

NHS Liverpool Clinical Commissioning Group
Information Governance
Subject Access Policy

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	<ul style="list-style-type: none"> ○ Updated Corporate Services Manager to Governance Manager (Compliance) ● Removed – Medical Terminology and Viewing a record section – as not appropriate ● Access by Relatives of the Deceased – removed request from living relatives will be considered in case of genetic or hereditary condition – as not appropriate ● Information shared by other organisations – removed where CCG legitimately accesses another organisations system – SAR will be redirected – removed as we cannot redirect to the CSU ● Timeframe for compliance – updated in line with GDPR 2018 ● Amendment to Records – removed section as not appropriate ● Fees – removed ● Dissemination and implementation – updated as more realistic reflection i.e. removed leaflets will be available. ● Monitoring Compliance and Effectiveness - updated as more realistic reflection i.e. 6 monthly reports, service user satisfaction spot checks will be carried out removed. 		
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Table of Contents

1.	Introduction	6
2.	Aim	6
3.	Definitions	6
4.	Responsibilities.....	7
4.1	Chief Operating Officer	7
4.2	Caldicott Guardian	7
4.3	The Senior Information Risk Owner	8
4.4	Finance Procurement and Contracting Committee	8
4.5	The Information Governance Steering Group.....	8
4.6	The Data Protection Officer (DPO)	8
4.7	The Governance Manager (Compliance)	8
4.8	Human Resources Department.....	8
4.9	Departmental Managers	8
4.10	Staff	9
5.	Subject Access Requests	9
6.	Provision of Copies or Viewing Records	9
7.	Access to Records of the Deceased	10
8.	Access to Children Records.....	10
9.	Children – age of consent to share data	10
10.	Information Shared by Other Organisations.....	11
11.	Application by Solicitors	11
12.	Statutory Disclosures	11
13.	Disclosures in Absence of a Statutory Requirement	11
14.	Timeframe for Compliance	11
15.	Request Log	12
16.	Service Users/Former Members of Staff Living Abroad	12
17.	Freedom of Information Act 2000.....	12
18.	Access to Medical Reports Act 1988	12
19.	Section 15 Access Requests	12
20.	Complaints.....	12

21.	Dissemination and Implementation	13
22.	Monitoring Compliance with Effectiveness	13
23.	Associated documents	13
Appendix A:	SARS Request Form	15
Appendix B	Acceptable ID documents for Subject Access Requests	19

1. Introduction

NHS Liverpool Clinical Commissioning Group (CCG) recognises the individual's right of access to their recorded information and in some cases to information relating to other people. The CCG will ensure that adequate provision is given to service users and staff to exercise this right.

This Policy describes how the CCG will achieve compliance with the key legislation that provides access to personal information.

The Data Protection Act 2018 regulates the processing, including disclosure of information relating to living individuals. The Act gives the individual (data subjects) or their authorised representatives the right to apply to view or have copies of personal data held about them, including health records, (subject access rights) and personnel records.

The CCG recognises that where there is legitimate interest, information relating to the deceased is accessible through the access to Health Records Act 1990.

This Policy should be read in conjunction with the related policies listed in section 25.

2. Aim

The purpose of this policy is to establish the CCG's responsibilities as the designated data controller under the Data Protection Act 2018, to comply with and process subject access requests, for example the CCG hold staff employment records for their staff, and may hold health records in relation to Continuing Healthcare (CHC) assessments.

This document provides policy statements to the staff processing such requests and the data subjects themselves and:

- describes how the CCG will comply with the law
- provides assurance on lawful practice
- establishes the roles and responsibilities of staff in the processing of requests
- establishes that processes will be in place to support this policy.

3. Definitions

The key definitions applicable to this policy are as follows:

Health/Medical Record	The Data Protection Act 2018 defines a health record 'as a record consisting of information relating to the physical or mental health or condition of an identified individual made by or on behalf of a health professional in connection with the care of that
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	individual'. The record may be held in computerised or manual form or in a combination of both.
The Data Subject	An individual who is the subject of the information (service user/member of staff)
The Data Controller	A person (organisation) who determines the purposes for which and the manner in which personal data, is processed
Subject Access Rights	Individuals can make an application in writing to gain access to information held or processed about them
3rd Party	A person identified in the health/medical record other than the data subject or a health professional
Service users Personal Representative	Defined as the executor or administrator of the deceased estate.
Caldicott Guardian	Designated by the Caldicott Committee as responsible for overseeing the arrangements for the use and sharing of clinical information.
Statutory Gateway	Permits disclosure of information
Access to Health Records Act 1990	This Act has been repealed to the extent that it affected the Health/medical records of living service users and is now only in force in respect of deceased service users. Applies to records created since 1 st November 1991
Data Protection Act 2018	An Act that regulates the processing of information relating to living individuals including the holding use or disclosure of such information
Freedom of Information Act 2000	An Act to make provision for the disclosure of information held by Public Authorities
Access To Medical Reports Act 1988	An Act to make provision for the individual to access medical reports written by a health professional for the provision of a service

4. Responsibilities

4.1 Chief Operating Officer

The Chief Operating Officer has ultimate responsibility for the implementation of the provisions of this policy. As the 'Accountable Officer' they are responsible for the management of the organisation and for ensuring that the appropriate mechanisms are in place to support service delivery and continuity.

The CCG has a particular responsibility for ensuring that it corporately meets its legal responsibilities, and for the adoption of and compliance with internal and external governance requirements.

4.2 Caldicott Guardian

The CCG Caldicott Guardian is responsible for the confidentiality of person identifiable information as designated in the Caldicott Report and for the information governance agenda, which incorporates data protection.

4.3 The Senior Information Risk Owner

The Senior Information Risk Owner is responsible for overseeing the application of this Policy and its principle within the organisation.

4.4 Finance Procurement and Contracting Committee

The Finance Procurement and Contracting Committee will monitor compliance with this Policy on behalf of the Board and will receive reports on compliance with the subject access provisions through the Information Governance Steering Group.

4.5 The Information Governance Steering Group

The Information Governance Steering Group will receive reports on the number of subject access requests received and responded to, compliance with the legal timeframes and any identified issues.

4.6 The Data Protection Officer (DPO)

The DPO will monitor internal compliance, inform and advise the CCG on data protection obligations, provide advice regarding Data Protection Impact Assessments (DPIAs) and act as the CCG subject matter expert.

4.7 The Governance Manager (Compliance)

The Governance Manager (Compliance) will manage the processing of subject access requests from service users and CCG staff, and will provide reports on compliance to the Information Governance Steering Group.

4.8 Human Resources Department

The Human Resources department will provide information from staff records where that staff member has requested access to their personnel file, to comply with this policy. A member of the Human Resources department will review personnel files before release to establish if any of the information may not be available for release, taking advice from the Caldicott Guidance or the DPO as appropriate.

4.9 Departmental Managers

Departmental Managers including the Midlands and Lancashire Commissioning Support Unit (MLCSU) Continuing Healthcare (CHC) Team will ensure that their staff are aware of this Policy, comply with, and support the operational procedures. Managers will make information

readily available to The Governance Manager (Compliance) to support the processing of subject access requests.

4.10 Staff

It is the responsibility of all permanent and temporary staff, students, volunteers and contracted staff to comply with data protection legislation, this Policy and the processes that support it.

5. Subject Access Requests

The CCG will accept written requests, including e-mail, from a data subject in the provision of subject access. The CCG will make a standard access form available to the public/staff, where required, to assist the application - see Appendix A.

Telephone applications from an individual who is unable to make a written request may be accepted subject to strict conditions following the Department of Health Guidance for Access to Health Records 2010.

The CCG requires applicants to provide 2 forms of proof of identity one of which should be photo identification – Appendix B.

Where an application is made on behalf of a service user/member of staff the CCG will confirm that the consent of the individual had been obtained prior to any release.

Where an individual has not specified the information that they require the CCG will ask the applicant to refine the request.

Where an access request has previously been met and a subsequent identical or similar request is received the CCG will assess if a reasonable time interval has elapsed before providing the information.

6. Provision of Copies or Viewing Records

The CCG will ensure that a relevant professional is consulted prior to any release of information of a health related nature. The CCG will require the professional to consider the following prior to the release of copies or the viewing of records:

- any serious harm to the physical or mental health or condition of the service user or, member of staff requesting access, or any other person
- the consent of any third party where the content relates to that third party who is not a health professional
- if it is reasonable to disclose without the consent of a third party

7. Access to Records of the Deceased

Application to view or have copies of health related records or occupational health records of the deceased will be considered under the Access to Health Records Act 1990.

The CCG recognises that it owes a duty of confidentiality to the deceased.

The Caldicott Guardian will be consulted on any proposed disclosure of information relating to the deceased and legal advice will be sought where necessary.

7.1 Access by Relatives of the Deceased

The CCG will consider access by a relative of the deceased to their health related or occupational health records. Where a request is made by a person who may have a claim arising out of the service user's death the CCG will require proof of such a claim before any disclosure is made.

The CCG will consider if a disclosure relating to the deceased death would help a relative through the grieving process, subject to any refusal from the deceased prior to death.

7.2 The Personal Representative

The Personal Representative of the deceased has an unqualified right of access to the health related record. The CCG will require proof of administrator/executor status before any disclosure is made.

8. Access to Children Records

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

Young people aged 16 or 17 will be considered as adults in respect to their rights to confidentiality.

Due regard will be given to children under the age of 16 who have the capacity and understanding to make decisions about their own treatment and access to records.

9. Children – age of consent to share data

Children need particular protection when we are collecting and processing their personal data because they may be less aware of the risks involved. If we process children's personal data then we should think about the need to protect them from the outset and design our systems and processes with this in mind. Compliance with the data protection principles and in particular fairness should be central to all our processing of children's personal data.

If necessary, we may have to write a clear and age-appropriate Privacy Notices for children.

The right to have personal data erased is particularly relevant when the individual gave their consent to processing when they were a child.

For reference, GDPR Article 8 Conditions applicable to child's consent in relation to information society services, and DPA Part 2 Chapter 2 Section 9 Child's consent in relation to information society services allows that in relation to the offer of information society services directly to a child, the processing of the personal data of a child shall be lawful where the child is at least 13 years old. Where the child is below the age of 13 years, such processing shall be lawful only if and to the extent that consent is given or authorised by the holder of parental responsibility over the child.

10. Information Shared by Other Organisations

Where the CCG has legitimately been provided shared identifiable information from other organisations and that organisation maintains its own records the CCG considers that subject access requests should be made directly to that organisation.

11. Application by Solicitors

The CCG will pay due regard to subject access requests made through a solicitor where the consent of the data subject has been provided. Consideration will be made to the information requested under the subject access provisions of the Data Protection Act 2018.

12. Statutory Disclosures

The CCG will consider application for access to health related and occupational health records and personnel records where there is a lawful requirement to comply.

13. Disclosures in Absence of a Statutory Requirement

Where there is no statutory requirement to comply with a request for access the CCG will consider applications on a case by case basis.

The CCG recognises that in all cases the public interest in disclosure must outweigh the duty of confidentiality owed to the deceased before any disclosure is approved.

14. Timeframe for Compliance

The CCG will endeavour to comply with the statutory 1 calendar month under the Data Protection Act 2018. If this deadline will not be met a full explanation will be provided to the requester, and the Information Governance Steering Group will be notified via the established reporting route.

The CCG will inform applicants of any refusal to comply with requests as soon as possible within the given timeframe.

15. Request Log

Subject access requests (including access to health related, personnel and occupational health records) will be recorded on the CCGs electronic database, and anonymous data will be used to demonstrate compliance with statutory timeframes and will provide assurance reports.

16. Service Users/Former Members of Staff Living Abroad

Service users or former members of staff, who are now living outside of the UK, will be given the same rights of access under the Data Protection Act 2018, where the records of treatment occupational health or personnel records are still held by the organisation.

Original medical or occupational health or personnel records will not be transferred abroad. A copy or summary of record will be provided.

17. Freedom of Information Act 2000

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

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

18. Access to Medical Reports Act 1988

Applications to view Medical Reports following Insurance or employment medicals will be considered with regard to the Access to Medical Reports Act 1988.

19. Section 15 Access Requests

Section 15 of the Data Protection Act 2018 provides an exemption in Law to access person identifiable information without seeking the consent of that individual for the purpose of investigating serious crime, fraud and taxation purposes.

The CCG will consider Section 15 applications on a case by case basis.

Where the CCG deems it acceptable to disclose under a section 15 request it will release sufficient information for the purpose but not excessive to the purpose.

The CCG recognises that subsequent to the refusal of a Section 15 request the Police may seek a Court Order which requires the disclosure.

20. Complaints

Information is available to service users and staff detailing how to apply for access to health related, occupational health, and personnel records on our website, and will detail the complaints process.

The CCG will initially try to resolve any complaints regarding subject access requests through informal discussion. If unresolved a formal complaints process will be initiated.

Where complaints are unresolved details of the NHS Complaints Procedure will be provided by the CCG to the applicant.

Complainants will be informed of their right to contact the Information Commissioner for a review of the subject access provision.

21. Dissemination and Implementation

This Policy will be made available to the Public through the CCG Internet site, in supporting documentation and upon application.

This Policy will be made available to staff through the CCG Intranet site.

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

The CCG will ensure that processes are in place to implement this policy.

21. Monitoring Compliance with Effectiveness

Compliance with this Policy will be monitored through the provision of 6-monthly reports to the Information Governance Steering Group, and will be escalated to the Finance Procurement and Contracting Committee via the minutes of the meeting.

A log of all subject access requests will be maintained. The effectiveness of the log will be regularly reviewed.

This Policy will be monitored through the investigation of any related complaints.

22. Associated documents

This Policy should be read in conjunction with the following CCG Policies:

- Data Protection Policy
- Freedom of Information Policy
- Information Governance Policy
- Records Lifecycle Policy

26. References

- Access to Health Records Act 1990
- Access to Medical Reports Act 1988
- Data Protection Act 2018
- Data Protection Subject Access Fees and Miscellaneous Provisions Regulations 2000
- Department of Health Guidance on Access to Health Records Requests 2010
- Freedom of Information Act 2000
- Mental Health Act
- Mental Capacity Act
- NHS Code of Practice: Records Management 2009

Appendix A: SARS Request Form

REQUEST FOR ACCESS TO PERSONAL INFORMATION

Under the Data Protection Act 2018, you have the right to request any personal information we may hold about you as an individual. This is known as a Subject Access Request. (A Subject is an individual who is the subject of personal data).

Please complete this form and send back to:

Post: Subject Access Requests
Corporate Services Team
NHS Liverpool CCG
4th Floor, The Department
Lewis's Building
2 Renshaw Street
Liverpool
L1 2SA

Email: SARS@liverpoolccg.nhs.uk – please ensure you write 'Subject Access Request' in the subject field of the email

1. Applicant's Full Name
.....
2. Applicant's Date of Birth
.....
3. Applicant's Current Address
.....
.....
.....

4. Applicant's Previous Address (if applicable)

.....
.....
.....

5. Applicant's Telephone Number:

Home Telephone

No:.....

Mobile Telephone

No:.....

6. The information requested is about me?

Yes No

If **Yes**, please go to Question 8

7. The Applicant (whose data is being requested) must give permission for the information to be released to their representative.

I _____ give _____ my _____ permission for..... to request access to my personal information as described in question 8 (below) of this form.

If the Applicant is unable to provide consent then the relevant Power of Attorney must be in place and a copy enclosed. If several people share this responsibility, they must all sign below and nominate one person to receive the information.

Power of Attorney Signature(s)

Print

Name(s):.....

Name of representative and address where information is to be sent:

.....
.....
.....
.....

8. To help us search for the information you require and to keep costs to a minimum, please tell us the about the information you require with as much detail as possible. For example, copies of personnel file between (date) and (date). If we do not receive enough information, we may be unable to process your request.

.....
.....
.....
.....
.....
.....

9. I confirm that I am the Data Subject

Signed:

.....

Print

Name:.....

Date:.....

I enclose a photocopy of 2 of the acceptable items as proof of my identity, 1 of which includes a photograph of me, and 1 proof of address.

Please tick on the attached form which 3 types of identity document have been enclosed.

10. I confirm that I am the representative

Signed:.....

Print Name:.....

Date:.....

I enclose 2 types of proof of identity (1 to be a copy of a Photo Personal Identity Document), and 1 proof of address.

Please tick on the attached form which 3 forms of identity have been enclosed.

I enclose the appropriate Power of Attorney to Act on behalf of the above person.

We will make every effort to process your subject access request as quickly as possible within the 1 calendar month time limit.

However, if you have any queries whilst your request is being processed, please do not hesitate to contact the Corporate Services Team at Liverpool CCG.

Appendix B - Acceptable ID documents for Subject Access Requests

To make a Subject Access Request, you will be asked to provide two forms of ID documentation, one being proof of identity and one to confirm your address, before any information will be released.

All forms of acceptable documentation are listed in the tables below. Please note, a copy of ONE document from each of the tables below should be provided. Please send copies and not original documents. **Please tick against the documents you have provided.**

PROOF OF IDENTITY	
1. Acceptable Photo Personal Identity Documents	
	Current UK (Channel Islands, Isle of Man or Irish) passport or EU/other nationalities passports
	Passports of non-EU nationals containing UK stamps, a visa or a UK residence permit showing the immigration status of the holder in the UK *
	Current UK (or EU/other nationalities) Photo-card Driving License.
	A national ID card and/or other valid documentation relating to immigration status and permission to work*
<i>Any documents not listed above are not acceptable forms of identification e.g. organisational ID card.</i>	
2. Acceptable Non-Photo Personal Identity Documents	
	Full UK Birth Certificate – issued within 6 weeks of birth
	Current Full Driving Licence (old version); (Provisional Driving Licences are not acceptable)
	Residence permit issued by Home Office to EU Nationals on inspection of own-country passport
	Adoption Certificate
	Marriage/Civil Partnership certificate
	Divorce or annulment papers
	Police registration document
	Certificate of employment in HM Forces
	Current benefit book or card or original notification letter from the Department of Work and Pension (DWP) confirming legal right to benefit
	Most recent HM Revenue and Customs (previously Inland Revenue) tax notification
	Current firearms certificate

	Application Registration Card (ARC) issued to people seeking asylum in the UK (or previously issued standard acknowledgement letters, SAL1 or SAL2 forms)
	GV3 form issued to people who want to travel in the UK without valid travel documents
	Home Office letter IS KOS EX or KOS EX2
	Building industry sub-contractors certificate issued by HM Revenues and Customs (previously Inland Revenue)
CONFIRMATION OF ADDRESS	
3. To confirm the address, the following documents are acceptable:	
	Recent utility bill or certificate from a supplier of utilities confirming the arrangement to pay for the services on pre-payment terms (note: mobile telephone bills should not be accepted as they can be sent to different addresses). Utility bills in joint names are permissible*
	Local authority tax bill (valid for current year)*
	Current UK photo-card driving licence (if not already presented as a personal ID document)
	Current Full UK driving licence (old version) (if not already presented as a personal ID document)
	Bank, building society or credit union statement or passbook containing current address
	Most recent mortgage statement from a recognised lender*
	Current local council rent card or tenancy agreement
	Current benefit book or card or original notification letter from Department of Work and Pensions (DWP) confirming the rights to benefit
	Confirmation from an electoral register search that a person of that name lives at the claimed address*
	Court Order*

**** The date on these documents should be within the last 6 months (unless there is a good reason for it not to be e.g. clear evidence that the person was not living in the UK for 6 months or more) and they must contain the name and address of the applicant***