

Document Control

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Access to Records Policy			
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3.2	Jan 2021	Revision	Updated the Access to Medical Records Act 1990 On Application Form – verbal request is acceptable however you will need identification prior to sending out the information. Added Article 12 DPA 2018/GDPR as Appendix B Update to reflect change of service line management.
3.3	Feb 2021	Revision	Policy name amended from Access to Records Procedure to Access to Records Policy. Reviewed policy submitted to Information Governance Steering Group for recommendation to approve.
4.0	May 2021	Final	Approved by the Information Governance Steering Group (IGSG). Reference to Digital Healthcare Services amended to Digital Services.
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CONTENTS

Document Control	1
2. Purpose	4
3. Definitions	5
3.1 Healthcare Record	5
3.2 Access	5
3.3 Requestor.....	5
4. Responsibilities	5
4.1 Role of the Chief Executive	5
4.2 Role of the Healthcare Records Manager.....	5
4.3 Role of the Access to Records staff.....	5
4.4 Role of the Legal Claims Manager.....	5
4.5 Role of the Data Protection Officer	5
4.6 Role of all staff within the Trust.....	5
5. Access to Records	6
5.1 Who can access healthcare records?.....	6
5.2 When can patients request copies of their records	6
5.3 Who can access a child's healthcare records?	6
5.4 Accessing a deceased person's healthcare records (under the Access to Records Act 1990)	7
5.5 Charges for accessing healthcare records and processing insurance forms.....	7
5.6 Procedure for complaints in relation to healthcare records access and/or contents 7	
5.7 Procedure following clearance to release records	7
5.8 Refusal and exemption for release of records	8
6. Monitoring Compliance with and the Effectiveness of the Policy	8
Standards/ Key Performance Indicators.....	8
7. Equality Impact Assessment	9
8. References	9
9. Associated Documentation	9
Appendix A: ACCESS TO HEALTHCARE RECORDS* APPLICATION FORM	10
Appendix B Access to Records process flow	13
Appendix C: Articles 12 GDPR	13

2. Purpose

This document sets out Northern Devon Healthcare NHS Trust's system for requests for access to patient healthcare records. It provides a robust framework to ensure a consistent approach across the whole organisation, and supports our statutory duties as set out in the NHS Constitution.

The purpose of this document is to ensure adherence to the Data Protection Act 2018, the General Data Protection Regulation (GDPR) which states that all patients have the right to request access to all their healthcare records. Persons wishing to access the healthcare records of a deceased individual may do so under the terms of the Access to Medical Records Act 1990.

It is important that all healthcare staff that handle medical records understand the requirements of these Acts and the part they have to play in ensuring that the Trust complies with its legal obligations.

All patients have a right to be confident at all times that their privacy will be respected and that all information relating to their healthcare will remain confidential.

Whilst the Trust has certain rights to withhold records, it is required to provide copies of requested documentation within one month of receipt of a valid request

In accordance with the above Acts, the Trust reserves the right to refuse to release patient healthcare records if:

- Disclosure is likely to cause serious harm to the physical and/or mental wellbeing of the patient or any other individual connected with that patient
- The patient is deemed incapable of understanding the nature of the application
- The patient is under 13 years of age and is deemed not in their best interest to have access to his/her records
- A third party has applied for access to a patient's records and that patient has clearly stated that he/she does not wish any disclosure
- The medical records were created prior to the 1st of November 1991 (Except when it helps to explain a record made on or after this date)
- The medical records contain any information showing that the person was or may have been born following treatment defined in the Human Fertilization & Embryology Act 1990.

The original healthcare records must not leave the Trust.

The procedure applies to all healthcare staff that handle medical records

Implementation of this procedure will ensure that:

- Access to patient records is controlled and managed within the Trust.

3. Definitions

3.1 Healthcare Record

These may consist of; x-rays, scans observations charts, prescription records etc., and all information relevant to the patients care.

3.2 Access

Access to healthcare records can be either to view them by appointment or to have a copy made. Viewing of patients records will be supervised.

3.3 Requestor

The person requesting access to the healthcare record may be the patient, their next of kin, healthcare professionals, solicitors, or Police.

4. Responsibilities

4.1 Role of the Chief Executive

The Chief Executive has executive responsibility for:

- The management and safety of Trust healthcare records.

4.2 Role of the Healthcare Records Manager

The Healthcare Records Manager is responsible for:

- Ensuring that appropriate medical records are available on request.

4.3 Role of the Access to Records staff

The Access to Records staff are responsible for:

- Ensuring that the day-to-day operation of this procedure are actioned within the relevant timescales
- The appropriate healthcare professional reviews the record prior to release.

4.4 Role of the Legal Claims Manager

The Legal Claims Manager is responsible for:

- Ensuring that originals are not sent to solicitors

4.5 Role of the Data Protection Officer

The Data Protection is responsible for:

- Ensuring that Subject Access Requests are processed in-line with Data Protection requirements.

4.6 Role of all staff within the Trust

All staff are responsible for:

- Responsible for being able to recognise a subject access request, for signposting it immediately to the correct department and for cooperating with the Access to Records Team by providing any information requested to comply with a SAR

5. Access to Records

All patients have a right to be confident at all times that their privacy will be respected and that all information relating to their healthcare will remain confidential. This is a commitment in the NHS Constitution.

A request to access healthcare records can be for all records, or a specific episode or period of care. The Trust is not responsible for requests for other hospitals or G.P. patient information

5.1 Who can access healthcare records?

Under the Data Protection Act 2018 the unlawful processing or disclosure of personal data to a third party is a criminal offence.

- You may apply direct to the Trust for access to your own notes by completing the Access to Records form (see [Appendix A](#)).
- If you wish to allow a third party to access your records, written consent must be supplied with proof of identity as stated on the rear of the Access to records form along with a completed Access to records form.
- If the patient is too ill to undertake a review of their own records a court may appoint a person to undertake that review for them.
- A request can be made however identification will be required prior to any records being sent to the requestor.
- The Trust will record the information requested.
- Proof of identity (listed in the Access to Healthcare Records form) will be required of all applicants visiting the Trust to view records.
- Note: the Trust retains records for a specified minimum storage period, in accordance with the most recent NHSX Code of Practice: Records Management 2020.

5.2 When can patients request copies of their records

If an individual wishes to access records of a patient currently receiving treatment in the Trust: A consent form, email, letter or verbal request must be completed along with the relevant identification documents provided.

- The Trust will allow the possibility to view a current patient's records based on individual circumstances. A clinician will need to review the record prior to the viewing.
- Viewing of patient's records will be supervised when necessary by the relevant clinician or by a member of the Access to Records staff.

5.3 Who can access a child's healthcare records?

- Any person with parental responsibility may apply for access to the records.
- Dependent on age and/or understanding, children may be asked whether they agree to the release of their records
- The Trust reserves the right to contact both parents/guardians of a child.

5.4 Accessing a deceased person's healthcare records (under the Access to Records Act 1990)

If the patient is deceased, access to records can only be granted if the individual is the named executor of the estate or has a claim arising from the deceased estate.

The Trust reserves the right to request proof of the requestor's right to Access the notes of a deceased person.

5.5 Charges for accessing healthcare records and processing insurance forms

Under GDPR, the Trust must provide a copy of the information free of charge.

- A reasonable fee may be charged when a request manifestly unfounded or excessive particularly if it is repetitive.
- A reasonable fee may also be charge to comply with requests for further copies of the same information. This does not mean that you can charge for all subsequent access to requests – only 1 request every 12 months can be made with the Trust reserve the right to impose a charge for any subsequent request.
- The fee will be based on previous maximum charges linked to the historic Data Protection Act 1998 (Maximum fee of £50 including postage and packing).

5.6 Procedure for complaints in relation to healthcare records access and/or contents

The Trust's Healthcare Records Policy states:

'All entries into a Healthcare Record relating to patient care or treatment will be made in a concise, objective and accurate manner and will relate only to the Healthcare episode.'

If an individual perceives that the records do not reflect the above statement then:

The Trust Data Protection Officer must be contacted in writing, detailing the records you wish to have amended. The letter will be placed on file and the relevant team within the Trust will be in contact. The healthcare professional may wish to have an informal meeting with the patient in the hope to resolve the complaint locally.

- If an individual still feels that their information has been recorded incorrectly within their notes, they may contact the Patient Advisory Liaison Service (PALS) for further advice.

5.7 Procedure following clearance to release records

- Under the Article 12 (3) of the Data Protection Act 2018*, the Trust is required to provide copies of requested documentation within 1 month a valid request. If for some reason the Trust is unable to meet this deadline, the applicant will be informed before the end of the first month of the reason for the delay in writing for a 2 months extension.

- Proof of Third Party entitlement to a patient's record will be required before any access requests can be processed. The third party will be informed in writing of any such requirement.
- An immediate request is made to all areas that hold the relevant patient records.
- Requests for copy records, not originals may be forwarded to more than one area if the applicant is requesting copies of all the records. This may include requests to the A&E Department, to services such as Physiotherapy and Maternity, and to clinical support services such as Radiology. Delays may occur where staff have to collate copies from several areas.
- Once all the required records have been located, they will be compiled for copying. Permission to release the information will then be sought from each relevant treating clinician.
- Patient records may not be immediately accessible if they are in current use, as all clinical usage **must** take priority over an access claim.
- All completed copied healthcare records will be sent via Recorded Delivery unless otherwise specified.

5.8 Refusal and exemption for release of records

The Trust reserves the right to refuse to release patient healthcare records if:

- Disclosure is likely to cause serious harm to the physical and/or mental wellbeing of the patient or any other individual connected with that patient
- The patient is under 13 years of age and is deemed not in their best interest to have access to his/her records
- The patient is deemed incapable of understanding the nature of the application
- A third party has applied for access to a patient's records and that patient has clearly stated that he/she does not wish any disclosure
- The medical records contain any information showing that the person was or may have been born following treatment defined in the Human Fertilisation & Embryology Act 1990

6. Monitoring Compliance with and the Effectiveness of the Policy

Process for Monitoring Compliance and Effectiveness

Monitoring compliance with this procedure will be the responsibility of the Information Governance Lead.

Regular compliance reports will be provided to the Information Governance Steering Group.

Where non-compliance is identified this will be reported to the Data Protection Officer.

Standards/ Key Performance Indicators

Key performance indicators comprise:

- Access to records provided within one month
- Any external monitoring/reporting
- Complaints regarding late or non-delivery of healthcare records

7. Equality Impact Assessment

Table 1: Equality impact Assessment

Group	Positive Impact	Negative Impact	No Impact	Comment
Age	X			Patients have the right to request their notes with no charge under the DPA 2018
Disability	X			As above
Gender	X			As above
Gender Reassignment			X	
Human Rights (rights to privacy, dignity, liberty and non-degrading treatment), marriage and civil partnership			X	
Pregnancy	X			As above
Maternity and Breastfeeding			X	
Race (ethnic origin)	X		X	
Religion (or belief)			X	
Sexual Orientation			X	

8. References

- Access to Medical Records Act 1990
- Data Protection Act 2018
- Human Fertilisation & Embryology Act 1990
- NHSX Code of Practice: Records Management 2020
- The General Data Protection Regulation (GDPR) 2016

9. Associated Documentation

- [Healthcare Records Policy](#)
- [Information Lifecycle Management Policy](#)

Appendix A: ACCESS TO HEALTHCARE RECORDS* APPLICATION FORM

(This is not a mandatory form but will assist the Trust in providing your records in a timely manner)

A. Patient details

Patient Name:	<input type="text"/>
Date of Birth:	<input type="text"/>
Address:	<input type="text"/>
Postcode:	<input type="text"/>
Telephone:	<input type="text"/>

B. Only complete this section IF YOU ARE NOT the patient detailed above. Please note that you will be required to provide proof of your right to access these records.

Name:	<input type="text"/>		
Address:	<input type="text"/>		
Postcode:	<input type="text"/>		
Relationship to patient (Please tick):	Guardian <input type="checkbox"/>	Executor <input type="checkbox"/>	Next of kin <input type="checkbox"/>
	Other:	<input type="text"/>	
Contact Phone Number	<input type="text"/>		

C. Type of record / information required /

Specialist/Dr:	<input type="text"/>
Hospital /Dept.:	<input type="text"/>
Date(s) and other relevant information:	<input type="text"/>
#please tick if you require copies of x-rays	<input type="checkbox"/>
Otherwise we assume written reports suffice.	

D. How would you like to access? Please tick one box.

To receive a copy of the records:	<input type="checkbox"/>	An appointment to view the records:	<input type="checkbox"/>
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PROOF OF IDENTITY: Whether viewing records or requesting copies, you will be asked to supply your Driving Licence or Passport (for own records) in addition to: the child's birth certificate (for child's records) or a death certificate (for deceased person's records) Power of Attorney, proof of Executorship. Written consent authorisation (for another person's records)

E. Declaration: Please sign and date:

I declare the information given by me is correct to the best of my knowledge and that I have read and understood the terms and conditions of access	
Signed	Date

PLEASE RETURN COMPLETED FORM TO: THE RELEVANT TREATING HOSPITAL WHERE YOU'RE MEDICAL INFORMATION IS HELD

Access to Healthcare Records

Data Protection Act 2018 Access to Healthcare Records Act 1990

GUIDE AND APPLICATION FORM

This leaflet explains the procedure for accessing a Patient's Hospital Records. If you require clarification of any of the points raised or need further information please let us know. Our contact details can be found at the end.

Procedure for Accessing Healthcare Records

- Access applications are logged upon receipt of a completed form to the address below, letter, fax (01271314180) or email. (ndht.accesstorecords@nhs.net)
- A request is made to the areas that hold the relevant records.
- (There may be a delay if the patient is currently undergoing treatment)
- Once all the required records have been gathered they will be sent to each treating clinician for authorisation to release.
- Within the time frame
- An appointment is arranged for the applicant to view the original records or
- The requested copy records are sent out via Recorded Delivery unless otherwise specified.
- The Trust expects to provide all requested documentation within one calendar month of receipt of a valid request. This can be extended by a further 2 months where the request is complex or where there are numerous requests. If this is the case, the Data subject must be contacted within one month of the receipt of the request and explained why the extension is necessary if for any reason we are unable to meet this deadline.

The Trust may refuse to release patient records if any of the following apply:

- Disclosure is likely to cause serious harm to the physical and / or mental wellbeing of the patient or any other individual connected with that patient.
- The patient is deemed incapable of understanding the nature of the application.
- The patient is under 13 years of age and is deemed not in their best interest to have access to their records.
- A third party has applied for access to a patient's records and the patient has clearly stated that he / she does not wish any disclosure of the records.
- The medical records were created prior to the 1st November 1991 (except when it helps to explain a record made on or after this date).
- The records contain any information showing that the person was or may have been born following treatment defined in the Human Fertilisation and Embryology Act 1990.

To access records of a patient currently being treated

- You can view these provided the clinician treating the patient has been informed and has given consent (subject to the exclusion listed in this document).
- An immediate review of the records may not always be possible, but the department will endeavour to make an appointment convenient to all parties as soon as possible.
- It will not be possible to photocopy case notes whilst the subject is an inpatient.

Access to Child's Healthcare Records

- If the patient is under the age of 13 and the Trust agrees that disclosure would not be detrimental to the physical and or mental wellbeing of the patient access may be granted to a parent or guardian.
- Dependant on age and or understanding of the child, they may be asked whether they agree to the release of their records.
- *Note: The Trust may contact both parents/guardians if a request is made.*

Access to a Deceased Persons Healthcare Records

- May be granted if the applicant has been named executor of the estate or Power of Attorney, or has a claim arising of the estate. *Note: If the Trust is unsure as to the identity of the person seeking access, the named next of kin (as retained in the case notes) will be contacted for verification.*
- Northern Devon Healthcare Trust reserves the right to request proof of the applicant's right to access the notes of a deceased person.

Under GDPR, the Trust must provide the a copy of the information free of charge

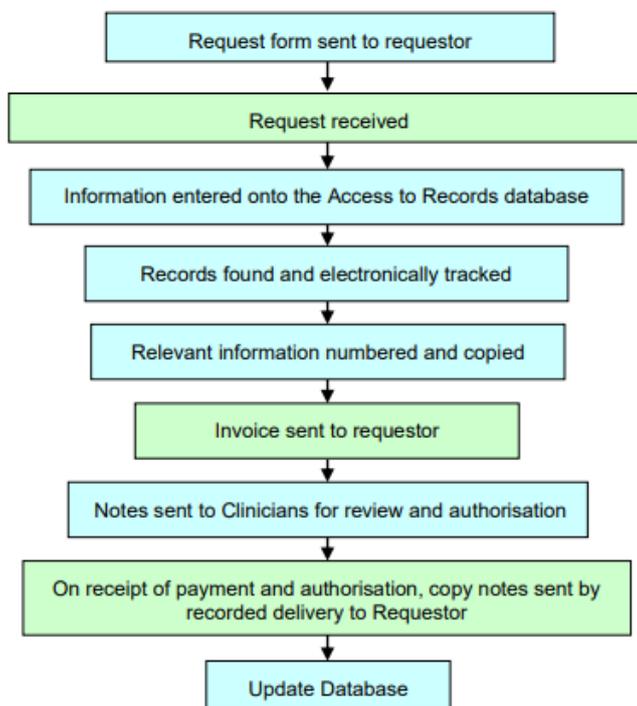
- A reasonable fee may be charged when a request manifestly unfounded or excessive particularly if it is repetitive.
- A reasonable fee may also be charge to comply with requests for further copies of the same information. This does not mean that you can charge for all subsequent access to requests.
- The fee must be based on the administration cost of providing the information.

If you feel your Request has been unfairly denied or you wish to make a complaint with regards to the contents of your Records

- You may write to the Trust Data Protection Officer, detailing your concerns.
- If you require advice or have concerns about any aspect of patient care you can contact the PATIENT ADVICE AND LIAISON SERVICE on 01271314090 or alternatively email them at ndht.pals@nhs.net.
- If you remain dissatisfied, you may contact the Northern Devon Healthcare Trust's Patient Advisory Liaison Service (PALS) department on 01271 314090 or via e-mail: ndht.PALS@nhs.net or you may wish to invoke the Trust's complaints process.

Appendix B Access to Records process flow

Procedure following receipt of a request for access



Replicate and add Invoice to requestor (if required)

Appendix C: Articles 12 GDPR

Transparent information, communication and modalities for the exercise of the rights of the data subject.

1. The controller shall take appropriate measures to provide any information referred to in [Articles 13](#) and [14](#) and any communication under [Articles 15](#) to [22](#) and [34](#) relating to processing to the data subject in a concise, transparent, intelligible and easily accessible form, using clear and plain language, in particular for any information addressed specifically to a child. The information shall be provided in writing, or by other means, including, where appropriate, by electronic means. When requested by the data subject, the information may be provided orally, provided that the identity of the data subject is proven by other means.
2. The controller shall facilitate the exercise of data subject rights under [Articles 15](#) to [22](#). In the cases referred to in [Article 11\(2\)](#), the controller shall not refuse to act on the request of the data subject for exercising his or her rights under [Articles 15](#) to [22](#), unless the controller demonstrates that it is not in a position to identify the data subject.
3. The controller shall provide information on action taken on a request under [Articles 15](#) to [22](#) to the data subject without undue delay and in any event within one month of receipt of the request. That period may be extended by two further months where necessary, taking into account the complexity and number of the requests. The controller shall inform the data subject of any such extension within one month of receipt of the request, together with the reasons for the delay. Where the data

subject makes the request by electronic form means, the information shall be provided by electronic means where possible, unless otherwise requested by the data subject.

4. If the controller does not take action on the request of the data subject, the controller shall inform the data subject without delay and at the latest within one month of receipt of the request of the reasons for not taking action and on the possibility of lodging a complaint with a supervisory authority and seeking a judicial remedy.
5. Information provided under [Articles 13](#) and [14](#) and any communication and any actions taken under [Articles 15](#) to [22](#) and [34](#) shall be provided free of charge. Where requests from a data subject are manifestly unfounded or excessive, in particular because of their repetitive character, the controller may either:
 1. charge a reasonable fee taking into account the administrative costs of providing the information or communication or taking the action requested; or
 2. refuse to act on the request.

The controller shall bear the burden of demonstrating the manifestly unfounded or excessive character of the request.

6. Without prejudice to [Article 11](#), where the controller has reasonable doubts concerning the identity of the natural person making the request referred to in [Articles 15](#) to [21](#), the controller may request the provision of additional information necessary to confirm the identity of the data subject.
7. The information to be provided to data subjects pursuant to [Articles 13](#) and [14](#) may be provided in combination with standardised icons in order to give in an easily visible, intelligible and clearly legible manner a meaningful overview of the intended processing. Where the icons are presented electronically they shall be machine-readable.
8. The Commission shall be empowered to adopt delegated acts in accordance with [Article 92](#) for the purpose of determining the information to be presented by the icons and the procedures for providing standardised icons.