



Manchester Health & Care
Commissioning

A partnership between
Manchester City Council
and NHS Manchester CCG



MANCHESTER
CITY COUNCIL



Manchester
Clinical Commissioning Group

SUBJECT ACCESS REQUEST PROCEDURE

Version: **1.2**

Date Approved: January 2016

Title of document:	Subject Access Procedure		
Supersedes:			
Placement in Organisation:	Information Governance		
Consultation/Stakeholders	North Manchester CCG Corporate Governance Committee Central Manchester CCG Corporate Governance Committee South Manchester CCG Corporate Governance Committee		
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Approved by:	North Manchester CCG Corporate Governance Committee Central Manchester CCG Corporate Governance Committee South Manchester CCG Corporate Governance Committee		
Approval date:	January 2016	Review date:	January 2018
Implementation Date:	January 2016		
Implementation Method:	Website / Staff Intranet Manchester Matters		
<i>This document is to be read in conjunction with the following documents:</i> Information Governance Policy Information Governance Procedures Records Management Policy Acceptable Use Policy Risk Management Framework Incident Management Policy			
V1.2 – March 2017 – Changes to NHS Manchester CCG logo			

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1. INTRODUCTION

- 1.1 Individuals have a right to apply for access to information held about them and, in some cases, information held about other people.

Personal data is information that relates to an individual who can be identified either directly or indirectly and includes any expression of opinion about the individual.

Central, North and South Manchester Clinical Commissioning Groups are commissioning organisations that do not hold individual medical records except in cases such as:-

- where patient consent has been obtained for commissioning processes such as Continuing Care, Individual Funding Requests and service evaluation
- as data processor for the Manchester Care Record
- Complaint handling or for other purposes where there is a specific legal basis for doing so (e.g. s251 exemption).

We will also hold personal data relating to employees and contractors present, past or prospective, whether permanent or temporary.

- 1.2 The main legislative measures that give rights of access to records include:

The Data Protection Act 1998 (DPA) – rights for living individuals to access their own records. The right can also be exercised by an authorised representative on the individual's behalf.

The Access to Health Records Act 1990 – rights of access to deceased patient health records by specified persons.

It is important that all staff understand the requirements of these Acts, and the part they have to play in ensuring that the CCG complies with these legal obligations.

2. ROLES AND RESPONSIBILITIES

2.1 The Accountable Officer

The Accountable Officer has ultimate responsibility for compliance with the Acts.

2.2 The Caldicott Guardian

The Caldicott Guardian is the conscience of the organisation and is responsible for ensuring that patient information is used, and shared in an appropriate, justifiable and secure manner.

2.3 The Senior Information Risk Owner (SIRO)

The SIRO is responsible for managing information risks and incidents and is also the Information Governance lead at Board Level.

2.4 The Head of IT and Information Governance

Ensuring all procedures within the CCG meet the requirements as set out in the Data Protection Act 1998 and for providing strategic direction and advice on data protection matters.

2.5 Senior Information Governance Officers

The Senior Information Governance Officers are responsible for advising staff in the CCG on requests for information under the Data Protection Act and the Access to Health Records Act.

2.6 All CCG staff

All staff are responsible for:

- Ensuring compliance with the requirement of the Act;
- Respecting the data subjects' rights to confidentiality and actively responding to any concerns raised about confidentiality; and
- Ensuring they are fully aware of the Subject Access Request Procedure and are following the correct process as set out in this procedure when a subject access request is received.

3. RECEIVING A REQUEST UNDER THE DATA PROTECTION ACT

- 3.1 A request for access to records in accordance with the DPA, (the DPA refers to these as a subject access request), should be made in writing. The requestor does not need to mention the DPA or state that they are making a subject access request for their request to be valid.

A subject access request can be made via email, fax, post or by social media.

Requests must contain the following elements:

- Enough information to enable the identification and location of the information being requested.
- Adequate steps will be taken to identify the requester. Examples of suitable documentation are:
 - ✓ Valid Passport
 - ✓ Valid Driving Licence
 - ✓ Birth Certificate along with some other proof of address e.g. a named utility bill (no longer than 3 months old) or a Medical Card.

A reason for applying for access to records is not required, but sufficient information is required to enable the records to be located.

Immediately upon receipt requests should be date stamped with the date the request came in to the department and directed to the Information Governance Team.

4. WHO CAN MAKE A REQUEST FOR RECORDS

- 4.1 Formal access to a record can be made by any of the following:

- a) the patient
- b) where the patient is a child (under 18), a person having parental responsibility for the patient **or** it may be possible to accept such a request directly from the child.
- c) where the patient is incapable of managing his/her own affairs, a person appointed by the court to manage those affairs **or** a person upon whom the

patient, when capable, has endowed an Enduring Power of Attorney or a Lasting Power of Attorney (LPA).

- d) an agent/representative e.g. solicitor or carer.
 - e) where the patient has died, the patient's personal representative and any person who may have a claim arising out of the patient's death.
 - f) A staff member, past or present wanting access to their employee records.
- However, access may also be requested from the following:

- Criminal Injuries Compensation Authority (CICA) or Department for Work and Pensions (DWP).
- The Police, who wish to have access under the Crime and Disorder Act 1998
- The Crown Prosecution Service

5. MANCHESTER CARE RECORD

- 5.1 The Manchester CCGs host the Manchester Care Record on behalf of contributing health and social care providers. A request for access to the Manchester Care Record should be forwarded onto the Manchester CCG's Information Governance Team and they will co-ordinate the request with the partner organisations whose clinicians have contributed to the record. This process is specified within the data sharing agreements held between the CCG and Care Provider organisations.

6. WHERE ACCESS TO INFORMATION MAY BE LIMITED OR DENIED

- 6.1 The Data Protection (Subject Access Modification) (Health) Order 2000 (S.I. No. 413)) enables the data controller to limit or deny access to an individual's health record where:

The information released may cause serious harm to the physical or mental health or condition of the patient, or any other person.

Before deciding whether this exemption applies, a data controller who is not a health professional (as defined in the Act) is obliged to consult the health professional responsible for the clinical care of the data subject, or if there is more than one professional, the most suitable one.

6.2 Information provided by a third party

Access may also be limited or denied where it would disclose information relating to or provided by a third person who has not consented to that disclosure **unless**:

- The third party is a health professional who has compiled or contributed to the records or who has been involved in the care of the patient.
- The third party, who is not a health professional, gives their consent to the disclosure of that information.
- It is reasonable to disclose information without that third party's consent.

7. FEES TO ACCESS RECORDS UNDER DATA PROTECTION ACT OR THE ACCESS TO HEALTH RECORDS ACT

7.1 The Data Protection (Subject Access) (Fees and Miscellaneous Provisions) Regulations 2000 sets out the fees a requester 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 are:

- Records held electronically - up to a maximum £10.
- Records held entirely on other media - up to a maximum £50.

To view records (where no copy is required) the maximum costs are:

- Records held electronically - a maximum of £10.
- Records held in part electronically and in part on other media - a maximum of £10 charge.

If the record has been added to in the last 40 days in which case there should be no charge.

For other records such as HR records, the charge will be a maximum of £10.

7.2 Where the patient is deceased, the requestor can be charged an initial fee of £10 plus photocopying and postage. There is no limit on this charge, but it should not result in profit. This fee is over and above the £10 for initial access.

8. CONSENT REQUIREMENTS

8.1 Written consent should be less than 6 months old.

In most cases consent to access personal information will be provided by the individual who is requesting the information. However, there may be cases where the individual is unable to consent or the individual is a child.

When a requestor is not able to produce written consent from the data subject to access their information or is not able to evidence that they are entitled to access the requested information, the CCG will request further information from the requestor with regard to the request, before deciding whether it would be justifiable to release the information to the requestor. In the event that the requestor is a solicitor the subject's written authority for release must be obtained.

8.2 Subject access requests made on behalf of people who lack capacity

If an adult lacks capacity and a representative is making the request on their behalf, the person dealing with the request must ensure that the requestor is authorised to act on the patient's behalf, that is, hold a Lasting Power of Attorney (LPA) for Health and Welfare purposes sealed by the Court of Protection.

9. ACCESS TO HUMAN RESOURCE RECORDS

9.1 Individuals can request access to their employee records. Sufficient detail to clearly identify the individual is essential and should include the person's full name, current

address and payroll details such as employee number or National Insurance Number.

Where documents provide information about other individuals as well as the individual making the request, it should not be disclosed without that third party's consent, unless it is reasonable to do so.

Viewing of personal files must be undertaken either in the presence of the relevant Manager or a member of Human Resources staff. Copies of information should be provided by arrangement with the relevant Manager in consultation with the Human Resources Advisor.

9.2 Access to Occupational Health Records

Occupational Health reports or letters are held on the employee's personal file and can be disclosed with the file. An employee wishing to view their medical records will need to supply either:

- the date employment began following a pre-employment assessment,
- a date of referral under the referral procedure,

9.3 Access to references

References which have been given in confidence should be removed from an employee's file prior to access being given.

9.4 Leavers files

Leavers' personal files should be maintained for at least six years after the employee leaves the employment of the CCG, or until the date on which the employee would reach the age of 70, whichever is the later. Ex-employees may request access to their personal file, for which an administration charge may be made.

10. CHILDREN AND YOUNG PEOPLE

10.1 A person, with parental responsibility, can make subject access requests on behalf of their children who are too young to make their own request. A young person aged 12 or above is generally considered mature enough to understand what a subject access request is. They can make their own request and would need to provide their consent to allow their parents to make the request for them. The health professional must use their own judgement to decide whether a young person aged 12 or above is mature enough to make their own request as they do not always have the maturity to do so.

Not all parents have parental responsibility. Both parents have parental responsibility if they were married at the time of the child's conception, or birth, or at some time after the child's birth. Neither parent loses parental responsibility if they divorce. However, there are circumstances in which a father who is not married to the child's mother may acquire parental responsibility for him/her.

Where a child is "looked after" by the Local Authority permission needs to be given by both the Local Authority and the parents as they share parental responsibility.

10.2 Child Protection Cases

Section 47 of the Children Act 1989 places certain duties on local authorities where they have reasonable cause to suspect that a child, who lives in their area, is suffering or is likely to suffer significant harm. Local authorities are required to make such enquiries, as they consider necessary to enable them to decide whether any action should be taken to promote a child's welfare.

11. WHERE THE PATIENT IS DECEASED

11.1 The rights to access under the Data Protection Act 1998 extend only to living individuals. Requests for deceased patients' records are made under the Access to Health Records Act 1990. Requests can only be made by:

- The patient's personal representative (usually the executor of the will or administrator of the estate) or
- Any person who may have a claim arising out of the patient's death. Release of any information will only be the minimum necessary to process their claim. Only relevant information relating to any claim made should be released

11.2 A health professional must inspect records taking into account the following:

- If it is known whether the deceased patient did not wish for their records to be disclosed or 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.

The same rules apply to third party information as with other records. The CCG should afford the same level of confidentiality to deceased person's records as for living ones.

11.3 Requests from the Coroner

If a patient has died in suspicious circumstances the Coroner may receive the deceased's medical records to ensure that they are not altered, lost or destroyed. The Coroner is entitled to request access to the deceased's medical records. The CCG has a duty to co-operate with the investigation and must disclose information relating to the deceased's medical history and treatment.

12. INDIVIDUALS LIVING ABROAD

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

13. TIME LIMITS

13.1 Legally, a formal subject access request must be completed within 40 calendar days or, if later, 40 calendar days from the day on which the CCG has the necessary information to confirm the identity of the requestor and locate the record.

The Department of Health states that NHS bodies should endeavour to comply with subject access requests within 21 calendar days.

Where the CCG requires a fee to process the request, or further clarification is required, the 'clock' will stop on the date it gave notice to the requester and restart once the information/payment is received.

Failure to comply gives the requestor a right of action in the High Court. It is therefore essential that all applications be processed as a matter of priority, thereby minimising risk to the CCG.

14. REQUEST FOR ACCESS TO LEGACY INFORMATION

Any requests received for legacy information created by Manchester Primary Care Trust will be directed to the appropriate receiving organisation if the information is no longer held by the Manchester CCGs by the Information Governance Team.

15. COMPLAINTS

If the requestor feels that they have not been fairly treated and that the holder of the record has not complied with the Acts, then they should first complain in writing to The Chief Officer of the CCG.

If they are still unhappy after this, the requestor has the right to apply to the Information Commissioner to review the outcome of the application if necessary. To complain to the Information Commissioner, please see the Information Commissioner's Office web page at: <http://www.ico.gov.uk/complaints/getting/complain.aspx>

16. ADMINISTRATION PROCESS

16.1 Receipt of request

- *Immediately* upon receipt, requests should be date stamped with the date the request came in to the department and directed to:
Information Governance Team
Ground Floor, Parkway 3
Parkway Business Centre
M14 7LU
- The Information Governance Team will:
 - Check that the request relates to personal data of a type likely to be held by the CCG.
 - Consider whether the requester has supplied sufficient information to identify the data required.
 - Consider whether there is sufficient evidence of identity of either the subject themselves or a third party authorised to act on their behalf.
 - In the case of a third party, consider whether they meet the legal criteria to make a request and whether they have supplied evidence to that effect (for example where appropriate written consent from the individual).
 - Consider whether the request is likely to be subject to a fee
 - Record the request in the Subject Access Logger.

The 40 day period begins from the date that the ID/clarification/fees are received.

16.2 Acknowledgement

- If the request meets the criteria above an acknowledgement letter is to be sent advising the requester of the expected timescale
- If further clarification, information, documentation or fees are required then request these as soon as possible
- Make a record of the actions.

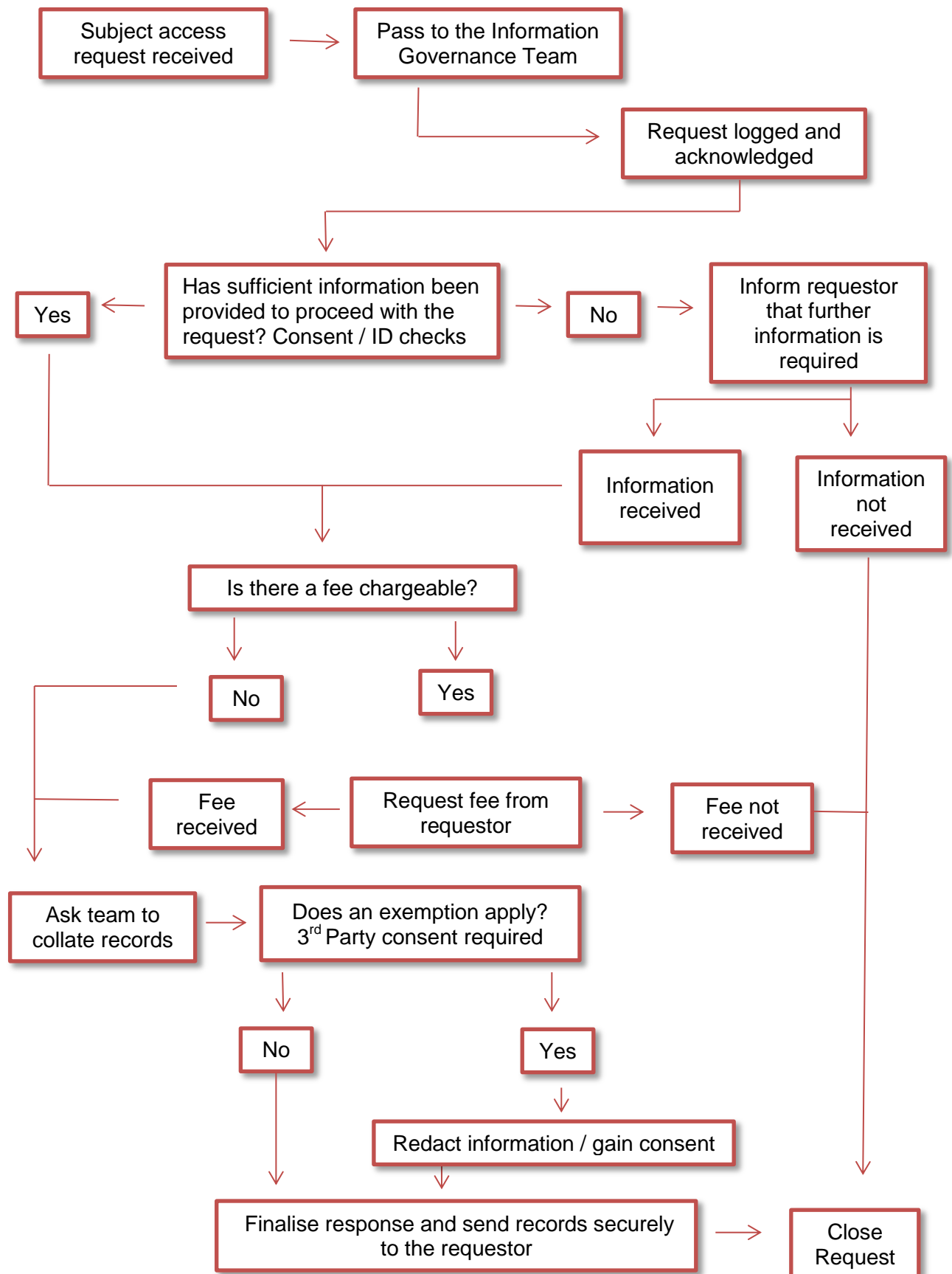
16.3 Collation

- Consider where the information may be held and ask the relevant staff to conduct a search within the parameters of the request details
- Ensure both electronic and manual filing systems are considered.
- There is no exemption for potentially embarrassing information to be redacted nor for the removal of personal comments from records. It is a criminal offence to alter, block or destroy information after receipt of a Subject Access Request.
- Information must be in an intelligible form and explanations should be provided for pseudonyms, abbreviations etc.
- It is important that the department receiving the access request should work closely with the Information Governance Team to satisfy the CCGs legal obligations under the Data Protection Act.

16.4 Responding

- Check that you have received any fees or additional supporting documentation requested at the time of acknowledgement
- Send the response to the requester explaining the information supplied
- The records must be sent securely by:
 - Seal the information in a robust envelope or one-use
 - Mark it 'Private and Confidential, for the attention of the addressee only'
 - Send to a named person only
 - Send the information by Recorded/Special Delivery or collected in person, once the identification of the requestor has been confirmed.
- Make a record of the response, including any redactions or exempted information and ensure that you have a clear record of documents disclosed including copies of any redacted documents.
- Ensure that the requester is advised of his right to complain about the response given to his request and the way in which he can do this.

Appendix A - Subject access procedure chart



Appendix B - Template Letters

Acknowledgement

CCG name & contact details

Our Ref
Your Ref

Name of Data Subject
Address

Date:

Dear [Name],

Data Protection Act 1998 Subject Access Request

Many thanks for your request for information which was received on *[Date]*. I/We am/are dealing with it under the terms of the Data Protection Act 1998.

The information you are requesting is outlined as below: [include dates, manner of ALL & subsequent requests received]

Please find enclosed a consent form that must be completed and sent to the above address prior to us releasing your records. In addition to this please supply a copy of your identification or your authority to act on behalf of the data subject.

We will endeavour to process your request as soon as possible and certainly within 40 calendar days as set down by the Act. You will receive a response from me by [Calculate 40 calendar days] at the latest.

If you have any queries about this letter, please contact me on the above number.

Please quote the reference number above in any future communications to make it easier for me to deal with your correspondence.

Yours sincerely,

cc Mark Wright, Information Governance Lead

Acknowledgement and fee request

CCG name & contact details

Our Ref
Your Ref

Name of Data Subject
Address

Date:

Dear [Name],

Data Protection Act 1998 Subject Access Request

Many thanks for your request for information which was received on *[Date]*. I/We am/are dealing with it under the terms of the Data Protection Act 1998.

The information you are requesting is outlined as below: [include dates, manner of ALL & subsequent requests received]

Please find enclosed a consent form that must be completed and sent to the above address prior to us releasing your records. In addition to this please supply a copy of your identification or your authority to act on behalf of the data subject.

We will endeavour to process your request as soon as possible and certainly within 40 calendar days as set down by the Act. You will receive a response from me by [Calculate 40 calendar days] at the latest.

We charge a £10 fee for responding to these requests. Please note that the CCG will not process your request until we have received payment of the fee. You can pay:

1. By cheque made payable to Central/North/South Manchester Clinical Commissioning Group and sent to me at the address above.
2. In person with cash at the address on this letter. ???

The 40 calendar days starts when the fee is received. We will endeavour to process your request within 40 calendar days from receipt of the fee.

I look forward to receiving confirmation that you wish to proceed with this request.

Yours sincerely,

cc Mark Wright, Information Governance Lead

Response letter

CCG name & contact details

Our Ref
Your Ref

Name of Data Subject
Address

Date:

Dear [Name],

Data Protection Act 1998 Subject Access Request

Many thanks for your request for information which was received on *[Date]*.

Please find enclosed all information relating to your request.

Under the terms of the Data Protection Act 1998, there is a right of complaint to the Information Commissioner if you are dissatisfied with the decision made in relation to your request. The address for the Information Commissioner is:

Information Commissioner's Office
Wycliffe House Water Lane
Wilmslow
Cheshire
SK9 5AF

If you have any queries about this letter, please contact me on the details as shown above. Please remember to quote the reference number above in any future communications.

Yours sincerely,

cc Mark Wright, Information Governance Lead