



North East Ambulance Service NHS Foundation Trust Quality System

Procedure
No :
GEN 310

Title : Subject Access Request Procedure

Issue : 1

Rev : 0

Issue Date : 14 / 05/ 12

Approved by :

Owner : Information Governance Manager

1. SCOPE

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.

It includes both computer and manual based records.

2. RESPONSIBILITY

- 2.1 The Information Governance Manager is responsible for monitoring and maintaining this procedure; advising on day-to-day data protection matters and for developing specific guidance notes on data protection 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 Information Governance Manager. 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. The group will also monitor the KPIs associated with Subject Access Requests (SARs).
- 2.3 The Clinical Administrative Assistant will be responsible for the administration and processing of all SARs relating to clinical information.
- 2.4 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. PROCEDURE

- 3.1 Who can make a request?



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3.1.1 Persons who are entitled to access personal data under this procedure are:

- a) The data subject
- b) A representative of the data subject who has written consent (e.g. solicitor; a court appointed representative if the subject could no longer manage his or her own affairs; a person with enduring power of attorney).
- c) 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.

3.2 Processing Subject Access Requests

3.2.1 A subject access request must come into the organisation in a written form, such as by letter, fax or email. A NEAS89 Subject Access Request Form may be completed by the individual and the Subject Access Request Guidance Notes included in Appendix B should be sent with this form.

3.2.2 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.

3.2.3 Once all information and the appropriate fee are received, the Clinical Administration Assistant will ensure that an appropriate response is issued within the required timescales.

3.2.4 The requested information will be searched for (this will usually be a Patient Report Form or Control Report).

3.2.5 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).

3.2.6 The information must be checked for clarity. All coded data must be decoded and any medical terms must be explained in writing.



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3.2.7 The health professional must also remove any information in relation to a third person, unless:

- a) 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.
- b) The third party, who is not a health professional, gives their consent to the disclosure of that information.
- c) All reasonable steps have been taken to contact the third party without success, and ensuring any duty of confidentiality owed to that person.

3.2.8 The response will need to be authorised by the Head of Clinical Care and Patient Safety 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.

3.2.9 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 Under the Data Protection Act, requests for access to records should be met within 40 days. However, government guidance for healthcare organisations says they should aim to respond within 21 days 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:

- a) £50 maximum fee payable for information relating held wholly in manual format, or partly in manual records and partly electronic records.
- b) £10 maximum fee for records held wholly electronically (unless otherwise stated).
- c) If the records are non-computerised and have been created or amended within the 40 days preceding a subject access request being



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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.

3.4.2 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.

3.4.3 Proof of entitlement to access the deceased's records will be required in addition to the standard identification documents. The fees for access to a deceased person's records are the same as those under the Data Protection 1998 (see section 0 of this procedure).

3.5 Exemptions

3.5.1 Where the Head of Clinical Care and Patient Safety decides that the information should not be released or only partially released, they must record their reasons.

3.5.2 There are five exemptions as to why subject access could be denied:

- a) 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
- b) 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.
- c) The data is being processed for purposes of national security.



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

3.5.2 Where the NEAS has previously complied with a request made by a data subject, the Trust is not obliged to comply with a subsequent identical or similar request under that section by that individual unless a reasonable interval has elapsed between compliance with the previous request and the making of the current request.

3.6 Staff Subject Access Requests

3.6.1 Like members of the public, all staff of the NEAS may access data held about them by the Trust. This includes any information such as their occupational health record or information held by the HR department in their personnel file. Subject access requests received by staff will be processed in the same way as those received by patients and other members of the public.

3.6.2 Previous employees the Trust should note that all HR records are destroyed in line with the Trust's Records Management Retention Schedule and dependent upon the time of the request, such records may no longer be held.

3.7 Staff Requests to Access Patient Information

3.7.1 At times, staff may be required to make a statement in regards to an incident they have previously attended. Given the nature of the job and vast amount of incidents paramedics attend to, a paramedic may require access to the Patient Report Form (PRF) they completed at the time of the incident in order to make a statement.

3.7.2 Staff who require access to patient information, such as PRFs, should use the form available on the intranet to make a request for such information.

3.8 Third Party Data



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3.8.1 Under the DPA, there are circumstances in which the NEAS is not obliged to respond to a SAR. One of these circumstances is when the information reveals personal information in regards to another individual.

3.8.2 The Clinical Administration Assistant will remove any information that may allow a third person to be identified, unless:

- a) 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;
- b) The third party, who is not a health professional, has given their *explicit* consent to the disclosure of that information; or
- c) It is reasonable in all the circumstances to comply with the request without the consent of the other individual, i.e. where exemptions under subject access provisions in the DPA apply.

3.9 Children

3.9.1 The law regards young people aged 16 or 17 to be adults in respect of their right to confidentiality. In relation to children between the ages of 12 and 16, it is generally accepted that they will have the capacity and understanding to have their confidentiality respected, take decisions about their own information and be entitled to decide whether their personal information is disclosed. As such children from the age of 12, who have the necessary capacity and understanding, can make subject access requests and these will be treated in the same way as requests received from adults.

3.9.2 Where a request for access to the records of a child aged 12 or over is received from their parents or legal guardian, the child's consent should be sought before access is granted. Careful consideration should be given to any instructions received from the child such as a request that certain information be withheld from their parents, particularly sensitive information e.g. sexual health matters is held or there are any concerns about parental abuse.

3.9.3 Where a parent or legal guardian makes a request for a child's information, access should only be granted if the Head of Clinical Care and Patient Safety is satisfied that the application is made in the child's, and not the parent's best interest.



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3.10 Consent

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

3.11 Appeals and Complaints Procedure

3.11.1 Data subjects 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.

3.11.2 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.

Tel: 01625 545 745

Fax: 01625 524 510

web: <https://www.ico.gov.uk>

3.11.3 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.