



## 1

- 1.1. This document will provide advice and guidance to staff on how to handle requests for subject access in relation to personal data under Section 7 of the Data Protection Act 1998, whether that access was requested by an individual in respect of personal data of which they are the subject, or by someone requesting the data on that individuals behalf.
- 1.2. It includes both computer and manual based records.

## 2

- 2.1. **Data Protection Lead** is responsible for day-to-day data protection matters and for developing specific guidance notes on data protection issues for members of the Trust.
- 2.2. **The NEAS Information Governance Working Group** is responsible for providing advice on subject access issues and to provide support for the Data Protection Lead. This group is also responsible for developing, maintaining and implementing the Data Protection Policy and this procedure across NEAS ensuring that they meet national and legislative requirements in relation to Act.
- 2.3. **The Clinical Audit Assistant** will be responsible for subject access requests made by members of the public including patients, police and third parties.
- 2.4. **The Risk Department** will be responsible for the subject access requests made by the coroners office; **the Occupational Health Department** will be responsible for subject access requests for medical notes made by current staff and previous employees and **the HR Department** will be responsible for subject access requests for personnel records made by current staff and previous employees. These departments will be responsible for devising their own procedures around subject access.
- 2.5. Compliance with data protection legislation and this procedure is the responsibility of all members of the Trust who process personal information.

## 3

- 3.1. **Who can make a request?**
  - 3.1.1. Persons who are entitled to access personal data under this procedure are:
    - The data subject

- A representative of the data subject who has written consent e.g. solicitor.
- The parent or guardian of a child under 16 years of age: In cases where the child agrees, or it was in the child's best interest for access to the data to be granted.
- Police/Solicitor on production of a Court Order.
- A court appointed representative if the subject could no longer manage his or her own affairs.
- A person with enduring power of attorney.

### 3.2. **Processing Subject Access Requests**

- 3.2.1. A subject access request may come into the organisation in a written form, fax or email.
- 3.2.2. The request must be logged and updated on progress and forwarded to the Data Protection Lead on a monthly basis.
- 3.2.3. The request will be confirmed and clarified in writing ensuring the identity of the data subject or third party is validated and that consent has been provided. The appropriate fee will be requested at this stage. If further information is required, this will be done in writing or by telephone.
- 3.2.4. Once all information and the appropriate fee are received, log the request response start date.
- 3.2.5. The requested information will be searched for (this will usually be a Patient Report Form or Control Report).
- 3.2.6. Once all the information has been collated, a response can be prepared. (If the response includes clinical information, it must be checked by a senior member of staff in the clinical department to identify whether any information is likely to cause serious harm to the physical or mental health of the data subject or any third person if it were to be released).
- 3.2.7. The information must be checked for clarity. All coded data must be decoded and any medical terms must be explained in writing.
- 3.2.8. The health professional must also remove any information in relation to a third person, unless:
- The third party is a health professional who has compiled or contributed to the health records or who has been involved in the care of the patient.
  - The third party, who is not a health professional, gives their consent to the disclosure of that information.
  - All reasonable steps have been taken to contact the third party without success, and ensuring any duty of confidentiality owed to that person.
- 3.2.9. The response will need to be authorised by the Data Protection Lead before it can be sent to the address specified on the request form. The envelope must be marked private and confidential – for addressee only. The total response time must be logged on the spreadsheet and the file may be closed.

3.2.10. All correspondence must be retained for the period specified in the Records Management Retention Schedule and destroyed under confidential conditions.

### 3.3. **Timescales and fees**

3.3.1. In all cases an access request must be dealt with within 40 days. The NHS however has a target of 21 days to comply with a written subject access request providing all the relevant information needed to process the request and the relevant fee, where applicable has been received.

3.3.2. The cost of providing the information is as follows:

1. £50 maximum fee payable for information relating held wholly in manual format, or partly in manual records and partly electronic records.
2. £10 maximum fee for records held wholly electronically (unless otherwise stated).
3. If the records are non-computerised and have been created or amended within the 40 days preceding a subject access request being made, the records may be viewed for free. If a copy is required, the usual charge may still be made.

### 3.4. **Deceased Patients**

3.4.1. The disclosure of records of deceased persons is dealt with under the Access to Health Records Act 1990. Under that legislation, when a data subject has died their personal representative or executor or administrator or anyone having a claim resulting from the death (this could be a relative or another person), has the right to apply for access to the deceased's health records. Health records relating to deceased people do not carry a common law duty of confidentiality but it is Department of Health and General Medical Council policy that records relating to deceased people should be treated with the same level of confidentiality as those relating to living people. If the deceased person had indicated that they did not wish information to be disclosed, or the record contains information that the deceased person expected to remain confidential then it must remain so.

### 3.5. **Exceptions**

3.5.1. Where the clinical department staff decide that the information should not be released or only partially released, they must record their reasons. There are five exceptions as to why subject access could be denied:

- If supplying the information would, or could, cause damage or distress to the physical or mental health of the data subject or any other person; and
- The data is being processed for crime and taxation purposes where the provision of this information would be likely to prejudice any of the crime and taxation purposes.
- The data is being processed for purposes of national security.

- The data is being processed for purposes of journalism, artistic and literary purposes.
- The data is being processed for research, history and statistics.

### 3.6. **Complaints Procedure**

- 3.6.1. Patient's have the right to appeal against a decision to refuse access to their information. If the data subject wishes to complain, this should be referred to the Clinical Development Manager. The data subject should be given the opportunity to either write their letter of complaint or express their complaint orally with a possible satisfactory outcome.
- 3.6.2. Data subjects are also free to contact the Information Commissioner, who is the compliance lead on Data Protection:

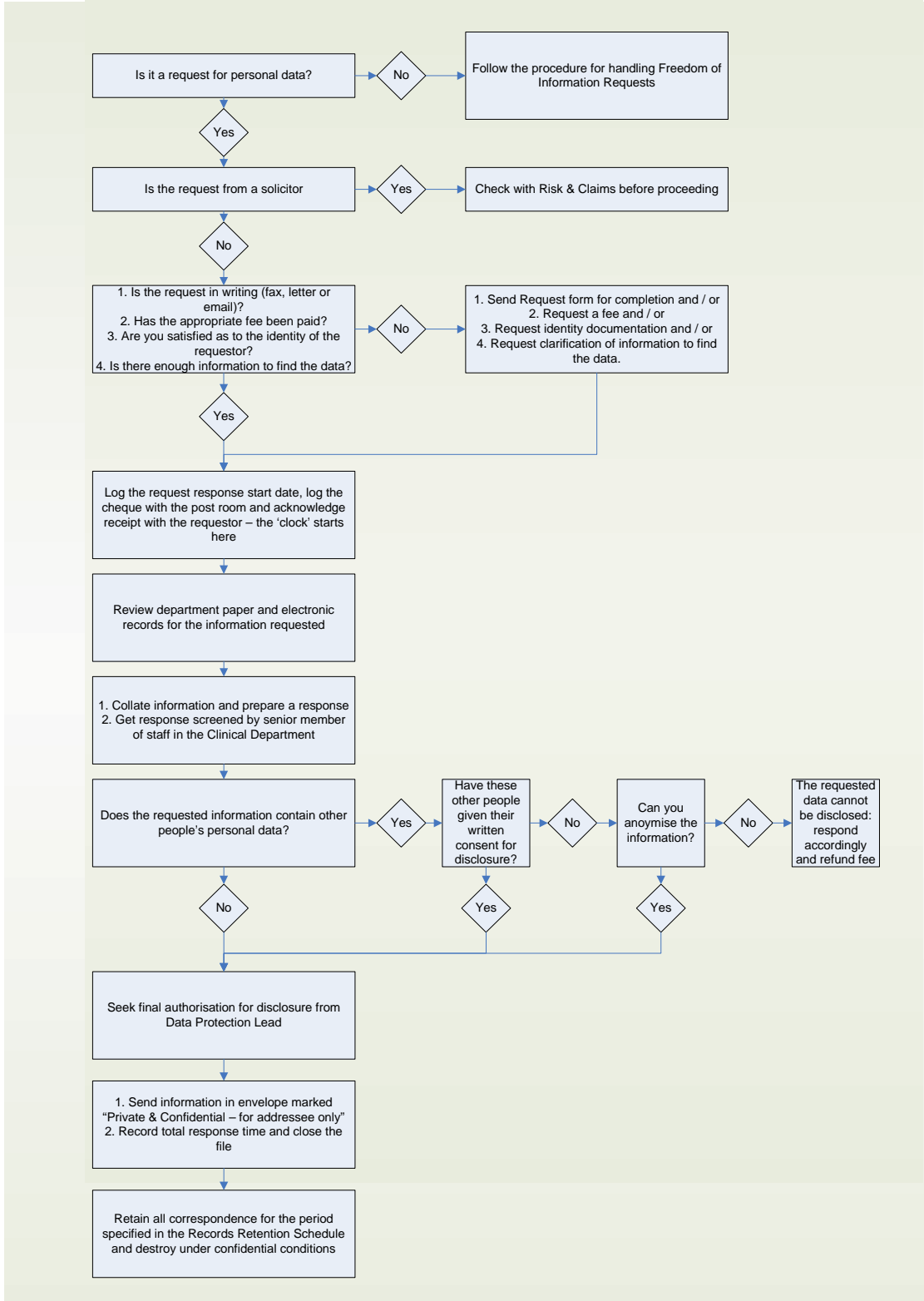
**Post: Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF.**

**Fax: 01625 524 510 Tel: 01625 545 700 Email: [mail@ico.gsi.gov.uk](mailto:mail@ico.gsi.gov.uk)**

The individual raising a complaint about the way their subject access request has been dealt with should be encouraged to raise the matter with the Trust before raising the matter with the Information Commissioner.

### 3.7. **Consent**

- 3.7.1. The Data Protection Policy and its appendices provide further information around obtaining consent.



North East Ambulance Service NHS Trust  
Subject Access Request Procedure