

Responding to **Subject Access Requests** (living individuals) or **Access to Health Records Requests** (deceased individuals)

Further information can be found on the Information Commissioner's website [here](#) or within Cambridgeshire and Peterborough CCG's Access to Health Records Policy [here](#)

Requests received under the Data Protection Act 2018 (living individuals)

Individuals have a number of rights under data protection law, one of these is the [Right of Access](#) commonly referred to as subject access. This gives individuals the right to obtain a copy of their personal data* as well as other supplementary information. It helps individuals to understand how and why you are using their data, and check you are doing it lawfully.

**Personal data is information that relates to an individual who can be identified either directly or indirectly and includes any expression of opinion about the individual and any indication of the intentions of the information holder or any other person in respect of the individual.*

Requests received under the Access to Health Records Act 1990 (deceased individuals)

The Common Law Duty of Confidentiality extends beyond death. Consideration must therefore be given to whether the data subject had requested confidentiality whilst alive.

Individuals who may make an Access to Health Records request are:

- The named executor of a will or personal representative as specified in letters of administration;
- Any person who may have a claim arising out of the individual's death. Only information directly relevant to a claim should be disclosed.

Note: A next of kin has no automatic right of access.

Key Points for Subject Access Request and Access to Health Records Requests

- Requests can be made verbally or in writing (e.g. by email or via social media);
 - *Use of a specific application form cannot be enforced.*
- You have one calendar month to respond to a request;
 - *For example, if you receive a request on the 9th of the month, you must respond by the 9th of the following month, regardless of whether the date of receipt or response falls on a weekend or a public holiday.*
- Where requests are particularly complex or voluminous, you are permitted to extend the period of compliance by a maximum of a further two months but you must inform the data subject within one month of the receipt of the request and explain why the extension is necessary;
- In most circumstances, you cannot charge a fee;
 - *Administrative costs may only be charged where requests are manifestly unfounded or excessive, in particular because of their repetitive character.*
- All requests should be acknowledged and logged with a record of what has been released documented;
- 3rd party data must not be released – it must be redacted prior to release.

Additional points for Subject Access Requests

- A data subject's consent must be obtained before any data is released;
- A data subject's identity must be confirmed before any data is released;
 - *For example, photocopies of two official documents (one should ideally be photographic) which between them clearly show the data subject's name, current postal address, date of birth and signature.*
- There is no obligation upon a data subject to explain why they wish to access their own personal data.
- Data portability – where possible, data subjects should be given the opportunity to choose how they would like to receive their data ie electronically; paper copies (posted by secure delivery or collected in person); other formats.

Data subjects who lack capacity

In the context of NHS Continuing Healthcare, where a Health and Welfare Lasting Power of Attorney is not in place and the data subject is still alive but lacks capacity, it may well be in their best interests (under the Mental Capacity Act) for relevant information to be shared with a Property and Financial Affairs deputy or attorney (or other third party who is acting as their advocate).

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