Upwell Health Centre and Welle Ltd (Pharmacy)

Information Disclosure (Including Subject Access Request) Protocol

|  |  |  |  |
| --- | --- | --- | --- |
| Version | Author | Next Review Date | Notes |
| V1 (March 22) | Emma Kitcher, DPO | March 23 | New protocol to replace IG12(SAR) and IG14 (Police). Far more comprehensive. |
| V2 March 23 | Emma Kitcher, DPO | March 24 | Added an item under Section 6 – Nominated Individuals about maintaining a log and passing requests over during absence |

**Contents**

[1. INTRODUCTION 2](#_Toc97532875)

[2. QUICK REFERENCE POINTS 3](#_Toc97532876)

[3. KEY DEFINITIONS 3](#_Toc97532877)

[4. SCOPE 3](#_Toc97532878)

[5. KEY LEGISLATION / FRAMEWORK 4](#_Toc97532879)

[6. NOMINATED INDIVIDUALS / TEAMS 4](#_Toc97532880)

[7. TYPES OF DISCLOSURE 4](#_Toc97532881)

[8. WHAT IS A SUBJECT ACCESS REQUEST? 5](#_Toc97532882)

[9. REQUESTS FROM INSURANCE COMPANIES 5](#_Toc97532883)

[10. SARS VIA A SOLICITOR 6](#_Toc97532884)

[11. SARS VIA OTHER ORGANISATIONS 8](#_Toc97532885)

[12. CHARGING FOR SARS 8](#_Toc97532886)

[13. TIMEFRAMES FOR SARS 8](#_Toc97532887)

[14. CONFIRMING IDENTITY 9](#_Toc97532888)

[15. SENDING DIGITALLY 9](#_Toc97532889)

[16. EXEMPTIONS FROM SAR RELEASE 10](#_Toc97532890)

[17. CHILDREN AND YOUNG PEOPLE 12](#_Toc97532891)

[18. ONLINE ACCESS 13](#_Toc97532892)

[19. PROXY ONLINE ACCESS 13](#_Toc97532893)

[20. REQUESTS WHERE THE PATIENT IS DECEASED 14](#_Toc97532894)

[21. LITIGATION FRIEND REQUESTS 18](#_Toc97532895)

[22. CRIME AUTHORITY REQUESTS 18](#_Toc97532896)

[23. HOW DO WE APPLY THE CRIME AUTHORITY EXEMPTIONS? 19](#_Toc97532897)

[24. ARMED FORCES REQUESTS 20](#_Toc97532898)

[25. LASTING POWER OF ATTOURNEY 21](#_Toc97532899)

[26. OTHER DISCLOSURES 22](#_Toc97532900)

[27. APPLICATION AND AUDIT 23](#_Toc97532901)

[28. APPENDIX A: A BMI LETTER TO PATIENT RE INSURANCE COMPANY REQUEST (LANGUAGE MADE MORE ACCESSIBLE TO PATIENTS) 23](#_Toc97532902)

[29. APPENDIX B: LETTER TO s COMPANY MAKING A SAR 24](#_Toc97532903)

[30. APPENDIX C: LETTER TO SOLICITOR SUBJECT ACCESS RESPONSE (FOLLOWING CALL TO PATIENT 25](#_Toc97532904)

[31. APPENDIX D: LETTER FOR BEING CHASED FOR TIMELY RESPONSE 27](#_Toc97532905)

[32. APPENDIX E: USING NHS DIGITAL ENCRYPTION TO SEND TO NON SECURE EMAIL ADDRESS 27](#_Toc97532906)

[33. APPENDIX F: SENDING SARS BY EMAIL THROUGH NON SECURE ROUTES 28](#_Toc97532907)

[34. APPENDIX G: SUBJECT ACCESS REQUEST REFINING RESPONSE 28](#_Toc97532908)

[35. APPENDIX H: SAR IDENTIFY VALIDATION 29](#_Toc97532909)

[36. APPENDIX I: SAR RESPONSE 30](#_Toc97532910)

[37. APPENDIX J: SAR REQUEST DELAY (MISSED LEGAL DEADLINE) 31](#_Toc97532911)

[38. APPENDIX K: DISCLOSURE TYPE MATRIX 32](#_Toc97532912)

[39. APPENDIX L: CHECKLIST TO SUPPORT THE TEAM TO PROCESS A SAR 32](#_Toc97532913)

[40. APPENDIX M: ACCESS TO HEALTH RECORDS LETTER 35](#_Toc97532914)

[41. APPENDIX N: DECLINING REQUEST LETTER 36](#_Toc97532915)

[42. APPENDIX O: EXTENDING DEADLINE LETTER 37](#_Toc97532916)

[43. APPENDIX P: LEGISLATION THAT COMPELS DISCLOSURE 38](#_Toc97532917)

[44. APPENDIX Q: LITIGATION FRIEND RESPONSE LETTER 40](#_Toc97532918)

1. INTRODUCTION

The UK GDPR provides the right for individuals to access their personal data. This includes seeing who has accessed their data.

The right helps individuals to understand how and why you are using their data, and check you are doing it lawfully. This right is commonly referred to as ‘subject access’.

Data protection law also permits disclosures to third parties such as the courts, the police and those having a claim arising from the death of an individual.

There are specific pieces of legislation that cover some of these disclosures such as the Access to Health Records Act 1990 which covers disclosures about the deceased and the Access to Medical Reports Act 1988 which allows insurance companies and other third parties to receive tailored reports.

1. QUICK REFERENCE POINTS

* There are a wide variety of routes by which information may be sought from the practice and disclosed
* It is a complex framework and requires support from the Data Protection Officer
* When a request to disclosure information is received, find the suitable chapter within this protocol and take note of the rules
* Specialist training is provided by the DPO

1. KEY DEFINITIONS

**Personal Confidential Information** This term is intended to cover information captured by the Data Protection Act 2018 / GDPR (identifiable information about the living), information covered by the Common Law Duty of Confidence / Tort of Misuse of Private Information and finally, information covered by Article 8 European Convention for Human Rights.

1. SCOPE

This protocol applies to all staff, whether temporary or permanent who are involved in the disclosure of personal data, including disclosing personal data to the data subject themselves.

Disclosures to the individual or to third parties may relate to service users, customers, staff or visitors’ personal data.

1. KEY LEGISLATION / FRAMEWORK

* UK GDPR / Data Protection Act 2018
* Human Rights Act 1998
* Common Law Duty of Confidentiality
* Access to Health Records Act 1990

1. NOMINATED INDIVIDUALS / TEAMS

The UK Information Commissioner informs us that disclosure requests should be directed to and processed by a suitably *trained* individual or team.

For your organisation, disclosure requests should be sent through to No Email - Online Admin Request via Upwell Health Centre Website

For organisations using the Kafico Managed Disclosure Service, you may refer your request directly to the Kafico team who will manage it in accordance with this policy.

However, staff should still be provided with a copy of this policy to support them to manage requests that are dealt with internally.

A log will be kept by the practice and / or the Data Protection Officer to ensure records of timely and lawful responses.

In the event of staff absence, the information rights lead at the practice will ensure that requests are handed over so that the DPO can continue to manage the request in their absence.

1. TYPES OF DISCLOSURE

* There are a number of routes by which information can be sought from Upwell Health Centre and Welle Ltd (Pharmacy).
* Subject Access Request (a person is asking for information you hold about them)
* Access to Medical Reports (insurance companies, employers or the DVLA are entitled to a tailored report about a person)
* Disclosure of deceased patient medical records
  + Setting aside of Duty of Confidentiality (to assist a family when they have lost a loved one)
  + Under Access to Health Records Act 1990 (the recipient is the executor to the estate or has a claim arising from their death)
* Disclosures to third parties for which there is a legal exemption to data protection principles (the courts, the police etc)
* Disclosures to third parties where explicit consent has been provided by the individual

1. WHAT IS A SUBJECT ACCESS REQUEST?

* A Subject Access Request involves an individual asking for information that is already held about them.
* An individual can ask for information themselves or they can instruct a solicitor or other representative to request the information
* The request does not need to be in writing, and you must accept requests in any form, for example, on the telephone, in person or even via social media.

1. REQUESTS FROM INSURANCE COMPANIES

* Insurance companies are legally not allowed to make a Subject Access Request (SAR).
* Instead, the Access to Medical Reports Act 1988 (AMRA) entitles them, and other organisations (like employers and the DVLA), to tailored medical reports.
* Because this requires the creation or production of targeted information and because it is not a SAR, a charge may be levied
* Even if the insurance company or other organisation has the consent of the individual for a copy of their full records or some of their notes, they must be asked to request a report instead.
* Under AMRA, a patient has a right to see the report before it goes to the organisation.
* You are legally obligated to facilitate this, and the report must not be sent on to the organisation until either consent from the patient is received or 21 days has passed.
* The patient also has a right to request changes, this must be made in writing and you have an obligation to consider the request and either make the requested changes or add a note with the report documenting the patient’s views on the report.
* The templates at Appendix A and B can support with this.

1. SARS VIA A SOLICITOR

* Solicitors can legitimately make a Subject Access Request on behalf of the patient.
* However, ICO guidance states that “if you think an individual may not understand what information would be disclosed, and in particular you are concerned about disclosing excessive information, you should contact the individual first to make them aware of your concerns”.
* This means it is appropriate to check with the patient where there is a request, via a solicitor, for their **full medical records**.
* Call the patient first to check.
* That they understand what ‘full record’ means
* That they understand that they can reduce what is sent because the information is for the patient NOT for the solicitor
* Check whether they want it sent straight to solicitor or to their home
* If they change or narrow the information to be send, respond to the solicitor using Appendix C.

**Possible Script when calling patient about a solicitor request**

“Hi [insert patient name] I am just calling as we’ve received a request for your full medical records from [insert Solicitors]. As the request is for full records I wanted to see if you are aware that this includes sensitive information such as sexual and mental health as well as all childhood records. As this is a subject access request you have a right to decide what information you want disclosed. The solicitors are acting on your behalf and cannot force you to disclose anything. Do you consent to them being provided with full records or is there anything you would like us to redact?”

“For example, we can redact sensitive information or information that isn’t relevant to your case, or we can provide information only from specific time periods, alternatively we can send the record direct to you and you can decide.”

* If a patient expresses that they do not want the solicitor to have their full record but feel have no choice but to allow access then, as a Controller of the information you have an **obligation** to decline the request from the Solicitors based on the fact the consent is not valid and the individual feels forced.
* See Appendix C for template letter to Solicitor

**What if I cannot make contact with the patient about a request made via a solicitor?**

* Sometimes you may find that a patient does not answer their phone or call you back. We do not advise sending a letter, instead try to call three times within a one to two-week time frame and then if still no contact, decide whether to release the information to the Solicitor.
* In these instances, the ICO have clarified that you should provide the information to the third party as long as you are satisfied that they are authorised to act on the individual’s behalf.
* Therefore, you can release to the Solicitor if:
* You have not heard back from the patient and
* You have signed consent form from the patient that includes a statement stating they understand their rights under GDPR / DPA 2018.

1. SARS VIA OTHER ORGANISATIONS

* A patient can ask anyone to request their record on their behalf, however, occasionally you will find an organisation trying to use SAR for a patient where they shouldn’t be, much like insurance companies did.
* In this instance, seek DPO advice before responding so that it can be determined whether the company is submitting a SAR.

1. CHARGING FOR SARS

* At this point, we are advised that charging is only for very limited circumstances – repeat copies is main one
* Data subjects are entitled to have all their information without having to explain why they need it.
* The practice should always contact the patient to let them know what they are doing in relation to their request
* Postage costs cannot be applied

1. TIMEFRAMES FOR SARS

* There is a one-month legal time frame for responding to SAR requests
* However, the ICO says;
* If you process a large amount of information about an individual, you can ask them for more information to clarify their request. You should only ask for information that you reasonably need to find the personal data covered by the request.
* You need to let the individual know as soon as possible that you need more information from them before responding to their request. The period for responding to the request begins when you receive the additional information.
* Therefore, when you are communicating with a solicitor for example, in relation to an excessive request, the legal time frame has not yet begun.
* If you are being chased to respond and the requestor has not yet refined the request in a satisfactory way, see Appendix D for an appropriate response.

1. CONFIRMING IDENTITY

* The identity of the person making the request must be validated, using “reasonable means”.
* If you have doubts 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. The key to this is proportionality
* This may include information to ensure that a parent has legal guardianship
* You need to let the individual know as soon as possible that you need more information from them to confirm their identity before responding to their request.
* The period for responding to the request begins when you receive the additional information

1. SENDING DIGITALLY

* If the request is made electronically, the information should be provided in a commonly used electronic format and this can often reduce costs.
* Download the clinical records from the system directly into a Word document
* Provide paper records and Word documents to clinician to highlight information that requires redaction
* Redact third party information and scan paper records to PDF
* Send email to patient to confirm they are happy to have information emailed and understand inherent risks with digital transfer, check email address and ask them to confirm receipt
* Use NHS Digital encryption technique Appendix E
* Send over several emails where necessary and include the recommended template at Appendix I
* If you are required to provide paper copies, you can request collection, but you cannot insist
* If a solicitor insists on paper copies (will not accept an email copy) you may charge a fee as can be viewed as excessive
* The text at Appendix E should support this.

1. EXEMPTIONS FROM SAR RELEASE

**Third Party Exemption**

* If the requested information contains information about a third party, and releasing it may breach your duty of confidentiality towards that person you should;
* Consider whether it is reasonable to ask their consent
* Consider whether it might be reasonable to release the information without their consent
* Redact the information related to the third party
* Names of professionals are generally not redacted
* Where an individual was present, there is no need to redact information (e.g. Mum and Son attend appointment together, there is no need to redact the other party since they are both already aware).
* Where the information is provided by the individual, there is no need to redact the information (e.g. patient discussed partner’s anxiety diagnosis and how it is affecting their relationship)
* It may sometimes be reasonable to release information about a third party – speak to your DPO if you have any concerns

**Serious Harm Test Exemption**

* The serious harm test applies to any data where it is determined by a clinician that either the patient or a third party is likely to come to serious mental or physical harm if the information is released.
* This is not just some harm, for example, mild distress at reading notes a previous consultant wrote about the patient but must be serious harm such as undoing progress on a patient’s mental wellbeing.
* It also has to be likely; this could be evidenced from previous consultations or from police reports where it is documented the patient has a volatile temper.
* This exemption can only be applied by certain individuals therefore if you believe information within a record may meet the above threshold you must note your concerns and ask one of the following to review the record;
* Professional responsible for patient or;
* Where more than one suitable, the best suited or;
* Where no one suitable, the most qualified available
* If unsure, please contact your DPO who will be able to support you.

**Other Exemptions**

* There may be other exemptions to releasing information such as;
* Confidential references
* Publicly available information
* Child Abuse information
* Crime and taxation (where releasing information would prejudice investigation or apprehension or offenders)
* Management information / forecasting
* Negotiations with the requester
* Legal advice and proceedings
* Social work records (where releasing information would prejudice social work activity)
* Where these additional documents exist, it is important to;
* Acknowledge any confirmation from police / social work departments about whether releasing the information would prejudice their activities.
* Obtain confirmation from clinician about how health information might cause the individual harm
* Whilst you are obtaining these confirmations, if they are taking some time, you could release what you do have.
* Information must not be amended (beyond redaction) for the purposes of releasing under Subject Access Rights.
* When information is released, it is good practice to include;
* Information about what has been redacted and why (unless that would make them aware of the nature of the information that has been withheld)
* A link to http://www.nhsconfed.org/acronym-buster which explains abbreviations and terms
* A link to the practice transparency notice
* If you believe that any of these exemptions are applicable, you should contact your DPO for support.
* Please use the Checklist at Appendix L.

1. CHILDREN AND YOUNG PEOPLE

* Children and Young People’s information warrants special protection because they are vulnerable.
* The age at which children are considered competent to make decisions about their health information is younger than the age they are considered competent to make decisions about their health care (12)
* Before this age, should a parent request the information held on their child, they may be entitled to this information. The ICO guidance is that, where it is in the best interests of the child, the parent can exercise rights on behalf of the child. Therefore, it is considered that it is inherently in the child’s best interest for the parent to have access to health records as they are in charge of the care of the child.
* If you have concerns that the parent may not be acting in the best interests of the child, for example there is evidence in the record that the child is subject to safeguarding or the parent has never previously been present in the child’s life, contact your DPO so that they can assist in completing an assessment.
* Younger children might also be assessed as competent to make decisions about their information
* Unless there are concerns, such as abuse, children’s decisions to keep information from their parents should be respected
* It is unreasonable to ring one parent to discuss a request from the other parent unless there is a compelling need. Each parent is entitled to make the request of their own volition and has a right for this to be kept confidential.
* If considered to be in best interests of the child (risk of significant harm), disclosure may take place without child’s consent
* If a child makes a decision to disclose information and the parents object, parents should usually be informed that the disclosure will take place (unless this would breach duty of confidentiality to the child or young person).
* If parents are requesting access to child’s record and the child is competent, access should only be granted with child’s consent
* Access should not be granted to information where the child had an expectation of confidentiality (consider sexual health etc) unless in the best interests of the child (Speak with your DPO and consider redaction)
* There is a specific exemption regarding child abuse data within a health record when the request comes from someone with parental responsibility.
* You should speak with your DPO to ensure the exemption is correctly considered as to the best interests of the child

1. ONLINE ACCESS

Please see the Online Access Protocol.

1. PROXY ONLINE ACCESS

* Proxy online access is not the same as full online access. At present, full online access is not being provided to the proxy (i.e. carer or parent).
* Coded online proxy access is available and must only be given to those where;
* the patient has consented or is under the age of 12
* the patient cannot consent but the requester has power of attorney for Health and Welfare
* or the patient cannot consent but a best interests decision has taken place (such as to give a carer proxy access.)
* As with any request, identity must be validated using reasonable means, including checking any consent.
* The requester should only be given coded / detailed coded access and not full online access.
* For more information see our guidance on Proxy Online Access.

1. REQUESTS WHERE THE PATIENT IS DECEASED

* Certain individuals have a right to information relating to a deceased patient.
* This is either because the organisation can reasonably set aside their duty of confidentiality or because the individual has a right to information under the Access to Health Records Act 1990.

**What is a request under Common Law Duty of Confidentiality?**

* When someone has died, data protection and subject access rules no longer apply to that information.
* However, it is protected by a duty of confidentially that extends beyond life.
* It may be reasonable to set aside the duty of confidentiality to release some information to certain individuals.
* It is necessary to determine whether the patient would have objected to the disclosure whilst alive and whether releasing the information would cause harm to anyone, taking into account the purpose of the disclosure.
* Reasonable examples of disclosure include to support a complaint or investigation but also to support a loved one in understanding how or why their family member / friend passed away.

**What is a request under Access to Health Records Act 1990?**

* This act governs who is entitled, by law, to have information disclosed to them held in a deceased patient record. Only two types of individuals are entitled to information from the record. These are:

1. Executor or administrator of the estate
   1. They are entitled to the entire record from 1991 - death
2. Someone who has a claim arising from the death of the patient.
   1. They are only entitled to information relevant to their claim from 1991 – death

**What do we need to consider?**

* First, it is important to establish how much of the record is being requested and why. This will determine whether a release can be considered under common law duty of confidentiality or the Access to Health Records Act.
* If it is unclear, you should ask the requester to provide more information on how they will use the information and whether the full record is necessary for their purpose. It is unlikely that a full record request will ever fall under a release for common law duty of confidentiality to friends or family.
* If they are only looking to view / discuss the last few months leading up to the patient death to understand why the patient died it is reasonable to discuss this with them unless there is clear evidence in the record that the patient would object to such a disclosure.
* Seek DPO advice once you have received information from the requestor on why they require the information

**When can we Withhold Information about the Deceased?**

* Information must be withheld when:
* There are explicit wishes of the deceased not to release their records (all or one particular section) to anyone / or specifically the requester
* It is implied within the record the deceased did not want their records shared
* The information was provided in a consultation that the patient may have expected the information would not be disclosed – such as a pregnancy termination.
* When the person is NOT the executor / administrator but has a claim arising from a patient’s death, you can only provide information that is relevant to their claim.
* You must ask the requestor the purpose of their request and what the information is to be used for.
* See Appendix M for template letter.
* Seek DPO advice once you have received information from the requestor on why they require the information

**What if they are NOT the Executor and they do Not Have a Claim?**

* The BMA guidelines tell us that where there is no legal entitlement based on having a claim or being an executor, health professionals have always had discretion to disclose information to a deceased person’s relatives or others when there is a clear justification.
* “A common example is when the family requests details of the terminal illness because of an anxiety that the patient might have been misdiagnosed or there might have been negligence. Disclosure in such cases is likely to be what the deceased person would have wanted and may also be in the interests of justice.
* Refusal to disclose in the absence of some evidence that this was the deceased patient’s known wish exacerbates suspicion and can result in unnecessary litigation.
* In other cases, the balance of benefit to be gained by the disclosure to the family, for example of a hereditary or infectious condition, may outweigh the obligation of confidentiality to the deceased.”
* If there is no evidence that the family member has a claim or is the executor to the estate, a number of factors should be considered;
* Is there any evidence that the patient would not have wanted their relative to have information from their record?
* Is the information going to be of benefit to the family?
* The nature and volume of the information – this will determine how much of an interference into privacy that the disclosure represents
* The final response should be justified using the above factors and documented.

**What evidence or identification do we need?**

* If the individual is making a claim as the executor / administrator of the will you would need a copy of the will or grant of probate as proof they are entitled to the information.
* With the will, it is reasonable to allow the individuals to redact the bequeathments etc, you would need to see the will as a whole document (photocopy is fine) so that you can review the page that lists the executors and then the signatory page to ensure the will is valid.
* If the request falls under having a claim arising for the death, it may be necessary to request documents that prove their claim, this would be on a case by case basis to determine but may include such documents as a life insurance policy, marriage certificate etc.
* If the request fall under common law duty of confidentiality it is unlikely any documents are needed and so it would just be a need to confirm identity of the individual by reasonable means if you do not know them.
* If you do not know the requester in any of the above circumstances it is also reasonable to ask for a form of valid ID to confirm their identity.

**What is the timeframe for responding?**

* When it is determined that the request falls under Access to Health Records Act 1990 there is a 40-day timeframe with which the practice must provide the records.
* There is no ability to extend the timeframe for responding under this Act. Like a SAR, the timeframe does not begin until you have finished clarifying the request and seeking any identification needed.
* There is no timeframe for responding under common law duty of confidentiality, but this is usually a much smaller request and so should not take long to complete, therefore it would be best practice to ensure any request falls within the 40-day timeframe set out under AHRA.

**Can We Charge?**

* Like subject access requests, AHRA prohibits charging for record requests. Whilst common law duty of confidentiality does not have such restrictions, it is unlikely to be justifiable to charge for these requests either given AHRA prohibits this, and they fall under the same category.

**What are the exemptions?**

* There are two exemptions under AHRA that would also apply to common law duty of confidentiality disclosures.

**Serious Harm Test** which is the same threshold and consideration as the exemption under SAR in that it must be likely to cause serious harm to any individual. This would require clinical oversight if there were a potential for the exemption to be applied.

**Third party exemption** is slightly different as you have to consider what the *requester* knows rather than the patient. Names etc are usually acceptable to leave in but where a patient may have discussed loved ones conditions and / or current life events you may need to redact unless the requester was present or it's reasonable to assume they know.

1. LITIGATION FRIEND REQUESTS

* This is not a subject access as a Litigation Friend is only entitled to act for an individual who does not have the capacity to act for themselves or is a minor.
* The Litigation Friend also has a very specific purpose in that they are only entitled to act for the individual for a single court case.
* When receiving a request signed by a Litigation Friend you may need to undertake the following:
* Request proof that the authorisation document has been “filed” with the court in order for the Litigation Friend to have a right to act
* Request further information on the purpose of the disclosure and how the information would be used
* Request evidence that a court case is ongoing
* Confirm that the adult patient lacks capacity to act for themselves
* They must be able to clearly demonstrate why the information they’ve requested is relevant to the court case at hand.

See Appendix Q for template letter.

1. CRIME AUTHORITY REQUESTS

* If you are asked to disclose information in relation to;
  + the prevention and detection of crime;
  + the apprehension or prosecution of offenders; or
  + the assessment or collection of a tax or duty or an imposition of a similar nature.

**Which Exemptions Apply to Data Disclosed for These Purposes?**

* + The individual may not have a right to be informed about the disclosure
  + The individual may not be able to object or withdraw consent
  + The individual does not need to be notified in the event of a data breach associated with the disclosure
  + There is no need to comply with the principles of fairness and transparency
  + You can make these disclosures even if you collected the data for something different
* However – the above exemptions only apply where doing so would prejudice the law enforcement purposes.
* For example; to inform the individual of the disclosure would affect our ability to detect crime and so we are applying the exemption to the Right to be Informed.

1. HOW DO WE APPLY THE CRIME AUTHORITY EXEMPTIONS?

* Practices cannot be expected to fully investigate how the information disclosed might help or hinder a law enforcement case or to what extent the information is necessary for such a case
* However, the practice should obtain confirmation from the requestor that the exemptions have been considered and applied appropriately.

**Ensuring the Information is Strictly necessary?**

* In order to satisfy this criterion, the information requested must not be disproportionate to the nature of the crime.
* The law enforcement officer does not have blanket entitlement to a victim and / or suspects entire medical record.
* If the request does not already state this - you must ask the law enforcement officer to confirm that they are only requesting what is necessary to investigate / prevent the criminal activity and that not having everything they have asked for would prejudice the case.
* You should ask this, even if the patient / individual has consented to releasing the entire medical record

**Do we have to notify the patient that we have received the request / are releasing their information?**

* Data protection law permits the information to be released without informing or obtaining consent from the data subject, but ONLY where informing them or obtaining consent would prejudice the case
* If not already stated in the request, ask the requestor to confirm informing / consent would prejudice law enforcement purposes

**Relevant Questions for Crime Authority Request (if not already stated on the request form)**

* You have requested the full medical record, can I ask you to confirm that the full medical record is necessary for the detection / prevention of crime (please be aware that the record will contain information such as childhood immunisations, STDs etc)
* Please confirm that NOT having the information requested would prejudice the detection / prevention of crime (or other stated law enforcement purposes such as tax collection)
* Please confirm whether informing the individual about the request would prejudice the investigation / detection of crime

1. ARMED FORCES REQUESTS

* This is not a subject access request but should be treated as a request from a third party.
* Where you have signed consent from the patient to release the information you can provide the records to the Armed Forces.

Please remember:

* Third party information should be redacted such as medical conditions of loved ones
* If you have concerns that the patient may not realise the level of sensitive information held in their record you should contact the patient to discuss. If the patient asks for a copy of their records this should be managed as a standard Subject Access Request separate from the Armed Forces request and the information should not be sent to the Armed Forces until the patient has had a chance to review and change their consent.
* You should explain to the patient that whilst this request is based on their explicit consent, should they withhold any information that may be a determining factor of acceptance, it may jeopardize their place and that the Army become their registered GP practice upon acceptance and this would include the redacted information.

1. LASTING POWER OF ATTOURNEY

* A lasting power of attorney (LPA) gives a specified person/s (the attorney) legal power to act on another’s behalf (the donor). There are two types of LPA – Health and Welfare & Property and Financial Affairs.
* Each have a different function and validity.

**Health and Welfare LPA**

* Only legally effective when the donor is considered to have lost mental capacity which has been assessed by a medical professional
* Cannot override a donor’s wishes on things like DNR that were made in the donor’s lifetime.

**Property and Financial Affairs LPA**

* Legally effective from the moment it is signed.
* Gives attorney power to sell the donors property / manage bank accounts and set up care / annuity plans.
* Can have access to basic health data where necessary to decide such details as care home and care / annuity plans.
* The donor can set restrictions on the attorney in the LPA documentation so it must always be checked in its entirety when releasing information under an LPA.
* In addition, the donor can stipulate whether multiple attorneys can act independently or jointly. Where a donor stipulates that they must work jointly, the practice must gain the consent of all attorneys before releasing information to one.
* An attorney must act in the best interests of the donor and keep their own affairs separate.

How to respond:

* Request a copy of the LPA if not provided at the point of request
* Check LPA to ensure it is the correct document, that it is signed and has been filed with the Office of Public Guardian (will have the seal of the OPG stamped on it) and that there are no restrictions that affect the decision to release information.
* If it is a Health and Welfare LPA check the mental capacity of the donor. If the patient has not yet lost capacity treat the request as a normal Subject Access Request and liaise with patient themselves to ensure they grant consent.
* If it is a Financial and Property Affairs LPA ensure the information requested is only for a limited purposed and that it is a decision the LPA is entitled to make.
* Comply with request as per this protocol.

1. OTHER DISCLOSURES

* There are lots of other instances where disclosure might be permitted either by an exemption under the Data Protection Act 2018 or by another law that orders the release.
* **A court order** is legally binding on the organisation / person it orders to disclose information. If the organisation receives a court order for information you must provide the information. If you believe there is a compelling reason to withhold certain information, speak with you DPO to discuss the reasons.
* **Disclosure to your legal advisers** to defend against a claim. You may disclose information to your legal advisers to support in a legal claim, however, it is important to ensure that only relevant information is provided and both the proportionality and minimisation principle are still adhered to
* **Disclosures to professional bodies**. Some professional bodies, such as the General Medical Council, have the same powers are the courts to order the release of information they believe necessary to continue their investigation, such as in an fitness to practice investigation. Please see Appendix P for a list of current known legislative powers.
* **The learning Disability Review Programme**. The LeDeR program has s251 approval and therefore there are no concerns with sharing the requested information as long as it is proportionate

If the request you receive is not on the list, please consult your DPO for advice.

1. APPLICATION AND AUDIT

Compliance with this protocol will be audited and the results fed into the Plan, Do, Check, Act Cycle described in the Information Risk and Audit Protocol.

* Anyone involved with disclosures should be provided with this policy and attend the DPO quarterly specialist training webinar
* Staff should actively engage with the DPO around disclosure requests
* The organisation will keep a log of all information rights requests to ensure that we are responding in a consistent and timely way. Information about requests or disclosures should not be kept in the patient record.
* Staff must confirm that they have read and understood this protocol
* This protocol will be reviewed annually or sooner in the event of significant learning or change
* This protocol should be read in conjunction with the other protocols in the Data Protection and Security policy suite

1. APPENDIX A: A BMI LETTER TO PATIENT RE INSURANCE COMPANY REQUEST (LANGUAGE MADE MORE ACCESSIBLE TO PATIENTS)

Dear [Patient],

I am writing to you as your insurance company has requested access to your full medical record with your consent – as enclosed.

Because the company has requested your full medical records, we want to check that you understand fully that these records may include extremely sensitive information which you may not expect to be shared or may not need to be shared as part of your application for insurance or the assessment of any claim.

The Information Commissioner’s Office (ICO) has recently written to the insurance industry to advise them to ask for a tailored medical report, rather than the full record because this is seen as requesting more information than is needed to process your claim.

We are therefore giving you a choice. We can provide you with a copy of your **full** medical records under a Subject Access Request so that you can choose whether you give your medical records to the insurance company in full or not.

Alternatively, you can ask your insurer to request a GP report from the practice which will only cover information in your record that is relevant to your application. Medical reports also exclude some information, in line with agreement reached with the insurance industry, such as genetic test results and certain information about sexually transmitted infections.

Please therefore let us know if you would like a copy of your full medical records under a subject access request or whether you plan to ask your insurer to seek a medical report. The BMA has let the Association of British Insurers (ABI) and insurance companies know that we are offering patients this choice. If your insurance company expresses concern about this please ask them to contact the ABI.

You do have a right to make a complaint to us or the Information Commissioner, if you feel your request has not been managed appropriately. You can call them on 0303 123 1113 or write to them at;

Information Commissioner's Office

Wycliffe House

Water Lane

Wilmslow

Cheshire

SK9 5AF

Additionally, you also have a right to seek to enforce your rights through the courts.

Yours faithfully

1. APPENDIX B: LETTER TO INSURANCE COMPANY MAKING A SAR

Dear [Insurer],

I am writing to you in relation to your recent request for the full medical record of {XXX} in relation to an insurance claim.

You are likely aware that the Information Commissioner has been considering the emerging practice of insurance companies obtaining medical records by using patients’ subject access rights.

The ICO recognise that insurance companies may have a genuine need to review medical information about its customers when providing policies like life and critical illness cover.

To enable this, the Access to Medical Reports Act 1988 gives insurance companies a clear and established legal route to access medical information. The Act also gives appropriate safeguards to patients and respects the confidential relationship between a GP and their patient. Under the Act, a GP can provide a tailored report to an insurer, with their patient’s consent, setting out only the information the insurer needs.

However, some insurance companies have instead been looking to rely on the subject access right given to consumers under the Data Protection Act in order to obtain medical records, rather than a tailored GP’s report.

A subject access request gives an individual the right to ask for all of the personal information an organisation holds about them. This is a powerful right, designed to ensure individuals can access information held about them within a specified time period and at a nominal cost. This right was not designed to underpin the commercial processes of insurers.

By making a subject access request on a patient’s behalf, an insurance company may be provided with a patient’s entire medical record, including information that is not relevant for the purpose of underwriting a policy.

The ICO has recently written to the insurance industry to explain that they consider that the use of subject access rights in this way is inappropriate and an abuse of that right.

We have therefore written to the patient to advise them to choose whether they would prefer the entire record to be send directly to them or for a report to be produced by the practice.

Please let us know if you wish to refine your request directly with the practice.

Yours faithfully

1. APPENDIX C: LETTER TO SOLICITOR SUBJECT ACCESS RESPONSE (FOLLOWING CALL TO PATIENT

Dear [insert Solicitor name]

Thank you for your request for access to information that [insert organisation] holds about [insert patient name & DOB], which was received by us on [insert date of receipt]. This request has been processed in accordance with the Data Protection Act 2018.

This request is submitted in line with the patient’s own rights, intended to support the data subjects to obtain information held about them.

This means that, as a controller we must ensure that the patient is comfortable with what is being released. We have been advised recently by the Information Commissioner that, where a solicitor insists on information that the patient does not wish to release, the consent is no longer valid since it is not ‘freely given’ in accordance with the law.

As such, we have spoken with the patient to confirm whether they understood the request is for their entire medical record and that their consent is valid.

[From below, delete the number that is not applicable]

1. Please find enclosed;

* Full Medical Records
* Records dated between / from / to [insert dates]
* Records only relating to the accident / injury concerned
* Medical Records with some information redacted (this could be information that the patient feels is sensitive or not relevant to the case at hand)

1. After our conversation we have determined that we do not have valid consent to release this information to you. As a controller of this information we have an obligation to ensure the data subject fully understands and consents to their information being provided to yourselves under a subject access request. In this instance we do not believe the data subject fully understood that you would be receiving their entire medical record and that they felt they had no choice but to provide consent. As this does not constitute valid consent we are declining this request.

In line with our duty of confidentiality and data protection legislation we have completed the following;

\* Removed references to third parties where revealing that information would represent a breach of confidence and the individual has not consented

\* Provided this link to a glossary of terms to assist you to understand any coding or complex information <http://www.nhsconfed.org/acronym-buster>

For information about how we use your information and our sharing partners, please visit [insert link to practice transparency notice]

We hope that you have all the information that you require.

You do have a right to make a complaint to us or the Information Commissioner, if you feel your request has not been managed appropriately. You can call them on 0303 123 1113 or write to them at;

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

Additionally, you also have a right to seek to enforce your rights through the courts.

We would be happy to discuss this with you further if required.

Sincerely,

1. APPENDIX D: LETTER FOR BEING CHASED FOR TIMELY RESPONSE

Dear [insert name]

As we have been trying to refine the request and identify exactly what information is required, the time frame for the SAR has not yet begun;

***If you process a large amount of information about an individual you can ask them for more information to clarify their request. You should only ask for information that you reasonably need to find the personal data covered by the request.***

***You need to let the individual know as soon as possible that you need more information from them before responding to their request. The period for responding to the request begins when you receive the additional information.***

https://ico.org.uk/for-organisations/guide-to-the-general-data-protection-regulation-gdpr/individual-rights/right-of-access/

[insert organisation] are committed to ensuring that we give effect to the rights of data subjects and so, as soon as you have clarified what you need as regards to a proportionate request, or provided payment for a request for full records, [insert organisation] will act promptly to provide what you need.

You do have a right to make a complaint to us or the Information Commissioner, if you feel your request has not been managed appropriately. You can call them on 0303 123 1113 or write to them at;

Information Commissioner's Office

Wycliffe House

Water Lane

Wilmslow

Cheshire

SK9 5AF

Additionally, you also have a right to seek to enforce your rights through the courts.

Sincerely

1. APPENDIX E: USING NHS DIGITAL ENCRYPTION TO SEND TO NON SECURE EMAIL ADDRESS
2. Send the recipient the guide for accessing encrypted emails for non-NHSmail users
3. Open a new email to the same recipient
4. Type [secure] at the start of the subject line. The word ‘secure’ is not case-sensitive but it must be surrounded by square brackets (no spaces)
5. Ask the recipient to reply to confirm receipt but do not include any patient-identifiable information at this time. This ensures there is no data breach if the recipient email is entered incorrectly.
6. When the recipient replies you can attach the patient-identifiable information, ensuring that [secure] remains at the start of the subject line

[Accessing Encrypted Emails Guidance](https://s3-eu-west-1.amazonaws.com/comms-mat/Comms-Archive/Accessing+Encrypted+Emails+Guide.pdf)

1. APPENDIX F: SENDING SARS BY EMAIL THROUGH NON SECURE ROUTES

As you will be receiving an email copy of the personal data, that you have requested, we want to point out that whilst we endeavour to use the most secure route possible, we cannot **guarantee** that the message or attachment is virus free or will not been intercepted and amended – these are risks that are inherent to transmitting digital information.

Please reply to confirm that you are understand these risks and are happy to proceed.

1. APPENDIX G: SUBJECT ACCESS REQUEST REFINING RESPONSE

This response can be used if it is necessary because the individual has not made it clear what information they require.

This should not be used as an approach to delay response.

Dear [insert requestor name],

Thank you for your request for access to information that [insert organisation name] holds about you, which was received by us on [insert date of receipt]. This request will be processed in accordance with Data Protection legislation.

In order for us to ensure that we give you the assistance and support to exercise your information rights, I want to clarify exactly which information you are seeking.

Please could you clarify whether you hope to receive [insert possible option] or [insert possible option].

Once we have this information, we will proceed with processing your request and aim to respond to you within one month.If we are experiencing a back log, or your request proves to be complex, we may contact you to extend the deadline or to notify you with an explanation of any possible delay.

You do have a right to make a complaint to us or the Information Commissioner, if you feel your request has not been managed appropriately. You can call them on 0303 123 1113 or write to them at;

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

Additionally, you also have a right to seek to enforce your rights through the courts.

We would be happy to discuss this with you further if required.

Sincerely,

1. APPENDIX H: SAR IDENTIFY VALIDATION

This response is to ensure that the individual’s identity has been validated. This should be through ‘reasonable’ means.

Dear [insert requestor name],

Thank you for your request for access to information that [insert organisation name] holds about you, which was received by us on [insert date of receipt]. This request will be processed in accordance with the Data Protection Act.

In order for us to ensure that we are not breaching our duty of confidentiality or data protection legislation, we need to verify your identity.

Please I ask that you provide the following;[insert required evidence or third-party authorisation]

Once we have this information, we will proceed with processing your request and aim to respond to you within one month.

If we are experiencing a back log, or your request proves to be complex, we may contact you to extend the deadline or to notify you with an explanation of any possible delay.

You do have a right to make a complaint to us or the Information Commissioner, if you feel your request has not been managed appropriately. You can call them on 0303 123 1113 or write to them at;

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

Additionally, you also have a right to seek to enforce your rights through the courts.

We would be happy to discuss this with you further if required.

Sincerely,

1. APPENDIX I: SAR RESPONSE

This response should be used for when you are providing a response. You should include an explanation of difficult terms.

If information contained within the record has the potential to cause the individual harm, this should be raised with the DPO.

Dear [insert requestor name],

Thank you for your request for access to information that [insert organisation name] holds about you, which was received by us on [insert date of receipt]. This request has been processed in accordance with the Data Protection Act 2018.

We enclose / attach the requested information.

In line with our duty of confidentiality and data protection legislation we have completed the following;

\* Removed references to third parties where revealing that information would represent a breach of confidence and the individual has not consented

\* Provided this link to a glossary of terms to assist you to understand any coding or complex information <http://www.nhsconfed.org/acronym-buster>

For information about how we use your information and our sharing partners, please visit [insert link to practice transparency notice]

We hope that you have all the information that you require.

You do have a right to make a complaint to us or the Information Commissioner, if you feel your request has not been managed appropriately. You can call them on 0303 123 1113 or write to them at;

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

Additionally, you also have a right to seek to enforce your rights through the courts.

We would be happy to discuss this with you further if required.

Sincerely,

1. APPENDIX J: SAR REQUEST DELAY (MISSED LEGAL DEADLINE)

This response can be used where the legal deadline has been missed. This is now an information breach and so it should be recorded as such and discussed with the DPO.

Dear [insert requestor name],

Thank you for your request for access to information that [insert practice name] holds about you, which was received by us on [insert date of receipt].

At present we have [insert number of requests] awaiting resolution and it is taking some time to work through these and provide the information required.

We anticipate that we will be able to respond by [insert date]

We sincerely apologise for any issues or frustration this may cause you and assure you that we are working hard to provide you the information you have requested. If you only require a part of your record, please let us know as it will help us to respond sooner.

You do have a right to make a complaint to us or the Information Commissioner, if you feel your request has not been managed appropriately. You can call them on 0303 123 1113 or write to them at;

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

Additionally, you also have a right to seek to enforce your rights through the courts.

We would be happy to discuss this with you further if required.

Sincerely,

1. APPENDIX K: DISCLOSURE TYPE MATRIX

|  |  |  |  |
| --- | --- | --- | --- |
| **Non-healthcare activity - chargeable** | **Subject Access Request** | **Access to Medical Records Act** | **Other** |
| Shotgun Licence | Medication List for patients travelling | Insurance company with consent from patient but acting for their own commercial purposes i.e. the patient is trying to claim and insurance company validating the claim | Police asking for records in relation to a crime |
| Driving Licence | Request from solicitor acting on behalf of patient | Reports for employers | Army requesting medical records |
| Passport - verify identity | Claims company acting on behalf of patient |  | Court orders records to be disclosed |
| Fitness to: letter, certificate, attend gym | Patient / their rep requests copy of all or some of their records |  | Request from solicitor NOT acting on behalf of patient |
| Holiday Cancellation Certificate |  |  |  |
| Copy of Sick Note |  |  |  |
| Letter request |  |  |  |
| Sick Note for School (private paper certificate - no charge) letter |  |  |  |
| To Whom It May Concern letter |  |  |  |
| Private Treatment Verification |  |  |  |
| Letter from GP to go with medication list for travelling |  |  |  |
| Reports for Housing |  |  |  |

1. APPENDIX L: CHECKLIST TO SUPPORT THE TEAM TO PROCESS A SAR

**Administrative Team Section**

|  |  |
| --- | --- |
| Details of the access request (date, internal reference – no personal data)? |  |
| Has the individual made it clear what information they require? If not, you may reply to clarify the request.  Detail what information has been requested and ensure that it matches what has been collated. |  |
| Has the individual’s identity been verified through ‘reasonable means’?  Has any third-party authority been established, i.e. written permission from individua, parental custody? |  |
| Where the individual is a child, identify what consideration been given to whether the maturity / capacity of the individual and whether they have been contacted to ensure they are comfortable with release? |  |
| Where the request is made by a solicitor and appears to be excessive for the identified purpose, has an attempt been made to narrow the request with the patient? |  |
| Has a response been provided advising of the legal timeframe and the rights of the individual? |  |
| Identify which systems / information assets have been explored to ensure a complete response? Are we comfortable that all relevant systems have been explored?  For example, clinical system, CCTV, paper records. |  |
| Describe how the information been scrutinised to remove any reference to third parties where they would not reasonably consent and releasing the information would breach their confidentiality. |  |
| Identify what information has been highlighted to the clinician undertaking final review, where you believe this information ***may*** meet the ‘serious harm’ threshold for health. |  |
| Identify what information has been redacted, where this information meets the ‘serious harm’ threshold for social work. Confirm that you have liaised with social work colleagues to confirm this exemption. |  |
| Identify what information has been redacted, where this information relates to crime and taxation. Confirm that you have liaised with police / HMRC colleagues to confirm this exemption. |  |
| Identify what information has been redacted, where this information relates to child abuse. Confirm that you have liaised with child protection colleagues to confirm this exemption. |  |
| Confirm that the following elements been included in the response;   * NHS Jargon buster * Link to privacy notice * Confirmation of why some information has been redacted (this should not be included when doing so would prejudice an investigation) |  |
| Has or will the response be provided within a month? If not, was a letter sent to the individual explaining the delay and assuring of a speedy response? |  |
| If the request was made digitally, has the response been made digitally using the process described in the SAR protocol? |  |
| Notes and Escalations to clinician undertaking final sign off |  |

**Clinician Review Section**

|  |  |
| --- | --- |
| Name of Clinician and Date of Review |  |
| Confirm that you have reviewed the health information highlighted to potentially cause ‘serious harm’.  Do you believe the information is ‘likely to cause serious harm to the physical or mental health of the requestor or others if released’?  If so, please detail your rationale. |  |
| Notes and Comments to the Admin Team |  |

1. APPENDIX M: ACCESS TO HEALTH RECORDS LETTER

Dear [insert name]

Thank you for coming back to [insert practice] with the information requested. I understand that this must be frustrating, and I want to assure you that we are not trying to obstruct you from accessing [insert patient name] record. As a GP Practice we have a duty of confidentiality to all our patients, and this continues after their death. In order to put aside that duty to release information, even to close family relatives, we have to be sure that there is a legal or reasonable reason to do so.

As you have stated that there is no representative of [insert patient name] estate / you are not the representative we must now consider whether we can set aside the duty of confidentiality another way.

The Access to Health Records Act 1990 does entitle a person who has a claim arising out of the death of a patient to information from the health record, however, per Section 5(4) of AHRA, this person is only entitled to information relating to their claim and not the entire record.

As such, please could you answer the following questions to aid us in our decision.

1. What specific information you are requesting, for example, are you seeking the information relating to their death or further back?
2. Why do you require this information?
3. For what purpose will this information be used?

Sincerely,

1. APPENDIX N: DECLINING REQUEST LETTER

Dear [insert name]

Thank you for your request for access to information that [insert organisation name] holds about [insert patient name & DOB], which was received by us on [insert date of receipt].

This request has been processed in accordance with any applicable legislation such as the Data Protection Act 2018 / Access to Health Records Act 1990.

At this time, [insert organisation] is declining this request on the basis that [delete as applicable or add other reason]

* You do not have valid authority to act on behalf of the [insert patient name]
* We do not hold any information about [insert patient name]
* The patient has advised they do not consent for you to access the information.
* We have been unable to obtain the necessary information to confirm your identity.
* We have already provided this information on [insert date] and due to it being within the last [insert months] we do not conclude that we are obligation to provide the records again. If you would still like a copy, we can provide this but it would incur a reasonable charge.
* This is not a Subject Access Request and we cannot proceed with the request under SAR rules. If you believe an alternative basis for disclosure exists, please resubmit your request with the relevant information.

You do have a right to make a complaint to us or the Information Commissioner, if you feel your request has not been managed appropriately. You can call them on 0303 123 1113 or write to them at;

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

Additionally, you also have a right to seek to enforce your rights through the courts.

We would be happy to discuss this with you further if required. Our DPO can be reached at Hannah.calway@nhs.net

Sincerely,

1. APPENDIX O: EXTENDING DEADLINE LETTER

Dear [insert patient name]

Thank you for your request for access to information that [insert organisation] holds about [insert patient name and DOB], which was received by us on [insert date].

Unfortunately, we do not anticipate being able to provide you with the requested information by the initial deadline of [insert date]. Where there is a request that is particularly complex, such as where it is for a child’s record or where we process large volumes of special category data the law allows for a controller to extend the timeframe by a further two months.

[delete if not applicable] Furthermore, at the present time the practice is under significant pressure due to several factors including data protection opt outs, covid vaccinations and not least an increase in demand for our core services. Unfortunately, it is taking longer than we would expect to process out outstanding access requests.

Therefore, we are going to have to delay our response to you by applying the deadline extension.

[delete as applicable]

We do not anticipate that this will take the full two months and hope to be able to respond by [insert date] at the very latest. We will endeavour to release the records to you sooner.  
Or  
We do anticipate that this may take the full two months to be able to respond to your request. We will endeavour to release the records to you sooner and keep you updated on our progress.

We sincerely apologise for any issues or frustration this may cause you and assure you that we are working hard to provide you the information you have requested.

You do have a right to make a complaint to us or the Information Commissioner if you feel your request has not been managed appropriately.

You can call them on 0303 123 1113 or write to them at;

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

Additionally, you also have a right to seek to enforce your rights through the courts.

We would be happy to discuss this with you further if required.

Sincerely,

1. APPENDIX P: LEGISLATION THAT COMPELS DISCLOSURE

**s35A(1) of the Medial Act 1983**

Gives GMC the power to request any information that believe to be necessary to undertake their powers to investigate fitness to practice concerns. Section 11 of DPA 2018 – disclosure required by law applies

**25(1) Nursing and Midwifery Order 2001**

Gives NMC the power to request any information that they believe to be necessary to undertake their powers to investigate fitness to practice concerns. Section 11 of DPA 2018 – disclosure required by law applies

**S115 Crime and Disorder Act 1998**

Gives relevant authorities (agencies and professionals with the power to disclose personal information) – including CCG right to share / request information for domestic homicide review. Schedule 2, Part 1, Paragraph 2 of DPA 2018 applies – necessary for purpose of investigating a criminal offence

**S42 Care Act 2014**

Give local authority the right to make any enquiries it believes necessary to protect an adult from abuse, including financial and to ensure that adult is receiving the care they need from the local authority. Does not apply to deceased patients. [Guidance](https://proceduresonline.com/trixcms1/media/1512/cumbria-unexpected-death-of-an-adult-with-support-and-care-needs-practice-guidance-final-june-2018.pdf)

**Health and Social Care Act 2012 s 215b**

Statutory obligation to share health information with health providers where it would facilitate the care of the individual and they have not objected. For example, care homes.

**Mental Capacity Act 2005 s.44 s.49 s.58 s.61**

Gives the right to court of protection visitors to examine and to take copies of any health record. And also, any record of or held by a local authority and complied in connection with a social services function.

s.44 – Joint investigation with the police into a possible breach of this section (neglect and/or mistreatment if a person without capacity – criminal offence

s.61 defines who a court of protection visitor is.

Only allowed information relating to the patient.

**S45 Care Act 2014**

Statutory obligation to share information with the Safeguarding Adults Board. As long as conditions 1 **&** 2 are met alongside condition 3 **or** 4.

(2)Condition 1 is that the request is made for the purpose of enabling or assisting the SAB to exercise its functions.

(3)Condition 2 is that the request is made to a person whose functions or activities the SAB considers to be such that the person is likely to have information relevant to the exercise of a function by the SAB.

(4) Condition 3 is that the information relates to—

(a)the person to whom the request is made,

(b)a function or activity of that person, or

(c)a person in respect of whom that person exercises a function or engages in an activity.

(5) Condition 4 is that the information—

(a)is information requested by the SAB from a person to whom information was supplied in compliance with another request under this section, and

(b)is the same as, or is derived from, information so supplied.

<https://www.gov.uk/government/publications/care-act-statutory-guidance/care-and-support-statutory-guidance#safeguarding-1> – 14.186

**S.12 Health Service Commissioner Act 1993**

Gives the right for an ombudsman to request information of a health service body concerned or any other person who in his opinion to supply information or produce relevant to the investigation to supply any such information or produce any such document.

s.12(1)(b) – provides them with the same powers as a court to require the documentation they believe is required.

**Children and Families Act 2014**

Gives local authority the right to request information in line with undertaking a educational, health and care needs assessment.

Part 3, Section 31 compels disclosure.

**MAPPA GUIDANCE**

Multi Agency Public Protection Arrangements is a team that are required to be set up under the Criminal Justice Act 2003. The guidance on SARs etc can be found [HERE](https://www.gov.uk/government/publications/multi-agency-public-protection-arrangements-mappa-guidance) and provides details guidance under s13 on how to handle these documents that may be in the public record.

**S58(5) Mental Capacity Act 2005**

Provides the Office of Public Guardian with statutory right to access a patients medical record when undertaking an investigation in any Lasting Power of Attorney.

**Firearms Licensing: Statutory Guidance for Chief Officers of Police**

Under page 6 of guidance found [HERE](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1029859/Statutory_Guidance_for_Firearms_Licensing_-_Final__Nov_2021_.pdf) it is the statutory guidance that when a private company are undertaking a firearms license they must have the medical records direct from the patients registered GP as opposed to from the patient themselves.

1. APPENDIX Q: LITIGATION FRIEND RESPONSE LETTER

Dear Sir / Madam,

Thank you for your request regarding [insert patient] that was received by us on [insert date.]

We have raised this to our Data Protection Officer for advice and she has advised that we require confirmation that the Courts have approved [insert name] to act as Litigation Friend. Information found here: <https://www.gov.uk/litigation-friend> provides guidance that a Litigation Friend is for a child, or a protected party and that the application must be filed with the court before they can act on the person's behalf.

Due to this, we cannot accept the signed consent of a Litigation Friend until we are provided with suitable evidence that they have been approved.

[delete as appropriate]

We also require further confirmation as to why the entire record is necessary for the purpose of this court case.

As soon as we have this, we would be happy to review the request once again.

Sincerely