

# Data Subject Access Request Procedure

Policy ID	IG06
Version	V2.0
Owner	Justin Dix, Governing Body Secretary
Approving Committee	Executive Committee
Date agreed	4 <sup>th</sup> August 2015
Next review date	4 <sup>th</sup> August 2017

## Version History

Version	Date	Author	Details	Description
1.1	27/01/2015	NHS South CSU IG Team	Final	Approved by Executive Committee
1.2	13/07/2015	Interim Information Governance Manager – Surrey Downs CCG	Draft	Reviewed and updated to reflect Policy to reflect recent IG Toolkit guidelines Caldicott 2 Review and SAR accountability and responsibility in the CCG.
1.3	25/07/2015	Interim Information Governance Manager – Surrey Downs CCG	Draft	Minor changes to section 6.6 following comments from Communications team.
2.0	04/08/2015	Interim Information Governance Manager – Surrey Downs CCG	Final	Approved by Executive Committee
Contributors		Governing Body Secretary, Head of Planning & Performance and, South East CSU Information Governance Principle Associate.		
Audience		All CCG officers, Governing Body members and staff (which includes temporary staff, contractors and seconded staff) and CCG members in their capacity as commissioners.		

## Equality Statement

Surrey Downs Clinical Commissioning Group (the CCG) aims to design and implement services, policies and measures that meet the diverse needs of our service, population and workforce, ensuring that none are placed at a disadvantage over others. It takes into account the Human Rights Act 1998 and promotes equal opportunities for all. This document has been assessed to ensure that no-one receives less favourable treatment on grounds of their gender, sexual orientation, marital status, race, religion, age, ethnic origin, nationality, or disability.

Members of staff, volunteers or members of the public may request assistance with this policy if they have particular needs. If the person requesting has language difficulties and difficulty in understanding this policy, the use of an interpreter will be considered.

The CCG embraces the four staff pledges in the NHS Constitution. This policy is consistent with these pledges.

1. Does the document/guidance affect one group less or more favourably than another on the basis of:			
		Yes, No or N/A	Comments
	• Race		
	• Ethnic origins (including gypsies and travellers)	No	
	• Nationality	No	
	• Gender	No	
	• Culture	No	
	• Religion or belief	No	
	• Sexual orientation including lesbian, gay and bisexual people	No	
	• Age	No	
	• Disability - learning disabilities, physical disability, sensory impairment and mental health problems	No	
2	Is there any evidence that some groups are affected differently?	No	
3	If you have identified potential discrimination, are there any exceptions valid, legal and/or justifiable?	No	
4	Is the impact of the document/guidance likely to be negative?	N/A	
5	If so, can the impact be avoided?	N/A	
6	What alternative is there to achieving the document/guidance without the impact?	N/A	
7	Can we reduce the impact by taking different action?	N/A	

For advice in respect of answering the above questions, please contact the Corporate Office, Surrey Downs CCG. If you have identified a potential discriminatory impact of this procedural document, please contact as above.

Names and Organisation of Individuals who carried out the Assessment	Date of the Assessment
Kate Taylor	May-14
Justin Dix	

## Contents

1. Introduction.....	6
2. Compliance with Data Protection Act 1998 and Caldicott 2 Report .....	6
3. Aim.....	6
4. Legislation.....	7
5. NHS & Related Guidance.....	7
6. Roles and Responsibilities .....	8
7. Training.....	9
8. Dissemination and Implementation.....	9
9. Monitoring & Audit.....	9
10. Related Documents.....	10
Appendix 1: How does the CCG process a request.....	11
Appendix 2: Subject Access Request Tracking Sheet.....	0
Appendix 3: Subject Access Request form.....	0
Appendix 4: Access to Medical Records Authorisation Form.....	3
Appendix 5: Standard Response Letter to Applicant .....	4
Appendix 6: Letter to Applicant Requesting Required Fee.....	5
Appendix 7: Letter to Applicant Acknowledging Receipt of Fee and Enclosing Record.....	6

## **1. Introduction**

The Data Protection Act 1998 (hereinafter called the Act) details rights of access to both manual data (which is recorded in a relevant filing system) and computer data for the data subject. This is known as a Data Subject Access Request (SAR).

This right, commonly referred to as subject access, is created by section 7 of the Data Protection Act. It is most often used by individuals who want to see a copy of the information an organisation holds about them. However, the right of access goes further than this, and an individual who makes a written request and pays a fee is entitled to be:

- told whether any personal data is being processed;
- given a description of the personal data, the reasons it is being processed, and whether it will be given to any other organisations or people;
- given a copy of the information comprising the data; and given details of the source of the data (where this is available).

Under the Act, NHS Surrey Downs Clinical Commissioning Group (the CCG) is required to have procedures in place to ensure that individuals' rights of access are met within a timely and appropriate manner, and seek to enable all who wish to do so to have access to the records that are held about them.

## **2. Compliance with Data Protection Act 1998 and Caldicott 2 Report**

Under the Act, organisations are required to respond to subject access requests within 40 calendar days of receiving the request, or in any case within 40 calendar days of receipt of any further information required to identify the correct individual. Failure to do so is a breach of the Act and could lead to a complaint being made to the Information Commissioner's Office (ICO).

The NHS undertakes to respond within 21 days. If it is anticipated that a request will take longer than the 21 day period, the CCG will inform the applicant giving an explanation of the delay.

To assist the obligation to provide information within the time limits, the CCG will ensure that all employees are aware of how a subject access request should be made and of the requirement to respond to requests quickly.

In response to the Caldicott2 Report and Department of Health the CCG will ensure that patient/service-users 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.

The CCG will charge for any subject access requests made, in line with legislative guidelines. The CCG will seek technical and legal advice on any complex requests as appropriate.

## **3. Aim**

This SAR Procedure details how the CCG will meet its legal obligations and NHS requirements concerning individual's access to their information. The requirements within the Procedure are primarily based upon the Data Protection Act 1998 and Access to Health Records Act 1990 as they are the key piece of legislation covering rights to personal information.

This SAR Procedure has been written to ensure that all staff are aware of their responsibilities to provide information if requested.

#### **4. Legislation**

For the purpose of this Procedure other relevant legislation and appropriate guidance may be referenced. The legislations listed below also refer to issues of security of personal confidential data:

- Freedom of Information Act 2000
- Regulation of Investigatory Powers Act 2000
- Crime and Disorder Act 1998
- Computer Misuse Act 1990
- Criminal Justice and Immigration Act 2008
- Health and Social Care Act 2012

Any request for access to medical records will be processed in line with the Access to Health Records Act 1990.

Where individuals are applying for access to a deceased person's records the Access to Health Records Act 1990 should be followed.

Health records relating to deceased person will be treated with the same level of confidentiality as those relating to living people. Under the Access to Health Records Act 1990 a request to see a deceased person's health record or to have a copy thereof can be made by the personal representative or any person who may have a claim arising out of the person's death.

The personal representative (executor or next of kin – who may be a relative, friend or solicitor) or anyone having a claim resulting from the death has the right to apply for access to the relevant part(s) of the deceased's health record under the 'Access to Health Records Act 1990'. Where the requestor is not acting in a legal capacity, they should detail why they need access in pursuing a claim. Where they are the executor or administrator they must provide proof of appointment under the Will/Grant of probate

#### **5. NHS & Related Guidance**

The following are the main publications referring to security and or confidentiality of personal confidential data:

- Records Management: NHS Code of Practice
- Information Security: NHS Code of Practice
- Information Commissioner's Office: Subject Access Request Code of Practice
- Caldicott Report 1997 and 2013

## **6. Roles and Responsibilities**

### **6.1 Accountable Officer**

The Accountable Officer has overall responsibility for the Data Subject Access Policy within the CCG. The Accountable Office has delegated SAR operational responsibilities to the Head of Human Resources and the Continuing Health Care Business Manager.

### **6.2 Head of Human Resources**

The CCG's Head of Human (HR) is responsible for ensuring that SARs relating to staff are effectively managed, systems and procedures are in place to support access to records across the organisation. Responsibility for processing SARs has been delegated to the HR Administrator who in turn report to the Head of HR.

The implementation of, and compliance with this Procedure is delegated to the Information Governance Steering Group (IGSG).

### **6.3 Continuing Health Care Business Manager**

The Continuing Health Care (CHC) Business Manager is responsible for processing SARs relating to service-users and oversees all aspects of disclosures in accordance with the Confidentiality: NHS Code of Practice 2003.

### **6.4 Caldicott Guardian**

The CCG's Caldicott Guardian will actively support work to enable effecting processing of SARs and will advise on options for lawful and ethical processing of information.

### **6.5 Information Governance Steering Group**

The CCG Information Governance Steering Group (IGSG) is accountable to the Executive Committee and the Audit Committee, which in turn report to the Governing Body. IGSG is responsible for the oversight of Information Governance (IG) within the CCG, this includes:

- Reviewing Subject Access Requests Procedures
- Ensuring that requests are actioned by fully trained and resourced staff
- All staff members are aware of the need to support subject access requests, and where in the organisation such requests should be directed.

The Group also has responsibility for ensuring IG issues are brought to the attention of the CCG Executive Committee.

### **6.6 All Staff**

All staff should ensure that:

- They are aware of their responsibility to support subject access requests and where in the organisation such requests are ultimately handled;
- they comply with this SAR Procedure and all related IG policies and procedures;
- personal confidential data and records (whether in electronic or manual) relating to service-users and staff are kept secure, accurate, relevant and up to date.

Members of staff who would like access to their personal confidential information must submit their requests in writing, either by email to the address below. The CCG Communications team will forward all SARs to the appropriate team responsible for the processing the requests.

Email: [contactus.surreydownsccg@nhs.net](mailto:contactus.surreydownsccg@nhs.net) or letter to:

NHS Surrey Downs Clinical Commissioning Group  
Communications Team  
Cedar Court  
Guildford Road  
Leatherhead  
Surrey  
KT22 9AE

## **7. Training**

The CCG will ensure all permanent/temporary/contract staff completes their online mandatory training modules within first week of employment, with further training required for, staff who process SARs.

Whilst the CCG may receive some direct subject access requests from service-users, it is recognised that with many requests for information, it may not be immediately apparent that the request is actually a subject access request. This may be most common when requests are relayed on to information staff, e.g. by a GP practice. The CCG will therefore determine where such requests are more likely to be made and ensure that awareness training is provided to all staff in those areas. Staff in areas where direct subject access requests are ultimately handled will be provided with comprehensive training. The training will cover:

- 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.

## **8. Dissemination and Implementation**

The Procedure will be publicised on the CCG website. Managers are required to ensure that their staff understand its application to their practice. Awareness of any new content/change in process will be through staff bulletin in the first instance. Where a substantive revision is made, then a separate plan for communicating and implementing this change will be devised by IGSG.

## **9. Monitoring & Audit**

This Procedure will be monitored by IGSG to ensure any legislative changes that occur are incorporated in the document. The Procedure will be reviewed biennially or when changes to legislation necessitate an earlier review.

## **10. Related Documents**

The following documentation relates to the management of information and together underpins both CCG's Information Governance Assurance Framework. The Information Governance Framework should be read in conjunction other documents, including, but not limited to:

- Information Governance Policy
- Information Security Policy
- Safe Haven Policy
- Confidentiality Policy - Data Protection 1998
- Records Management Policy
- Freedom of Information Policy
- Information Incident Management and Reporting Procedures

**The process for dealing with Data Subject Access requests for personal information held by the CCG are outlined in Appendices 1 – 9.**

## Appendix 1: How does the CCG process a request

When a subject access request is received it should immediately be reported to the Head of Human Resources (SAR relating to staff) or Continuing Health Care Business Manager (SAR relating to service-user medical record). These staff member will then coordinate the response. Teams may be required to provide information relating to this request.

It should be noted that:

- Individuals have a right under Section 7 of the Data Protection Act 1998 to:
  - know whether their personal information is being processed (which includes being held or stored)
  - be given a description of the data held, the purpose for which it is processed and to whom the data may be disclosed.
  - be given a copy of the information held.
  - be given information as to the source of the data

Requests must be made in writing, either by letter or email. [contactus.surreydownsccg@nhs.net](mailto:contactus.surreydownsccg@nhs.net) or letter to:

NHS Surrey Downs Clinical Commissioning Group  
Communications Team  
Cedar Court  
Guildford Road  
Leatherhead  
Surrey  
KT22 9AE

- The type of access and the fee chargeable may vary depending on how the records are held. It does not have to state 'Subject Access Request' or 'Data Protection' to constitute a request under the Act.
- If a request has already been complied with and an identical or similar request is received from the same individual there is no obligation to comply with the second request unless a reasonable interval has elapsed.
- The Statutory response time is 40 calendar days, however, the NHS has committed to responding within 21 days or sooner if possible.
- Requests should include the full name and address of the person seeking access to their information. To comply with the Act, information relating to the individual must only be disclosed to them or someone with their written consent to receive it.
- The CCG is required to record all incoming requests for information and track them through to completion. The CCG will acknowledge all requests for information and record the key dates and information relating to the request in a central register.
- Adequate steps will be taken to identify the requester.. Examples of suitable documentation are:
  - Valid Passport
  - Driving Licence
  - Birth Certificate along with some other proof of address e.g. a named utility bill (no longer than 3 months old) or a Medical Card.

## **Fees**

A £10 charge may be made for all types of records whether held in manual or electronic format.

### **Subject access requests made by a representative or third party**

Anyone with full mental capacity can authorise a representative/third party to help them make a subject access request, for example solicitors/advocates. Before disclosing any information, the CCG must be satisfied that the solicitor/advocate has the authority to make the request on behalf of the requestor and that the appropriate authorisation to act on their behalf is included.

### **Subject access requests made on behalf of people who lack capacity**

If an adult lacks capacity and a representative is making the request on their behalf, the person dealing with the request must satisfy themselves that the request is being made in the individual's best interest.

### **What information should be provided?**

All information should be provided subject to any data protection exemptions that may apply, for example information provided by third parties or information that may cause harm or distress to the data subject or others.

Where the record contains the personal information on more than one person, consideration should be given to the interests of all the parties before deciding whether or not you may disclose the information.

Information must be supplied to the individual in permanent form, if requested, unless to do so would involve 'disproportionate' effort. For manual records this would involve photocopies. For computerised records these can be supplied in electronic format but must contain explanations of codes or abbreviations where appropriate. If the 'disproportionate' effort issue arises, the records can be shared with the individual on a face to face basis who can be asked to visit the premises to view their records.

Original records must not be released because of the potential detriment to the individual should the records be lost. Copies must always be provided.

### **Disclosure of information that may harm someone's health – Statutory Instrument 2000 No. 413**

A medical professional may believe that providing an individual with access to certain information might cause serious harm to their physical or mental health or to that of another person. If so, the Data Protection (Subject Access Modification) (Health) Order 2000 allows a data controller to withhold information. However, only a medical professional can make such a decision, and it must be fully documented.

This exemption does not apply to information the individual already knows.

If an individual disputes some of the information held within their record this should be discussed with the CCG Continuing Health Care Business Manager.



## **Complaints**

If an individual is dissatisfied with the way their subject access request has been managed, they should be advised to invoke the CCG complaint process. If they are still dissatisfied, they can complain to the Information Commissioner's Office. This can be done in writing to:

Information Commissioner's Office

Wycliffe House

Water Lane

Wilmslow

Cheshire

SK9 5AF



## Appendix 2: Subject Access Request Tracking Sheet

Name _____				Date of Birth _____				
GP _____				Address _____ NHS _____				
<b>Request Date</b>	<b>Start Date</b>	<b>Start Date + 21 Days</b>	<b>Stop Date</b>	<b>Elapsed Days</b>	<b>Restart Date</b>	<b>Final Expiry Date</b>	<b>No of pages copied and sent</b>	<b>Final Charge Made</b>
<b>Tracking Steps</b> <i>(Need not be completed in this order)</i>			<b>Date</b>	<b>Completed</b>	<b>Comments</b>			
Service responsible for request								
Letter received and logged on tracking sheet								
Identity of Applicant confirmed (where further information is required from the Applicant the clock may be stopped pending receipt)								
Databases checked and episodes identified								
Information requested/pulled								
Applicant informed of charges								

3 <sup>rd</sup> Party checks made			
Fee Received			
Copies made and sent out			
Copies of records sent to applicant			
Applicants name if different names individual relationship to named individual			
Evidence of Authority checked			

## Appendix 3: Subject Access Request form

**a) Details of person requesting information (the Applicant):**

Full name: Date of birth:

Address:

Telephone Number:

**b) Are you the Data Subject (for example the named individual who the requested records refer)?**

**YES:** If you are the data subject please go to question e)

**NO:** Are you acting on behalf of the Data Subject with their written authority? If so, the written authority must be included. Please answer questions c) and d).

**c) Details of the Data Subject if different to those given in answer to question a).**

Full name:

Date of birth:

Address:

Telephone Number:

**d) Please describe your relationship with the Data Subject that leads you to make this request for information on their behalf:**

.....

.....

.....

.....

**e) Please give details as to the information you would like to review:**

**The date range(s) for the information held (approximate dates are acceptable):**

**NOTES:**

NHS organisations will normally respond to a Subject Access Request within 21 days. This period will not commence until the organisation is satisfied as to the identity and authority of the Applicant.

The organisation may seek further information from the Applicant as to the specific information requested. Any request for clarification will suspend the 21 day period until the required information is received.

The organisation is allowed to charge for the Subject Access Request. The current fee is £10 and up to £50 for photocopying.

The records may not be released until the fee has been paid. The Applicant will be informed of the fee required.

In accordance with the Data Protection Act 1998, we wish to inform you that your details may be used for management and audit purposes.

Please return this completed Subject Access Request (SAR) Form and any requested documentation to the address below:

**Appendix 4: Access to Medical Records Authorisation Form**

*To be used when authorisation to release records is required*

I, ..... as the Data Subject

.....(Insert full name of the Data Subject)

Address.....  
.....

Date of Birth..... NHS No: .....

Hereby Authorise (**Name and address of organisation**)

.....  
.....

To disclose my Records:

.....

..... This request is made in  
accordance with the Data Protection Act 1998.

Please release the following:

.....  
.....

**Data Subject signature:**

**Dated:**

**Appendix 5: Standard Response Letter to Applicant**

Ref: Subject Access Request under the Data Protection Act 1998 or Access to Health Records Act.

Dear Mr/Mrs.....

Thank you for your correspondence of            with reference to your application for access to personal information in respect to

.....

I can confirm that we will respond to your request within the 21 day period adopted by the NHS under the Data Protection Act 1998.

The law allows us to take reasonable steps to establish and confirm your identity before providing any such personal information. However, the 21 days rule may be suspended whilst your identity is checked.

We would be grateful if you would provide a **copy** of your;

1. Driving licence **or**
  
2. Passport or birth certificate, with additional proof of address, e.g. a utility bill (no longer than 3 months old) etc.

Under the Data Protection Act 1998, we are entitled to charge you a fee for copying records. You will be advised of the amount of this fee, when the amount of data to be provided is known.

In accordance with the Data Protection Act 1998 we wish to inform you that your details may be used for management and audit purposes.

Yours sincerely

**Appendix 6: Letter to Applicant Requesting Required Fee**

Ref: Subject Access request under the Data Protection Act 1998 Dear

Mr/Mrs.....

Your request for a copy of personal information is now complete and the fee for this information is £

On receipt of payment, copies of the records will be released.

Please make cheques payable to.....  
.....

Yours sincerely

**Appendix 7: Letter to Applicant Acknowledging Receipt of Fee and Enclosing Record**

Ref: Subject Access Request under Data Protection Act 1998

Dear Mr/Mrs.....

We acknowledge receipt of the fee for providing copies of your records as requested under the Data Protection Act 1998.

Please find enclosed a copy of the information as requested.

If you have any queries, please do not hesitate to contact the NHS South Commissioning Support Unit.

Yours sincerely