Information Access (Subject Access Request) Protocol

|  |  |  |
| --- | --- | --- |
| Policy Title / Reference | Author | Owner |
| Information Access (Subject Access Request) Protocol | Emma Cooper, Kafico Ltd | [insert protocol owner] |

|  |  |  |  |
| --- | --- | --- | --- |
| Version | Revision author |  | Version comments |
| 1 | Emma Cooper, Kafico Ltd | Jan 18 | Jan 18 New Draft |
| 1.1 | Emma Cooper, Kafico Ltd | Jan 19 | Jan 19 Replaced 1998 DPA with 2018 Act. Replaced GDPR with “data protection legislation”.  Included methods for sending information in digital form |
| 1.2 | Emma Cooper, Kafico Ltd | Jan 19 | Jan 19 – removed reference to charging solicitor for excessive request due to proportionality |
| 1.3 | Emma Cooper, Kafico Ltd | Feb 19 | Added section related to Power of Attorney |
| 1.5 | Emma Cooper, Kafico Ltd | Jun 19 | Added section for Children and Young People |
| 1.6 | Emma Cooper, Kafico Ltd | Sep 19 | Updated Accessing Encrypted Emails Guidance Link |
| 1.7 | Emma Cooper, Kafico Ltd | Nov 19 | Added Appendix I (2) for practices who only release a ‘filtered’ record for SAR |
| 1.8 | Hannah Calway, Kafico Ltd | Dec 19 | Amendments to sections “What about Requests via a Solicitor” and Addition of “Possible Script when Calling a Patient”  Amendment to Appendix C Letter to Solicitors |
| 1.8 | Emma Cooper, Kafico Ltd | Feb 20 | Annual review – no amendments |
| 1.9 | Hannah Calway, Kafico Ltd | Jun 20 | Updated Solicitor Requests Added Serious Harm Test Section |
| 2.0 | Hannah Calway, Kafico Ltd | Nov 20 | Added section – Armed Forces medical requests and deceased patient records. |

Contents

[Sources 3](#_Toc56842920)

[Definitions / Context 4](#_Toc56842921)

[1. Clarify the Request 5](#_Toc56842922)

[What Constitutes a Subject Access Request? 5](#_Toc56842923)

[What about Insurance Companies? 5](#_Toc56842924)

[What about requests for deceased patients’ records? 6](#_Toc56842925)

[What about Subject Access Requests via a Solicitor? 7](#_Toc56842926)

[How do I Make Sure a Subject Access Request is Proportionate, and Can I charge? 9](#_Toc56842927)

[How Long do I have to Respond? 9](#_Toc56842928)

[How Should I Make Sure I Confirm Identity? 10](#_Toc56842929)

[How Can I Save Time and Costs by Sending Information Digitally? 11](#_Toc56842930)

[What Information Should NOT be Included? 11](#_Toc56842931)

[Children and Young People’s Information 13](#_Toc56842932)

[What about Requests from the Police? 14](#_Toc56842933)

[What about Requests from the Armed Forces? 14](#_Toc56842934)

[Appendix A BMI Letter to Patient About Insurance Company Request (language made more accessible to patients) 16](#_Toc56842935)

[Appendix B Letter to Insurance Company Making a SAR 18](#_Toc56842936)

[Appendix C Letter to Solicitors Subject Access Request Response (following a call to the patient) 19](#_Toc56842937)

[Appendix D Response to Being Prompted for Timely Response 21](#_Toc56842938)

[Appendix E Using NHS Digital Encryption to send to non nhs.net 22](#_Toc56842939)

[Appendix F Sending SARs by Email 22](#_Toc56842940)

[Appendix G Subject Access Request Refining Response. 22](#_Toc56842941)

[Appendix H Subject Access Request Identification Validation 23](#_Toc56842942)

[Appendix I Subject Access Request Response 24](#_Toc56842943)

[Appendix I (2) Subject Access Request Response (Filtered to Only Practice Additions) 25](#_Toc56842944)

[Appendix J Subject Access Request Delay (missed legal deadline) 27](#_Toc56842945)

[Appendix K Request Matrix 28](#_Toc56842946)

[Appendix L – SAR Checklist 29](#_Toc56842947)

[Appendix M – Access to Health Records Letter: 32](#_Toc56842948)

## Sources

[Data Protection Act 2018 (DPA)](http://www.legislation.gov.uk/ukpga/2018/12/contents)

[General Data Protection Regulations (EU) 2016/679 (GDPR)](https://gdpr-info.eu/art-9-gdpr/)

[Information Commissioner – Guide to the General Data Protection Regulations (ICO Guide)](https://ico.org.uk/media/for-organisations/guide-to-the-general-data-protection-regulation-gdpr-1-0.pdf)

Scope

This protocol has been drafted for use by customers of Kafico Ltd across Norfolk and Waveney.

At the time of writing and unless alternative protocols have been adopted locally, the protocol applies to;

|  |  |  |
| --- | --- | --- |
| Acle Medical Partnership | Boughton Doctors Surgery | Hellesdon Medical Practice |
| Beccles Medical Centre | Bridge Street Surgery | Holt Medical Practice |
| Birchwood Surgery | Cromer Group Practice | Feltwell Surgery |
| Blofield Surgery | St Clement's Surgery | Great Massingham and Docking Surgeries |
| The Brundall Medical Centre | Castle Partnership | The Harleston Medical Practice |
| Coltishall Medical Practice | The Burnhams Surgery | Heacham Group Practice |
| Campingland Surgery | Drayton Surgery | St John's Surgery |
| Hoveton & Wroxham Medical Centre | Roundwell Medical Centre | Staithe Surgery |
| Ludham Surgery | Paston Surgery | Thorpewood Surgery |
| The Market Surgery | Prospect Medical Practice | Upwell Health Centre and Welle Ltd |
| Howdale Surgery | Sheringham Medical Practice | Watlington Medical Centre |
| Litcham Health Centre | Southgate and Wootton’s | Wells Health Centre |
| Mundesley Medical Centre | St James Medical Practice | St Stephen’s Gate |
| Manor Farm Medical Centre | The Fakenham Medical Practice | Plowright Medical Centre |
| Grimston Medical Centre | Aldborough Surgery | Bacon Road / Taverham |
| The Burnham Surgery | Reepham & Alysham Surgery | Lakenham Surgery |
| Oak Street Medical Practice | UEA Medical Centre | Woodcock Road Surgery |
| Old Catton Medical Practice | Alexandra Road | Andaman Surgery |
| Attleborough Surgery | Beechcroft and Old Palace | Bridge Road |
| Bungay Medical Practice | Chet Valley Medical Practice | Church Hill Surgery |
| Cringleford Surgery | Cutlers Hill Surgery | East Harling Surgery |
| East Norfolk Medical Practice | Elmham Surgery | Falkland Surgery |
| Fleggburgh Surgery | Heathgate Medical Practice | Hemsby Medical Centre |
| High Street Surgery | Hingham Surgery | Hollies Surgery |
| Humbleyard Practice | Lawns Medical Practice | Lawson Road Surgery |
| Lighthouse Medical Centre | Lionwood Medical Practice | Long Stratton Medical Partnership |
| Longshore Surgery | Magdalen Medical Practice | Mattishall Surgery |
| Millwood Surgery | Old Mill Surgery | Orchard Surgery |
| Rosedale Surgery | School Lane Surgery | Shipdham Surgery |
| Solebay Health Centre | The Beaches Medical Centre | The Coastal Partnership |
| The Park Surgery | Theatre Royal Surgery | Toftwood Medical |
| Trinity Street Surgery | Victoria Road | Watton Medical Practice |
| West Pottergate Medical Practice | Windmill Surgery | Wymondham Medical Practice |

## Definitions / Context

* The GDPR provides the following rights for individuals: The right to be informed, the right of access, the right to rectification, the right to erasure, the right to restrict processing, the right to data portability, the right to object, rights in relation to automated decision making and profiling.
* Individuals have the right to access their personal data. This includes which health care professionals / care navigators have accessed their medical record.
* The right helps individuals to understand how and why you are using their data, and check you are doing it lawfully.
* This is commonly referred to as subject access.
* Individuals can make a subject access request verbally or in writing.
* You have one month to respond to a request.
* You cannot charge a fee to deal with a request in most circumstances.
* Responsibility for complying with a subject access request lies with the controller and not the processor

# Clarify the Request

There are a number of routes by which information can be sought from practices;

* Subject Access Request
* Access to Medical Reports
* Disclosures to third parties for which there is a legal exemption to data protection principles

## What Constitutes a Subject Access Request?

* A Subject Access Request involves an individual asking for information that is already held about them.
* An individual can ask for information themselves or they can instruct a solicitor or other representative to request the information

## What about Insurance Companies?

Insurance companies are not entitled to make a Subject Access Request.

The Access to Medical Reports Act entitled them, and other organisations like employers and the DVLA to tailored medical reports and a charge may be levied

Even if the insurance company or other organisation has the consent of the individual for copy records, they should be asked to request a report instead. The templates at Appendix A and B can support with this.

## What about requests for deceased patients’ records?

These are also NOT a Subject Access Request

Whilst requests for paper records relating to a deceased patient are usually referred to PCSE, digital records are expected to be provided by the practice under the Access to Health Records Act 1990.

You have 40 days to comply with a request under Access to Health Records Act 1990 and cannot charge. As with a subject access request, where you are seeking clarification, the time frame to respond does not start until this information is received.

The Act entitles two types of individuals to information held in a deceased patient’s record:

1. Executor or administrator of the estate
   1. They are entitled to the entire record from 1991 - death
2. Someone who has a claim arising from the death of the patient.
   1. They are only entitled to information relevant to their claim from 1991 – death

When can we withhold information?

Information must be withheld when:

1. There are explicit wishes of the deceased not to release their records (all or one particular section) to anyone / or specifically the requester
2. It is implied within the record the deceased did not want their records shared
3. The information was provided in a consultation that the patient expected the information would not be disclosed – such as an abortion.

When the person has a claim and is not the executor / administrator you can only provide information that is relevant to their claim. You must ask the requestor the purpose of their request and what the information is to be used for.

See Appendix M for template letter.

Seek DPO advice once you have received information from the requestor on why they require the information

The BMA guidelines tell us that while there is no legal entitlement based on having a claim or being an executor, health professionals have always had discretion to disclose information to a deceased person’s relatives or others when there is a clear justification.

“A common example is when the family requests details of the terminal illness because of an anxiety that the patient might have been misdiagnosed or there might have been negligence. Disclosure in such cases is likely to be what the deceased person would have wanted and may also be in the interests of justice.

Refusal to disclose in the absence of some evidence that this was the deceased patient’s known wish exacerbates suspicion and can result in unnecessary litigation.

In other cases, the balance of benefit to be gained by the disclosure to the family, for example of a hereditary or infectious condition, may outweigh the obligation of confidentiality to the deceased.”

So, if there is no evidence that the family member has a claim or is the executor to the estate, you will need to weigh up a few things;

1. Is there any evidence that the patient would not have wanted their relative to have information from their record?

2. Is the information going to be of benefit to the family?

3. The nature and volume of the information – this will determine how much of an interference into privacy that the disclosure represents

You will need to justify your response based on the above.

## What about Subject Access Requests via a Solicitor?

Solicitors can legitimately make a Subject Access Request on behalf of the patient.

However, ICO guidance states that *“if you think an individual may not understand what information would be disclosed, and in particular you are concerned about disclosing excessive information, you should contact the individual first to make them aware of your concerns”*

This means it is appropriate to check with the patient where there is a request, via a solicitor, for their full medical records.

Call the patient first to check;

* That they understand what ‘full record’ means
* That they understand that they can reduce what is sent because the information is for the patient NOT for the solicitor
* Check whether they want it sent straight to solicitor or to their home
* If they change or narrow the information to be send, respond to the solicitor using Appendix C.

**Possible Script when calling patient about a solicitor request**

*“Hi [insert patient name] I am just calling as we’ve received a request for your full medical records from [insert Solicitors]. As the request is for full records I wanted to see if you are aware that this includes sensitive information such as sexual and mental health as well as all childhood records. As this is a subject access request you have a right to decide what information you want, the Solicitors are acting on your behalf. Do you consent to them being provided with full records or is there anything you would like us to redact?”*

*“For example, we can redact sensitive information or information that isn’t relevant to your case or we can provide information only from specific time periods, alternatively we can send the record direct to you.”*

IMPORTANT CHANGE:

If a patient expresses that they **do not want the solicitor to have their full record** but feel have no choice but to allow access then, as a controller of the information you have an obligation to ***decline*** the request from the Solicitors based on the fact the consent is not valid.

See Appendix C for template letter to Solicitor

**What if I cannot make contact with the patient about a request made via a solicitor?**

Sometimes you may find that a patient does not answer their phone or call you back. We do not advise sending a letter, instead try to call three times within a one to two-week time frame and then if still no contact, decide whether to release the information to the Solicitor. In these instances, the ICO have clarified that you should provide the information to the third party as long as you are satisfied that they are authorised to act on the individual’s behalf.

Therefore, you can release to the Solicitor if:

* You have not heard back from the patient ***and***
* You have signed consent form from the patient that includes a statement stating they understand their rights under GDPR / DPA 2018.

## How do I Make Sure a Subject Access Request is Proportionate, and Can I charge?

At this point, we are advised that charging is only for very limited circumstances – repeat copies is main one

Data subjects are entitled to have all their information without having to explain why they need it

Sometimes, it might be clear that a solicitor is asking for too much information. For example, they have stipulated that it relates to a back injury sustained in a car accident.

In this circumstance – they are clearly asking for more information than necessary, so you should call the patient and explain exactly what “full record” means. For example, they may not understand that this includes information about STDs or other stigmatised information

You should explain that they have a right to limit what is sent to the solicitor

If they still wish to proceed with full record, you should do so, without any charge

The letter at Appendix C can be used for this purpose

The practice should always contact the patient to let them know what they are doing in relation to their request

Postage costs cannot be applied

## How Long do I have to Respond?

There is a one-month legal time frame for responding to SAR requests

However, the ICO says;

If you process a large amount of information about an individual, you can ask them for more information to clarify their request. You should only ask for information that you reasonably need to find the personal data covered by the request.

You need to let the individual know as soon as possible that you need more information from them before responding to their request. The period for responding to the request begins when you receive the additional information.

Therefore, when you are communicating with a solicitor for example, in relation to an excessive request, the legal time frame has not yet begun.

If you are being chased to respond and the requestor has not yet refined the request in a satisfactory way, see **Appendix D** for an appropriate response.

## How Should I Make Sure I Confirm Identity?

The identity of the person making the request must be validated, using “reasonable means”.

If you have doubts about the identity of the person making the request, you can ask for more information

However, it is important that you only request information that is **necessary** to confirm who they are. The key to this is proportionality

This may include information to ensure that a parent has legal guardianship

You need to let the individual know as soon as possible that you need more information from them to confirm their identity before responding to their request. ]]#

The period for responding to the request begins when you receive the additional information

## How Can I Save Time and Costs by Sending Information Digitally?

If the request is made electronically, the information **should** be provided in a commonly used **electronic** format;

1. Download the clinical records from the system directly into a Word document
2. Provide paper records and Word documents to clinician to highlight information that requires redaction
3. Redact third party information and scan paper records to PDF
4. Send email to patient to confirm they are happy to have information emailed and understand inherent risks with digital transfer, check email address and ask them to confirm receipt
5. Use NHS Digital encryption technique Appendix E
6. Send over several emails where necessary and include the recommended template at Appendix I

As long as the data subject has put in writing that they understand the inherent risks of using email, the practice can use this route

If you are required to provide paper copies, you can request collection, but you **cannot** insist

If a solicitor insists on paper copies (will not accept an email copy) you may charge a fee as can be viewed as excessive

The text at **Appendix E** should support this.

## What Information Should NOT be Included?

If the requested information contains information about a third party, and releasing it may breach your duty of confidentiality towards that person you should;

* Consider whether it is reasonable to ask their consent
* Consider whether it might be reasonable to release the information without their consent
* Redact the information related to the third party
* Names of professionals are generally not redacted
* Where an individual was present, there is no need to redact information (e.g. Mum and Son attend appointment together, there is no need to redact the other party since they are both already aware).
* It may sometimes be reasonable to release information about a third party – speak to your DPO if you have any concerns

There may be other exemptions to releasing information such as;

* Confidential references
* Publicly available information
* Crime and taxation (where releasing information would prejudice investigation or apprehension or offenders)
* Management information / forecasting
* Negotiations with the requester
* Legal advice and proceedings
* Social work records (where releasing information would prejudice social work activity)
* Health information (where releasing information would cause them harm – must be signed off by clinician)
* Information about third parties (not professionals)

Where these additional documents exist, it is important to;

* Acknowledge any confirmation from police / social work departments about whether releasing the information would prejudice their activities.
* Obtain confirmation from clinician about how health information might cause the individual harm
* Whilst you are obtaining these confirmations, if they are taking some time, you could release what you do have.
* Information must not be amended (beyond redaction) for the purposes of releasing under Subject Access Rights.
* When information is released, it is good practice to include;
  1. Information about what has been redacted and why (unless that would make them aware of the nature of the information that has been withheld)
  2. A link to <http://www.nhsconfed.org/acronym-buster> which explains abbreviations and terms
  3. A link to the practice transparency notice

If you believe that any of these exemptions are applicable, you may contact your DPO for support.

Please use the Checklist at Appendix L.

## Children and Young People’s Information

Children and Young People’s information warrants special protection because they are vulnerable.

The age at which children are considered competent to make decisions about their health information is younger than the age they are considered competent to make decisions about their health care (12)

Younger children might also be assessed as competent to make decisions about their information

Unless there are concerns, such as abuse, children’s decisions to keep information from their parents should be respected

If considered to be in best interests of the child (risk of significant harm), disclosure may take place without child’s consent

If a child makes a decision to disclose information and the parents object, parents should usually be informed that the disclosure will take place (unless this would breach duty of confidentiality to the child or young person).

If parents are requesting access to child’s record and the child is competent, access should only be granted with child’s consent

Access should not be granted to information where the child had an expectation of confidentiality (consider sexual health etc) unless in the best interests of the child (Speak with your DPO and consider redaction)

There is a specific exemption regarding child abuse data within a health record when the request comes from someone with parental responsibility. You should speak with your DPO to ensure the exemption is correctly considered as to the best interests of the child

## What about Requests from the Police?

See **Disclosing Information to the Police Protocol**

## What about Requests from the Armed Forces?

This is not a subject access request but should be treated as a request from a third party, Where you have signed consent from the patient to release the information you can provide the records to the Armed Forces.

Please remember:

1. Third party information should be redacted such as medical conditions of loved ones
2. If you have concerns that the patient may not realise the level of sensitive information held in their record you should contact the patient to discuss. If the patient asks for a copy of their records this should be managed as a standard Subject Access Request separate from the Armed Forces request and the information should not be sent to the Armed Forces until the patient has had a chance to review and change their consent.

What about Lasting Powers of Attorney?

A lasting power of attorney (LPA) gives a specified person/s (the attorney) legal power to act on another’s behalf (the donor). There are two types of LPA – Health and Welfare & Property and Financial Affairs. Each have a different function and validity.

**Health and Welfare LPA**

* Only legally effective when the donor is considered to have lost mental capacity
* Cannot override a donor’s wishes on things like DNR that were made in the donors lifetime.

**Property and Financial Affairs LPA**

* Legally effective from the moment it is signed.
* Gives attorney power to sell the donors property / manage bank accounts and set up care / annuity plans.
* Can have access to basic health data where necessary to decide such details as care home and care / annuity plans.

The donor can set restrictions on the attorney in the LPA documentation so it must always be checked in its entirety when releasing information under an LPA.

In addition, the donor can stipulate whether multiple attorneys can act independently or jointly. Where a donor stipulates that they must work jointly, the practice must gain the consent of all attorneys before releasing information to one.

An attorney must act in the best interests of the donor and keep their own affairs separate.

How to respond:

1. Request a copy of the LPA if not provided at the point of request
2. Check LPA to ensure it is the correct document, that it is signed and that there are no restrictions that affect the decision to release information.
3. If it is a Health and Welfare LPA check the mental capacity of the donor. If the patient has not yet lost capacity treat the request as a normal Subject Access Request and liaise with patient themselves to ensure they grant consent.
4. If it is a Financial and Property Affairs LPA ensure the information requested is only for the purposed stated above.
5. Comply with request as per SAR protocol.

What about the Serious Harm Test?

The serious harm test applies to any data where it is determined by a clinician that either the patient or a third party is likely to come to serious mental or physical harm if the information is released. This is not just some harm, for example, mild distress at reading notes a previous consultant wrote about the patient but must be ***serious*** ***harm*** such as undoing progress on a patient’s mental wellbeing. It also has to be likely; this could be evidenced from previous consultations or from police reports where it is documented the patient has a volatile temper.

This exemption can only be applied by certain individuals therefore if you believe information within a record may meet the above threshold you must note your concerns and ask one of the following to review the record;

* 1. Professional responsible for patient or;
  2. Where more than one suitable, the best suited or;
  3. Where no one suitable, the most qualified available

If unsure, please contact your DPO who will be able to support you.

# Appendix A BMI Letter to Patient About Insurance Company Request (language made more accessible to patients)

Dear [Patient],

I am writing to you as your insurance company has requested access to your full medical record with your consent – as enclosed.

Because the company has requested your full medical records, we want to check that you understand fully that these records may include extremely sensitive information which you may not expect to be shared or may not need to be shared as part of your application for insurance or the assessment of any claim.

The Information Commissioner’s Office (ICO) has recently written to the insurance industry to advise them to ask for a tailored medical report, rather than the full record because this is seen as requesting more information than is needed to process your claim.

We are therefore giving you a choice. We can provide you with a copy of your **full** medical records under a Subject Access Request so that you can choose whether you give your medical records to the insurance company in full or not.

Alternatively, you can ask your insurer to request a GP report from the practice which will only cover information in your record that is relevant to your application. Medical reports also exclude some information, in line with agreement reached with the insurance industry, such as genetic test results and certain information about sexually transmitted infections.

Please therefore let us know if you would like a copy of your full medical records under a subject access request or whether you plan to ask your insurer to seek a medical report. The BMA has let the Association of British Insurers (ABI) and insurance companies know that we are offering patients this choice. If your insurance company expresses concern about this please ask them to contact the ABI.

You do have a right to make a complaint to us or the Information Commissioner, if you feel your request has not been managed appropriately. You can call them on 0303 123 1113 or write to them at;

Information Commissioner's Office

Wycliffe House

Water Lane

Wilmslow

Cheshire

SK9 5AF

Additionally, you also have a right to seek to enforce your rights through the courts.

Yours faithfully

# Appendix B Letter to Insurance Company Making a SAR

Dear [Insurer],

I am writing to you in relation to your recent request for the full medical record of {XXX} in relation to an insurance claim.

You are likely aware that the Information Commissioner has been considering the emerging practice of insurance companies obtaining medical records by using patients’ subject access rights.

The ICO recognise that insurance companies may have a genuine need to review medical information about its customers when providing policies like life and critical illness cover.

To enable this, the Access to Medical Reports Act 1988 gives insurance companies a clear and established legal route to access medical information. The Act also gives appropriate safeguards to patients and respects the confidential relationship between a GP and their patient. Under the Act, a GP can provide a tailored report to an insurer, with their patient’s consent, setting out only the information the insurer needs.

However, some insurance companies have instead been looking to rely on the subject access right given to consumers under the Data Protection Act in order to obtain medical records, rather than a tailored GP’s report.

A subject access request gives an individual the right to ask for all of the personal information an organisation holds about them. This is a powerful right, designed to ensure individuals can access information held about them within a specified time period and at a nominal cost. This right was not designed to underpin the commercial processes of insurers.

By making a subject access request on a patient’s behalf, an insurance company may be provided with a patient’s entire medical record, including information that is not relevant for the purpose of underwriting a policy.

The ICO has recently written to the insurance industry to explain that they consider that the use of subject access rights in this way is inappropriate and an abuse of that right.

We have therefore written to the patient to advise them to choose whether they would prefer the entire record to be send directly to them or for a report to be produced by the practice.

Please let us know if you wish to refine your request directly with the practice.

Yours faithfully

# Appendix C Letter to Solicitors Subject Access Request Response (following a call to the patient)

Dear [insert Solicitor name]

Thank you for your request for access to information that [insert organisation name] holds about [insert patient name & DOB], which was received by us on [insert date of receipt]. This request has been processed in accordance with the Data Protection Act 2018.

As the requested is submitted in line with the patient’s own rights, intended to support the data subjects to obtain information held about them.

This means that, as a practice we must ensure that the patient is comfortable with what is being released. We have been advised recently by the Information Commissioner that, where a solicitor insists on information that the patient does not wish to release, the consent is no longer valid since it is not ‘freely given’ in accordance with the law.

As such, we have spoken with the patient to confirm whether they understood the request is for their entire medical record and that their consent is valid.

[From below, delete the number that is not applicable]

1. Please find enclosed;

* Full Medical Records
* Records dated between / from / to [insert dates]
* Records only relating to the accident / injury concerned
* Medical Records with some information redacted (this could be information that the patient feels is sensitive or not relevant to the case at hand)

1. After our conversation we have determined that we do not have valid consent to release this information to you. As a controller of this information we have an obligation to ensure the data subject fully understands and consents to their information being provided to yourselves under a subject access request. In this instance we do not believe the data subject fully understood that you would be receiving their entire medical record and that they felt they had no choice but to provide consent. As this does not constitute valid consent we are declining this request.

In line with our duty of confidentiality and data protection legislation we have completed the following;

\* Removed references to third parties where revealing that information would represent a breach of confidence and the individual has not consented

\* Provided this link to a glossary of terms to assist you to understand any coding or complex information <http://www.nhsconfed.org/acronym-buster>

For information about how we use your information and our sharing partners, please visit [insert link to practice transparency notice]

We hope that you have all the information that you require.

You do have a right to make a complaint to us or the Information Commissioner, if you feel your request has not been managed appropriately. You can call them on 0303 123 1113 or write to them at;

Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF

Additionally, you also have a right to seek to enforce your rights through the courts.

We would be happy to discuss this with you further if required.

Many Thanks

Sincerely,

[Caldicott Guardian}

# Appendix D Response to Being Prompted for Timely Response

As we have been trying to refine the request and identify exactly what information is required, the time frame for the SAR has not yet begun;

***If you process a large amount of information about an individual you can ask them for more information to clarify their request. You should only ask for information that you reasonably need to find the personal data covered by the request.***

***You need to let the individual know as soon as possible that you need more information from them before responding to their request. The period for responding to the request begins when you receive the additional information.***

https://ico.org.uk/for-organisations/guide-to-the-general-data-protection-regulation-gdpr/individual-rights/right-of-access/

XXXX surgery are committed to ensuring that they give effect to the rights of data subjects and so, as soon as you have clarified what you need as regards to a proportionate request, or provided payment for a request for full records, the practice will act promptly to provide what you need.

You do have a right to make a complaint to us or the Information Commissioner, if you feel your request has not been managed appropriately. You can call them on 0303 123 1113 or write to them at;

Information Commissioner's Office

Wycliffe House

Water Lane

Wilmslow

Cheshire

SK9 5AF

Additionally, you also have a right to seek to enforce your rights through the courts.

# Appendix E Using NHS Digital Encryption to send to non nhs.net

1. Send the recipient the guide for accessing encrypted emails for non-NHSmail users
2. Open a new email to the same recipient
3. Type [secure] at the start of the subject line. The word ‘secure’ is not case-sensitive but it must be surrounded by square brackets (no spaces)
4. Ask the recipient to reply to confirm receipt but do not include any patient-identifiable information at this time. This ensures there is no data breach if the recipient email is entered incorrectly.
5. When the recipient replies you can attach the patient-identifiable information, ensuring that [secure] remains at the start of the subject line

[Accessing Encrypted Emails Guidance](https://s3-eu-west-1.amazonaws.com/comms-mat/Comms-Archive/Accessing+Encrypted+Emails+Guide.pdf)

# Appendix F Sending SARs by Email

As you will be receiving an email copy of the personal data, that you have requested, we want to point out that whilst we endeavour to use the most secure route possible, we cannot **guarantee** that the message or attachment is virus free or will not been intercepted and amended – these are risks that are inherent to transmitting digital information.

Please reply to confirm that you are understand these risks and are happy to proceed.

# Appendix G Subject Access Request Refining Response.

This response can be used if it is necessary because the individual has not made it clear what information they require.

This should not be used as an approach to delay response.

Dear [insert requestor name],

Thank you for your request for access to information that [insert organisation name] holds about you, which was received by us on [insert date of receipt]. This request will be processed in accordance with Data Protection legislation.

In order for us to ensure that we give you the assistance and support to exercise your information rights, I want to clarify exactly which information you are seeking.

Please could you clarify whether you hope to receive [insert possible option] or [insert possible option].

Once we have this information, we will proceed with processing your request and aim to respond to you within one month.

If we are experiencing a back log, or your request proves to be complex, we may contact you to extend the deadline or to notify you with an explanation of any possible delay.

You do have a right to make a complaint to us or the Information Commissioner, if you feel your request has not been managed appropriately. You can call them on 0303 123 1113 or write to them at;

Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF

Additionally, you also have a right to seek to enforce your rights through the courts.

We would be happy to discuss this with you further if required.

Sincerely,

[Caldicott Guardian}

# Appendix H Subject Access Request Identification Validation

This response is to ensure that the individual’s identity has been validated. This should be through ‘reasonable’ means.

Dear [insert requestor name],

Thank you for your request for access to information that [insert organisation name] holds about you, which was received by us on [insert date of receipt]. This request will be processed in accordance with the Data Protection Act.

In order for us to ensure that we are not breaching our duty of confidentiality or data protection legislation, we need to verify your identity.

Please I ask that you provide the following;

[insert required evidence or third-party authorisation]

Once we have this information, we will proceed with processing your request and aim to respond to you within one month.

If we are experiencing a back log, or your request proves to be complex, we may contact you to extend the deadline or to notify you with an explanation of any possible delay.

You do have a right to make a complaint to us or the Information Commissioner, if you feel your request has not been managed appropriately. You can call them on 0303 123 1113 or write to them at;

Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF

Additionally, you also have a right to seek to enforce your rights through the courts.

We would be happy to discuss this with you further if required.

Many Thanks

Sincerely,

[Caldicott Guardian}

# Appendix I Subject Access Request Response

This response should be used for when you are providing a response. You should include an explanation of difficult terms.

If information contained within the record has the potential to cause the individual harm, this should be raised with the DPO.

Dear [insert requestor name],

Thank you for your request for access to information that [insert organisation name] holds about you, which was received by us on [insert date of receipt]. This request will be processed in accordance with the Data Protection Act 2018.

We enclose / attach the requested information.

In line with our duty of confidentiality and data protection legislation we have completed the following;

\* Removed references to third parties where revealing that information would represent a breach of confidence and the individual has not consented

\* Provided this link to a glossary of terms to assist you to understand any coding or complex information <http://www.nhsconfed.org/acronym-buster>

For information about how we use your information and our sharing partners, please visit [insert link to practice transparency notice]

We hope that you have all the information that you require.

You do have a right to make a complaint to us or the Information Commissioner, if you feel your request has not been managed appropriately. You can call them on 0303 123 1113 or write to them at;

Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF

Additionally, you also have a right to seek to enforce your rights through the courts.

We would be happy to discuss this with you further if required.

Many Thanks

Sincerely,

[Caldicott Guardian}

# Appendix I (2) Subject Access Request Response (Filtered to Only Practice Additions)

This response should be used for when you are providing a response and your response includes only practice entered information rather than also including other contributors such as community. You should include an explanation of difficult terms.

If information contained within the record has the potential to cause the individual harm, this should be raised with the DPO.

Dear [insert requestor name],

Thank you for your request for access to information that [insert organisation name] holds about you, which was received by us on [insert date of receipt]. This request will be processed in accordance with the Data Protection Act 2018.

We enclose / attach the requested information.

In line with our duty of confidentiality and data protection legislation we have completed the following;

\* Removed references to third parties where revealing that information would represent a breach of confidence and the individual has not consented

\* Provided this link to a glossary of terms to assist you to understand any coding or complex information <http://www.nhsconfed.org/acronym-buster>

Please be aware that we have provided the ‘core’ record. This is information recorded into your record by the practice. We are also able to see information recorded by other providers such as;

Community Providers

Social Care Teams

XXXXX

XXXXX

XXXXX

You may wish to contact these organisations to get a complete view of what the practice can see in relation to your health and social care.

For information about how we use your information and our sharing partners, please visit [insert link to practice transparency notice]

We hope that you have all the information that you require.

You do have a right to make a complaint to us or the Information Commissioner, if you feel your request has not been managed appropriately. You can call them on 0303 123 1113 or write to them at;

Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF

Additionally, you also have a right to seek to enforce your rights through the courts.

We would be happy to discuss this with you further if required.

Many Thanks

Sincerely,

[Caldicott Guardian}

# Appendix J Subject Access Request Delay (missed legal deadline)

This response can be used where the legal deadline has been missed. This is now an information breach and so it should be recorded as such and discussed with the DPO.

Dear [insert requestor name],

Thank you for your request for access to information that [insert practice name] holds about you, which was received by us on [insert date of receipt].

At present we have [insert number of requests] awaiting resolution and it is taking some time to work through these and provide the information required.

We anticipate that we will be able to respond by [insert date]

We sincerely apologise for any issues or frustration this may cause you and assure you that we are working hard to provide you the information you have requested. If you only require a part of your record, please let us know as it will help us to respond sooner.

You do have a right to make a complaint to us or the Information Commissioner, if you feel your request has not been managed appropriately. You can call them on 0303 123 1113 or write to them at;

Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF

Additionally, you also have a right to seek to enforce your rights through the courts.

We would be happy to discuss this with you further if required.

Many Thanks

Sincerely,

[Caldicott Guardian}

# Appendix K Request Matrix

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
|  |  |  |  |  |
| **DESCRIPTION** | **Subject Access Request** | **Non-healthcare activity - chargeable** | **Access to Medical Records Act** | **Other** |
| Shotgun Licence |  |  |  |  |
| Driving Licence |  |  |  |  |
| Passport - verify identity |  |  |  |  |
| Fitness to: letter, certificate, attend gym |  |  |  |  |
| Holiday Cancellation Certificate - Complex |  |  |  |  |
| Holiday Cancellation Certificate - Medium |  |  |  |  |
| Holiday Cancellation Certificate - Simple |  |  |  |  |
| Copy of Sick Note |  |  |  |  |
| Letter request |  |  |  |  |
| Sick Note for School (private paper certificate - no charge) letter |  |  |  |  |
| To Whom It May Concern letter: Simple One Liner |  |  |  |  |
| To Whom It May Concern letter: Medium |  |  |  |  |
| To Whom It May Concern letter: Lengthy |  |  |  |  |
| Private Treatment Verification |  |  |  |  |
| Medication List for patients travelling |  |  |  |  |
| Letter from GP to go with medication list for travelling |  |  |  |  |
| Reports for employers |  |  |  |  |
| Reports for Housing |  |  |  |  |
| Request from solicitor acting on behalf of patient |  |  |  |  |
| Request from solicitor NOT acting on behalf of patient |  |  |  |  |
| Claims company acting on behalf of patient |  |  |  |  |
| Insurance company with consent from patient but acting for their own commercial purposes i.e. the patient is trying to claim and insurance company validating the claim |  |  |  |  |
| Police asking for records in relation to a crime |  |  |  |  |
| Army requesting medical records |  |  |  |  |
| Court orders records to be disclosed |  |  |  |  |
| Patient / their rep requests copy of all or some of their records |  |  |  |  |

# Appendix L – SAR Checklist

Administrative Team Section

|  |  |
| --- | --- |
| Details of the access request (date, internal reference – no personal data)? |  |
| Has the individual made it clear what information they require? If not, you may reply to clarify the request.  Detail what information has been requested and ensure that it matches what has been collated. |  |
| Has the individual’s identity been verified through ‘reasonable means’?  Has any third-party authority been established, i.e. written permission from individua, parental custody? |  |
| Where the individual is a child, identify what consideration been given to whether the maturity / capacity of the individual and whether they have been contacted to ensure they are comfortable with release? |  |
| Where the request is made by a solicitor and appears to be excessive for the identified purpose, has an attempt been made to narrow the request with the patient? |  |
| Has a response been provided advising of the legal timeframe and the rights of the individual? |  |
| Identify which systems / information assets have been explored to ensure a complete response? Are we comfortable that all relevant systems have been explored?  For example, clinical system, CCTV, paper records. |  |
| Describe how the information been scrutinised to remove any reference to third parties where they would not reasonably consent and releasing the information would breach their confidentiality. |  |
| Identify what information has been highlighted to the clinician undertaking final review, where you believe this information ***may*** meet the ‘serious harm’ threshold for health. |  |
| Identify what information has been redacted, where this information meets the ‘serious harm’ threshold for social work. Confirm that you have liaised with social work colleagues to confirm this exemption. |  |
| Identify what information has been redacted, where this information relates to crime and taxation. Confirm that you have liaised with police / HMRC colleagues to confirm this exemption. |  |
| Identify what information has been redacted, where this information relates to child abuse. Confirm that you have liaised with child protection colleagues to confirm this exemption. |  |
| Confirm that the following elements been included in the response;   * NHS Jargon buster * Link to privacy notice * Confirmation of why some information has been redacted (this should not be included when doing so would prejudice an investigation) |  |
| Has or will the response be provided within a month? If not, was a letter sent to the individual explaining the delay and assuring of a speedy response? |  |
| If the request was made digitally, has the response been made digitally using the process described in the SAR protocol? |  |
| Notes and Escalations to clinician undertaking final sign off |  |

Clinician Review Section

|  |  |
| --- | --- |
| Name of Clinician and Date of Review |  |
| Confirm that you have reviewed the health information highlighted to potentially cause ‘serious harm’.  Do you believe the information is ‘likely to cause serious harm to the physical or mental health of the requestor or others if released’?  If so, please detail your rationale. |  |
| Notes and Comments to the Admin Team |  |

# Appendix M – Access to Health Records Letter:

Thank you for coming back to [insert practice] with the information requested. I understand that this must be frustrating and I want to assure you that we are not trying to obstruct you from accessing [insert patient name] record. As a GP Practice we have a duty of confidentiality to all our patients and this continues after their death. In order to put aside that duty to release information, even to close family relatives, we have to be sure that there is a legal or reasonable reason to do so.

As you have stated that there is no representative of [insert patient name] estate / you are not the representative we must now consider whether we can set aside the duty of confidentiality another way.

As such, please could you answer the following questions to aid us in our decision.

1. What specific information you are requesting, for example, are you seeking the information relating to their death or further back?
2. Why do you require this information?
3. For what purpose will this information be used?

Sincerely,