

Cambridgeshire and Peterborough Clinical Commissioning Group (CCG) **Access to Records Policy** **2019 - 2021**

Ratification Process

Lead Author:	Corporate Services Manager (IG Lead) Corporate Services Support Manager (IG)
Developed by:	IG, BI and IM&T Steering Group
Approved by:	IG, BI and IM&T Steering Group May 2019
Ratified by:	Integrated Performance and Assurance Committee 28 May 2019
Version:	1.2
Latest Revision date:	May 2021 (Extension until July 2021 approved by IG, BI and IM&T Steering Group on 22 April 2021)
Valid on:	28 May 2019

Document Control Sheet

Development and Consultation:	Policy developed in accordance with new guidance under the Data Protection Act 2018. Document approved by the CCG's IG, BI and IM&T Group and endorsed by the Clinical Executive Committee.
Dissemination	This policy will be promoted within the CCG and uploaded to the public website.
Implementation	The Caldicott Guardian is responsible for monitoring the application of the policy by ensuring that: <ul style="list-style-type: none"> • The Policy is brought to the attention of all employees; • Managers are aware of their responsibilities for ensuring that staff under their control implement the policy; • Appropriate training and guidance is provided to staff; • Corporate business processes support the implementation of the policy.
Training	Training will be undertaken as part of the CCG's ongoing processes.
Audit	Implementation of the Policy will be monitored on a regular basis.
Review	This policy will be reviewed annually or earlier if there are changes in procedures or legislation.
Links with other documents	The policy should be read in conjunction with the following CCG Policies: <ul style="list-style-type: none"> • Data Protection Policy; • Records Management and Lifecycle Policy; • Safe Haven Policy; • Code of Conduct for Staff in Respect of Confidentiality; • Information Security for Staff Policy; • IG Forensic Readiness Policy.
Equality and Diversity	An Equality & Diversity Impact Assessment has been carried out by the Information Governance Team. The CCG's Equality and Diversity Manager has concluded that the Policy did not identify any negative impacts.

Revisions

Version	Page/Para No	Description of Change	Date Approved
1.0	Whole document	Complete document revision in accordance with GDPR implementation May 2018. Access to Records had previously been included in the Data Protection Policy but has now been removed to create a standalone Policy.	May 2018
1.1	Sections 4 & 5	Sections relating to Access to Health Records revised to reflect that any fees payable are linked to Subject Access under current Data Protection Legislation.	Revision reported to IG, BI and IM&T Steering Group 2 May 2019.
1.2	Sections 6 & 8	<ul style="list-style-type: none"> • Revised to reflect acting in the best interests of a data subject who lacks capacity in relation to NHS Continuing Healthcare by accepting a property and financial affairs LPOA where a health and welfare LPOA is not in place as the requestor's authority to act. • Time limits for responding to data subject access requests updated. 	Revision to be reported to IG, BI and IM&T Steering group 31 October 2019.

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1. Rights of Access to Personal Data

Individuals have the right, under Data Protection legislation (General Data Protection Regulation (EU) 2016/679, Articles 12 and 15) to request access to, or a copy of, information an organisation holds about them. This information may be held on computer, in a manual paper system, video, digital image, photograph, x-rays, email, text message or by any other new or existing medium or media. This is called a Subject Access Request (SAR).

Anyone making such a request is entitled to be given a description of:

- Which data (categories) are being processed;
- Details of the data controller, including contact details;
- Contact details of the Data Protection Officer;
- Purposes of the data processing, applicable legal basis and whether there is a statutory or contractual requirement to process data;
- Other organisations that data may be shared with;
- Whether there is any data processing taking place outside of the EEA;
- The retention period for the data categories;
- Individual rights to rectification, erasure, withdraw consent/object/opt out, data portability, ability to take complaints to the ICO.

The General Data Protection Regulation (EU) 2016/679 applies only to living persons but there are limited rights of access to personal data of deceased persons under the Access to Health Records Act 1990.

2. Personal Data held by a Clinical Commissioning Group

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 and any indication of the intentions of the information holder or any other person in respect of the individual.

A Clinical Commissioning Group is a commissioning organisation and does not hold individual's medical records except with consent as part of processes such as Safeguarding, Continuing Health Care, Individual Funding Requests and Complaints or where there is a specific legal basis for doing so (eg s251 of the NHS Act 2006). The organisation will also hold personal data relating to employees and contractors.

3. Subject Access Requests

- 3.1 The responsibility for oversight of a SAR rests with the CCG's Information Governance Lead with assistance from support staff and other CCG teams who have delegated authority to handle their own access to records requests.

- 3.2 The CCG has provided an application form (Appendix H) on its public website to assist applicants and the CCG to ensure that all the relevant information is collected and recorded, but there is no requirement in law for an applicant to use a specific form.
- 3.3 There is no obligation upon a data subject to explain why they wish to access their own personal data.
- 3.4 Applicants are required to provide proof of Identity, unless they are already known, in which case it is reasonable to process the request without. If there is any doubt about the identity of the person making the request you can ask for more information, however, it is important that you only request information that is necessary to confirm who they are. Individuals must be notified as soon as possible that more information to confirm their identity is required before responding to their request; the period for responding to the request begins when the additional information is received.

4. Requests under the Access to Health Records Act 1990

- 4.1 The Common Law Duty of Confidentiality extends beyond death. Consideration must therefore be given to whether the data subject had requested confidentiality whilst alive.
- 4.2 The Act covers manual health records made since 1 November 1991. Access must also be given to information recorded before these dates if this is necessary to make any later part of the records intelligible.
- 4.3 Statutory rights of access are set out in the Access to Health Records Act 1990.

Individuals who may make an Access to Health Records request, are:

- Those named executor of a will or personal representative as specified in letters of administration (documentation confirming this is required);
- Any person who may have a claim arising out of the patient's death. Under section 5(4) of the Access to Health Records Act, no information which is not directly relevant to a claim should be disclosed to either the personal representative or any other person who may have a claim arising out of the patient's death.

A Next of Kin has no automatic right of access, but professional codes of practice allow for information sharing where concerns have been raised. If in doubt, guidance should be sought from the CCG's IG Lead / Data Protection Officer or Caldicott Guardian.

5. Charging a Fee for Access

Subject Access Requests

- 5.1 The General Data Protection Regulation (EU) 2016/679 removes the ability to charge fees for fulfilling Subject Access Requests and tightens the statutory timeframe for completing a request to one calendar month.
- 5.2 Where requests are manifestly unfounded or excessive, in particular because of their repetitive character, the CCG may either charge a reasonable fee (taking into account only the administrative costs of providing the information) or may refuse to act on the request. If there is any doubt, contact the Information Governance Team.
- 5.3 Where a fee applies, the requester must be advised as soon as possible after the request is received and this will be payable before the request is further processed.

Access to Health Records Requests

- 5.4 Legislative changes¹ to the Data Protection Act have also amended the Access to Health Records Act 1990 which now states that access to the records of deceased patients and any copies, must be provided free of charge. As with Subject Access Requests, a fee may be charged where requests are manifestly unfounded or excessive.

6. Timescale for Response

The legal timeframe for response under current Data Protection law is **one calendar month** starting from the day the request is received ie if the request is received on the 8th of the month, you will need to complete the request by the 8th of the following month. The timeframe, however, won't generally commence until the CCG has received the following:

- A valid verbal or written request;
- Consent from the data subject (if applicable) or the requestor's authority to act;
- Valid Identification (See 3.4);
- Payment of a fee (If applicable, see 5).

You are able to extend the period of compliance by a further two months where requests are particularly complex or voluminous. Where this is the case, you must inform the subject within one month of the receipt of the request and explain why the extension is necessary.

Further information on the time limits for responding can be found on the Information Commissioner's website at: <https://ico.org.uk/your-data-matters/time-limits-for-responding-to-data-protection-rights-requests/>

¹ Statutory Instruments 2000, No 191 - The Data Protection (Subject Access) (Fees and Miscellaneous Provisions) Regulations 2000.

7. Access Requests for Minors

- 7.1 A child may make a Subject Access Request in relation to their own personal data as from the age of 13 they are normally considered competent enough to do so.
- 7.2 Those with parental responsibility for a child under 13 years may make an access request on their behalf but the information holder must consider whether it is in the best interests of the child to disclose information held.

See 'Note' in Appendix B – Requests by Parents/Guardians for Access to a Child's Data.

8. Access Requests for those who lack capacity to consent

In certain circumstances a person acting as an advocate can seek access to personal information in so far as it is necessary or relevant to their role. This includes:

- Persons appointed by the Court of Protection;
- Persons holding a registered Lasting Power of Attorney (LPOA) for specified purposes*;
- Persons appointed as Independent Mental Health Advocates under the Mental Capacity Act 2005.

**In the context of NHS Continuing Healthcare, where a health and welfare LPOA is not in place and the data subject is still alive but lacks capacity, it may well be in their best interests (under the Mental Capacity Act) for relevant information to be shared with a property and financial affairs deputy or attorney (or other third party who is acting as their advocate).*

9. Third Party Requests for Access to Personal Data

There are a number of organisations concerned with law enforcement, crime prevention, fraud and taxation who have a right to request information from NHS organisations under the provisions of Data Protection legislation. These requests should be dealt with on an individual basis which balances the public interest against the confidentiality rights of the subject. Any request should be authorised by an appropriately senior enforcement officer (an Inspector of Police or equivalent rank in other services) and should be accompanied by sufficient information to enable an informed decision to be made within by the Caldicott Guardian (patient data) or Senior Information Risk Owner (SIRO). To state a 'serious crime' is not sufficient and more detail must be given. The Coroner may request access to medical or staff records and is deemed to be acting in the public interest. Guidance and further information are available from the [Information Governance Alliance](#) website.

- 9.1 The CCG will take a pro-active approach to the sharing of information relevant to the safeguarding of children and adults at risk.
- 9.2 A number of other organisations including the Health and Safety Executive, Health Service Ombudsman and the Care Quality Commission may have rights of access in relation to enquiries being conducted. Advice should be sought from the Caldicott Guardian, SIRO or the Information Governance team.

- 9.3 Follow any locally agreed information sharing protocols and national guidance.
- 9.4 Information may be shared with Local and National Counter Fraud Specialists in relation to actual or suspected fraud in the NHS.
- 9.5 Information held by the CCGs originating from other organisations should be included unless such data is exempt or contains data regarding other individuals than the data subject.

10. Access to Corporate Information

CCG's are public authorities and are subject to the provisions of the Freedom of Information Act 2000 and the Environmental Information Regulations 2004. Personal Data is usually exempted from public disclosure but in certain circumstances some personal data may be disclosed in the public interest but still subject to the individual's rights under Data Protection legislation.

11. Access to Records Procedure

This section should be read in conjunction with (Appendices A and B).

11.1 Receiving an Access to Records Request:

- All requests must be forwarded to the Information Governance Team who will respond on behalf of the CCG unless it has been formally agreed that your team will handle them;
- Check that the request relates to personal data of a type likely to be held by the CCG;
- Consider whether the requester has provided sufficient information to enable identification of the data required, if not seek clarification before processing further;
- Consider whether you have 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;
- Consider whether the request is likely to be subject to a fee (See section 5);
- Record the request on your Access to Records Log ensuring that you include date of receipt and the date by which a response is due. The Information Governance Team maintains an Access to Records log for all requests that they handle. CCG teams with an arrangement in place to handle Access to Record requests must make sure that each request received is recorded on their own centrally held logs.
- Arrangements must be in place for the safe and secure storage of access requests and responses with appropriate limited access.

11.2 Acknowledging the Request

- If the request meets the criteria above, send an acknowledgement letter (Appendices C or E) advising the requester of the expected timescale for response;
- If further clarification, information, documentation or fees are required then request these as soon as possible;
- Make a record of your actions in the 'comments' section on your log;
- If the CCG does not hold the information requested, due to confidential destruction in accordance with NHS Records Management retention schedules, the requestor must be informed in writing as soon as possible (See Appendix G).
- If the CCG does not hold the information requested and believes that it may be held by another NHS organisation, offer the applicant advice and guidance as to the likely location of the data.

11.3 Establishing Identity

To help establish identity the application must be accompanied by photocopies of **two** official documents which between them clearly show the data subjects **name, current postal address, date of birth and signature**, for example: birth certificate, Local Authority provided bus pass, driving licence, passport, medical card, bank statement, utility bill, rent agreement. Ideally, one of the proofs should be a photographic identity document such as passport or driving licence. Additional documents may be required from third parties to establish their legal right to make an Access Request.

11.4 Collating the data

- 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 along with email, digital records, CCTV images, telephone recordings and other media options;
- There is no exemption for potentially embarrassing information to be redacted or 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.

11.5 Potential Redactions or Refusals

- All collated data should be reviewed before release and consideration given to redacting any information likely to cause serious harm to the mental or physical health of any individual;
- Information supplied by third parties eg family members should usually be redacted;

- Data and information held from other agencies may be disclosed, but should be discussed with the originating organisation first;
- Any information subject to Legal Professional Privilege should not be disclosed;
- Information should not be disclosed where there is a statutory or court restriction on disclosure eg adoption records;
- References written for current or former employees are exempt (but not those received from third parties);
- In the case of deceased records, information should not be disclosed where the entry in the records makes it clear that the deceased expected the information to remain confidential;
- A personal record may also contain reference to third parties and redaction should be considered by balancing the data protection rights of all parties.

12. Records Management procedure (retention period)

12.1 Responding to the Request

- Check receipt of any applicable fees or additional supporting documentation requested at the time of acknowledgement;
- Send a holding letter with an explanation if it seems likely that the stator deadline will be breached;
- Send the response (See Appendices D or F) to the requester explaining the information supplied;
- Record the response on your Access to Records log, including any redactions or exempted information and ensure that you have a clear audit trail 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;
- Be prepared to facilitate a meeting to explain the records if necessary.

12.2 Summary of procedure

- Determine whether you are in receipt of a Subject Access or an Access to Health Records Request (See Flowchart at Appendix A);
- Confirm the requester's identity;
- Ensure that sufficient information had been provided to identify the desired records;
- Record the request;

- Inform if the request has been deemed manifestly unfounded or excessive and any fee that would be charged for administration;
- Is information held on this person;
- Will the information change from the point of receiving the request to responding;
- Remove any third-party information;
- Is the information exempt;
- Explain any codes, complex terms, and or abbreviations;
- Ensure that all of the data has been reviewed prior to release and consideration given to redacting any information likely to cause serious harm to the subject;
- Keep a record of exact information disclosed;
- Monitor to ensure timescales for responding are met.

ANNEX A - Equality Impact Assessment Form

Name of Proposal (policy/strategy/function/service being assessed)	CCG Access to Records Policy
Those involved in assessment:	Policy developed in consultation with the IG, BI & IM&T Steering Group and for endorsement by the Integrated Performance and Assurance Committee
Is this a new proposal?	No. Policy updated to reflect Legislative changes (Statutory Instruments 2000, No 191 - The Data Protection (Subject Access) (Fees and Miscellaneous Provisions) Regulations 2000) to the Data Protection Act 2018.
Date of Initial Screening:	21 May 2018, updated 16 May 2019

What are the aims, objectives?	This Policy will raise awareness to all staff working for the CCG on recognition of an access to records request. It will also provide guidance for staff members whom the IG Lead has delegated authority to handle their own access to records requests. Staff will be advised of the availability of the Policy on the CCG's website via iConnect.
Who will benefit?	<ul style="list-style-type: none"> • All CCG staff; • Data Subjects; • Certain individuals with limited rights of access to deceased records.
Who are the main stakeholders?	Staff, Managers, IG, BI, IM&T Steering Group
What are the desired outcomes?	<ul style="list-style-type: none"> • Staff awareness of the CCG Policy; • Recognition of the type of access to records request received ie SAR or ATHR.
What factors could detract from the desired outcomes?	<ul style="list-style-type: none"> • Lack of awareness of the existence of the Policy; • Failure to follow the Policy/procedure.
What factors could contribute to the desired outcomes?	Knowledge of the policy and implementation
Who is responsible?	Staff, managers, IG, BI, IM&T Steering Group
Have you consulted on the proposal? If so with whom? If not, why not?	Policy developed in consultation with the IG, BI & IM&T Steering Group for approval and endorsement by the Integrated Performance and Assurance Committee

Which protected characteristics could be affected and be disadvantaged by this proposal (Please tick)		Yes	No
Age	<u>Consider:</u> Elderly, or young people		x
Disability	<u>Consider:</u> Physical, visual, aural impairment; Mental or learning difficulties		x
Gender Reassignment	<u>Consider:</u> Transsexual people who propose to, are doing or have undergone a process of having their sex reassigned		x
Marriage and Civil Partnership	<u>Consider:</u> Impact relevant to employment and /or training		x
Pregnancy and maternity	<u>Consider:</u> Pregnancy related matter/illness or maternity leave related matter		x
Race	<u>Consider:</u> Language and cultural factors, include Gypsy and Travellers group		x
Religion and Belief	<u>Consider:</u> Practices of worship, religious or cultural observance, include non-belief		x
Sex /Gender	<u>Consider:</u> Male and Female		x
Sexual Orientation	<u>Consider:</u> Known or perceived orientation		x

What information and evidence do you have about the groups that you have selected above?

The above protected characteristics will have no adverse impact as the Policy has been developed in accordance with new Data Protection legislation (ie General Data Protection Regulation May 2018).

Consider: Demographic data, performance information, recommendations of internal and external inspections and audits, complaints information, JNSA, ethnicity data, audits, service user data, GP registrations, CHD, Diabetes registers and public engagement/consultation results etc.

How might your proposal impact on the groups identified? For example, you may wish to consider what impact it may have on our stated goals: Improving Access, Promoting Healthy Lifestyles, Reducing Health Inequalities, Supporting Vulnerable People

Examples of impact re given below:

- a) Moving a GP practice, which may have an impact on people with limited mobility/access to transport etc

- b) Planning to extend access to contraceptive services in primary care without considering how services may be accessed by lesbian, gay, bi-sexual and transgender people.
- c) Closure or redesign of a service that is used by people who may not have English as a first language and may be excluded from normal communication routes.

Please list the positive and negative impacts you have identified in the summary table on the following page.

Summary	
Positive impacts (note the groups affected) N/A	Negative impacts (note the groups affected) N/A

Summarise the negative impacts for each group:

N/A

What consultation has taken place or is planned with each of the identified groups?

Policy was developed and approved in consultation with the IG, BI & IM&T Steering Group prior to endorsement by the Integrated Performance and Assurance Committee.

What was the outcome of the consultation undertaken?

Approval, and Endorsement sought

What changes or actions do you propose to make or take as a result of research and/or consultation?

Briefly describe the actions then please insert actions to be taken on to the given Improvement Plan template provided.

The Information Governance Team on behalf of the Associate Director of Corporate Affairs will be responsible for ensuring that this policy is implemented, including any supporting guidance and training deemed necessary to support the implementation, and for monitoring and providing Governing Body assurance in this respect.

Will the planned changes to the proposal:

Please State
Yes or No

Lower the negative impact?	N/A
Ensure that the negative impact is legal under anti-discriminatory law?	N/A
Provide an opportunity to promote equality, equal opportunity and improve relations i.e. a positive impact?	N/A

Taking into account the views of the groups consulted and the available evidence, please clearly state the risks associated with the proposal, weighed against the benefits.

Information risk - The CCG must respect patient confidentiality in accordance with the NHS Constitution, ICO Guidance, and the Statutory Code of Practice. 'Necessity' is a qualifying condition to justify the lawful use of PCD.

What monitoring/evaluation/review systems have been put in place?

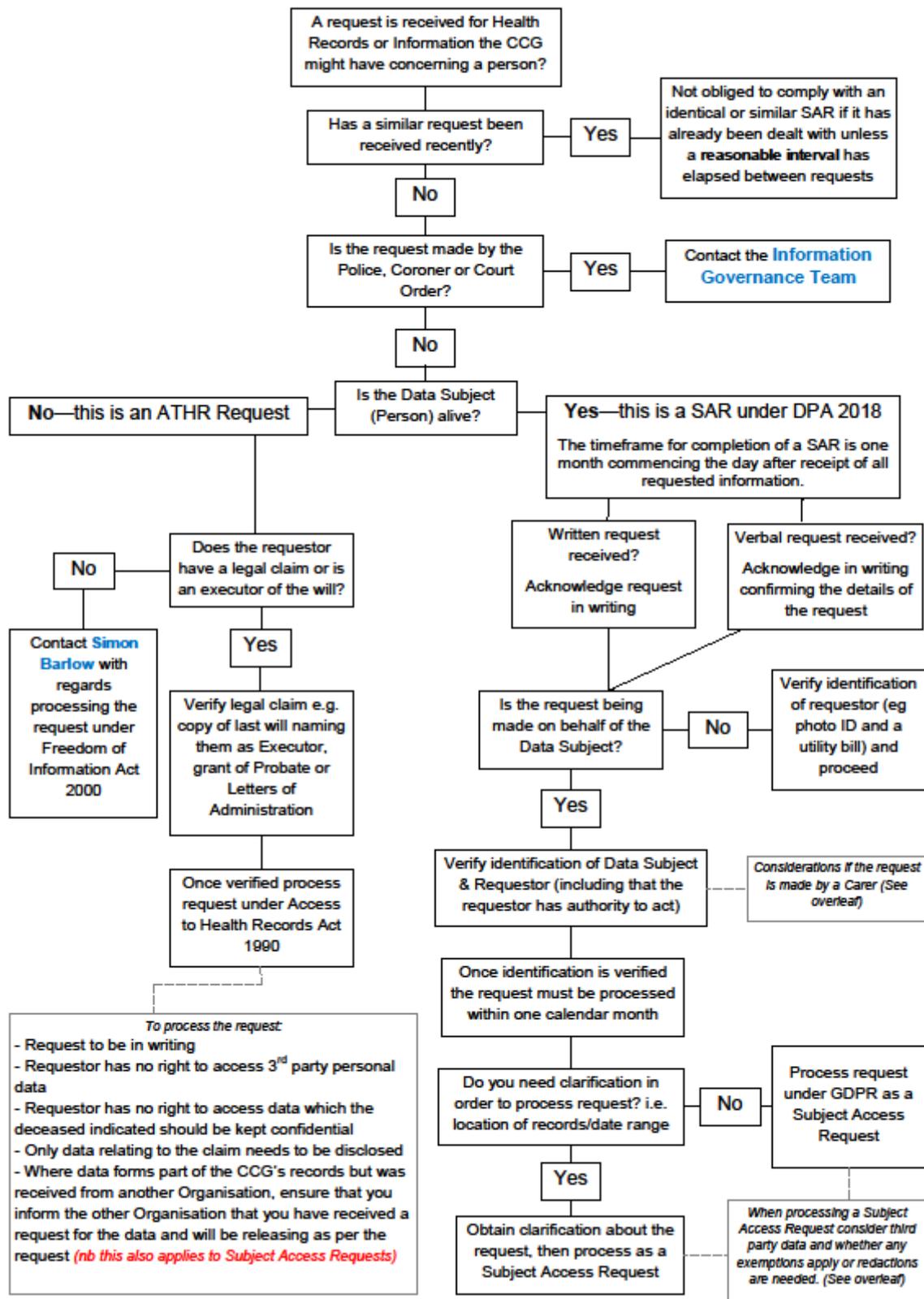
Monitoring will be undertaken by the Information Governance team. The frequency of review will be every other year or as required.

When will it be reviewed?

May 2021

Date completed:	16 May 2019
Signature:	Corporate Services Manager (DPO / IG Lead)
Approved by:	Equality & Diversity Adviser
Date approved:	28 May 2019

APPENDIX A – Flowchart for Identifying a SAR / ATHR



C&PCCG IG Team—May 2018 v3

Subject Access Requests

Third Party Data

- If possible, securely redact 3rd party data
- Disclose if you can get consent from the 3rd party without disclosure of personal data of the requestor
- Disclose if Information is already known to the requestor or general public
- Disclose if a member of staff is acting in the course of their duties (*unless disclosing will cause the member of staff damage or distress*)
- Disclose if Information is critical to requestor

Subject Access Requests / Access to Health Records: Where data form part of the CCG's records but was received from another Organisation, ensure that you inform the other Organisation that you have received a request for the data and will be releasing as per the subject / personal representative's request.

Exemptions to Subject Access Requests

Exemption: Health Data

- Data maybe exempt if access to data would cause serious harm to the physical or mental health or condition of the data subject (must obtain written confirmation from a health professional)
- For request made on behalf of the data subject – exemption may apply if the data subject has made it clear they object to the information being disclosed

Exemption: Negotiations with Data Subject

Data which relates to negotiations with the Data Subject are exempt to the extent that releasing the information may affect the negotiations (this only applies during the negotiation stage, they can request after this stage)

Exemption: Management Information

Data that is process for management forecasting or management planning is exempt. E.g. if there is a re-structure planned this will affect some employees. If a staff member made a SAR before the plans are finalised, the plans do not have to be disclosed as it would prejudice the management process.

Exemption: Confidential References

Confidential references given in connection with education, training or employment are exempt. (This only applies to given references, not received references).

Exemption: Legal Advice Privilege

Confidential information given by a qualified and practising solicitor, barrister or Legal Executive to a client is exempt. Only covers legal advice obtained "in a legal context". Once claimed privilege it can last forever. Communications with 3rd parties is not covered.

Exemption: Legal Litigation Privilege

Litigation privilege is designed to allow litigants to prepare for litigation (Legal action before a court) without fear of documents having to be disclosed.

Exemption: Prevention or Detection of Crime

Data can be exempt if it was processed for the following purposes:

- The prevention or detection of crime
- The apprehension or prosecution of offenders

Requests from Carers

Requests by carers where the data subject cannot give consent must only be continued if:

- The data subject lacks capacity
- The carer "cares for" the data subject
- There is no legal documentation in place to prevent sharing
- There are no contra-indications to sharing
- There are no apparent safeguarding issues

APPENDIX B – Recognising, Handling and Formally Recording Requests

Please also refer to the CCG's 'Access to Records' Flowchart (Appendix A)

Recognising a SAR

- Is it a Subject Access Request? If not, should it go elsewhere? ie is it a FOI request or an Access to Health Records request?
- A request does not have to be in writing, it can also be made verbally. Verbal requests **must** be acknowledged and confirmed in writing by the CCG in the same way as for written requests, (See Appendices C and E) adapting wording as necessary.
- A request can also be made to any part of an organisation (including by social media) and does not have to be to a specific person or contact point.
- A request does not have to mention that it is a 'Subject Access Request' or Data Protection legislation as long as it is clear that the individual is asking for their own personal data, it may even cite the Freedom of Information Act, but it could still be a SAR.

Acknowledging / Logging a Request

- All Access to Records requests **must** be:
 - Acknowledged, regardless of whether they are received verbally or in writing (if received verbally, ensure that the details of the request are captured when acknowledging);
 - Recorded on your SAR / ATHR Log.

Timescale for Response

- The legal timeframe for response under GDPR is **one calendar month** starting from the day you receive the request and any required additional information to enable you to complete the request. For example, if you receive the request and the additional information on the 8th of the month, you will need to complete the request by the 8th of the following month.
You are able to extend the period of compliance by a further two months where requests are complex or voluminous. Where this is the case, you must inform the subject within one month of the receipt of the request and explain why the extension is necessary.

Further information on the time limits for responding can be found on the Information Commissioner's website at: <https://ico.org.uk/your-data-matters/time-limits-for-responding-to-data-protection-rights-requests/>

Consent

- Have you obtained consent?
- Does it include subject consent / legitimate consent of carer, legal guardian, power of attorney etc?
- Does the Subject lack capacity to make the request? (See Notes)
- Do the records contain 3rd party data? (See Notes)

Identity

- Have you received and checked the requestor's Identity?

Establish

- How the requestor would like to receive the data, ie format required (ie electronic; paper; mixture of both or view in person);

Can we charge a fee for complying with a Subject Access Request?

- Under Data Protection Act 2018, you cannot charge a fee for complying with a Subject Access Request for personal information except in specific circumstances. A 'reasonable fee' may be charged where a request is manifestly unfounded or excessive, particularly if it is repetitive. You may also charge a 'reasonable fee' to comply with requests for further copies of the same information. Any fee charged must be based only on the administrative cost of providing the data.

Can we charge a fee for complying with an Access to Health Records Requests?

Legislative changes² to the Data Protection Act have also amended the Access to Health Records Act 1990 which now states that access to the records of deceased patients and any copies, must be provided free of charge. As with Subject Access Requests, a fee may be charged where requests are manifestly unfounded or excessive.

Clarifying the Request

- Do you know what type of data is required, ie what is being requested, if unsure ask the requestor ASAP;
- Do you know where the data is held, if not, check with the requestor;
- Has the requestor specified the date range of the data being requested, if not, establish without delay.

Releasing the Data

- Consider redaction, eg where there is opinion rather than fact or where there is reference to 3rd parties.
- Send the data securely – ie for emailing to a non-NHS mail address - use NHS mail encryption; for mailing – use robust packaging and a secure delivery method ie 'signed for'. If the requestor wishes the data to be sent to an insecure email address without encryption, you must obtain their consent to this in writing.
- On release, inform the receiver in writing 'that all medical records released by the CCG are for their personal use only, the security and confidentiality of the records becomes the responsibility of the requestor and the CCG cannot be held responsible for any onward transmission or distribution.
- Request confirmation of receipt of the records from the Requestor.
- Where data forms part of the CCG's records but was received from another Organisation, ensure that you inform the other Organisation that you have received a request for the data and will be releasing in accordance with the Subject / personal representative's request.

Requests received other than from the Data Subject

(For these types of request - please consult with the IG Manager)

- Requests from parents/guardians for access to a child's records (*See Notes*)
- Requests from Solicitors, Police, Coroner.
- Child protection / life or death situations.
- Court order – ie does it cover Health and Well Being or Finance and Affairs?

² Statutory Instruments 2000, No 191 - The Data Protection (Subject Access) (Fees and Miscellaneous Provisions) Regulations 2000.

FURTHER GUIDANCE:

ICO Guidance on Individual's Rights of Access

Mental Capacity Act 2005 Code of Practice

DH Deprivation of Liberty (DoLS) 2005

NOTES:

Mental Capacity Act (Deprivation of Liberty Safeguards)

In some cases, an individual does not have the mental capacity to manage their own affairs. There are no specific statutory provisions enabling a third party to exercise subject access rights on such a person's behalf. But it is reasonable to assume that a person holding a Lasting Power of Attorney (LPOA*) for Property and Affairs** or Health and Welfare or a person appointed by the Court of Protection to make decisions about such matters will have the appropriate authority to make a request.

**LPOA - It is recommended that the original document is viewed and a copy taken noting that the original has been seen. Alternatively, you may accept a copy but only after having checked its validity with The Office of the Public Guardian at <https://www.gov.uk/find-someones-attorney-or-deputy>.*

***In the context of NHS Continuing Healthcare, where a health and welfare LPOA is not in place and the data subject is still alive but lacks capacity, it may well be in their best interests (under the Mental Capacity Act) for relevant information to be shared with a property and financial affairs deputy or attorney (or other third party who is acting as their advocate).*

3RD Party Data

The exemptions and restrictions that apply to other types of personal data also apply to personal data included in a health record. For example, if a health record contains personal data relating to someone other than the requester (such as a family member), you must consider the rules about third-party data before disclosing it to the requester. However, information that identifies a professional, such as a doctor or social worker, carrying out their duties should not normally be withheld for this reason. (Source: ICO Subject Access Code of Practice)

Prior to release of 3rd party data, review is required by a nominated person. Consideration needs to be given to redaction where consent is not obtained from the 3rd party.

Requests by Parents/Guardians for Access to a Child's Data

Even if a child is too young to understand the implications of subject access rights, it is still the right of the child rather than of anyone else such as a parent or guardian. Therefore, it is the child who has a right of access to the information held about them, even though in the case of young children these rights are likely to be exercised by those with parental responsibility for them.

Before responding to a subject access request for information held about a child, you should consider whether the child is mature enough to understand their rights. If you are confident that the child can understand their rights, then you should usually respond directly to the child. You may, however, allow the parent to exercise the child's rights on their behalf if the child authorises this, or if it is evident that this is in the best interests of the child.

What matters is that the child is able to understand (in broad terms) what it means to make a subject access request and how to interpret the information they receive as a result of doing so. When considering borderline cases, you should take into account, among other things:

- the child's level of maturity and their ability to make decisions like this;
- the nature of the personal data;

- any court orders relating to parental access or responsibility that may apply;
- any duty of confidence owed to the child or young person;
- any consequences of allowing those with parental responsibility access to the child's or young person's information. This is particularly important if there have been allegations of abuse or ill treatment;
- any detriment to the child or young person if individuals with parental responsibility cannot access this information; and
- any views the child or young person has on whether their parents should have access to information about them.

For further information on situations where the request has been made by a child, see the ICO's guidance on children and the GDPR

APPENDIX C – SAR Acknowledgement Letter Template



Our ref:
Your ref:

Lockton House
Clarendon Road
Cambridge
CB2 8FH

<date>

CONFIDENTIAL – Addressee Only

<Name>
<Address>

Telephone: 01223 725400
Direct dial: <insert telephone no>
Email: <insert generic email address>
Web: www.cambridgeshireandpeterboroughccg.nhs.uk

Dear

Subject Access Request <insert Patient Name, D.O.B, NHS Number>

Thank you for your letter dated <insert date> requesting the health records of <insert patient's name>.

Your request will be dealt with as a Subject Access Request under the Data Protection Act 2018 and responded to within the legal timeframe. However, to enable us to comply with your request within the legal timeframe and avoid unnecessary delay in our response to you; the following requirements need to be in place before we can proceed:

Consent / Authorisation

Where a request has been made on behalf of a data subject, consent must be provided by the data subject before we are able to release the requested data. If the data subject lacks mental capacity there are no specific statutory provisions enabling a third party to exercise subject access rights on such a person's behalf. However, an attorney with authority to manage the individual's property and affairs, or a person appointed by the Court of Protection to make decisions about such matters will have the appropriate authority.

Note: We are unable to release 3rd party personal data or data which the data subject may have previously indicated should be kept confidential.

Confirmation of your Identity and Right of Access

We are required to confirm identity of the requesting data subject or their authorised representative. We would therefore ask that you provide proof of your identity/your client's identity in each of the following formats:

1. copy of a valid driving licence or passport; (i.e. photo id)
2. copy of a utility bill no older than six months (i.e. address id)

Format of Data Requested

Please advise how you would like to receive the information; we are able to provide records in electronic or paper format or a combination of both.

Fee

The CCG will only charge a fee for complying with your Subject Access Request for personal data in specific circumstances. Any fee charged will be based only on the administrative cost of providing the data, you will be advised if a fee applies to your request.

Release of the Data

Please note that all health records released by the CCG in response to an Access to Records Request are supplied for your use only. Upon receipt, the security and confidentiality of the records is the responsibility of the requestor and we cannot be held responsible for any onward transmission or distribution of the records after release.

How we use your information

For further information on the information that we hold and the way in which it is used, please see Cambridgeshire and Peterborough CCG's Privacy / Fair Processing Notice available at: <https://www.cambridgeshireandpeterboroughccg.nhs.uk/privacy-fair-processing-notice/>

Complaints procedure

If you wish to raise a concern about how your request has been dealt with, please contact our Patient Experience Team at CAPCCG.PET@nhs.net or call them on Freephone 0800 279 2535 or 01223 725588.

If we can be of any further assistance in the meantime, please do not hesitate to contact us.

Yours sincerely

Name

Job Title

APPENDIX D – SAR Response Letter Template



**Cambridgeshire and
Peterborough**
Clinical Commissioning Group

Lockton House
Clarendon Road
Cambridge
CB2 8FH

Our ref:
Your ref:

<insert date>

CONFIDENTIAL – Addressee only

<Name>
<Address>

Telephone: 01223 725400
Direct dial: <insert telephone no>
Email: <insert generic email address>
Web: www.cambridgeshireandpeterboroughccg.nhs.uk

Dear <title/name of addressee>

Subject Access Request <Patient Name, D.O.B, NHS Number>

Thank you for your letter dated <insert date> requesting the health records of <insert patient's name>. We are pleased to enclose / attach the records you have requested.

Please note that all health records released by the CCG in response to a Subject Access Request are supplied for your use only. Upon receipt, the security and confidentiality of the records becomes the responsibility of the requestor and we cannot be held responsible for any onward transmission or distribution of the records after release.

How we use your information

For further information on the information that we hold and the way in which it is used, please see Cambridgeshire and Peterborough CCG's Privacy / Fair Processing Notice available at: <https://www.cambridgeshireandpeterboroughccg.nhs.uk/privacy-fair-processing-notice/>

Complaints procedure

If you wish to raise a concern about how your request has been dealt with, please contact our Patient Experience Team at CAPCCG.PET@nhs.net or call them on Freephone 0800 279 2535 or 01223 725588.

If, after you receive our response and have spoken to our Patient Experience Team, you would like to report your concern to the Information Commissioner's Office (ICO) you can give them a copy of our response letter to consider. The ICO contact details are provided below:

By Post: Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF
Telephone: 0303 123 1113 (Monday to Friday between 9am and 5pm)
Website: www.ico.org.uk

If we can be of any further assistance in the meantime, please do not hesitate to contact us.

Yours sincerely

Name
Job Title

Encs <list enclosures>

APPENDIX E – ATHR Acknowledgement Letter Template



Our ref:
Your ref:

Lockton House
Clarendon Road
Cambridge
CB2 8FH

<date>

CONFIDENTIAL – Addressee Only

<Name>
<Address>

Telephone: 01223 725400
Direct dial: <insert telephone no>
Email: <insert generic email address>
Web: www.cambridgeshireandpeterboroughccg.nhs.uk

Dear <title/name of addressee>

Access to Health Records <insert Patient Name, D.O.B, NHS Number>

Thank you for your letter dated <insert date> requesting the health records of <insert patient's name>.

Your request will be dealt with under the Access to Health Records Act (AHRA) 1990; however, to enable us to comply with your request within the legal timeframe and avoid unnecessary delay in our response to you; the following requirements need to be in place:

Confirmation of your Identity and Right of Access

We are required to confirm your identity and right of access to the health records of the deceased. We would therefore ask that you provide proof of your identity/your client's identity in both of the following formats:

- copy of a valid driving licence or passport; (i.e. photo id)
- copy of a utility bill no older than six months (i.e. address id)

Please also provide evidence that you are the personal representative (i.e. Executor) or administrator of the estate of the deceased, or are acting on their instructions, or have a legal claim arising out of the death. In either case, we require a copy of the latest Will naming you as Executor, Letters of Administration or Grant of Probate.

Exemptions

A personal representative has no right of access to:

- 3rd party personal data or to data which the deceased indicated should be kept confidential.

Format of Data Requested

Please advise how you would like to receive the information requested; we are able to provide records in electronic or paper format or a combination of both.

Fee

The CCG will only charge a fee for complying with your Access to Health Records request in specific circumstances. Any fee charged will be based only on the administrative cost of providing the data, you will be advised if a fee applies to your request.

Release of the Data

Please note that all health records released by the CCG in response to an Access to Records Request are supplied for your use only. Upon receipt, the security and confidentiality of the records is the responsibility of the requestor and we cannot be held responsible for any onward transmission or distribution of the records after release.

How we use your information

For further information on the information that we hold and the way in which it is used, please see Cambridgeshire and Peterborough CCG's Privacy / Fair Processing Notice available at: <https://www.cambridgeshireandpeterboroughccg.nhs.uk/privacy-fair-processing-notice/>

Complaints procedure

If you wish to raise a concern about how your request has been dealt with, please contact our Patient Experience Team at CAPCCG.PET@nhs.net or call them on Freephone 0800 279 2535 or 01223 725588.

If we can be of any further assistance in the meantime, please do not hesitate to contact us.

Yours sincerely

Name

Job Title

APPENDIX F – ATHR Response Letter Template



Our ref:
Your ref:

Lockton House
Clarendon Road
Cambridge
CB2 8FH

<insert date>

CONFIDENTIAL – Addressee only

<Name>
<Address>

Tel: 01223 725400
Direct dial: <insert telephone no>
Email: <insert generic email address>
Web: www.cambridgeshireandpeterboroughccg.nhs.uk

Dear <title/name of addressee>

Access to Health Records <Patient Name, D.O.B, NHS Number>

Thank you for your letter dated <insert date> requesting the health records of <insert patient's name>. We are pleased to enclose / attach the records that you have requested.

Release of the Data

Please note that all health records released by the CCG in response to an Access to Records Request are supplied for your use only. Upon receipt, the security and confidentiality of the records is the responsibility of the requestor and we cannot be held responsible for any onward transmission or distribution of the records after release.

How we use your information

For further information on the information that we hold and the way in which it is used, please see Cambridgeshire and Peterborough CCG's Privacy / Fair Processing Notice available at: <https://www.cambridgeshireandpeterboroughccg.nhs.uk/privacy-fair-processing-notice/>

Complaints procedure

If you wish to raise a concern about how your request has been dealt with, please contact our Patient Experience Team at CAPCCG.PET@nhs.net or call them on Freephone 0800 279 2535 or 01223 725588.

If we can be of any further assistance in the meantime, please do not hesitate to contact us.

Yours sincerely

Name
Job Title

Encs
<list enclosures>

APPENDIX G – Response letter template for records no longer held



Our ref:
Your ref:

Lockton House
Clarendon Road
Cambridge
CB2 8FH

<date>

CONFIDENTIAL – Addressee Only

<Name>
<Address>

Tel: 01223 725400
Direct dial: <insert telephone no>
Email: <insert generic email address>
Web: www.cambridgeshireandpeterboroughccg.nhs.uk

Dear <title/name of addressee>

Access to Health Records <insert Patient Name, D.O.B, NHS Number>

Thank you for your letter dated <insert date> requesting the health records of <insert patient's name>.

Regretfully, we are unable to provide the health records you have requested as they had reached the end of their retention period, as set out in the [Records Management Code of Practice for Health and Social Care 2016](#). The records requested have been confidentially destroyed in accordance with the CCG's compliance with the Data Protection principles.

How we use your information

For further information on the information that we hold and the way in which it is used, please see Cambridgeshire and Peterborough CCG's Privacy / Fair Processing Notice available at: <https://www.cambridgeshireandpeterboroughccg.nhs.uk/privacy-fair-processing-notice/>

Complaints procedure

If you wish to raise a concern about how your request has been dealt with, please contact our Patient Experience Team at CAPCCG.PET@nhs.net or call them on Freephone 0800 279 2535 or 01223 725588.

If we can be of any further assistance, please do not hesitate to contact us.

Yours sincerely

Name
Job Title

**Form for Subject Access Request under the Data Protection Act 2018
or Access to Health Records Act 1990**

It is not essential to complete this form for us to process your request, but If you choose to use the form, it would help us to avoid delay in processing your request if all fields are fully completed.

Please note: Cambridgeshire and Peterborough Clinical Commissioning Group are only able to process requests for access to any personal data that we hold for you. Requests for access to primary care health records (General Practice) or secondary care health records (our local hospitals and community services) should be directed to the Trust who provided your treatment / care.

Section 1 Data subject's details	
Details of person whose records are being requested	
Surname	
Former name	<i>(if applicable)</i>
Forename(s)	
Title	
Date of Birth	
NHS Number	
Current address	
Daytime Tel No	
Section 2 Declaration and authorisation	
<p>I am applying to access my records under the terms of the Data Protection Act 2018.</p> <p>I understand that although the Data Protection Act 2018 removes the fee for complying with a Subject Access Request for personal information, I may be charged a reasonable fee in specific circumstances, this will be based only on the administrative cost of the CCG providing the data.</p> <p>I understand that I will be required to provide proof of my identity.</p> <p>I declare that the information I have given in this form is correct to the best of my knowledge and that I am the person named above.</p> <p>Signature _____</p> <p>Date _____</p>	

If you are a representative of the data subject, please complete either of the boxes below

I am applying on behalf of the person named above to access their records under the Data Protection Act 2018.

I understand that although the Regulation removes the fee for complying with a Subject Access Request for personal information, I may be charged a reasonable fee in specific circumstances, this will be based only on the administrative cost of the CCG providing the data.

I understand that I will be required to provide proof of my identity.

Your name (BLOCK CAPITALS): _____

Your signature: _____

Date: _____

Authorisation from patient/data subject

I agree to the above named person to being supplied with a copy of the records as stated above.

Signature: _____

Date: _____

or,
I am acting on behalf of the data subject who lacks capacity to consent as defined by the Mental Capacity Act 2005.

I hold a Lasting Power of Attorney (LPA) / I have been appointed as an independent Mental Capacity Advocate to act on behalf of the data subject* (*delete as applicable*) and have attached evidence.

or,
I have parental responsibility and the data subject is under the age of 16 years and either

- Lacks capacity to understand the request
- Has consented to the request
- The data subject is between 16 and 18 and lacks capacity

The data subject is deceased and I am the personal representative (*please provide details*):

Disclosure of records of a deceased person

I am applying for access to the deceased patient's health records named above. I understand that there may be a charge for a copy of the record.

Your name (block capitals): _____

Your address: _____

Your signature: _____

Date: _____

Your relationship to the deceased patient (delete as applicable)

- I am the executor / patient representative of the deceased person's estate and agree to provide evidence.

I have a claim arising out of the death of the deceased person and the details of the claim are *(please provide details)*:

**Section 3
Further Information**

IMPORTANT: Please use the box below to describe the specific information you are requesting, providing as much detail as possible so that we can identify the records quickly. Where patient records* are being requested, please provide details such as the date range of the data being requested. If staff records are being requested, please indicate whether you are a current or previous member of staff, providing your payroll number if known.

**Cambridgeshire and Peterborough CCG do not hold patient data for episodes of treatment within general practice / hospital wards or clinics.*

**Section 4
Provision of Information**

Please confirm by ticking the appropriate box, the format by which you would prefer to receive a copy of the records.

<p>Electronic copies <i>(No administrative charge will be made for provision of electronic copies. Please provide your email address, the data will be sent by an NHS mail secure method).</i></p>	
<p>Paper copies - collection in person <i>(please note that there may be an administrative charge for the provision of paper copies)</i></p>	
<p>Paper copies by post <i>(please note that there may be an administrative charge for the provision of paper copies, the data will be sent by a secure postal method).</i></p>	
<p>Other format <i>(please specify)</i></p>	