Essex Partnership University
NHS Foundation Trust

ACCESSING HEALTH RECORDS PROCEDURE

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PROCEDURE SUMMARY

The purpose of this Procedural Guideline document is to ensure that all staff understand the procedures for patients/clients and their representatives to access records. This is required in order to ensure safety of confidential information.

The Trust monitors the implementation of and compliance with this procedure in the following ways:

The Access to Records process is monitored via the Information Governance Toolkit and assurance reports are submitted to the Information Governance Steering Committee.

Services	Applicable	Comments
Trustwide	✓	

The Director responsible for monitoring and reviewing this procedure is Executive Chief Finance Officer

ESSEX PARTNERSHIP UNIVERSITY NHS FOUNDATION TRUST

ACCESSING HEALTH RECORDS PROCEDURE

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Assurance Statement

The purpose of this Procedural Guideline document is to ensure that all staff understand the procedures for patients/clients and their representatives to access records. This is required in order to ensure safety of confidential information

1.0 INTRODUCTION

1.1 Patients/clients, or an authorised representative, have the right of access to their records under the Data Protection Act 2018. The Act refers to all records held relating to a living person whenever made, where the patient/client can be identified by the records.

1.2 The records of a **deceased person** remain under the Access to Health Records Act 1990, whereby only records made after 1 November 1991 may be accessed.

1.3 Records made for research purposes, where the patient/client is not identifiable, or in the course of a criminal investigation are not included.

1.4 The Medical Reports Act 1988 gives individuals the right to have access to reports, relating to themselves, provided by medical practitioners for employment or insurance purposes.

1.5 An individual does not have the right to access information recorded about someone else unless they are an authorised representative or are acting on behalf of the deceased, in line with guidance in the Access to Records Act 2000.

1.6 The Trust is not required to respond to requests for accessing health records, unless it is provided with sufficient details to enable the location of information, and to satisfy itself as to the identity of the individual making the request. .The team will take every precaution that is reasonable to establish that requests are, or are not, legitimate requests for access to health records. If there is some concern as to the legitimacy of the request, the team will inform the individual and ask for further clarification.

1.7 **Police Application:** The Police **DO NOT** have an automatic right to access. They have to apply under the Data Protection Act 2018 or seek a Court Order. However they may request a voluntary disclosure and whilst health professionals have the power to disclose there is no obligation to do so. In such cases health professionals may only disclose information where the patient has given consent, or there is an overriding public interest. Disclosures in the public interest based on the common law are made where disclosure is essential to prevent a serious threat to public health, national security, the life of the individual or a third party, or to prevent or detect serious crime, e.g. murder, manslaughter, rape, treason, kidnapping and abuse of children or other vulnerable people etc. Please refer to the Trust's

Head of Electronic Systems & Records - Records Manager - for further consultation.

1.8 **Patient/Client Application:** This procedure document must be read by any member of staff who is, or will become, involved in the process of accessing patient/client records at the request of the patient/client or his/her authorised representative.

1.9 This procedure covers all notes related to all aspects of health care provision.

1.10 This procedure must be followed by all members of staff at all times.

1.11 Access to records must, wherever possible, be on an informal basis. Wherever possible informal access to records is encouraged with the patient/client and health professional discussing the contents of the record as it is made. If more than one health professional is involved in the care and treatment of the patient/client, it may be necessary to discuss with all those involved if possible. However, in the absence of the relevant staff, this decision will be taken by the Manager* for the service area in consultation with the Consultant Psychiatrist where a Consultant Psychiatrist is involved in the patient's care as to how much, if any, of the record can be accessed. It is a legal requirement for the Trust to consult with the appropriate professional before giving disclosure.

Informal access is still subject to the non-disclosure of information, which would:

- be seriously harmful to the physical or mental health of the data subject or a third party if seen.
- breach the confidence of a third party or parties (i.e. non health care professional).

If copies of the records are required, a formal application to the relevant access to records team will need to be made.

**(Manager is a Team Manager, Consultant Practitioner, Matron or Head of Department)*

1.12 Under the Data Protection Act 2018, former patient/clients now living outside of the United Kingdom have the same rights to apply for access to their UK health records and their request will be treated in the same way as a request made from within the UK.

1.13 For the specific purposes of Access to Records legislation, Sharing of Information procedural guidelines and the Data Protection Act 2018 "Health Professional" includes the following:

- Registered Medical Practitioner
- Dentist
- Optician (Optometrist or Ophthalmic Medical Practitioner
- Pharmacist
- Registered Nurse

- Midwife or Health Visitor
- Registered Chiropodist
- Dietician
- Occupational Therapist
- Orthoptist or Physiotherapist
- Psychologist
- Child Psychotherapist or Speech Therapist
- Art & Music Therapist employed by an NHS body
- Scientist employed by such a Head of Department
- Seconded Social Workers
- CMHTs

This list is not exhaustive....

1.14 Solicitors who have the written consent of their client/patient to represent them have the choice of accessing medical records for the purposes of preparing for mental health tribunals by the route described below, or by an expedited process specifically for this purpose as described in section 16.0.

1.15 Staff **do not** have an automatic right to look at their own health records or those of colleagues, friends and family, they too must follow this procedure, failure to do so will be considered an Information Governance breach.

1.16 Who can make an application to access records?

- Data Subjects (Patients / Clients)
- Relatives and carers
- Legal Representatives (Solicitors)
- Police
- Statutory organisations
- Non-statutory organisations
- Other health organisations or health care providers

1.17 All requests for accessing records in line with this procedure must be directed to the Access to Records team Email epunft.accesstorecords@nhs.net or by post to Langdon Ward, Mental Health Unit Basildon.

2.0 DUTIES

2.1 The accountability for the implementation and operation within the organisation of the Access to Records Procedures and management lies with the Director of Information Technology & Telecoms. The day-to-day responsibility for the management of the process lies with the Trust's Head of Electronic Systems & Records / Records Manager.

3.0 DEFINITIONS

3.1 Within the Data Protection Act 2018, a health record is defined as "a record consisting of information about the physical or mental health, or condition, of an identifiable individual, made by, or on behalf of, a health professional, in connection with the care of the individual". This relates to living individuals.

3.2 A health record can be in computerised/electronic and/or manual form. It may include such documentation as hand written clinical notes, letters to and from other health professionals, laboratory reports, radiographs, patient medication records and other imaging records, printouts, photographs, videos and tape records.

3.3 Data Protection legislation is not confined to health records held for National Health Service purposes. It applies equally to all relevant records relating to living individuals; this includes the private health sector and health professionals private practice records.

3.4 The Legal Definition of Third Party Information is: *"information about individuals other than the patient/client – such as relatives or neighbours, or which identifies such individuals as the source of information about the patient/client*."

3.5 Exemption – Is defined as "*a reason why certain information can be legitimately withheld from disclosure under the terms of the Act*".

4.0 WHO CAN APPLY FOR ACCESS

4.1 The following people may make an application for access:

4.1.1 **Over 16 years of age** – The patient/client, if aged over 16 either via a personal request or through advocacy/solicitors/insurance and is supported by a signed authority of consent.

4.1.2 **Under 16 years of age** – The patient/client aged under 16 if, in the opinion of the health professional, they are Gillick competent and meet the Fraser guidelines to make decisions regarding making an application for access to their records.

4.1.3 The parents of the patient/client under 16 years old, who is competent under the Fraser/Gillick guidelines, do not have an automatic right to access. In these circumstances the consent of the young person must be sought before a person with parental responsibility can be given access to the child's health records.

4.1.4 **Not Gillick / Fraser competent** – If a young person is assessed as not being competent to either having access or consenting to disclosure to the parent/guardian, it is likely that consent for disclosure will be decided by those with parental responsibility. If a child raises concerns about this disclosure albeit without being Gillick/Fraser competent the clinician must consider carefully the child's best interests and act accordingly, ensuring the Trust's Caldicott Guardian is consulted.

4.1.5 **Under 12 years of age** – It is generally considered that a child under 12 years old will not have the ability to make a decision about their treatment; likewise, they will be unlikely to understand the pros and cons of disclosure of their records to parents/guardians. Decisions therefore must considered carefully and made in the child's best

interest taking into account any refusal of disclosure made by the child. If a clinician has any concerns regarding disclosure they must consult the Head of Electronic Systems/Records - Records Manager/Caldicott Guardian.

In all of the above cases, good practice dictates that the young person must involve parents or those with parental responsibility, in their treatment where appropriate.

4.1.6 It is vital that all decisions, assessments and the voice of the young person are clearly recorded in the young person's records. Reference: Gillick Fraser Competence: http://www.bailii.org/uk/cases/UKHL/1985/7.html

4.1.7 A person able to show documented proof of a claim arising out of the death of the patient/client. In this case access must only be given to information relevant to the claim.

4.2 Oral requests for access for records must be noted in the health record and encouraged whenever possible. It will be at the discretion of the manager of the healthcare professional/consultant to whom the oral application is made, whether or not to release the records, bearing in mind the restraints outlined in this procedure. If an oral request is denied by the manager/consultant, a formal written application must be made.

4.3 Written applications not made on the official form (How to Access your Personal Health Records Leaflet) will be accepted as long as they contain sufficient information for finding the record and that the person making the application is entitled to do so. Use of the Access to Records Leaflet should be encouraged. Requests can be made electronically via email to epunft.accesstorecords@nhs.net**.** All requests to include the relevant identification documentation. An acknowledgement will be sent. Patients who are currently admitted to the ward will not need to provide identification documentation.

4.4 Patients/clients who are incapable of understanding their application must apply through an authorised representative. Suitability to represent normally depends on the patient/client's expressed knowledge and consent. Where the patient/client has died, or is not competent to give consent - for example due to mental illness or disability, or because they are too ill at the time - it will be necessary to establish that the applicant is suitable giving particular regard to the confidentiality of the patient/client and any known wishes expressed by the patient/client that information should not be disclosed to third parties.

4.5 In the absence of there being a person who is enabled by the Mental Capacity Act 2005 to make decisions on behalf of the patient/client, e.g. a deputy appointed by the Court of Protection will have the responsibility of the mental health professional and/or Manager or Consultant Psychiatrist and be involved in the care of the patient/client to determine whether it is in the best interest of the patient/client to release such information.

4.6 Independent Mental Health Advocates (IMHA) may require records relating to the patient/client for inspection. However, where the patient/client has capacity, the IMHA can only access the records if the patient/client has consented. If the patient/client lacks capacity and consent is refused by the holder of a Lasting Power of Attorney (for Health and Welfare) or a deputy appointed by the Court of Protection then records must not be disclosed. Otherwise if the patient/client lacks capacity but it is appropriate and the records are relevant then they must be disclosed to the IMHA by the relevant health professional. Legal advice should be sought if further clarification is needed.

4.7 There are cases where an individual does not have the mental capacity to manage their own affairs. Although there are no specific provisions in the GDPR, the Mental Capacity Act 2005 or in the Adults with Incapacity (Scotland) Act 2000 enabling a third party to exercise subject access rights on behalf of such an individual, it is reasonable to assume that an attorney with authority to manage the property and affairs of an individual will have the appropriate authority.

The same applies to a person appointed to make decisions about such matters:

- in England and Wales, by the Court of Protection;
- in Scotland, by the Sheriff Court; and
- in Northern Ireland, by the High Court (Office of Care and Protection).

There is a distinction to be drawn between making decisions about care and treatment and making a SAR. Making decisions about treatment and care does require 'health and welfare' but making a SAR for health records does not. If someone has the authority to manage the property and affairs of an individual, they have the appropriate authority to make a subject access request on their behalf.

4.8 "Next of Kin" does not have formal legal status. A next of kin cannot give or withhold their consent to the sharing of information on a patient/client's behalf. A next of kin has no rights of access to medical records.

5.0 ACCESS TO HEALTH RECORDS ACT 1990

5.1 The Access to Health Records Act 1990 (AHRA) allows a patient/client's personal representative and any person who may have a claim arising out of the patient/clients death the right to apply for access to information contained within a deceased person's health record.

5.2 A patient/client's personal representative is the executor or administrator of the deceased person's estate or lasting or enduring power of attorney. They have an unqualified right of access to the deceased patient/client's record and need give no reason for applying.

5.3 Individuals other than the personal representative have a legal right of access under the Act only where they can establish a claim arising from a patient/client's death and where they can demonstrate a legitimate purpose and strong relationship to the deceased patient/client. They must also provide

a reason for the request and where possible, specify the parts of the deceased health record they require. In cases where it is not clear whether a claim arises the Trust's Head of Electronic Systems/Records - Records Manager must be consulted.

5.4 Relatives, friends and carers may have a range of important reasons for requesting information about deceased patient/clients. For example, helping a relative understand the cause of death and actions taken to ease suffering of the patient/client at the time may help aid the bereavement process, or providing living relatives with genetic information about hereditary condition may improve health outcomes for the surviving relatives of the deceased. In some cases the decision about disclosure may not be simple or straightforward and the Trust's Caldicott Guardian or Trust's Head of Electronic Systems/Records - Records Manager must be consulted.

5.5 Record holders must satisfy themselves as to the identity of applicants who will provide as much information to identify themselves as possible. Where an application is being made on the basis of a claim arising from the deceased's death, applicants must provide evidence to support their claim. Personal representatives will also need to provide evidence of identity.

6.0 ACCESS TO MEDICAL REPORTS ACT 1988

6.1 The Access to Medical Reports Act 1988 governs access to medical reports made by a medical practitioner who is, or has been, responsible for the clinical care of the patient/client for insurance or employment purposes. Reports prepared by other medical practitioners, such as those contracted by the employer or insurance company, are not covered by the Act. Reports prepared by such medical practitioners are covered by the Data Protection Act 2018.

6.2 A person cannot ask a patient/client's medical practitioner for a medical report on him/her for insurance or employment reasons without the patient/client's knowledge and consent. Patient/clients have the option of declining to give consent for a report about them to be written.

6.3 The patient/client can apply for access to the report at any time before it is supplied to the employer/insurer (subject to certain exemptions covered in paragraph 6.6 below). The medical practitioner will not supply the report until this access has been given, unless 21 days have passed since the patient/client has communicated with the doctor about making arrangements to see the report. Access incorporates enabling the patient/client to attend to view the report or providing the patient/client with a copy of the report.

6.4 Once the patient/client has had access to the report, it will not be supplied to the employer/insurer until the patient has given their consent. Before giving consent the patient/client can ask for any part of the report that they think is incorrect to be amended. If an amendment is requested, the medical practitioner will either amend the report accordingly, or, at the patient/clients request, attach to the report a note of the patient's views on the part of the report which the doctor is declining to amend. Patients/clients will need to

request amendments in writing. If no agreement can be reached, patients/clients also have the right to refuse supply of the report.

6.5 Medical practitioners must retain a copy of the report for at least 6 months following its supply to the employer/insurer. During this period patients/clients continue to have a right of access for which the medical practitioner may charge a reasonable fee for a copy.

6.6 The medical practitioner is not obliged to give access to any part of a medical report whose disclosure would in the opinion of the practitioner:

- cause serious harm to the physical or mental health of the individual or others, or;
- indicate the intentions of the medical practitioner towards the individual, or;
- identify a third person, who has not consented to the release of that information or who is not a health professional involved in the individual's care.

7.0 INFORMATION TO BE WITHHELD

7.1 The Trust may withhold any information that the professional/manager believes is likely to cause serious harm to the mental or physical health of the client, or any other person.

7.2 Information concerning another individual (third party) or identifying him or her as a source of information about the patient/client (other than a health professional, e.g. Dentist or other Medical Consultant acting in that capacity) who could be identified by that information, unless their permission is obtained.

7.3 If the manager has concerns regarding release/or withholding certain documents, liaison with the Consultant/Consultant Psychiatrist/Doctor /Community Matron where involved in the care of the patient/client is recommended to decide on the best course of action. Any reference found in the notes relating to another person other than the client or a clinician may need to be obscured / redacted or consent sought. If further concerns are expressed this will be referred to the Trust's Head of Electronic Systems/Records - Records Manager for advice.

7.4 Information that the patient/client understood would be kept confidential cannot be given to a person representing the patient/client unless permission is given by the patient/client where appropriate.

7.5 Records compiled as part of a criminal investigation maybe subject to release under the Data Protection Act 2018 and advice must be sought from the Trust's Head of Electronic Systems & Records / Records Manager .

7.6 Information is not be disclosed if the records are restricted by order of the Courts or in the case of children's records, disclosure is prohibited by law, e.g. adoption records.

7.7 Information must be redacted as much as possible rather than withholding.

8.0 DENYING ACCESS

If it is decided that access is denied (when the person would normally have the right of access):

8.1 A note to this effect must be made on the record along with the reasons for denying access. (See also section 14 - Monitoring access to Records.)

8.2 The application form must be returned to the manager and the relevant director should be informed. A meeting must be held between the Manager and the Trust's Caldicott Guardian to explore the grounds for denying access.

8.3 The Trust's Head of Electronic Systems & Records / Records Manager will be responsible for arranging a meeting between the appropriate health professional, Service Manager/Director, and the Trust's Caldicott Guardian to explain the reasons why access has been denied and the requirements under the Act. The Caldicott Guardian will confirm the outcome of this meeting in writing.

8.4 The Trust's Head of Electronic Systems & Records / Records Manager will advise the patient/client on how to appeal against the decision. A patient/client may also apply to the Information Commissioner who has the power to have the Trust amend a record of any inaccurate information. They may also appeal through the Courts should the Trust fail to comply with the terms of the Act.

8.5 The complainant has the right to take their complaint at any stage to the Information Commissioner who is the compliance lead on Data Protection and contact details for the Information commissioner will be provided.

9.0 TIMESCALES & CHARGES

9.1 Requests for access to records have to be completed at the latest within 1 calendar month of the receipt of an application when received once all the relevant evidence/documents have been received by the Access to Records Department, Head of Electronic Systems & Records / Records Manager. You must calculate the time limit from the day after you receive the request (whether the day after is a working day or not) until the corresponding calendar date in the next month. If the person has been seen within 21 days that information must be provided to them within 21 days of receipt of the application.

9.2 Failure to comply with a request for access to records, without valid justification is treated as a serious matter and could be investigated by the Information Commissioner.

9.3 If more information is needed, in order for the application to be processed, this must be requested as soon as possible after receiving the original application.

9.4 There is no charge for individuals requesting copies of their own records as agreed by the Trust. However, where the request is manifestly unfounded or excessive the Trust may charge a "reasonable fee" for the administrative costs of complying with the request – a maximum of £50 (a maximum of £10 if all the information is held electronically)

10.0 ACCESS TO RECORDS PROCEDURE

10.1 The procedure for accessing records for the Trust is detailed below. Staff must follow this procedure upon receipt of an access to records application.

10.2 If the application is made by a letter, the letter must clearly identify the patient/client in question and the records required, including the following details:

- Full name – including previous names
- Address – including previous address(es)
- NHS number (if available)
- Dates of records required
- Date of birth
- Mental Health or Community records

10.3 Where an application is made on behalf of an individual, a signed form of consent must accompany the written application, this could include requests from relatives and carers and legal representatives.

10.4 It is the responsibility of the relevant Managers to ensure that all the records requested for access are released within the designated timeframe, as this is a legal requirement.

10.5 Where the only professional from the team who had clinical knowledge of the patient/client has left the Trust, the Team Manager will make a decision on whether access can be granted. In the case of medical records, the new Consultant Psychiatrist responsible for the catchment area would make a decision whether access can be granted.

10.6 Statutory organisations are government managed bodies that can have a claim or entitlement to access an individual's records. Certain statutory organisations do not have to gain consent, nor in some circumstances do the records need to be scrutinised.

The following organisations **do not** require consent

Organisation	Do notes need to be redacted Yes or No
Her Majesty's Coroner	No
UK Immigration Services	Yes
Judicial Reviews	No
The Child Protection Agency	No
By order of a civil or criminal court	Yes – unless they have

judge on behalf of the court or other parties such as the police.	asked for them un-redacted
Another NHS Trust	Yes – unless they have asked for them un-redacted
NHS England death in prison	No
The Care Quality Commission	No

The following organisations **do** require consent **

Organisation	Do notes need to be redacted Yes or No
The Office of the Parliamentary and Health Service Ombudsman	No
The Office of the Information Commission	No
The Clinical Commissioning Group	Yes
The General Medical Council (GMC)	Yes ** unless they are exercising Section 35A
Nursing & Midwifery Council	Yes
Royal College of Nursing	Yes
Criminal Injuries Compensation Authority	Yes
Other Health Organisations	Yes
DWP – The Benefits Office	Yes
The Pensions Agency	Yes
Housing Agency	Yes
Local authorities	Yes
Allied Health Professionals Council	Yes
Ministry of Defence	Yes
Criminal Compensation Authority	Yes
Police	Yes
British Transport Police	Yes
Probationary services	Yes
NHS Resolution	Yes

10.7 Non-statutory organisations are either privately funded or voluntary run agencies and consent must be established in order for them to access the record. The records must be reviewed / scrutinised and the agency must proceed through the proper process.

- Advocacy Services
- The Citizens Advise Bureau
- Solicitors

10.8 All notes that are leaving the organisation must be scrutinised prior to release.

11.0 PROCEDURE

11.1 The Trust has produced a standard leaflet entitled 'How to Access to Your Personal Health Records' which offers a brief outline of the Act, and includes an application form. These leaflets are published in English however translations into any one of over 160 languages are available through the Trust's translation service – Language Empire.

11.2 On receipt of a signed and dated application form, application letter or email, it must be sent immediately to the Access to Records Department where it will then be processed and an acknowledgement letter will be sent to the applicant within 3 working days. 2 forms of ID will be required to provide assurance to the organisation that identification can be proven. This will involve proof of name and a proof of address. All managers of the specific service area involved will also be notified of this application, requesting their authorisation for release of their records. (Copy attached as Appendix 1).

- All requests are logged onto the Trust's database, which will generate a reference number.
- The request can be tracked ensuring the relevant timescales are met.
- This database will be interrogated for IGSC reporting.

11.3 Where the applicant has had contact with more than one team or service this will be identified by the Access to Records team in liaison with the appropriate Team Manager for the service area and information obtained from the applicant as to which specific records they want access to.

11.4 Co-ordination of the application, through to closure will be carried out by the Access to Records team

11.5 The Trust's Records Manager will retain the application. A copy of the application will be forwarded to the appropriate Manager, and the professional concerned (see Appendix 1). The copy sent to the professional will identify which personnel/teams have been requested to provide access in the case of the applicant having several records.

11.6 It is a provision of the Data Protection Act and the Access to Health Records Act that a suitably qualified person must review / scrutinise the records prior to their release unless exemptions apply. This is to ensure that information relating to a third party or material that would be seriously harmful to the physical or mental health of a patient / client or a third party is removed prior to disclosure.

11.7 In the **(South Locality)** it has been agreed for those records going to a Consultant will be reviewed by a trained dedicated staff member within the Access to Records Team who will identify all third party information. The consultant will need to review the findings, check for any harmful information and confirm their agreement.

11.8 In the **(North Locality)** the records are sent over to the Community Service Manager's PA who will allocate accordingly to staff members. These staff members are all clinical band 6 and above.

- The scrutiniser will carry out a preliminary investigation to gather information to support the scrutiny. Liaising with other scrutinisers that are involved in the process, ensuring all pertinent information about the patient / client is shared.
- All scrutinised records are sent back to Access to Records team for release.

11.9 **(South Locality**) - **Records made by all Team Members other than Doctors:** Each team will vet all their records before they are released, in order to identify whether there is any information which can not be disclosed e.g. third party information. The individual responsible within each team will be the lead professional and/or the team manager. He or she must check whether records are compliant before disclosure and will complete the release form (Appendix 1).

11.10 **(South Locality)** - **Records made by Doctors:** The patient/client's consultant psychiatrist will be responsible for records made by medical members of the team only unless all patient/clients of the relevant team are under the care of one consultant and the consultant has agreed that he/she would make all decisions on release of records themselves. Any part of the record not to be released must be clearly identified.

11.11 Once access is approved. All records will then be sent to the applicant within the 1 calendar month time limit. In any event of a likely delay, the Records Manager or Clinical Coding Manager will be notified within 5 days of the time limit so as the applicant can be notified in writing by the Access to Records Department

11.12 If ID is not received within 2 weeks of the request the request will be closed and the requester informed.

11.13 All records removed from their archive boxes must be tracked using the Trust's electronic information systems. indicating the date, recipients name and location of where the records have been sent. Once the records have been returned the electronic information systems will be updated accordingly.

12.0 GRANTING ACCESS

12.1 If the applicant wishes to view their records and not have copies then the Access to Records Team will contact the appropriate manager concerned to arrange an appointment. This is pertinent to Mental Health Act Review Tribunals. Solicitors must be accompanied by a Trust member of staff during the process of access.

12.2 If some of the information within the record is excluded from access, an extract of the record, containing all the information that has been withheld will be compiled. This will be done by the person appointed by the Trust to deal with access to medical records. The decision to either include or exclude information must be confirmed by the manager/consultant/scrutiniser.

12.3 Where records contain information that relates to an identifiable third party that information may not be released unless:

- The third party is a health professional who has compiled or contributed to the health records, or who has been involved in the care of the patient/client.

- The third party, who is not a health professional, gives their consent to the disclosure of that information.

- It is reasonable to dispense with the third party's consent (taking into account the duty of confidentiality owed to the other individual, any steps taken to seek his/her consent, whether he/she is capable of giving consent and whether consent has been expressly refused).

12.4 If the professional/Manager is unclear whether specific items in the record constitute third party information they will inform the Trust's Records Manager who will advise accordingly.

12.5 Information identified as not releasable will need to be redacted; it is not justifiable to remove the whole page / document. The ICO will not see this as favourable. Any whole pages / documents will need to have a justifiable reason for withholding and this will need to be documented and explained to the relevant requester.

12.6 To avoid multiple requests for information, the Head of Service/Manager holding the requested record will ensure that all sources of information are searched for data relating to the request, including manual, archived and computerised records.

12.7 Where a request for access to records has previously been complied with, the Trust is not obliged to respond to a subsequent identical or similar request unless a reasonable interval has elapsed since the previous request.

13.0 CORRECTIONS

13.1 The applicant can request that factual alterations be made to the records if he/she feels that it contains inaccuracies.

13.1.1 If the professional/Manager agrees to the alteration, the record must be amended by putting a single line through the part to be altered and adding a footnote with the amendment at the bottom of the record. **Nothing must be erased from the record**. For those records held electronically amendments can still be made and will show up in both the original and amended versions for audit purposes

13.1.2 If the professional/Manager disagrees with the alteration, a note must be attached to the record giving the reasons why the applicant felt an amendment was necessary and why it was refused. The Caldicott Guardian must be informed and the patient/client will be advised of the Trust's complaints procedures. If possible a meeting will take place between all parties concerned in order to discuss the situation.

14.0 MONITORING ACCESS TO RECORDS REQUESTS

14.1 When a formal application for access to a patient/client's record is received in the Trust it is registered to the database, generating a reference number and an 'Access to Records Audit Trail' will be initiated

14.2 This will be a File Checklist and Minute sheet which will stay attached to the original application until access to the record is provided or denied; in addition the information is entered onto the Trust's Information System.

14.3 The Access to Audit Trail will record:

- the patient/client's name and the date of the request for access
- the clinician's / scrutinisers name and the date they were advised of the request
- details of the request
- the date access was either provided or denied
- details of the records withheld if some are withheld
- details of the reasons for withholding the record, signed off by the clinician / scrutiniser
- the date on which the patient/client was provided with access or informed that access had been denied

15.0 APPLICATIONS FOR ACCESS FOR A MENTAL HEALTH REVIEW TRIBUNAL

15.1 This procedure applies only where the Trust receives a request from solicitors on behalf of a patient/client for access to the patient/client's medical records for the purposes of representing the patient/client at an imminent Mental Health Review Tribunal. A minimum of 72 hours' notice must be given to ensure the Trust is able to review the records in line with the Data Protection Act 2018 for third party/harmful data.

15.2 Often tribunals will be held at short notice and it may be impossible to process access under the usual procedures within an appropriate timescale. On these occasions every effort will be made to contact the relevant doctor to complete an urgent review of the records. However the needs of the client /patient must be paramount and so the Trust will act quickly within its procedures to ensure waiting time is kept to a minimum.

15.3 Where a request of this kind is received from a solicitor it will be passed to the Access to Records Team immediately upon receipt by safe haven fax on 01268 243510 or via email, epunft.accesstorecords@nhs.net with the original paperwork being sent via internal mail. The Access to Records Team will telephone the solicitors within the hour to agree the scope of disclosure i.e. request confined to recent records and/or ward records.

15.4 If the relevant doctor is unable to be contacted/and or review the records within the timescales the solicitor, the Mental Health Act Team and the Trust's Head of Electronic Systems & Records / Records Manager must be notified immediately.

15.5 In most circumstances the normal expectation will be that the solicitor will be able to access this information within 72 hours after initially invoking this part of the procedure, provided they have the written consent of the patient and have otherwise followed this procedure as stated in this section. Every effort will be made to ensure access is managed as quickly as possible. However if unforeseen circumstances arise access will be granted no later than 5 calendar days from receipt of the application, again provided that applications from solicitors have properly followed this procedure. In all cases applications must be made in advance to give the Access to Records team time to make

access arrangements. The Access to Records team will then arrange an appointment with the solicitor to visit for the purpose of accessing the records which have been agreed. The solicitor will be asked to wait until the appointed time before visiting designated wards or Trust premises for this purpose.

15.6 Under no circumstances are patient records to be shared with family members or another person claiming to represent the patient, other than a solicitor. The same applies to records or information about which section of the Mental Health Act (1983) the person is being detained under.

15.7 If the solicitors (and/or the patient/client instructing them) will not agree to disclosure on the above basis then a request will need to be processed under the usual Accessing Health Records procedure.

16.0 RETRIEVAL PROCESS FOR RECORDS

Access to Records

16.1 All records required for an access to records case will in the first instance be checked by the Access to Records department to determine where the records are.

- If the records are with the community teams the health care professional will be responsible for printing these records from the Trust's electronic records system, checking and sending to the Access to Records Department in a sealed bag and sent via the couriers and signed for. They can also be sent electronically.
- **All movement** of paper records is to be tracked on the Trust's electronic system.

If the records are in offsite storage, they will be recalled back, photocopied and the copies sent to the health care professional / scrutiniser for checking and approval.

Serious Incidents/Litigation

16.2 All paper records required for a serious incident will need to be quarantined within 2 working days of being alerted. This process is facilitated by the Head of Serious Incidents and Quality who will inform records management to locate these records. Where records cannot be found in the timescale given this will then be escalated to the Trust's Head of Electronic Systems/Records - Records Manager who will instigate the missing records procedure and inform the Head of Serious Incidents and Quality who will then inform the relevant Director for the case.

- Records will be sent to Basildon Mental Health Unit, Access to Records Department, or direct to the Serious Incident team
- All records will be tracked so their whereabouts are known at all times.

17.0 DESPATCH OF DOCUMENTS

17.1 Any copies of documents, (either paper or electronic (discs) etc. that are sent externally must be sent by recorded delivery packaged in polythene envelopes (for order details of this product contact the Records Manager) ensuring they are labelled as private and confidential and addressee only. On the back a label is to be added stating if undelivered please return to (PO Box 2213 plus the courier code (for the South locality) and the building name (for the North Locality) plus staff initials

17.2 Where copies of documentation are sent outside the UK but within the European Economic Area (EEA), the above process will apply. However, where it is necessary to send documentation outside the EEA, the European Commission's data protection website must be referred to, to ascertain if there is an adequate level of protection for personal data. In all cases of transfer of information outside the UK, the patient's written consent must be obtained (at the same time as advising them whether the country to which the information is being sent is recorded as having adequate protection). This is not necessary for deceased patients as the DPA does not apply.

18.0 MONITORING OF IMPLEMENTATION AND COMPLIANCE

The Access to Records process is monitored via the Information Governance Toolkit and assurance reports are submitted to the Information Governance Steering Committee.

Local management peer audits will be carried out with staff directly in the Access to Records teams.

19.0 PROCEDURE REFERENCES / ASSOCIATED DOCUMENTATION

Reference can be made to the following related documents:

- Confidentiality Procedure (CPG59b)
- Whistleblowing Policy and Procedures (CP/CPG53)
- Freedom of Information Act (FoI 2000) Policy (CP25)
- Information Governance and Security Policy and Procedures (CP/CPG50)
- Trust Records Strategy
- Records Destruction and Retention Procedure (CPG9c)
- Data Protection Leaflet, A patients' guide – how it affects you
- Respecting Patient Confidentiality – A guide to the use of patient's medical records
- Data Protection Act 2018
- Caldicott Principles
- GMC Code of Practice
- Information Commissioners Guidance
- Human Rights Act 1998
- Freedom of Information Act 2000
- The Computer Misuse Act 1990
- The Access to Health Records Act 1990

- Access to Medical Records Act 1988
- Confidentially NHS Code of Practice
- Data Protection & Confidentiality Policy, CP59
- Records Management Policy CP9
- Guidance for Access to Health Records Requests from DOH
- Information Sharing Policy

END

ACCESS TO HEALTH RECORDS AUDIT REPORT

Patient's Name & NHS Number:		ATR Number:	
Details of request being made:		Date Request Received:	

Are there additional archive records? (If Yes, please provide a copy with this audit form) **Please delete as appropriate:**	**Yes / No** **Not Applicable**
Are there additional shared drive records? (If Yes, please provide a copy with this audit form) **Please delete as appropriate:**	**Yes / No** **Not Applicable**
Can the records be released? (Delete as appropriate)	**Yes / No**

If No, please state the reasons for withholding authorisation to release records (this must include details of the 'significant harm' that the release of these records could cause)

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Yes / No

Please confirm if any additional redactions have been made to the records? If yes Please confirm the details of the redactions below, including page numbers:	**Yes / No**

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Are there any additional documents that need to be withheld in their entirety? Please confirm the reason for withholding the documents below, including page numbers:	**Yes / No**

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Signature of Clinician:		Service/ Team:	
Print Name:		Date:	
