

# SUBJECT ACCESS REQUESTS POLICY

*Details the standard process that should be followed within Dr Kershaw's Hospice to ensure a consistent approach when dealing with requests for personal information*

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## 1. Introduction & Purpose

As of the 25<sup>th</sup> May 2018, The General Data Protection Regulation (GDPR) sets out the rules governing Subject Access Requests (SARs). This is the main piece of legislation that governs the protection of personal data in the UK. Under the Act any living individual (or their nominated representative e.g. a solicitor) has the right to contact an organisation and ask to 'see' and / or request a copy of any personal information that the organisation is holding about them. This is known as a Subject Access Request.

GDPR covers all forms and formats of personal information e.g. written, computerised, recorded images, audio tapes etc., however if access is required to a Health Record this should be made separately in accordance with the Hospice Information Governance & Security policy.

This procedure details the standard process that should be followed within Dr Kershaw's Hospice to ensure a consistent approach when dealing with requests for personal information. It supports the 'Information Governance & Security policy' and should be read in conjunction with that policy.

## 2. Aims

In accordance with the GDPR and ICO guidelines, this procedure will ensure that the hospice will:

- Process all subject access requests within the legislative timeframe
- Release appropriate information in accordance with the Act
- Provide advice and assistance where appropriate
- Respect the interests of third parties who may be affected by any disclosure of information

## 3. Roles and responsibilities

As Caldicott Guardian, the Medical Director provides advice and guidance to the hospice in order to ensure overall compliance with GDPR. However, the routine processing of all subject access requests will be managed by the following personnel who will be referred to as 'the application processor' here after:

- Senior Information Risk Owner (SIRO) - (will be the initial contact point for receiving, logging and acknowledging requests)
- Caldicott Guardian – (will be consulted prior to release of information in relation to complex requests).
- SMT member

## 4. Making a Subject Access Request (SAR)

Applicants, who make contact, either in person or by telephone, should be advised that they are required to make their request in writing, either manually or electronically. They should be invited to use the template at appendix A to this document. It should however, be explained that using this appendix is not compulsory. Once received the application should be forwarded

to SIRO. Requests may also be received by way of fax or e-mail and must be directed immediately to the SIRO.

The applicant will be expected to supply two forms of identity with the application form. Forms of identity may include copies of driving licence, passport or birth certificate in addition to other relevant information confirming the applicant's address e.g. copy of a utility bill.

Requests submitted by a nominated representative (e.g. Solicitor) acting on behalf of an individual should obtain the individual's consent in writing and include a copy of this with the fully completed SAR letter.

The hospice is legally obliged to comply with all subject access requests within one month of receipt of request, or, within one month of receipt of verified proof of identity.

One month should be taken to mean until the corresponding date in the following month if that date exists. If the corresponding date does not exist in the following month, the deadline will be final day of the following month.

EG: SAR received on 28 Jan, deadline will be 28 Feb.  
SAR received on 31 Jan, deadline will be 28 Feb.

When a request or enquiry has been received, the applicant will be sent a letter acknowledging receipt of the request and detailing the hospice intention of complying within one month of receipt of the correctly completed SAR and accompanying information details.

## 5. Charging for subject access requests

Under GDPR, it will no longer be permissible to charge a fee for the SAR. GDPR states:

You must provide a copy of the information free of charge. However, you can charge a 'reasonable fee' when a request is manifestly unfounded or excessive, particularly if it is repetitive.

You may also charge a reasonable fee to comply with requests for further copies of the same information. This does not mean that you can charge for all subsequent access requests. The fee must be based on the administrative cost of providing the information.

## 6. Procedure for processing subject access requests

### 6.1 Stage one – receipt of request

Subject access requests should always be received in writing by either letter, fax or e-mail and may be received at any of the hospice sites. The request should be forwarded on immediately to the SIRO.

On receipt of a fully completed SAR the SIRO will log the request into the SAR spreadsheet, giving each request a unique identifier reference number

If the request has sufficient information to be processed and the applicant's identity has been proven (and consent provided if via a nominated representative) the SIRO will send the applicant a letter of acknowledgement stating that the request will be processed within one month.

If the applicant has not supplied sufficient information for the request to be processed the SIRO will send a standard letter to the applicant, requesting proof of identity. The one month will then start upon receipt of the proof of identity.

If the request is from a representative of the individual, a letter of consent must be included with the request.

## **6.2 Stage two – processing of request**

On receipt of proof of identity, the SIRO must confirm that the accompanying identification documents are valid. This is to ensure that the applicant is authorised to access the information. Forms of identity should include a photocopy of the applicant's driving licence, passport or birth certificate; in addition to other relevant information confirming the applicant's address e.g. copy of a utility bill.

Following confirmation of identity the start date and due date should be entered onto SAR spreadsheet. An acknowledgement letter should be sent to the applicant notifying them when they should expect to receive a response.

The SIRO will then forward the SAR to the relevant application processor who should arrange a search their systems for all information relating to the request. If an individual has requested all information held on them within the organisation, a search of all relevant databases and filing systems (including archived systems) should be initiated.

Types of personal information that might be held by the hospice are:-

- Personnel/human resources files if the applicant is/was a member of staff or applied for a post within the organisation
- Complaints files
- Client files or reports such as delayed transfers or applications for funding
- Payments made or received by the applicant
- Information held by other organisations on behalf of the hospice
- Health records of a patient or bereavement files pertaining to a relative

## **6.3 Stage three – reviewing the information**

The application processor must carefully review all information that has been collated.

If any 'third party' individual, not including health professionals, is named or has provided information about the applicant, the following must be considered by the application processor prior to releasing the information:-

- Is it possible to comply with the request without revealing information that relates to and identifies any third party individuals? If so, the third party information must either be removed prior to releasing the information or alternatively consent of the individual/s must be obtained.
- Careful consideration must be given prior to disclosure to ensure that the applicant would not suffer any harm or distress on receipt of the information. This will be the subject of discussion with the application processor and the Caldicott Guardian.

- If a third party individual does not consent to releasing the information and the application processor is satisfied that it would be reasonable not to disclose the information, it should be withheld. However, as much of the information requested should be given without disclosing the identity of the third party where possible unless it is reasonable given all of the circumstances to disclose without consent.

If the third party information has previously been provided to or is already known by the applicant, or it is generally available, it would be considered reasonable to disclose the information without third party consent.

The SAR spreadsheet must be updated by application processor with details of the course of action and reasoning behind why consent was not sought or considered not appropriate.

The application processor must check the information thoroughly to ensure that any codes or acronyms are explained to the applicant.

The application processor must decide if whether there are any grounds for withholding the information under GDPR exemptions. Examples include safeguarding national security, crime and taxation and parliamentary privilege.

The SAR spreadsheet must be updated with details of any information, which is withheld, and the exemptions used.

#### 6.4 Stage four – releasing / refusing the information

As soon as the request has been processed, the information, which has been judged the applicant's personal data should be, released using the applicant's preferred method i.e. sent via mail, collection or viewing. In all instances the applicant should be informed of what information, if any, is available and the purpose of holding the information.

The applicant should also be notified on how to access the hospice data controller notification. This is submitted annually to the Information Commissioner's Office (ICO) and is then recorded on the Data Protection Register. It can be accessed via the ICO's web site by using the following link <http://www.ico.gov.uk/ESDWebPages/DoSearch.asp> and entering registration number **ZA461616** into the relevant field. The applicant can be directed to this site but if they request a hard copy of the notification, one must be supplied.

If the information is to be sent to the applicant, a standard letter should be used and copies of the information included. The information must be sent by Special Delivery annotated '**Private and Confidential**', '**Addressee only**' and packaged securely in a double envelope. The Special Delivery reference number should be logged onto the SAR spreadsheet.

If the applicant has chosen to collect the information from the hospice, then a receipt will be required to be signed and photographic ID (e.g. passport or driving licence) must be provided to confirm the recipient's identity.

If the applicant has chosen, and the hospice has agreed to allow the information to be viewed, the application processor will write to the applicant to arrange a convenient time and place that is both suitable to the hospice and the applicant within one month receipt.

Ideally, the viewing should be of photocopied information. Any copies required by the applicant can then be removed as they are being viewed.

If there is no other choice but to view the original record, the process must be witnessed by the application processor who must ensure that the applicant is not left alone with the records at any time.

Up to a maximum of one hour will normally be allowed for the applicant to spend viewing the information. However, this time may be extended, if justified, with the application processor's discretion. The applicant will be informed of the time allowance prior to and as a condition of the viewing.

Following release of the information, copies of the documentation should be stored manually in accordance with the Records Management Policy. However, any redacted documents will be retained in accordance with the requirements of the Data Protection Act. The date of release and file reference should then be recorded onto the SAR

If the application has been denied, restricted, or no information has been found, the applicant should be notified in writing using a standard letter. There is no requirement to explain the reason for denying or restricting the information. However, the application processor may consider disclosing if this would not contravene any of the Act's principles.

All decisions must be recorded on the SAR spreadsheet.

## 7. Dealing with requests from the Police

In addition to the Act, personal information is also protected by the common law duty of confidentiality. This duty requires that confidential information may only be disclosed:

- With the consent of the individual to whom the information relates
- If there is a legal requirement e.g. court order, Act of Parliament
- If it is in the public interest i.e. the public interest in the specific circumstances outweigh the individual's right to privacy

There is no legal obligation for the hospice to disclose information to the police without a court order. However, the hospice may consider releasing information following a request made by the police, under the DPA (Section 29) or the Crime and Disorder Act (Section 115) without the patient's consent for the purposes of the prevention or detection of crime or the apprehension or prosecution of offenders.

It is essential that prior to releasing personal information without consent, the Caldicott Guardian is assured that the public interest in the specific circumstances outweigh the individual's right to privacy. The factors that should be considered are:

- Whether there is a threat to public health and safety
- Whether there is a risk of death or serious harm to the individual concerned or other individuals
- The circumstances of the matter under investigation

It will be the Caldicott Guardian's decision whether to release information, without consent, under either Section 29 or Section 115.

It is mandatory to comply with a court order requiring release of personal information.

Requests should be submitted on a Section 29 or Section 115 police request form containing full details of the data subject and reason for requiring information. A senior police officer of the minimum rank of Inspector should sign it. It should also be clear whether the police have the consent of the individual.

The IG Lead must log the request onto the SAR spreadsheet and process it as soon as possible, liaising with the relevant department to locate the information as appropriate.

When the information is ready for release the application processor should arrange for the information to be sent securely using Safe Haven procedures.

If an agreement has been made for the information to be collected, the application processor should make the necessary arrangements. The police officer collecting the information must provide proof of identity e.g. warrant card.

The date that the information was sent or collected must be recorded onto the SAR spreadsheet and a copy of the request form used should be uploaded.

A paper copy of the information released should be retained for a minimum of 3 years and the file reference recorded on the SAR spreadsheet.



## Appendix 1 – Standard Application Template

[Your full address]

[Phone number]

[The date]

[Name and address of the organisation]

Dear Sir or Madam

### Subject access request

[Your full name and address and any other details to help identify you and the information you want.]

Please supply the information about me I am entitled to under the General Data Protection Regulation relating to: [give specific details of the information you want, for example

- your personnel file;
- emails between 'A' and 'B' (between 1/6/11 and 1/9/11);
- your medical records (between 2006 & 2009) held by Dr 'C' at 'D' hospital;
- CCTV camera situated at ('E' location) on 23/5/12 between 11am and 5pm;
- Copies of statements (between 2006 & 2009) held in account number xxxxx).

If you need any more information from me, or a fee, please let me know as soon as possible.

It may be helpful for you to know that a request for information under the General Data Protection Regulation should be responded to in one month.

If you do not normally deal with these requests, please pass this letter to your Data Protection Officer. If you need advice on dealing with this request, the Information Commissioner's Office can assist you and can be contacted on 0303 123 1113 or at [ico.org.uk](http://ico.org.uk)

Yours faithfully

[Signature]

## Appendix 2 - Equality Impact Assessment Checklist

To ensure relevant equality and equity aspects of policies have been considered and addressed in the document to give assurance that the policy will be legal, fair and equitable.

<b>POLICY TITLE/NAME:</b>	<b>SUBJECT ACCESS REQUEST</b>		
<b>POLICY AUTHOR:</b>	<b>MARK BRADLEY</b>	<b>DATE OF ISSUE:</b>	<b>OCT 2018</b>

		YES	NO	If yes, what positive or negative impact do you assess there may be?
1	Does the proposal affect one group more or less favourably than another on the basis of:		X	
	• Age		X	
	• Pregnancy and Maternity		X	
	• Sex		X	
	• Gender or Gender Re-Assignment		X	
	• Marriage or Civil Partnership		X	
	• Religion or belief		X	
	• Sexual orientation (L.G.B.T.)		X	
	• Nationality/Race		X	
	• Disability (including physical and mental health problems)		X	
2	Will the proposal have an impact on lifestyle? (e.g. diet and nutrition, exercise, physical activity, substance use, risk-taking behaviour, education and training).		X	
3	Will the proposal have an impact on social environment? (e.g. social status, employment (either paid or not), social/family support, stress, low income, homeless).		X	
4	Will the proposal have an impact on physical environment? (e.g. living conditions, working conditions, pollution or climate change, accidental injury, public safety, transmission of infectious disease).		X	
5	Will the proposal affect access to or experience of services? (E.g. health or social care, transport, housing services, education).		X	

<b>Equality Impact Assessor:</b>	<b>Lyndsey Donbavand</b>	<b>Date of assessment:</b>	<b>09.02.19</b>
<b>Job Title:</b>	<b>Quality &amp; Governance Manager</b>		