in order to ascertain a legal basis for the release of patient information. In the absence of patient consent, a disclosure in the public interest i.e. risk may be considered ([including reliance upon Section 29 of the DPA](#)).

- 8.2.3 Any decision to share (or not to share) information with the Police should be clearly considered by the current clinical team and documented onto the patient's health record. This entry should include the considerations made, and a clear outline of the rationale behind making the decision. If information is to be shared with the Police without the patient's consent, they should be informed of the disclosure as soon as is practicable to do so. This should be done either before or after the sharing takes place, unless it is considered by the clinical team that it is inappropriate or unsafe to inform.

8.3 Urgent Police Requests

- 8.3.1 Where there is a serious risk to life, the police will normally contact the relevant team direct to obtain the information they require. In such circumstances the clinical team should consider the situation to hand and decide whether the public interest in disclosing information outweighs the duty of medical confidence owed. Any disclosure in these circumstances should be limited to information considered necessary and proportionate to serve the aim in mind.
- 8.3.2 For assistance during office hours contact the Caldicott and Legal Affairs Team. For assistance out of hours contact the Point of Contact or the on-call Director.

8.4 Court Orders

- 8.4.1 A Court Order received must be immediately faxed through to the Caldicott and Legal Affairs Office and the original sent in the mail to follow.
- 8.4.2 A Court may order disclosure of a patient's health record. A Court Order should bear the Court seal and must be obeyed unless there is a robust justification to challenge it, in which case, the Trust may challenge the order through the Courts. 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.
- 8.4.3 A Court Order should not be confused with a request from a solicitor.
- 8.4.4 Courts and Coroners are entitled to request original records. If they do, copies of the original records **must** be retained by the Trust. Coroners normally give sufficient notice for copies to be made, but have the power to seize records at short notice, which may leave little or no time to take copies.

8.5 Coroners Courts

- 8.5.1 The Coroners courts may request full copies of a patient's record following a death. In these cases the patient's records should be photocopied and printed from RiO / IAPTus. There should be no redaction of information.
- 8.5.2 A quality check should be carried out by the Disclosure Team on the health records copies to ensure they do not contain any other patient's information.

9 Freedom Of Information Act (FOI) and Access to Health Records

- 9.1 The FOI act is not intended to allow people to gain access to private sensitive information about themselves or others, such as information held in health records. Those wishing to access personal information about them should apply under the DPA. The Information Commissioner has provided guidance to the effect that health records of the deceased are exempt from the provisions of FOI due to their sensitive and confidential content.

10 Access Requests Previously Complied With

- 10.1 Where an access request has previously been complied with, the Trust need not respond to a subsequent identical or similar request unless a reasonable interval has elapsed.
- 10.2 The definition of a 'reasonable interval' will depend upon the nature of the information, how often it is altered and the reason for its processing.

- 10.3** The Disclosure Team should seek advice and guidance in relation to frequent or multiple requests. The Appropriate Health Care Professional should be informed and make a decision whether the request should be processed. The Disclosure Team will notify the requestor of the outcome and must inform them if the decision is not to proceed if a 'reasonable interval' has not passed and that the information has already been provided and no new information has been added to the record.

11 Where the Trust Decides to Refuse Access

- 11.1** Any notification or refusal to disclose personal data will be given as soon as practicable and in writing, even if the decision has also been given in person. The Trust should record the reason for its decision and explain these to the applicant.
- 11.2** If the Trust decides not to disclose some or all of the personal information, the applicant must be told in writing by the responsible clinician the reasons, distinguishing between reliance on an exemption, inability to obtain consent of a third party or their refusal to consent.

12 Rights of Rectification

- 12.1** Applicants may after an access request ask that a record be amended. In these circumstances this should be directed to the Caldicott and Legal Affairs Team for advice and guidance.
- 12.2** Where an applicant considers that information contained in their health records is inaccurate, they may apply for a correction to be made. If the health professional is satisfied that the information is inaccurate, i.e. incorrect, misleading or incomplete, the health records may be corrected. If the health professional is not satisfied that the applicant's concerns are justified, a note of the applicant's comments must be appended in the part of the record to which the comments relate. Whether or not the record is corrected, the health professional must supply the applicant with a copy of the correction/appended note, without charge. Care must be taken not to obliterate information significant to the future care and treatment of the patient.
- 12.3** If the Trust's attempts to rectify the records and resolve the concerns are not accepted, the patient may apply to the Court, for an order, or to the Information Commissioner for an enforcement notice. Either of which, may require that the inaccurate data, and any expression of opinion based on it, is rectified, blocked, erased or destroyed.
- 12.4** However, where the data is inaccurate but accurately records information given by the data subject or another person, the Court or the Information Commissioner may instead order that the record should be supplemented by a statement of the true facts as approved by the Court / Information Commissioner.

12.5 If this situation arises then the Caldicott Guardian must be contacted.