## Access to Health Records Policy

Access to Health Records  
Data Protection  
Department of Health “Guidance for Access to Health Records Requests”

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**Pennine Acute Hospital NHS Trust**

**Access to Health Records Policy**

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1. Introduction

1.1 This policy provides procedures to be followed when dealing with requests for access to health records as set down by the Data Protection Act 1988, in relation to living individuals and the Access to Health Records Act 1990 in relation to requests made on behalf of the deceased.

2. Aims / Purpose

2.1 This document explains who can access health records and how this process is to be administered. Specifically the items below:

- The law on who can and who cannot have access to Health Records
- How an individual applies to access Health Records
- Time scales to provide Health Records
- Charges applied for access to Health Records provided
- Responsibilities of those involved in processing requests.

2.2 This document should be applied in accordance with the document released by the Department of Health ‘Guidance for Access to Health Records Requests’ – Feb 2010.

3. Scope

3.1 This document sets out what Trust staff should follow i.e. those who are responsible for helping process requests for Health Records, this includes Health Records staff, Medical Legal staff and Health Care Professionals (e.g. including Consultants, doctors) who have been involved in the patient’s care.

4. Roles, Responsibilities and Accountabilities

4.1 The Associate Director of Elective Access – has overall responsibility for the requests received and managed by the Elective Access Compliance Manager and the Medico Legal team.

The Associate Director is responsible for ensuring that the Elective Access Compliance Manager and team adhere to the strict timescales and for undertaking audits to ensure that the service provided follows/is in line with this policy.

4.2 Elective Access Compliance Manager - It is the responsibility of the Elective Access Compliance Manager to ensure that all the Medico Legal team staff are familiar with the latest versions of all documentation involved in the processing of Access to Health Records. These should include:-
• Data Protection Act 1998
• Access to Health Records Act 1990
• Charges for Access to Health Records under the Data Protection Act 1998
• Freedom of Information Act 2000
• Caldicott Principles
• The Trust Information Governance Policy (EDI001)

It is also the responsibility of the manager to ensure that Medico Legal team staff attend all updated training sessions in relation to the above. It is also the responsibility of the manager to ensure that all Medico Legal staff have signed a confidentiality statement as part of their contract.

4.3 **Medico Legal Team** - It is the responsibility of all staff members to ensure that they are familiar with the latest version of the documentation above and abide by these conventions whilst carrying out their duties.

4.4 **Health Professionals** – It is the responsibility of all Health Professionals to ensure that they are familiar with the latest version of the documentation above and abide by these conventions whilst carrying out their duties.

5. **Request for a copy of the record**

5.1 Formal access to a record will only be provided if the application is in written format to the Trust and is by any of the following:

• The patient
• A person having parental responsibility for the patient (where the patient is a child under 18 unless it is possible to accept such a request from the child them self), see section 11 Children and young people.
• A person appointed by the court to manage the patient’s affairs (where the patient is incapable of managing his/her own affairs) or a person upon whom the patient, when capable, has endowed a Lasting Power of Attorney. Persons with powers of attorney have no Data Protection or common law consent functions. Nevertheless, sometimes it may be appropriate to involve them as their person who has the authority to make commercial arrangements for the patients, including arrangements to provide both accommodation and nursing care. They, on their patient’s behalf, may have an interest in securing the best value in a nursing and care package. Where this is the case, it may be necessary to consider whether the vital interests or medical care needs of the patient in question also require the disclosure of all or some of the sensitive personal information in the question to the person who holds the power of attorney.
• An agent acting on behalf of an intellectually capable patient with written authority from the person to make the request on their behalf or, a capable
person might appoint someone to be there agent for the purpose of exercising data access rights by granting him/her power of attorney.

- 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, see section 8 Where the patient is deceased.

5.2 On receipt of a verbal request for access to health records the Medico Legal Department will send to the requestor the appropriate documentation to initiate the request formally including an information booklet.

Written requests in other formats will be accepted as a formal request.

5.3 Under the Data Protection (Subject Access Modification) (Health) Order 2000 (S.I. No. 413) the information should not be provided unless, where necessary, the appropriate Health Professional has been consulted.

5.4 The Medico Legal department will contact the “appropriate Health Professional” requesting them to review the notes, for which they have responsibility for disclosure, see section 7.2 Permitting access.

The “appropriate Health Professional” is defined as either:

- The appropriate Health Professional who is currently or was most recently responsible for the clinical care of the data subject in connection with the matter to which the information which the subject of the request relate.

- Where one or more professionals are currently involved or were recently involved in the clinical care of the data subject - The professional who is the most suitable to advise on the matter to which the information which the subject of the request relates.

- In the absence of anyone else who might qualify for the above – The professional who has the necessary experience and qualifications to advise on the matter to which the information which the subject of the request relates.

5.5 The appropriate Health Professional will be asked to sign a release form stating they have been consulted and whether the records should be released either fully, partially or whether the request is refused.

The purpose of the release form is to prove that the appropriate Health Professional has been consulted.

5.6 Documenting the request - all Data Access requests must be recorded onto the Ulysses Safeguard system, ensuring all available information from the requestor is populated.

5.7 Repeat of an earlier request - access to health records requests can be refused where an access request has previously granted. The Data Protection Act permits record holders not to respond to a subsequent identical or similar request unless a reasonable interval has elapsed since the previous.
compliance. In determining whether a reasonable interval has elapsed, the following should be considered. The nature of the information

- How often the information is altered
- The reason for its processing
- Whether the reason for the request is also relevant

6. Request to view the record

6.1 Wherever possible in response to a written request by the patient/client to view records, access should be allowed by the appropriate Health Professional to the parts of the record for which they have responsibility in accordance with section 7 Permitting access.

6.2 The appropriate Health Professional must first decide if access can be permitted to all or part of the record. The Medico Legal department must review the notes to ensure that any third party information is removed.

6.3 If full or partial access is granted as decided by the appropriate Health Professional, an appointment will be made for the patient to attend to view the records. Any decisions and access to a record must be fully documented on the appropriate consent for release form.

6.4 The appropriate Health Professional must then decide whether the access should be supervised by themselves or whether an appointment should be made with the Medico Legal department staff. In these circumstances the Medico Legal department staff must not comment or advise on the content of the record and if the applicant raises enquiries an appointment should be offered with the appropriate Health Professional.

6.5 The accessed record must not be removed from the Trust; any requests for copies to be provided should be referred to the Medico Legal department and processed as a formal Subject Access request.

6.6 When viewing access is granted a full explanation of any abbreviations or medical terminology should be offered by the appropriate Health Professional, if present, and any subsequent discussions must be documented clearly in the health records.

6.7 Access should not normally be granted to someone other than the subject of the records, at least where the applicant is capable of requesting it themselves.

7. Permitting access

7.1 The Data Protection Act 1988 permits access to the health records of a living patient, whenever they were made.
7.2 The appropriate Health Professional should satisfy themselves that access to the health records is **not likely to cause serious harm to the physical or mental health or condition of the patient** (or any other person), (The Data Protection (Subject Access Modification) (Health) Order 2000 (Health Order), Article 5(1).

Records must be reviewed for information relating to third parties. This will be undertaken by the Medico Legal Team.

7.3 **Third Party information**

7.3.1 Information from a non-health professional e.g. a relative of a patient, which is included in the subject's record is third party information. Similarly, information about a relative is third party information.

7.3.2 Third party information should not be disclosed without the consent of that third party.

7.3.3 If in any doubt clarification should be sought from the Information Governance Department.

7.4 **Information received from other Health Professionals**

Access to a record containing information relating to the patient’s physical or mental health or condition cannot be denied on the grounds that the identity of the third party would be disclosed if the third party is a Health Professional (Appendix A Definition of Health Professional) who has complied, or contributed to, health record or has been involved in the care of the patient in his capacity as a Health Professional, unless serious harm to that Health Professional's physical or mental harm or condition is likely to be caused by giving access. The appropriate Health Professional is responsible for permitting or denying disclosure in these cases.

7.5 **Joint health/social care records**

Access to parts of the record containing information relating to the social care of the patient cannot be denied on the grounds that the identity of a third party would be disclosed where the third party is a social worker or other social work professional unless to disclose it would cause the social worker or other social care professional serious harm.

7.6 **Release to another Health Professional involved in the care of the patient**

It is recognised that Health Professionals generally need to share information amongst them in order to provide an effective service and care to the patient. Staff should ensure that only such information as is required for the safe management of each individual patient is disclosed.

8. **Where the patient is deceased**

8.1 Health records of deceased patients are still covered by the Access to Health Records Act 1990, which entitles the applicant to access records made on or after 1st November 1991. Access must also be given to information recorded.
before this date if this is necessary to make any later part of the records intelligible.

8.2 Where the patient has died, the patient’s personal representative is entitled to apply for access to information about the deceased. A patient’s personal representative is:-

- An executor appointed under the deceased’s will,
- Where there is no will, a person appointed as an administrator.

8.3 If the applicant is not a Personal Representative the dependants of the deceased patient may have a claim arising out of the death under the Fatal Accidents Act 1976. Dependants are defined under the Act as including:

- The wife or husband or former wife or husband of the deceased
- Any person who:
  i. Was living with the deceased in the same household immediately before the date of death and
  ii. Had been living with the deceased in the same household for at least two years before that date and
  iii. Was living during the whole of that period as the husband or wife of the deceased
- Any parent or other ascendant of the deceased
- Any person who was treated by the deceased as his parent
- Any child or other descendant of the deceased (including an infant born after the death but who was en ventre sa mere (i.e. conceived but not yet born) at the time of injury that caused the death)
- Any person (not being a child of the deceased) who, in the case of any marriage to which the deceased was at any time a party, was treated by the deceased as a child of the family in relation to the marriage
- Any person who is, or is the brother, sister, uncle or aunt of the deceased

8.4 Once proof of appointment as a Personal Representative or that the applicant is a dependant who may have a claim arising out of the death has been obtained then it is necessary to consider which part of the records are relevant to the claim. Section 5 (4) Access to Health Records Act 1990 states that access shall not be given to any part of the records which in the opinion of the holder of the records, would disclose information which is not relevant to any claim which may arise out of the patient’s death. It is necessary to consider the type of claim envisaged by the applicant and decide which records are relevant to the claim.

8.5 In addition, a claim arising out of the Inheritance (provisions for Family and Dependents) Act 1975 would also be a valid claim.
8.6 Dependants are defined under the 1975 Act as follows:
- A spouse or former spouse of the deceased,
- A child of the deceased
- A child of the family
- A dependant of the deceased at the time of the deceased’s death

8.7 Before providing access to health care information to any personal representative of the deceased or anyone with a claim arising out of the death of the deceased, the deceased’s records should be checked to ensure that the deceased made no request, when he/she was alive, that his/her records which are relevant to a legal claim arising out of a death of the deceased should not be disclosed to the applicant. In addition, the appropriate Health Professional should agree that the disclosure would not be likely to cause serious harm to somebody’s physical or mental health and any third party information must be removed.

8.8 The applicant should submit a written request for access and will be processed by the Medico Legal Department.

9. Ensuring the identity of the person making the request

9.1 If a member of staff cannot be sure that someone requesting access to information is who they say, that member of staff may require them to provide proof in that regard. Possible methods of checking identity include:
- Ask the individual to give information which has been recorded as personal data by the Trust and which the individual might be expected to know.
- Asking the individual to produce documents that might reasonably be expected to be in only their possession see section 19.2 Responses collected in person

10. Consent Requirements

10.1 Where the patient is alive and has capacity
A patient may request access to information about him/her through an agency. However the agent will enjoy no greater right of access than the patient enjoys. When applying for such access an agent should be asked to provide written confirmation that they have been appointed by the patient to exercise such rights of access to information that the patient enjoys.

10.2 The consent should include whether all or part of the records are required and to whom they are being disclosed. In the case of partial disclosure the consent should be given an indication as to which part of the record is to being disclosed e.g. incident date. The consent should be less than 6
months old.

10.3 **Where the patient is incapacitated**

As the law stands, nobody is empowered to give consent on behalf of an adult. However, where a person is incapable giving or withholding their consent, it will be the person in charge of the patient’s treatment who will decide whether information about them may be disclosed to another party. A patient may be incapable because they are unconscious or mentally ill or other reasons. In many cases the person in charge of his/her treatment may be the one identified as the appropriate Health Professional. Disclosure of information may only take place if it is in the patients’ best interest. In order to decide whether this requirement is met the person making the decision must consider everything that is known about the patient (including wishes they may have expressed while capable), together with the views of his/her relatives or carers. Where an adult is, or becomes, incapable of making decisions on his or her own behalf, the law provides that another may be appointed to act on their behalf has his/her agent:

- **Enduring Power of Attorney.** Enduring power of attorney has been replaced by lasting power of attorney. They can still be used if they were made and signed before October 2007.

- **A Lasting Power of Attorney.** The Mental Capacity Act 2005 (implemented in October 2007 (LPA) A person nominated under LPA (Lasting Power of Attorney) can make decisions about personal welfare – which includes healthcare – as well as financial matters. An LPA must be registered with the Public Guardian to be valid. The complication here is that there can be multiple LPA’s with different roles – it must be clear that the LPA in question covers decisions regarding healthcare and is not restricted to some other area of decision making.

- **The Court of Protection.** The Court of Protection 2007 deals with issues of personal welfare (including healthcare) as well as financial. The Court of Protection can also appoint Court Deputies if a person lacking capacity needs an on-going decision maker. This can be anyone the court feels appropriate. However, this person must be registered as a court appointed deputy.

10.4 **Where the patient is under 18** Access should only be given with the child’s consent if the child is capable of giving consent. Should the child refuse consent this can be overridden by someone who holds parental responsibility.

11. **Children and young people**

11.1 Where the young person is a child (under 18), any person, with parental responsibility may apply for access to the records. Where more than one person has parental responsibility, each may independently exercise rights of access. In the case where a child lives with his/her mother and whose father
applies for access to their child’s records, there is no obligation to inform the child’s mother that access has been sought. However, the father may only be given access to information where he has parental responsibility for the child (see 11.4). Access should only be given with the child’s consent if the child is capable of giving consent. See section 10 Consent requirement for further information.

11.2 Children of all ages vary in their level of maturity and understanding, and therefore, each case should be dealt with on an individual basis.

11.3 In each case it will be necessary to enquire of the medical practitioner who has most recently treated the child as to whether in their opinion the child has reached an age where he/she has sufficient understanding and intelligence to understand the nature of the application for access to his/her records. Each application must be assessed on an individual basis.

11.4 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 if they jointly adopted a child. Neither parent loses responsibility if they divorce and this applies to both the resident or non-resident parent. However, there are circumstances in which a father who is not married to the child’s mother may acquire parental responsibility for him/her (see below).

Please refer to section 10.2 of the Child Protection Policy (NCWC001) and section 7.2 of the Policy on Consent to Examination or Treatment (EDQ002).

Individuals other than parents can acquire parental responsibility by:

- **Adoption Order** – this confers full parental responsibility upon the adoptive parents and that formerly held by the birth parents is extinguished.

- **Special Guardianship Order (such as after a parental death)** – this gives guardians all the parental responsibility that the parent would have had.

- **Residence Order** – parental responsibility is shared with the parent, and is subject to the limitation that the person with the order cannot withhold consent to adopt or appoint a guardian (limitations may be relevant for the policy).

- **Parental Order** – full and permanent responsibility is conveyed to a married couple of a child born in surrogacy, where at least one member of the couple is the genetic parent.

According to current law, a mother always has parental responsibility for her child. A father, however, has responsibility only if married to the mother when the child was born or has acquired legal responsibility for his child through one of the following routes:

- (from 1 December 2003) by jointly registering the birth of the child with the
mother

- By a parental responsibility agreement with the mother
- By a parental responsibility order, made by the court

Living with the mother, even long term, does not give the father parental responsibility and if the parents are not married, parental responsibility does not always automatically pass to the natural father if the mother dies.

11.5 Where a child is looked after by the Local Authority there are three possible routes of parental responsibility.

- A child may be accommodated by the Local Authority but a parent still retains full parental responsibility.
- The local authority have full parental responsibility
- A parent and the local authority share parental responsibility. If this is the case consent can be gained from either the parent or local authority. There is no requirement to get consent from both parties.

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

- **Emergency Protection Order (Section 44, Children Act 1989)** – temporary parental responsibility is conveyed for a period of up to 8 days without prior notice to parents if necessary, and can be extended for a further 7 days.

- **Interim Care Order (Section 38, Children Act 1989)** – temporary parental responsibility is conveyed for a period of up to 4 weeks at a time. Parental responsibility is shared with the birth parents. The court can issue directions regarding medical care etc.

- **Full Care Order (Section 33, Children Act 1989)** – parental responsibility is shared between the Local Authority and the parents and the local authority has the power to determine the extent to which the parents can exercise their parental responsibility.

11.6 The law regards young people aged 16-18 to be adults for the purpose of consent to treatments and right to confidentiality. If they are judged competent to make a decision about their own medical treatment, then they have the right to deny parental access to their health records.

However, unlike adults, the refusal of a person aged 16-17 may in certain circumstances be overridden by either a person with parental responsibility or a court.

Please refer to section 7.2 of the Policy on Consent to Examination or Treatment (EDQ002)
11.7 The Data Protection Act does not allow disclosure of information whose disclosure is already prohibited in legislation concerning adoption records and reports. Health Professionals who believe their records may contain such information should seek advice from the Information Commissioner’s Department.

11.8 Child Protection Cases
11.8.1 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.

11.8.2 A corresponding duty is placed upon the Trust to assist with those enquiries by providing relevant information and advice about the child if called upon to do so.

11.8.3 It is important that appropriate advice is sought via the Safeguarding Team on extension 44420 before the records are released if the request is not accompanied by a Court Order requiring disclosure of the medical records.

11.8.4 If the records contain child psychiatry information the appropriate Health Professional within child psychiatry should be contacted before access to the part of the record is permitted.

12. Request for information by the police
– see Police Disclosure of Information and Clinical Samples Policy (EDG001)

12.1 The Trust wishes to foster good relations with the police, and to play its part in keeping the public safe and protecting from crime. However, the Trust also has a duty to protect the confidentiality of its patients, whether they are in hospital, in the community or alive or deceased. The duty is breached where information about a patient – including the mere fact that they are a patient is divulged.

12.2 The Trust has a duty to comply with the previsions of the Data Protection Act 1988. It follows that information may only be disclosed with the correct consent of the patient, except in exceptional circumstances.

12.3 Disclosure may be necessary and in the public interest where a failure to disclose information may expose the patient, or others, to a risk of death or serious harm. In such circumstances the information should be disclosed promptly to an appropriate person or authority. Such circumstances may arise where the disclosure is necessary for the prevention of serious crime. The circumstances where this can arise are diverse and will need to be considered on an individual basis. They can only include circumstances where the patient or former patient is a victim of an offence or is suspected of having committed a serious offence.
12.4 Consent

12.4.1 If capable, an adult patient should be asked to give explicit consent to information about his/her being disclosed unless the police give good reasons why this would be detrimental to the investigation or prevention of a serious offence. A child of any age may give such consent, provided they are sufficiently mature to understand the nature of disclosure. If a child is not sufficiently mature, consent to disclose may be given by anyone with parental responsibility of him/her see section 11 Children and young people. The consent must not be less than 12 months old, and must detail to who the information is being disclosed, what parts of the record are being disclosed and why the information is required.

12.4.2 Even if consent has been given the procedure around permitting access by the appropriate Health Professional still apply.

12.4.3 If the consent of the patient cannot be obtained the following principles apply:

- The police do not have a general right of access to records or information about patients, unless there is a court order, the final decision about what may be disclosed will rest with the Trust. However any request for information by the police should be considered by the Health Professional who is in charge or was in charge of the patient’s treatment in the first instance.

- A police officer requesting disclosure of confidential information relating to a patient should be asked to provide:
  - Why it is believed that the subject of the request has committed or is about to commit an offence which warrants release of health records without patient consent
  - The reason it is believed the provision of the information request will assist the investigation
  - If the request is urgent, and why

- The form “Request for disclosure of personal information” (see Police Disclosure of Information and Clinical Samples Policy EDG001) should be completed by an officer not below the rank of Inspector and retained with the request. If the request is handled by a Health Professional the form should be handed to the Medical Legal Department to be registered on Ulysses Safeguard.

- Only the information that is relevant to the police should be given. Initially this should be restricted to the name and address of the patient, but at the discretion of the person deciding on its release, may include additional details if they are relevant to the investigation.

- If the Health Professional in charge of the patient’s treatment decides against releasing the information and the Police dispute this then the matter should be referred to the Caldicott Guardian for further
consideration. The Caldicott Guardian shall consult with the Health Professional in charge of the patients’ treatment before a decision is made whether or not to release the information.

- **Ensuring the request is genuine**
  Anyone who claims to be a police officer and to be acting as such should be asked to produce their warrant card. This card is credit card sized and pale blue in colour. It should include:
  
  o The Police Logo
  o The officer’s photo
  o Their warrant number
  o A signature from the chief constable

  In addition, the officer should be asked for their collar number, which should match the number on the warrant card. If there is any doubt that the request is genuine verification can be sought by contacting the police on 0161 872 5050. Requests received over the phone can also be verified via the above number.

12.5 **Disclosure of confidential information without police request**
Situations may arise where staff become aware that a patient may have or may be about to commit a serious offence. The police may be unaware of this but the seriousness of the offence, or for example, a threat of serious harm to another, may mean that this information should be disclosed to the police in the public interest.

12.6 **Documenting the request**
A request for the disclosure of patient information, and any decision to disclose such information, should be recorded in the patient’s clinical notes including to whom the information has been disclosed and when. All Data Access requests must be logged on the Ulysses Safeguard system.

12.7 Original records should not be sent to the Police and a charge should be made see Section 17 ‘Charges for release of the record.’

13. **Requests from Solicitors**

13.1 These should be made in writing and clarification of whether or not action is intended against the Trust should be obtained where possible. The request should not be held up if this is not forthcoming.

13.2 If action against the Trust is intended the Medico Legal Department must inform the Legal Services Department, who will decide whether further investigation is merited at that time.

13.3 If the request is in relation to childcare proceedings, a witness summons should be submitted with the application.
13.4 Written consent must be submitted with the application and must be current (within 6 months).

13.5 Original records should not be sent to Solicitors and a charge should be made in line with Section 18 (Data Protection Act 1988).

13.6 Solicitors have no greater right to access to information than is enjoyed by their clients.

14. Court Order / Affidavit

14.1 Often disclosure of medical records of the alleged victim of, or witness to, a crime is requested by the alleged perpetrator’s defence lawyer, and occasionally by the Crown Prosecution Service or prosecution team. Initial refusal by the appropriate Health Professional to release such records will usually be met by a witness summons being issued by the court (under the Criminal procedure (Attendance of Witnesses) Act 1965) in the Crown Court. The defence legal team are only entitled to have access to confidential material that is relevant to the matters in issue in the criminal trial. They are not entitled to trawl through a patient’s/victim’s entire medical history seeking material for cross-examination.

14.2 Prior to the applicant (defence/prosecution) requesting a court order to be served on the Trust they should issue the Trust with an affidavit and copy of the application notice to answer within 7 days (Crown Court rules 1982). This gives the Trust a period of time to decide whether the records should be disclosed or whether it would be in the interests of the patient, or the third parties mentioned within the notes, to disclosure. The appropriate Health Professional remains obliged to refuse disclosure on the grounds of confidentiality. The Trust can then either write to the court setting out the reasons why it is felt a summons should not be issued or the Trust can attend the hearing for the summons (legal representation would be required if this is the case).

14.3 If the Trust is not issued with the affidavit it may be served with a summons to produce the records to the court on a specific date. Failure to comply with the order may be contempt of court, and therefore a very serious matter. A Court Order will usually require a consultant/lead clinician to produce healthcare records to the court, and in these circumstances they should not be handed over to the police, defence or prosecution.

14.3.1 It is essential that all records the Trust holds relating to the patient are taken to the court. The handler should establish what records are held.

14.4 If an affidavit or court order is issued to the Trust it must immediately be complied with in line with the contents of the document on the action to be taken, a copy of the affidavit/order, should be sent to the appropriate person. The Legal Services Department or Safeguarding Team (for children) can assist with any queries.
14.5 Where information is disclosed under court order, those who disclose it will usually have a complete defence to any allegations that they have breached confidentiality, but the order must be interpreted correctly and the information only to be disclosed in accordance with the terms of the order. However even though the court has ordered production of the notes the appropriate Health Professional should still review the notes for anything that may harm the patient or any other person. It may then be necessary for the Trust to seek legal representation if it is felt it would not be in the best interest of the patient, or the third parties mentioned within the notes, to disclose the whole records to the court. In these circumstances the Caldicott Guardian/ Legal Services Department should be contacted so that, if the Trust agrees, legal representation can be appointed.

14.6 Coroners and their appointed pathologists are entitled to request original records. If they do, copies of the records must be retained by the Trust. Coroners normally give sufficient notice for the copies to be made, but have the power to seize records at short notice, which may leave little time to take copies. The release of records to the Coroner or their appointed pathologist does not require authorisation by the Trust, however a copy of the Health records must be retained.

15 **Access to medical reports**

15.1 The Access to Medical Reports Act 1988 establishes a right of access by individuals to reports relating to themselves provided by medical practitioners for employment or insurance purposes.

15.2 Requests received into the Trust for access to medical reports should be forwarded to the relevant Health Professional for processing.

15.3 **Request for information used for Benefit Assessment purposes**

**Department of Work and Pensions (DWP)**

In order to assess the benefit claims of their client it is often necessary for the DWP to have a factual report prepared. This is in order that the claim can be objectively considered.

15.4 The request should be processed by the relevant Health Professional. If approached by the DWP for information the responsibility to provide it lies with the Trust and not a third party.

15.5 **Consent to release of information**

It is not necessary for the Trust to seek consent to release information to the DWP. The patient will be aware that the DWP may be required to make such requests and the consent from the patient in an integral part of the benefit claim form.

15.6 **Charges for release of records**

The information required should be supplied without charge.
15.7 **Confidentiality**  
The DWP are required to handle all information in a manner that is in accordance with NHS Policy on the secure handling of confidential patient information.

16. **Time Limits**

16.1 Legally a formal request for Access to Health Records must be actioned and completed within 40 calendar days or if later, 40 days from the day on which the Trust has the necessary information to confirm the identity of the applicant. The Department of Health has issued guidance that states that Trusts should aim to complete requests within 21 days.

16.2 Where the applicant has request to view the records the Trust should aim to arrange an appointment within 40 calendar days or at least an appointment date with the requestor.

17. **Charges for release of the record**

17.1 A charge of £50 may be charged for providing a copy of manual records or a mixture of manual and electronic records.

17.2 A charge of £10 may be charged for providing electronic records.

17.3 The access fee of £10 applies where a client or their solicitor views their records but does not receive a copy. If a copy of the record is then required a further £40 fee will apply.

17.4 Where the client is deceased, the applicant can be charged a maximum fee of £10 for access plus 25 pence per sheet.

Postage is charged as follows:

- £2.50 for records up to a ream of paper.
- £5 for records of up to 2 reams of paper
- £10 for records to be sent by courier

All copies will be black and white and single sided.

18. **Sending the records to the applicant**

18.1 All documents being released via post will be despatched having been secured within two envelopes i.e. one contained inside the other. Both envelopes should be marked “Private and Confidential – To be opened by
It is your responsibility to check that this print out is the most up-to-date version of this document
Check on the ‘Documents’ pages of the Trust Intranet
21.2 Training Arrangements
All staff members working in areas where requests are received require basic awareness training, particularly with regard to forwarding requests for access to the Medico Legal Team. All department managers are responsible for making their staff aware of this aspect.

Medico Legal Department staff who deal with requests require comprehensive training in working to this policy document.

Training will be carried out by the Patient Access Compliance Manager on a one to one basis or as a group as appropriate.

The Patient Access Compliance Manager takes advice from their line manager, Information Security Manager, Head of Legal Services and the Trust’s solicitors.

The training will be revisited on change of any change of policy, procedures and documentation incorporated into the Personal Development Reviews of Medico Legal Department staff members.

21.3 Financial Impact
No financial impact.

22. Monitoring Arrangements

22.1 See appendix C.

23. Review Arrangements

23.1 This policy will be reviewed by the author every three years or earlier should a change in legislation or other change dictate.

24. References and Bibliography

24.1 Associated Documents
- Police Disclosure of Information and Clinical Samples Policy (EDG001)
- Information Governance Policy (EDI001)
- Child Protection Policy (NCWC001)
- Policy on Consent to Examination or Treatment (EDQ002)

24.2 Supporting References
- Guidance for Health Records requests –February 2010 (DOH)
• Fatal Accidents Act 1976
• Data Protection Act 1988
• Access to Health Records Act 1990
• Inheritance (Provision for Family and Dependents) Act 1975
• GMC confidentiality guidance: Disclosure after a patient’s death
• Attendance of witness Act 1965
• NHS Confidentiality Code of Practice
• Data Protection (Subject Access Modification) (Health) Order 2000 (S.I. No. 413)
• Data Protection (Subject Access Modification) (Health) Order 2000 (Health Order), Article 5(1)
• Mental Capacity Act 2005 (implemented in October 2007 (LPA)
• Criminal procedure (Attendance of Witnesses) Act 1965
• Access to Medical Reports Act 1988
• Children Act 1989

25. Abbreviations & Definitions of terms used

DMA  Document Management System
DWP  Department of Work and Pensions
KPI  Key Performance Indicator
LPA  Lasting Power of Attorney
PDR  Personal Development Review

26. Appendices

A  Definition of Health Professional
   Definition of the Caldicott Guardian
B  Exemption Summary
C  Arrangements for Monitoring Compliance
   with this document
D  Equality Impact Assessment
Appendix A - Definitions

Definition of Health Professional

Under the Data Protection Act 1988 *Health Professional* means any of the following, including Allied Health Professionals registered under the Health Professionals Council. This list is intended as an overview rather than a conclusive list;

a) A registered medical practitioner
b) A registered dentist
c) A registered optician
d) A registered pharmaceutical chemist
e) A registered nurse, midwife or health visitor
f) A registered osteopath
g) A registered chiropractor
h) A clinical psychologist, child psychotherapist or speech therapist
i) A music therapist employed by a health service body
j) A scientist employed by such a body as a head of department

Definition of the Caldicott Guardian

A Caldicott Guardian is a senior person responsible for protecting the confidentiality of patient and service user information and enabling appropriate information sharing. The Guardian plays a key role in ensuring that the NHS, Councils with Social Services responsibilities and partner organisations satisfy the highest practicable standards for handling patient identifiable information.
Appendix B - Exemption Summary

The Trust has a right to withhold information in the following situations:

**Disclosure Might Cause Harm:**
Under the Data Protection (Subject Access Modification) (Health) Order 2000, the Trust has the right to deny patients access to all or part of their health records if one of the following conditions apply:

- If, in the opinion of the appropriate Health Professional in charge of the patients care, access would disclose information likely to cause serious harm to the physical or mental health or condition of the patient or any other person.
- If giving access would disclose information that could identify a third party (unless the individual concerned has given their consent).

**Detection / Prevention of Crime and Prosecution of Offenders:**
Disclosure of confidential information may be necessary for the prevention or detection of serious crime. If therefore, a police officer is undertaking the investigation of a crime which falls under the Serious Organised Crime and Police Act 2005 the Health Professional in charge of the patient’s care should bear this in mind when deciding whether or not to disclose confidential information. See section 12 request for information by the police.

**Child Protection Concerns:**
There may be situations in which access to all or part of a child’s health records can be refused – for example, where there are ongoing child protection issues, or where releasing information may be put a child or young person at risk of harm. In these cases, advice must be sought from the Safeguarding Team or Caldicott Guardian before releasing any information.

**Wishes of deceased patients:**
It is the policy of the Department of Health of Health and the General Medical Council that records relating to deceased people should be treated with the same level of confidentiality as those relating to living people. e.g. if the record contains a note made at the patient’s request that they did not want a particular individual to know the details of their illness or their care, then no access should be granted to that individual.

In addition, the Trust has the right to deny or restrict access if it is felt that disclosure would cause serious harm to the physical or mental health of any other person or would identify a third person.

Health Professionals must carefully consider and be prepared to justify to the Trust any decision to disclose or withhold information. The Caldicott Guardian must be advised if there appears to be any grounds for withholding information.

If information has been withheld applicants should be informed of the grounds on which information has been withheld. Health Professionals may not wish to divulge the reason for refusal if this may cause undue distress.
### Appendix C - Arrangements for Monitoring Compliance with this document

|-----------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------|------------------------|------------------------------------------------------|------------------------|-------------------------------------------------------------|---------------------------------------------------------------------|---------------------------------------------------------------------|
| 1) All Medical Legal Team have been trained regarding this policy and processes within the department. | a) All new starters will receive departmental induction into the processes. Refresher training will be undertaken. All training will be documented and signed both the staff member and the trainer i.e. supervisor or manager. 
 b) All PDRs will include an element for training and refresher training. | Review of training documentation | Elective Access Compliance Manager | Annually | Elective Access Compliance Manager | Elective Access Compliance Manager | Elective Access Compliance Manager |
| 2) Access requests are processed within appropriate timescales                       | All requests to be processed within 40 calendar days.                                           | a) Safeguard reports 
 b) Patient satisfaction survey 
 c) Process KPI | Elective Access Compliance Manager | a) Monthly 
 b) Annually 
 c) Weekly | Elective Access Compliance Manager | Elective Access Compliance Manager | Elective Access Compliance Manager |
| 3) Appropriate consents from applicant for release of records to authorised individuals are obtained. | Appropriate consents from applicant for release of records to authorised individuals are obtained. | Sampling of completed requests | Medico Legal, OSV, PP Officers | Monthly | Elective Access Compliance Manager | Elective Access Compliance Manager | Elective Access Compliance Manager |
| 4) Appropriate consents from clinicians for release of records to authorised         | Appropriate consents from applicant for release of records to authorised                         | Sampling of completed requests | Medico Legal, OSV, PP Officers | Monthly | Elective Access Compliance Manager | Elective Access Compliance Manager | Elective Access Compliance Manager |
Appendix D - Equality Impact Assessment for this Document

Equality Impact Assessment Pro-forma (Policy)

Part One

<table>
<thead>
<tr>
<th>Name of Policy</th>
<th>Access to Health Records Policy</th>
<th>Date of assessment</th>
<th>Is the policy new or for review?</th>
<th>Revised policy (more or less re-written)</th>
</tr>
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<tbody>
<tr>
<td>Area</td>
<td>Medical Legal Department</td>
<td>Name of Author(s)</td>
<td>Sandra Rushton, Health Records</td>
<td></td>
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<tr>
<td></td>
<td>Elective Access, Health Records</td>
<td>Lead and Nicola</td>
<td>Lead and Nicola Grey, Patient</td>
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<td></td>
<td></td>
<td>Grey, Patient Access</td>
<td>Compliance Manager.</td>
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</table>

1.1 Briefly describe the aims and objectives and the purpose of the policy

Aim: This document explains who can access health records and how this process is to be administered. Specifically the items below:

- The law on who can and who cannot have access to Health Records
- How an individual applies to access Health Records
- Time scales to provide Health Records
- Charges applied for access to Health Records provided
- Responsibilities of those involved in processing requests.

The document should be applied in accordance with the document released by the Department of Health ‘Guidance for Access to Health Records Requests – Feb 2010.’

Objective: To set out the information in a readable and user friendly manner for any staff member involved in processing a request for access to medical records for both living and deceased patients. This is done in accordance with the DoH ‘Guidance for Access to Health Records Requests’, the Data Protection Act 1998 and the Access to Health Records Act 1990.’

1.2 Are there any associated objectives or directives of the policy? i.e. Care Quality Commission (CQC), NHS Litigation Authority (NHSLA)

No

1.3 Who is the policy intended to benefit, and

The policy provides clear information for staff members who are involved in processing access to...
what are the expected outcomes? records requests including who can and who cannot have access to medical records. The policy will benefit any staff members involved in requests for access to medical records and the process that needs to be followed in line with legal requirements.

1.4 What factors could influence the intended outcomes either positively or negatively? The policy has been compiled in accordance with the document released by the Department of Health ‘Guidance for Access to Health Records Requests – Feb 2010.

Staff failing to follow the policy could adversely affect the correct procedures being followed and could result in the Trust being fined for non compliance with the Data Protection Act and Access to Health Records Act.

1.5 Who are the main stakeholders in relation to the policy Staff/Patients

1.6 Who implements and is responsible for the policy? Jo Keogh, Associate Director of Elective Access

### Part One (cont)

For each of the Nine Equality Categories ask the question below:

<table>
<thead>
<tr>
<th>Human Rights</th>
<th>Age</th>
<th>Disability</th>
<th>Ethnicity (Race)</th>
<th>Religion</th>
<th>Gender</th>
<th>Sexual orientation</th>
<th>Carers</th>
<th>Social Deprivation</th>
</tr>
</thead>
</table>

1.7 From the evidence, does the policy affect or have the potential to affect individuals or communities differently or disproportionately, either positively or negatively (including discrimination)? N N N N N N N N N

1.8 Is there potential for, or evidence that, the proposed policy will promote equality of opportunity for all and promote good relations with different groups?

Y (this policy relates to everyone equally and each request will be assessed)

Y Y Y Y Y Y Y Y Y
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<td>1.9 Is there public concern (including media, academic, voluntary or sector specific interest) in the policy area about actual, perceived or potential discrimination about a particular community?</td>
<td>N</td>
<td>N</td>
<td>N</td>
<td>N</td>
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<tr>
<td>1.10 Is there any doubt about answers to any of the questions?</td>
<td>N</td>
<td>N</td>
<td>N</td>
<td>N</td>
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<td>N</td>
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<td>N</td>
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</table>

**Part Two**

2.1 In what way does the policy impact on any particular group listed above? Include here what evidence you have collated, whether there are any gaps and what further information is required.

This policy relates to everyone equally and each request will be assessed on individual needs.

2.2 Adverse Impact - if you have identified potential or real direct or indirect discrimination? If so, can it be justified (e.g., legislation, clinical or social evidence)?

N/A

2.1 Positive Impact - does the policy actively promote equality of opportunity and/or good relations between different groups of people?

This policy relates to everyone equally and each request will be assessed on individual needs.
### Part Three

<table>
<thead>
<tr>
<th>Policy Title (as it appears on the Document Management System)</th>
<th>Policy Number</th>
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<tbody>
<tr>
<td>Access to Health Records Policy</td>
<td>EDM012 Version 2.1</td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>Ratifying Committee</th>
<th>Date sent to Committee</th>
</tr>
</thead>
<tbody>
<tr>
<td>The Health Records Forum</td>
<td>4 December 2013</td>
</tr>
</tbody>
</table>

This policy has been assessed as having no or low equality impact. Part 1 is completed.

This policy has been assessed as having low to medium impact. Parts 1 and 2 have been completed. Full impact assessment is unnecessary.

This policy has been assessed as having medium to high impact. Parts 1 and 2 have been completed. Full impact assessment is necessary.

<table>
<thead>
<tr>
<th>Assessors Name</th>
<th>Designation</th>
<th>Signed*</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sandra Rushton</td>
<td>Health Records Lead</td>
<td></td>
</tr>
<tr>
<td>Equality Champion</td>
<td>Directorate</td>
<td>Signed*</td>
</tr>
<tr>
<td>Naheed Nazir</td>
<td>Naheed Nazir</td>
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<tr>
<td>Date</td>
<td>28/8/13</td>
<td>Please scan or insert electronic signature</td>
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