

# Subject Access Request Policy

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## CONTENTS

<b>Part</b>	<b>Description</b>	<b>Page</b>
<b>1</b>	Introduction	<b>5</b>
<b>2</b>	Purpose	<b>6</b>
<b>3</b>	Scope	<b>6</b>
<b>4</b>	Who can make the Subject Access Request	<b>6</b>
<b>5</b>	Application	<b>7</b>
<b>6</b>	Fees	<b>6</b>
<b>7</b>	The Release Stage	<b>7</b>
<b>8</b>	Exemptions	<b>9</b>
<b>9</b>	Complaints and Appeals	<b>9</b>
<b>10</b>	Roles and Responsibilities	<b>10</b>
<b>11</b>	Monitoring and Review	<b>9</b>
<b>12</b>	Equality Impact	<b>9</b>
<b>13</b>	Appendix A- CSU Form for Subject Access Requests	<b>10</b>
<b>14</b>	Appendix B – Subject Access Request Form	<b>13</b>

## 1. Introduction

- 1.1. Under the (chapter III rights of the data subject) of the EU General Data Protection Regulations and section 45 of the Data Protection Act 2018, subject to certain conditions, an individual is entitled to be informed whether personal data about them is being processed by or on behalf of the data controller and whether this is information shared and with whom. Individuals are entitled to apply for access to personal data of which they are the subject.
- 1.2. The Data Protection Act extends equally to all relevant records relating to living individuals, including records held in the private health sector and health professionals' private practice records.
- 1.3. Personal data held by the CCG may be:-
  - Personnel/Staff records relating to a member of staff, present, past or prospective, whether permanent, temporary or volunteer
  - Health records consisting of information about the physical or mental health of an identifiable individual made by, or on behalf of, a health professional in connection with the care of that individual.
- 1.4. Access encompasses the following rights:-
  - To obtain a copy of the record in permanent form
  - To have information provided in an intelligible format (and explained where necessary e.g. abbreviations)
- 1.5. The Data Protection legislation also gives subjects who now reside outside the UK the right to apply for access to their former UK health and employment records:
  - Employees are legally entitled to request their personal records and may take them outside of the UK at their own discretion.
  - Original health records should not be given to people to keep/take outside the UK. A GP or community health professional may be prepared to provide the patient with a summary of treatment; alternatively the patient may make a request for access in the usual way.
- 1.6. Organisations must have procedures in place to ensure that individual's rights of access are met within a timely and appropriate fashion.
- 1.7. Individual's rights regarding the sharing of their personal information are supported by the *Care Record Guarantees*, which set out high-level commitments for protecting and safeguarding service user information, particularly in regard to individuals' rights of access to their own information, how information will be shared (both within and outside of the organisation) and how decisions on sharing information will be made.

- 1.8. The NHS Constitution sets out a series of patients' rights and NHS pledges: "You have the right of access to your own health records and to have any factual inaccuracies corrected".
- 1.9. In the response to the Caldicott2 Report, the Department of Health confirmed that service users should have access to information about themselves even if it was obtained through new or non-traditional approaches (for example, virtual consultations) to delivering health and care services.

## **2. Purpose**

- 2.1. This policy provides Great Yarmouth and Waveney CCG with a process for the management of requests for personal information (for living individuals) under the Data Protection Act 2018 (DPA) and (for deceased individuals) the Access to Health Records Act 1990.
- 2.2. It defines a process for achieving legislative requirements and ensuring effective and consistent management of such requests.
- 2.3. The policy ensures that all staff are aware of how a subject access request should be made and to respond quickly.

## **3. Scope**

- 3.1. This policy applies to any request by a patient or member of staff for access to their personal information held by the CCG.
- 3.2. This policy applies to all staff (employees, governing body members, contractors) of Great Yarmouth and Waveney CCG.

## **4. Who can make an Access Request**

- 4.1. An application for access to personal data may be made to Great Yarmouth and Waveney CCG by any of the following:-
  - an individual
  - a person authorised by the individual in writing to make the application on an individual's behalf e.g. solicitor, family member, carer
  - a person having parental responsibility for the individual where he/she is a child.
  - a person appointed by a court to manage the affairs of an individual who is deemed incompetent
  - individuals who hold a health and welfare Lasting Power of Attorney
  - where the individual has died, the personal representative and any person who may have a claim arising out of the individual's death (the executor of the

deceased's will; someone who has been appointed as an Administrator of the Estate by the Courts; someone who has the written consent of either of the above to be given access, someone who is in the process of challenging the deceased's will)

- 4.2. The Police may, on occasion, request access to personal data of individuals. Whilst there is an exemption in the Data Protection Act which permits Great Yarmouth and Waveney CCG to disclose information to support the prevention and detection of crime, the Police have no automatic right to access; however they can obtain a Court Order.
- 4.3. Parental responsibility for a child is defined in the Children's Act 1989 as '*all the rights, duties, powers, responsibilities and authority, which by law a parent of a child has in relation to a child and his property*'. Although not defined specifically, responsibilities would include safeguarding and promoting a child's health, development and welfare, including if relevant their employment records. Included in the parental rights which would fulfil the parental responsibilities above are:
- having the child live with the person with responsibility, or having a say in where the child lives;
  - if the child is not living with her/him, having a personal relationship and regular contact with the child;
  - controlling, guiding and directing the child's upbringing.
- 4.4. Foster parents are not ordinarily awarded parental responsibility for a child. It is more likely that this responsibility rests with the child's social worker and appropriate evidence of identity should be sought in the usual way.
- 4.5. The law regards young people aged 16 or 17 to be adults for the purposes of consent to employment or treatment and the right to confidentiality. Therefore, if a 16 year old wishes HR or a medical practitioner to keep their information confidential then that wish must be respected.
- 4.6. In some certain cases, children under the age of 16 who have the capacity and understanding to take decisions about their own treatment are also entitled to decide whether personal information may be passed on and generally to have their confidence respected.
- 4.7. Where a child is considered capable of making decisions, e.g. about his/her employment or medical treatment, the consent of the child must be sought before a person with parental responsibility may be given access. Where, in the view of the appropriate professional, the child is not capable of understanding the nature of the application, the holder of the record is entitled to deny access if it is not felt to be in the patient's best interests.
- 4.8. The identity and consent of the applicant must always be established.

4.9. The applicant does not have to give a reason for applying for access.

4.10. NHS Great Yarmouth and Waveney CCG is a Data Controller and can only provide information held by the organisation. Data controllers in their own right must be applied to directly, Great Yarmouth and Waveney CCG will not transfer requests from one organisation to another.

## 5. Application

5.1. Individuals wishing to exercise their right of access should:-

- Make a written application to the organisation holding the records, including via email
- Provide such further information as the CCG may require to sufficiently identify the individual

5.2. See form in Appendix A

5.3. The CCG as “data controller” is responsible for ascertaining the purpose of the request and the manner in which the information is supplied.

Individuals have extended rights under the new Data Protection Legislation but within the NHS there are usually overriding reasons why the CCG would not be able to comply with those rights these are scribed below

**To Erasure** otherwise known as the *right to ‘be forgotten’* - individuals have the *right to ‘be forgotten’* unless there is an overriding legal requirement to retain the information held. Within the NHS It is a statutory responsibility to retain a record of Health care events; i.e. a medical record. All Health related records are held in line with the NHS Records Management Code of Practice 2016 retention schedules unless otherwise stated.

If an individual wishes to discuss the content of their medical record then please inform them to contact the medical record holding organisation usually where their treatment was administered to address their concerns.

**To rectification** - individuals have the right to have accurate and up to date records held on them by an organisation. If you are made aware of a mistake contact the CCG Governance Manager or instruct them to contact the service whom they supplied the information to for rectification of your record. If the information is not part of the health record (these will follow specific DOH Records Management Code of Practice 2016 guidance) the CCG will review to see if it is able to rectify the inaccurate information.

**To restrict processing** - or suppress the use of your personal data. It is a statutory responsibility for the NHS to retain a record of Health care events; i.e. a medical record. If an individual wishes to discuss the content of their medical record then please inform them to contact the medical record holding organisation to address their concern. If they wish to discuss this right in relation to the data the CCG holds please inform them to contact the CCG using the details on the CCG webpages and on the fair processing notice.

**To Object** – Individuals have the right to give consent / refuse & withdraw consent to information sharing at any moment in time. If there are possible consequences to not sharing these will need to be fully explained to enable an informed decision to be made.

**To Data Portability** - Where an individual has provided information directly to the CCG or the CCG has collected information for the performance of a contract, the individual can exercise their right to data portability, this means that in practice they could request their data to be moved to another source or it to be provided to them. This only applies where this information has been collected on the basis of consent. If a request is received for this contact the CCG Governance Manager who will review if it is possible to comply with the request.

**To Complain** – If an individual is unhappy with how their request has been handled they will need to follow the complaints and appeals process (section 9) of this policy

## 6. Fees

6.1. Under the General Data Protection Regulation (GDPR) with effect from May 2018 an organisation will not be able to charge for complying with a request unless the request is 'manifestly unfounded or excessive'. The data controller may charge a reasonable administrative-cost fee if further copies are requested.

6.2. The request should be initially passed to the Governance Manager who will seek support from the CSU who manage Subject Access Requests on behalf of Great Yarmouth and Waveney CCG under Service Level Agreement.

6.3. Under the Act, the request must be complied with within a calendar month of receipt, or any further information required to identify the correct individual.

6.4. Where the individual agrees, the access right may be met by providing a facility for the individual to view the record without obtaining a copy.

6.5. The identity of an individual who provided/recorded information should not be disclosed, nor should the identity of any other person/s referred to in the record(s) of the individual requesting access, unless explicit consent has been given.

## **7. The Release Stage**

7.1. The release of a health record is subject to consultation with either:-

- The health professional who is currently, or was most recently, responsible for the clinical care of the data subject in connection with the information which is the subject of the request
- Where there is more than one such health professional, the health professional who is the most suitable to advise on the information which is the subject of the request

7.2. Once the records have been collated and signed off by the Governance Manager, they should be sent to the requester. On no account must the original record be released.

7.3. Where information is not readily intelligible, an explanation (e.g. of abbreviations or terminology) must be given.

7.4. If it is agreed that the subject or their representative may directly inspect the record, a health professional or HR administrator must supervise the access. If supervised by an administrator, this person must not comment or advise on the content of the record and if the applicant raises enquiries, an appointment with a health professional must be offered.

## **8. Exemptions**

8.1. Access may be denied or restricted where:-

- The record contains information which relates to or identifies a third party that is not a care professional and has not consented to the disclosure. If possible, the individual should be provided with access to that part of the record which does not contain the third party information
- Access to all or part of the record will prejudice the carrying out of social work by reason of the fact that serious harm to the physical or mental well-being of the individual or any other person is likely. If possible the individual should be provided with access to that part of the record that does not pose the risk of serious harm
- Access to all or part of the record will seriously harm the physical or mental well-being of the individual or any other person. If possible the individual should be provided with access to that part of the record that does not pose the risk of serious harm

8.2. There is no requirement to disclose to the applicant the fact that certain information may have been withheld.



## 9. Complaints and Appeals

9.1. The applicant has the right to appeal against a CCG decision to refuse access to their information to the Governance Manager.

9.2. If an applicant is unhappy with the outcome of their access request, the following complaints channels should be offered:

- meet with the applicant to resolve the complaint locally
- Advise a patient to make a complaint through the complaint's process
- Advise a member of staff to consult with their trade union representative

9.3. If individuals remain unhappy with the CCG response, they have the right to appeal to the Information Commissioner's Office:

9.4. [https://www.ico.org.uk/Global/contact\\_us](https://www.ico.org.uk/Global/contact_us).

Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF  
Telephone: 0303 123 1113

9.5. Email: [casework@ico.gsi.gov.uk](mailto:casework@ico.gsi.gov.uk)

## 10. Roles and Responsibilities

10.1 The **Chief Finance Officer** has executive responsibility for Subject Access Requests.

10.2 The **Senior Governance Manager** has operational responsibility for Subject Access Requests.

10.3 **The Data Protection Officer** has the responsibility to monitor compliance with the GDPR including collection and maintenance of the CCGs record of processing activities. This is done in conjunction with information provided by the Information Asset Owners and Asset Administrators The DPOs role is also to Provide advice and issue recommendations to the CCG, overall ensuring compliance with the Article 30 of the General Data Protection Regulations.

10.4. **Subject access requests** for health care records are co-ordinated on behalf of Great Yarmouth and Waveney CCG by the Commissioning Support Unit (CSU). Any such request will be approved by the CCG prior to providing the relevant information.

10.4. **All staff** must be aware of how to recognise and manage a subject access request is. Training will be provided to staff likely to be in receipt of requests (governance team, communications team, administrative staff, CSU staff etc) covering:-

- Required format of a subject access request
- Correct identification of the requesting individual
- Location of personal information
- Timescales for compliance
- Provision of information in an intelligible format
- Action to be taken if the information includes third party data or if it has been determined that access will seriously harm an individual (see exemptions)

## **11. Monitoring and Review**

11.1. The Audit Committee monitor all Subject Access Requests to ensure the correct process has been followed and monitor any appeals/complaints relating to Subject Access Requests.

11.2. The CCG will monitor the performance of the CSU as service provider for Subject Access Requests against KPIs within the service specification.

## **12. Equality Impact**

12.1. In applying this policy, the organisation will have due regard for the need to eliminate unlawful discrimination, promote equality of opportunity, and provide for good relations between people of diverse groups, in particular on the grounds of the following characteristics protected by the Equality Act (2010); age, disability, gender, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, and sexual orientation, in addition to offending background, trade union membership, or any other personal characteristic

## Commissioning Support Unit

### Form - Request for access to records

The Access to Health Records Act 1990 and Data Protection Act (2018) give patients/clients/staff or their representatives a right of access, subject to certain exemptions, to their health records. The Commissioning Support Unit respects the rights of individuals to have copies of their information wherever possible.

**Personal information collected from you by this form, is required to enable your request to be processed, this personal information will only be used in connection with the processing of this Subject Access Request.**



**Charges Payable:** Under the General Data Protection Regulation (GDPR) with effect from May 2018 an organisation will not be able to charge for complying with a request unless the request is 'manifestly unfounded or excessive'. The data controller may charge a reasonable administrative-cost fee if further copies are requested.

**PLEASE COMPLETE IN BLOCK CAPITALS – Illegible forms will delay the time taken to respond to requests.**

**1. Details of Patient/Clients/Staff members records to be accessed** (Please complete one form per person)

Surname					Date of Birth				
Forename(s)					Current Address				
Any former names (If Applicable)									
Telephone Number					Full Postcode				
NHS Number (If known/relevant)					Previous Address (If Applicable)				
					Full Postcode				
If further details are available please include in a separate covering note.									

**2. Details of Records to be Accessed**

In order to locate the records you require please provide as much information as possible. Please list the department or services you have accessed that you require records from: i.e. PALs, complaints, continuing healthcare or Human resources etc (Continue on a separate sheet if required).

Records dated from	Department or services accessed
/ / to / /	
/ / to / /	
/ / to / /	

<b>3.</b>	<b>Details of applicant</b> (Complete if different to patients/clients/staff members details)	
	Full Name	
	Company (if Applicable)	
	Relationship with individual who's records have been requested	
	Address to which a reply should be sent	<b>Postcode:</b> _____ <b>Tel:</b> _____
<b>4.</b>	<b>Authorisation to release to applicant</b> (to be completed by the patients/clients/staff member if not making their own request)	
	<p><b>I (Print name)</b> _____ hereby authorise Arden Gem to release any personal data they may hold relating to me to the above applicant and to whom I authorise to act on my behalf.</p> <p><b>Signature of patient/client/staff member :</b> _____</p> <p><b>Date:</b>     /     /</p>	
<b>5.</b>	<b>Declaration</b>	
	<p>I declare that information given by me is correct to the best of my knowledge and that I am entitled to apply for access to the health record(s) referred to above, under the terms of the Access to Health Records Act (1990) / Data Protection Act (2018).</p> <p><b>Please select one box below:</b></p> <p><input type="checkbox"/> I am the patient/client/staff member (data subject).</p> <p><input type="checkbox"/> I have been asked to act on behalf of the data subject and they have completed section 4 -authorisation above.</p> <p><input type="checkbox"/> I am acting on behalf of the data subject who is unable to complete the authorisation section above (Covering letter with further details supplied).</p> <p><input type="checkbox"/> I am the parent/guardian of a data subject under 16 years old who has completed the authorisation section above. (Please include proof such as birth certificate)</p> <p><input type="checkbox"/> I am the parent/guardian of a data subject under 16 years old who is unable to understand the request and who has consented to my making the request on their behalf.</p> <p><input type="checkbox"/> I have been appointed the Guardian for the patient/client, who is over age 16 under a Guardianship order (attached).</p> <p><input type="checkbox"/> I am the deceased patient/client's personal representative and attach confirmation of my appointment.</p> <p><input type="checkbox"/> I have a claim arising from the patient/client's death and wish to access information relevant to my claim (Covering letter with further details to be supplied).</p>	

**Please Note:**

- If you are making an application on the behalf of somebody else we require evidence of your authority to do so i.e. personal authority, court order etc.
- It may be necessary to provide evidence of identity (i.e. Driving Licence).
- If there is any doubt about the applicant's identity or entitlement, information will not be released until further evidence is provided. You will be informed if this is the case.
- Under the terms of the Data Protection Act 2018, requests will be responded to within 21 days after receiving all necessary information and/or fee required to process the request.
- For requests under the Access to Health Records Act 1990, requests will be responded to within 20 days where no entries have been made to the patient/client's record 20 days immediately preceding the date of this request, otherwise requests will be responded to within 20 days after receiving all necessary information to process the request.
- Under the terms of Section 7 of the Data Protection Act 2018, Information disclosed under a Subject Access Request may have information removed; this is to ensure that the confidentiality is maintained for third parties referred to who have not consented to their information being disclosed.

<b>Print Name</b>		<b>Signed (Applicant )</b>		<b>Date</b>	/ /
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Please complete and send this document to:  
Arden and Gem CSU  
Subject Access Requests, Room 18  
Scarsdale  
Newbold Road  
Chesterfield  
S41 7PF

or email via [agcsu.informationgovernancenorfolk@nhs.net](mailto:agcsu.informationgovernancenorfolk@nhs.net)

## Appendix B – Subject Access Request Form

The Access to Health Records Act 1990 and Data Protection Act (2018) give patients/clients/staff or their representatives a right of access, subject to certain exemptions, to their health records. NHS GYW CCG respects the rights of individuals to have copies of their information wherever possible.

Personal information collected from you by this form, is required to enable your request to be processed, this personal information will only be used in connection with the processing of this Subject Access Request.



**Charges Payable:** Under the General Data Protection Regulation (GDPR) with effect from May 2018 an organisation will not be able to charge for complying with a request unless the request is 'manifestly unfounded or excessive'. The data controller may charge a reasonable administrative-cost fee if further copies are requested.

PLEASE COMPLETE IN BLOCK CAPITALS – Illegible forms will delay the time taken to respond to requests.

1. Details of Patient/Clients/Staff members records to be accessed (Please complete one form per person)

Surname		Date of Birth	
Forename(s)		Current Address	
Any former names (If Applicable)		Full Postcode	
Telephone Number		Previous Address (If Applicable)	
NHS Number (If known/relevant)		Full Postcode	

If further details are available please include in a separate covering note.

2. Details of Records to be Accessed

In order to locate the records you require please provide as much information as possible. Please list the department or services you have accessed that you require records from: i.e. PALS, complaints, continuing healthcare or human resources etc (Continue on a separate sheet if required).

Records dated from	Department or services accessed
/ / to / /	
/ / to / /	
/ / to / /	

3. Details of applicant (Complete if different to patients/clients/staff members details)	
Full Name	
Company (if Applicable)	
Relationship with individual who's records have been requested	
Address to which a reply should be sent	Postcode: _____ Tel: _____
4. Authorisation to release to applicant (to be completed by the patients/clients/staff member if not making their own request)	
<p>I (Print name) _____ hereby authorise NHS GYW CCG to release any personal data they may hold relating to me to the above applicant and to whom I authorise to act on my behalf.</p> <p>Signature of patient/client/staff member : _____ Date: ____ / ____ / ____</p>	
5. Declaration	
<p>I declare that information given by me is correct to the best of my knowledge and that I am entitled to apply for access to the health record(s) referred to above, under the terms of the Access to Health Records Act (1990) / Data Protection Act (2018).</p> <p><b>Please select one box below:</b></p> <p><input type="checkbox"/> I am the patient/client/staff member (data subject).</p> <p><input type="checkbox"/> I have been asked to act on behalf of the data subject and they have completed section 4 - authorisation above.</p> <p><input type="checkbox"/> I am acting on behalf of the data subject who is unable to complete the authorisation section above (Covering letter with further details supplied).</p> <p><input type="checkbox"/> I am the parent/guardian of a data subject under 16 years old who has completed the authorisation section above. (Please include proof such as birth certificate)</p> <p><input type="checkbox"/> I am the parent/guardian of a data subject under 16 years old who is unable to understand the request and who has consented to my making the request on their behalf.</p> <p><input type="checkbox"/> I have been appointed the Guardian for the patient/client, who is over age 16 under a Guardianship Order (attached).</p> <p><input type="checkbox"/> I am the deceased patient/client's personal representative and attach confirmation of my appointment.</p> <p><input type="checkbox"/> I have a claim arising from the patient/client's death and wish to access information relevant to my claim (Covering letter with further details to be supplied).</p> <p><input type="checkbox"/></p>	

Please Note:

- If you are making an application on the behalf of somebody else we require evidence of your authority to do so i.e. personal authority, court order etc.
- It may be necessary to provide evidence of identity (i.e. Driving Licence).
- If there is any doubt about the applicant's identity or entitlement, information will not be released until further evidence is provided. You will be informed if this is the case.
- Under the terms of the Data Protection Act 2018, requests will be responded to within 20 days after receiving all necessary information
- For requests under the Access to Health Records Act 1990, requests will be responded to within 20 days where no entries have been made to the patient/client's record 20 days immediately preceding the date of this request, otherwise requests will be responded to within 20 days after receiving all necessary information to process the request.
- Under the terms of Section 7 of the Data Protection Act 2018, Information disclosed under a Subject Access Request may have information removed; this is to ensure that the confidentiality is maintained for third parties referred to who have not consented to their information being disclosed.

Print Name		Signed (Applicant)		Date	/ /
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Please complete and send this document to:  
NHS Great Yarmouth and Waveney CCG  
Beccles House  
1 Common Lane North  
Beccles  
Suffolk  
NR34 9BN  
[GYWCCG.governance@nhs.net](mailto:GYWCCG.governance@nhs.net)