

## Subject Access Request and Information Rights Policy & Procedure

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Status	Ratified		
Target Audience (who does the document apply to and who should be using it)	Wiltshire Health and Care staff		
Accountable Director	Director of Infrastructure		
Document Author/Originator – <b>Any comments on this document should, in the first instance, be addressed to <a href="mailto:whc.policyqueries@nhs.net">whc.policyqueries@nhs.net</a></b>	IG Manager & Data Protection Officer		
If developed in partnership with another agency, ratification details of the relevant agency			
Is this Policy/Procedure available for release under Freedom of Information	Yes If yes, date uploaded to WHC website:		
<b>Key Words, including abbreviations/acronyms within the text, which will assist staff when searching for documents or subjects.</b>	Subject Access Request / SAR / Right of Access / Access to Records / Information Rights / Data Protection / GDPR / Disclosure		

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## Equality Impact and Parity of Esteem

Wiltshire Health and Care staff strive to ensure equality of opportunity and parity of esteem for all service users, local people and the workforce. As an employer and a provider of health care, we aim to ensure that none are placed at a disadvantage as a result of its policies and procedures. This document has therefore been equality impact assessed in line with current legislation to ensure fairness and consistency for all those covered by it regardless of their individuality. This means all our services are accessible, appropriate and sensitive to the needs of the individual.

**References: NHS England 'Everyone Counts: planning for patients 2014-15 / 2018-19' and The Mental Health Crisis Care Concordat (DH 2014).**

<b>Name of the policy / procedure / project / strategy / proposal:</b>
<b>Subject Access Request and Information Rights Policy &amp; Procedure</b>
<b>The principles of equality, diversity and inclusion are fundamental to the successful delivery of patient care and underpin our vision of best care for everyone. We're committed to designing and delivering our services around the needs of individual patients and their families. We use Equality Impact Assessments (EIAs) to help us look at what impact an existing or proposed policy, procedure, practice, or service is likely to have on different groups of people. They aim to eliminate discrimination and improve equality. EIAs assess several important areas, including race, disability, and gender.</b>

Is there a disproportionate/negative impact?	Tick One		
	No	Neutral	Yes
<b>Age</b>	X		
<b>Disability</b>	X		
<b>Gender Reassignment</b>	X		
<b>Sexual Orientation</b>	X		
<b>Marriage and Civil Partnership</b>	X		
<b>Race – including Nationality and Ethnicity</b>	X		
<b>Pregnancy and Maternity</b>	X		
<b>Religion or Belief</b>	X		
<b>Sex</b>	X		
<b>Health Inequalities</b>	X		

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## What are you proposing to do?

Establish the framework and clear processes for dealing with requests from patients, service users and staff for access to the information that Wiltshire Health and Care holds about them. These rights were known as 'subject access' provisions under the Data Protection Act 1998, and the 'right of access' under the new GDPR.

## Why are you doing it?

The Data Protection 2018 provides clear statutory rights granting the individuals access to recorded information held about them.

## Who is intended to benefit from this proposal?

All staff, public and patients will benefit from the promotion of a culture of openness and accountability of public sector bodies.

## What equality issues or impacts have you identified?

None

## What do you propose to do to manage the impacts?

N/A

## Potential mitigating actions – summary of actions

N/A

**Completed by**

**Steven Lobb**

**Date**

**24/08/2021**

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## Safeguarding

Wiltshire Health and Care has a strong commitment to care that is safe, of a high quality and that upholds our patients' rights. All our patients have the right to live lives free from abuse or neglect and, where they are able to, to make or be supported to make informed decisions and choices about their treatment, care and support. Where patients are not able to make their own decisions, Wiltshire Health and Care staff are committed to ensuring that treatment, care and support is undertaken in accordance with the person's best interests. In order to fulfil these commitments, Wiltshire Health and Care follow the Safeguarding principles and responsibilities laid out in sections 42-46 of the Care Act (2014) and are informed by, and apply, the guiding principles and provisions of the Mental Capacity Act (2005) (refer to Wiltshire Health and Care Safeguarding Adults Policy and Procedure, and Mental Capacity Act Policy and Procedure). Regarding children, WHC is responsible for providing services in accordance with Section 11 of the Children's Act (1989) and works under the principles of Working Together to Safeguard Children (2018).

## Special Cases

*None*

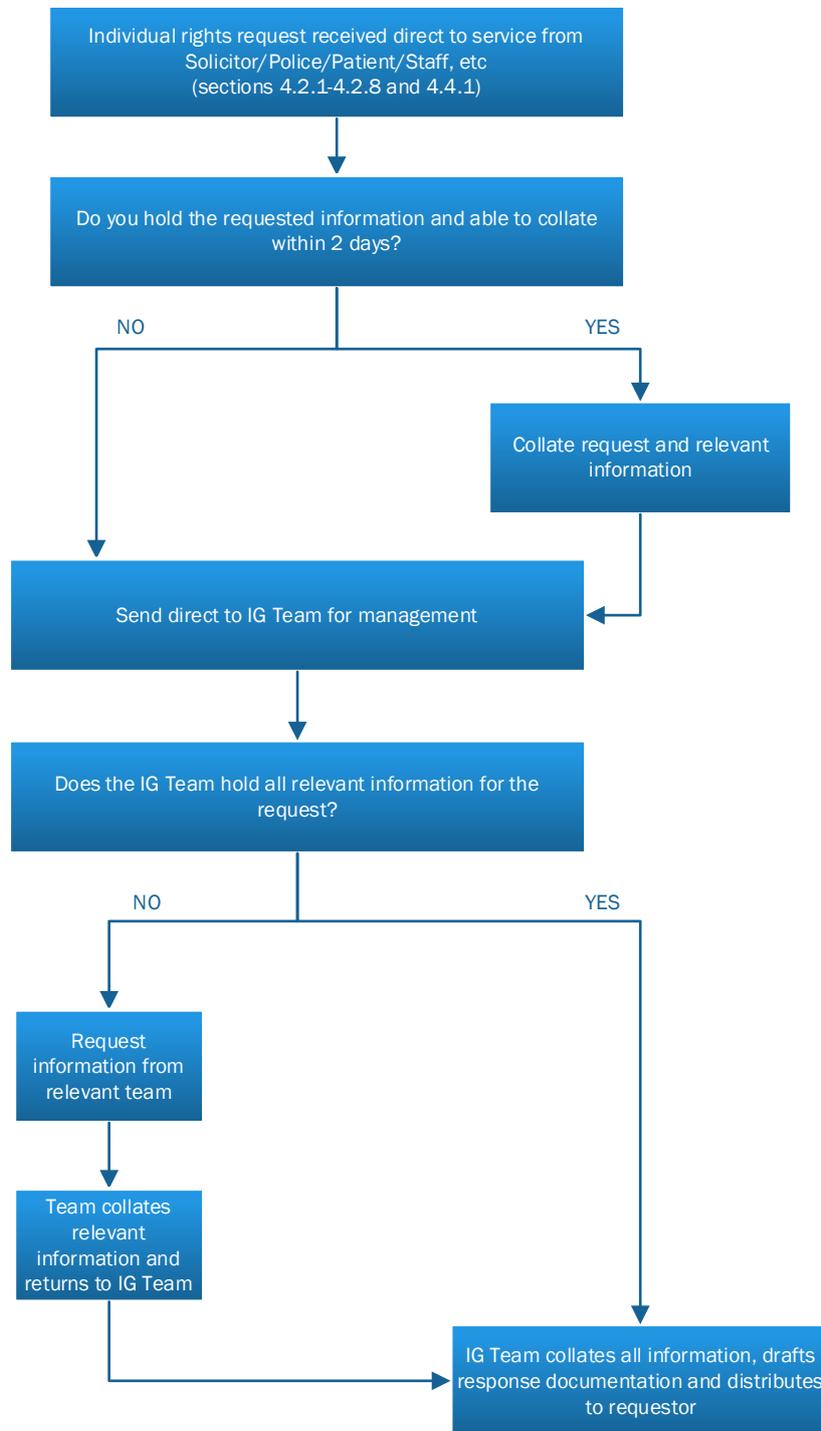
### 1. Instant Information

This policy ensures that all staff are aware of and comply with the organisation's statutory obligations and responsibilities in relation to the information rights held by patients, service users and staff under the General Data Protection Regulations (GDPR), The Data Protection Act 2018 (DPA), The Access to Health Records Act 1990 (AHR) and The Access to Medical Reports Act 1988 (AMR).

Individuals have the right to make an Individual Rights request as defined in section 4.2.1-4.2.8. Upon receipt of an Individual Rights Request all staff should follow the procedure documented below.

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Specific detailed information in relation to the Rights of Access (Subject Access Requests) can be found in section 4.3.

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## 2. Regulatory/Legal Framework

### 2.1 Further Reading and Links to Other Policies or documents

The following is a list of other policies, procedural documents, or guidance documents (internal or external) to which employees should refer for further details:

Ref. No.	Document Title	Document Location
1	General Data Protection Regulation	<a href="http://www.legislation.gov.uk">www.legislation.gov.uk</a>
2	Data Protection Act 2018	<a href="http://www.legislation.gov.uk">www.legislation.gov.uk</a>
3	Access to Health Records Act 1990	<a href="http://www.legislation.gov.uk">www.legislation.gov.uk</a>
4	The Human Rights Act 1998	<a href="http://www.legislation.gov.uk">www.legislation.gov.uk</a>
5	The Freedom of Information Act 2000	<a href="http://www.legislation.gov.uk">www.legislation.gov.uk</a>
6	The Access to Medical Reports Act 1988	<a href="http://www.legislation.gov.uk">www.legislation.gov.uk</a>
7	Confidentiality: NHS Code of Practice	<a href="http://www.gov.uk">www.gov.uk</a>
8	The NHS Care Record Guarantee	<a href="http://www.nigb.nhs.uk">www.nigb.nhs.uk</a>
9	Records Management Code of Practice 2021	<a href="http://www.nhsx.nhs.uk">www.nhsx.nhs.uk</a>
10	Information Commissioners Office, Codes of Practice	<a href="http://www.ico.org.uk">www.ico.org.uk</a>

## 3. Document Details

### 3.1 Introduction and Purpose of the Document

This policy sets out Wiltshire Health and Care's legal obligation to comply with statutory obligations and responsibilities in relation to the information rights held by patients, service users and staff under the General Data Protection Regulations (GDPR), The Data Protection Act 2018 (DPA), The Access to Health Records Act 1990 (AHR) and The Access to Medical Reports Act 1988 (AMR).

The document establishes a framework and clear processes for dealing with requests within the legislated timeframes. Defines the roles and responsibilities within Wiltshire Health and Care for the processing of access requests for information held by the organisation (commonly known as 'subject access request'), and the provision of a centralised managed service within the organisation's Information Governance Department.

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## 4. Main Document Content Details

### 4.1 Definitions

<b>Data Subject</b>	Individual whom the data is about e.g., the patient / service user, staff member.
<b>Data Controller</b>	Organisation who has collected the data and defines how it is processed e.g., Wiltshire Health and Care.
<b>Representative</b>	An organisation or person who is making a request on behalf of the Data Subject, e.g., the Solicitor, MP, another person with relevant legal authority such as a family member with a Power of Attorney.
<b>Redaction</b>	The act of removing, or otherwise making certain information unavailable. In the instance of Access Rights this could include information covering one of the areas below: <ul style="list-style-type: none"> <li>• Third Party Information – this does not constitute information received from other organisations, but information relating to other individuals who are not health professionals, i.e., Parent, Spouse, Partner, etc.</li> <li>• Legal Information – Where legal information has been copied into an individual's personal information there is the ability to remove this data.</li> <li>• Harmful Information – Where information, if released, may cause harm to the physical or mental health or condition of anyone (and this can include a professional) then it can be withheld.</li> </ul>
<b>Information Commissioner's Office (ICO)</b>	The regulatory authority for various Information Rights Acts e.g., Data Protection Act, Freedom of Information Act etc.
<b>Access to Health Records Act 1990</b>	Allows access to the patient's personal representative and any person who may have a claim arising out of the patient's death unless there is any reason to withhold the data such as potential to cause harm.
<b>Access to Medical Reports Act 1988</b>	Allows individuals to see medical reports written about them, for employment or insurance purposes, by a doctor or clinician who they usually see in a "normal" doctor/patient capacity. This right can be exercised either before, or after, the report is sent.
<b>Freedom of Information Act 2000</b>	Under this Act personal data of the applicant is exempt under section 40(1) or section 40(2) of the Freedom of Information Act 2000 and is therefore managed under the Information Rights explained in this policy.
<b>Human Rights Act 1998</b>	Article 8.1 of the Human Rights Act 1998 provides that "everyone has the right to respect for his private and family life, his home and his correspondence". This is however, a qualified right i.e., there are specified grounds upon which it may be legitimate for authorities to infringe or limit those rights and Article 8.2 provides "there shall be no interference by a public authority with the exercise of this right as it is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety, or the economic well- being of the country, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedom of others".
<b>One Calendar Month</b>	This is the legislative time requirement for the provision of information to the applicant and is initiated from the date that all required information for processing the request is provided to the data controller e.g., February = 28 days, August = 31 days

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## 4.2 General Principles of Information and Access Rights

In summary the General Data Protection Regulations (GDPR) provides the following rights for individuals:

1. The right to be informed (see 4.2.1)
2. The right of access (see 4.2.2) (formerly Subject Access Rights)
3. The right to rectification (see 4.2.3)
4. The right of erasure (see 4.2.4)
5. The right to restrict processing (see 4.2.5)
6. The right to data portability (see 4.2.6)
7. The right to object (see 4.2.7)
8. Rights in relation to automated decision making and profiling (see 4.2.8)

Unless otherwise stated in this policy, individuals who would like to invoke any of the above rights under the GDPR should submit their request in writing to the Information Governance Service.

Where there are no specific timeframes imposed by the GDPR for processing a request made by an applicant in relation to the rights outlined above, Wiltshire Health & Care will endeavour to meet a best practice turnaround of within one month, and no more than three months.

A breach of timeframes will be reported through the organisation's Incident Management System by the Information Governance Service and will detail the cause of the breach. Breaches are reported to the Executive Committee and the Audit Committee through the Information Governance Policy Oversight Group (IGPOG) who may recommend further actions.

If the organisation has actioned a request for rectification, erasure or restriction of processing and already disclosed the personal data in question to any third parties, Wiltshire Health and Care must inform them about the action taken, unless it is impossible or involves disproportionate effort to do so.

If the organisation takes the decision not to action a request made by an applicant in relation to the rights outlined above, this must be clearly communicated to the applicant in writing along with a full explanation and reasons for the decision. The applicant must also be given the right to complain via the organisation's formal procedures and be made aware of their right to complain to the Information Commissioner's Office.

### 4.2.1 The Right to be Informed

The right to be informed encompasses the organisation's obligation to provide 'fair processing information' and emphasises the need for transparency over how we use personal data. To meet our obligations, Wiltshire Health and Care has two privacy notices – one for patient and service user information, and one for staff information – both of which explain:

- What a privacy notice is and why it has been issued
- Who we are, what we do and how to contact
- What information we collect, how and why
- How the information is stored and used, and why this is important
- How we keep information safe and maintain confidentiality
- Where and why information may be shared with others
- An individual's right to withhold or withdraw sharing consent
- How to gain access to the information that we hold
- How to raise concerns, queries, or complaints

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## 4.2.2 The Right of Access

All individuals have the right to obtain access to the information that Wiltshire Health & Care holds about them. This is similar to the previous 'subject access' provisions under the DPA where the request must be made in writing provided with relevant documentation and enough information to locate relevant records. Wiltshire Health and Care has published guidance on the intranet and public website for anyone wishing to invoke this right.

From the date of receiving the request, the organisation has one calendar month to provide the information. Therefore, it is imperative that requests are date stamped and forward to the Information Governance Team to process; [whc.recordsrequest@nhs.net](mailto:whc.recordsrequest@nhs.net)

The legislated timeframe may be extended to a maximum of three calendar months where the request is complex or numerous. If this is the case, the individual must be informed of this within the initial one-month compliance period, with an explanation as to why the extension is necessary and the likely response date.

The organisation must provide a copy of the information requested free of charge. Wiltshire Health and Care is only permitted to charge a 'reasonable fee' where the request is manifestly unfounded or excessive (particularly if it is repetitive), or it relates to duplicate copies of information already provided. This fee must be based solely on the administrative cost of providing the information.

## 4.2.3 The Right of Rectification

Individuals are entitled to have their personal information corrected (rectified) if it is inaccurate or incomplete. The corrections must be actioned by WHC within one calendar month of receiving the request. This timeframe may be extended to a maximum of three calendar months where the request is complex.

Any processing of the information which requires correction should be restricted until the corrections are completed (see 4.2.5 for further details).

These types of requests will usually be raised by the patient directly with the ward or department when the required correction is identified. In all cases the applicant must be directed to the Information Governance team for processing.

## 4.2.4 The Right to Erasure

The right to erasure is also known as 'the right to be forgotten' and enables an individual to request the deletion or removal of personal data. However, this right will only apply under specific circumstances (further details are available on the ICO website). There are also additional requirements when the request for erasure relates to a child's personal data. Further guidance should be sought from the Information Governance team as required.

## 4.2.5 The Right to Restrict Processing

Individuals are entitled to stop or prevent the processing of their personal data. Where this occurs, Wiltshire Health and Care is permitted to continue storing the data – unless the individual also invokes their right to erasure (see 4.2.4).

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Where processing is restricted, Wiltshire Health and Care will retain just enough information to ensure that this restriction is respected in the future. Should this type of request be received, further guidance should be sought from the Information Governance team.

#### 4.2.6 The Right to Data Portability

The right to data portability allows individuals to obtain and reuse their personal data for their own purposes across different services. It allows them to move copy or transfer personal data easily from one IT environment to another in a safe and secure way, without hindrance to usability. However, this right will only apply when the processing is carried out by automated means, and therefore is unlikely to apply to the information held by Wiltshire Health and Care.

Should this type of request be received, further guidance should be sought from the Information Governance team.

#### 4.2.7 The Right to Object

Individuals have the right to object to:

- Processing based on legitimate interests or the performance of a task in the public interest / exercise of official authority.
- Direct marketing (including profiling); and
- Processing for the purposes of scientific/historical research/statistics.

The individual must have an objection on “grounds relating to his or her particular situation”, and Wiltshire Health and Care must cease the processing unless we can demonstrate compelling legitimate grounds for the processing, which override the interests, rights and freedoms of the individual, or the processing is for the establishment, exercise, or defence of legal claims.

The right to object is explained within Wiltshire Health and Care’s privacy notices, and individuals should be made aware of this right “at the point of first communication”. This must be “explicitly brought to the attention of the data subject and shall be presented clearly and separately from any other information”. This right is particularly relevant to research carried out by (or in conjunction with) the organisation and further guidance is available from the Information Governance team as required.

#### 4.2.8 Rights Relating to Automated Decision Making and Profiling

The GDPR provides safeguards for individuals against the risk that a potentially damaging decision is taken without human intervention. Individuals have the right not to be subjected to a decision when it is based on automated processing and it produces a legal effect or a similarly significant effect on the individual.

It is unlikely that this situation will occur due the ways in which information regarding patients, service users and staff is processed by Wiltshire Health and Care. However, should there be a query relating to this area, guidance should be sought from the Information Governance team.

## 4.3 Rights of Access Process to the Information Held by Wiltshire Health and Care

### 4.3.1 Subject Access Requests (Right of Access)

Individuals have the right to request access to the information that Wiltshire Health and Care holds about them – this is explained in section 4.2.2 of this policy. This was known as a ‘subject access request’ under Previous Data Protection legislation, and is the term adopted by Wiltshire Health and Care.

Subject Access Requests can relate to patient, visitor, volunteer or staff information and all requests should be managed through the same process, with requests being sent to the Information Governance Team for management.

Individuals wishing to make a Subject Access Request should be signposted to the Wiltshire Health & Care Application Form (Appendix B), available from the Wiltshire Health & Care website; although use of the application form is preferred it is not mandatory. All Subject Access Requests must be forwarded promptly to the Information Governance team via post or email to:

Wiltshire Health and Care LLP  
Medical Records  
Information Governance Team  
Chippenham Community Hospital  
Rowden Hill  
Wiltshire, SN15 2AJ  
[whc.recordsrequest@nhs.net](mailto:whc.recordsrequest@nhs.net)

If the request relates to information about Wiltshire Health and Care (for example, policies, statistics and finances) rather than the personal information of an individual, then this would be handled under the Freedom of Information Act 2000. Please refer to the Freedom of Information Policy for further details regarding this.

Personal information comes in a variety of formats including, but not limited to, manual and electronic files, emails, images, and pictures. Subject access requests are also applicable to CCTV footage which is considered personal information. All formats of information are covered by this policy, although Wiltshire Health and Care is not the data controller for CCTV footage and any requests for this information should be referred to the CCTV data controller.

Wiltshire Health and Care is not legally obliged to supply any information, and the one calendar month timeline does not start, unless:

- the request has been made in writing (by application form, letter or email).
- any required fee has been paid (if applicable).
- the identity of the requestor has been verified and the legitimacy of the request has been confirmed.
- sufficient details have been supplied to locate the information.

If the one calendar month time limit is insufficient to meet the full needs of the request, the applicant should be informed as soon as this is identified, and in any case before the initial deadline date of one calendar month. An extension to the deadline may be applied of up to two calendar months, and this should be communicated in writing to the applicant. It may also be appropriate to consider a staggered approach to supplying the information, i.e., sending as and when identified rather than waiting until all information is fully collated.

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If it is evident that an individual may not understand what information would be disclosed to a third party who has made a subject access request on their behalf, the response can be sent directly to the individual rather than to the third party. The individual may then choose to share the information with the third party after having had a chance to review it.

Wiltshire Health and Care is also not obliged to comply with repeat, identical or vexatious requests made by an individual unless a reasonable time period has passed. Under these circumstances, the organisation is permitted to apply a charge equivalent to the associated admin costs.

Where copies of information have been requested, this must be supplied in a permanent format, i.e., hardcopy or electronic format, unless the individual has agreed otherwise, or this would involve disproportionate effort (in these circumstances the requester could be invited in person to view the information). The preferred format for supplying information is electronic; however, this will depend on the information requested and any specifics of the application. If information is sent by post, it will be sent via a tracked service, in a secure envelope marked confidential with a return address label to avoid any unauthorised disclosure.

Wiltshire Health and Care will retain Subject Access Request records for a minimum of three years, unless the information is disputed and the retention period shall be extended to 6 years, as required by the records Management Code of Practice 2021. Thereafter, records will be reviewed and destroyed under confidential conditions if no longer required.

### 4.3.2 Refusal of an Access Request

Wiltshire Health and Care may refuse to disclose all, or part of the information requested if it has been assessed by an appropriate healthcare professional that disclosure would be likely to cause harm to the physical or mental health of the patient or any other person. There are also other circumstances when the organisation is legally permitted to withhold information – for example, if the disclosure would prejudice the prevention or detection of crime.

Wiltshire Health and Care may also refuse to disclose information which relates to, or identifies, another individual. This information will be redacted, removed or refused from the final release, unless:

- the information identifies an organisation, not an individual.
- the individual in question is a health professional who has provided the information as part of the health / medical record.
- the other individual has given their explicit consent.
- it is reasonable to release without gaining consent.

When considering the option to release without consent, the organisation will assess whether:

- there is a duty of confidence to the other individual.
- appropriate steps have been taken to gain consent.
- the other individual is capable of giving consent.
- the other individual has expressly refused to give consent.

If the information requested has been located but the decision is taken not to release, a response should be sent to the applicant confirming this decision and the reason for it (unless this would be likely to prejudice the purpose of the exemption in question). Any decision to refuse disclosure will be centrally recorded by the Information Governance team.

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If the information requested cannot be located, a response should be sent to the applicant indicating this. It should be made clear that Wiltshire Health and Care is not refusing to supply information, but in fact does not hold the information requested. Where this is in relation to records that have been 'lost' responsible staff will be required to record the loss through the Incident Management System and an apology shall be issued to the individual.

### 4.3.3 Requests for Information in Relation to Children/Young People

In Scotland, a person aged 12 years or over is presumed to be of sufficient age and maturity to be able to exercise their right of access, unless the contrary is shown. This presumption does not apply in England and Wales or in Northern Ireland, where competence is assessed depending upon the level of understanding of the child, but it does indicate an approach that will be reasonable in many cases.

Where a child is not considered to be competent, an adult with parental responsibility may usually exercise the child's data protection rights on their behalf. However, the following should be considered:

- the child's level of maturity and their ability to make decisions like this.
- the nature of the personal data.
- any court orders relating to parental access or responsibility that may apply.
- any duty of confidence owed to the child or young person.
- any consequences of allowing those with parental responsibility access to the child's or young person's information. This is particularly important if there have been allegations of abuse or ill treatment.
- any detriment to the child or young person if individuals with parental responsibility cannot access this information.
- any views the child or young person has on whether their parents should have access to information about them.

### 4.3.4 Requests for information in relation to individuals who lack capacity

Where an individual does not have the mental capacity to provide consent, evidence of the authority of an individual to act on behalf of the data subject will be required. Guidance will be sought from the Wiltshire Health & Care Legal Service where appropriate.

### 4.3.5 Third Party requests to release Wiltshire Health and Care Information

There may be occasions when a third party, such as another NHS organisation or a local authority (social services), is dealing with a subject access request which includes information that has been provided by Wiltshire Health and Care. The third-party organisation might request approval from Wiltshire Health & Care for release of the information, there are three possible solutions as follows: -

- review and redact relevant information prior to authorising release
- request the data subject submits a subject access request to Wiltshire Health & Care
- refuse to release the information

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## 4.4 Additional information access guidance

### 4.4.1 Requesting access to the records of a deceased patient

The health records of a deceased patient are not included within the right of access under the GDPR. Instead, the Access to Health Records Act 1990 (AHRA) provides a statutory right for certain individuals to apply for access to this information. However, this is limited to:

- ‘the patient’s personal representative’ – This is the named executor or administrator of the deceased person’s estate, either through an official will or grant of probate.
- ‘any person who may have a claim arising out of the patient’s death’ – The decision as to whether a legitimate claim exists lies with Wiltshire Health and Care and therefore this will be assessed on a case-by- case basis, with legal advice sought as required.

Where an individual who does not have a statutory right of access submits a request to Wiltshire Health and Care, this should be carefully considered and not simply rejected. Access may be permitted; however, the benefit of the disclosure must outweigh both:

- the obligation of confidentiality owed to the deceased individual (likely to be less than that owed to living patients and will diminish over time) and any others cited in a record.
- the overall importance placed on the health service providing a confidential service.

Key issues for consideration include:

- any preference expressed by the deceased prior to death.
- the distress or detriment that any living individual might suffer following the disclosure.
- any loss of privacy that might result and the impact upon the reputation of the deceased.

The views of surviving family and the length of time after death are also important considerations, along with the extent of the disclosure. Disclosing a complete health record is likely to require a stronger justification than a partial disclosure of information extracted from the record. If the point of interest is the latest clinical episode or cause of death, then disclosure, where this is judged appropriate, should be limited to the pertinent details.

The applicant will need to provide sufficient identity documentation, together with proof of their right to access the information – either:

- a valid Will naming them as the Executor of the estate.
- a Grant of Representation (Grant of Probate for an Executor, or Letters of Administration for an Administrator)
- evidence to support their claim to the deceased’s estate.

Upon receipt of the request, the Information Governance team will establish if there is any fee for the supply of information. In the majority of cases, the organisation will provide a copy of the requested information free of charge.

However, in accordance with the AHRA, Wiltshire Health and Care may charge a ‘reasonable fee’ when a request is manifestly unfounded or excessive, particularly if it is repetitive or a duplicate. This fee is based on the administration time associated with the request. Should there be a fee for the information, Wiltshire

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Health and Care will contact the applicant with a request for payment and an explanation and/or breakdown of the fee applied. The request will not be processed further until the relevant payment has been received.

Once the request, all supporting evidence and any relevant fee has been received, Wiltshire Health & Care must comply with the request promptly and within one calendar month. The request will be recorded and processed in the same way as any other information request and the organisation still has the right to deny or restrict any access or disclosure as outlined in Section 4.3.1 of this policy.

#### **4.4.2 Medical Reports for Insurance and Employment Purposes**

The Access to Medical Reports Act 1988 governs access to medical reports which have been drafted by a medical practitioner (who is, or has been, responsible for the clinical care of the individual) for insurance or employment purposes.

Only certain clinicians i.e., GP/Consultant are obliged to provide such reports under the Access to Medical Reports Act 1988. Clinicians that are not obliged to provide a medical report can decline the request. In all instances the subject of the report has the right to review the report prior to sending to the requester.

Other requests may relate to: -

- Department of Work and Pensions
- Criminal Injuries Compensation Authority (CICA)
- War Pensions Department – Veterans Agency
- Insurance companies
- Patients on Clinical Trials (often want to know what happened to the patient years later)

Most of these requests will relate to treatment/attendance dates, where possible the receiving department should complete these details and send to the Information Governance team for processing.

If one of these requests requires copies of the medical records, then the guidance in Section 4.3.1 should be followed.

#### **4.4.3 Informal access to view health records – patients, relatives and carers**

Wiltshire Health & Care encourages patient involvement and contribution to their own records and therefore it may be relevant for staff to provide access to view relevant sections of the record.

As patient records often contain medical terminology or data about other individuals a health care professional responsible for the care of that patient must confirm that it is safe for the record to be viewed, i.e., access is not going to adversely affect the patients' or anybody else's physical or mental health, and they must be in attendance to give advice, explanation, and overview.

Where relatives or carers would like to view relevant sections of the record the patient must provide consent, unless there is another form of authority in place allowing access to the requester, such as a relevant Power of Attorney.

Care must be taken with patient records held on wards to avoid unauthorised access. Medical notes should not be left unattended near patients or visitors, where access is probable / inevitable.

If individuals require a copy of records held by Wiltshire Health and Care they must make a written application as described in Section 4.3.1 of this policy, in accordance with the Data Protection Act 2018 and Access to Health Records Act.

#### 4.4.4 Staff Access to Records

Staff should not look up or amend their own record as it could be construed as abuse of privilege – this includes health / medical and employment records. All access must be governed via the processes outlined in this policy, and staff are required to follow the same procedure as any other requestor.

Staff should only access the records of their family, friends and other people they know (such as colleagues) when there is a legitimate professional reason for them to do so, in line with their job description and contract of employment. If this situation occurs, the member of staff should inform an appropriately senior manager who will then assess the impact and risks and may allocate another member of staff to the relevant tasks.

If a member of staff is attending the hospital as a patient, they can ask the Information Governance Service to monitor access to their records. The individual does not need to provide any medical information; however they may be asked to give an indication of the wards or departments that they are likely to visit to assist with identifying whether or not access to the records is appropriate. If any potential inappropriate access is identified, this will be followed up by the Information Governance Service and pursued via the organisation's Disciplinary Procedure, if appropriate.

#### 4.4.5 Police (and other agencies conducting criminal investigations)

The police and other agencies have an important and general power of common law to prevent and detect crime and the Crime and Disorder Act 1998 introduces a number of measures to control crime and disorder. The police will need to submit their request, to the Information Governance team, in writing detailing what data they require for what purpose and with a crime reference number.

#### 4.4.6 Requests relating to a pending litigation claim

Where it is considered that a claim against Wiltshire Health and Care may arise, or one has been notified, (pre-action disclosure), it may be the first indication that an incident has occurred. Any such requests that indicate that there is a potential claim against the organisation should be notified immediately to Legal team ([whc.legal@nhs.net](mailto:whc.legal@nhs.net)).

On receiving a pre-action disclosure, the Information Governance team will:

- Inform the Legal team of the notification immediately. Copies of the disclosure will be forwarded to the Legal team for litigation purposes.
- Will ensure that all relevant medical records, supplementary documents, recordings, charts etc. are collated and electronically retained until the conclusion of the claim. If the patient is still receiving treatment / care, the local clinician must send a copy of any new medical record as it occurs, to be added to the electronic copy.

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## 4.5 Complaints and internal review

### 4.5.1 Internal reviews

Applicants can ask Wiltshire Health and Care for an internal review if they are not content with the information being released. This is the first review stage for applicants.

If a complaint is received from a dissatisfied applicant, the recipient must contact the Information Governance team who will confirm to the applicant that the request for review has been received and indicate to them when they should expect a response.

The IG Manager and Data Protection Officer will then carry out the internal review unless they were involved in the processing of the original request (either as provider of information provider or in the decision-making process) in which case the Wiltshire Health and Care solicitor will perform the internal review.

The internal review must be a fair and impartial review of the decisions made during the original consideration of whether to release information. All internal reviews must consider the information released against the information requested and make a full review of the papers associated with the original application.

The internal reviewer will discuss the decisions made with the staff member, or members, who dealt with the original application to build a full picture as to how decisions were made.

The applicant must be fully informed of the outcome of the internal review. To assist in any further investigations by the Information Commissioner, full records of the review must be kept.

### 4.5.2 Right to Appeal

If the applicant remains dissatisfied with the outcome of the Internal Review, they must be informed of their right to appeal to the Information Commissioner:

Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF  
Tel: 0303 123 1113  
[www.ico.org.uk](http://www.ico.org.uk)

## 5 Duties and responsibilities of individuals and groups

### 5.1 Information Governance Manager and Data Protection Officer

The Information Governance Manager and Data Protection Officer is responsible for the oversight and administration of all Subject Access Requests.

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## 5.2 Caldicott Guardian

The Caldicott Guardian is responsible for protecting the confidentiality of patient and service-user information and enabling appropriate information-sharing. The Caldicott Guardian approval will be sought by the IG team in complex cases where senior approval for the release of information is required.

## 5.3 Information Governance (IG) team

The Information Governance team provide a centralised subject access request service to process requests to the personal information held about patients and staff. Not intended to be an exhaustive list but in general responsible for: -

- Providing guidance and support to applicants on making an access request and the necessary evidence required.
- Recording all access requests within the Wiltshire Health and Care central subject access database and ensuring that information is recorded accurately and in a timely manner.
- Coordinating all access requests from patients, service users, staff, solicitors, insurers and the police, locating and downloading appropriate records, redirecting the request as appropriate, such as to the Legal team (potential litigation against the organisation) or clinicians who need to share relevant data with other NHS Trusts / Providers.
- Checking proof of identity and address (and/or authority to act), establishing right of access, maintaining active communication with the applicant and resolving queries.
- Liaising with clinical staff to obtain locally held records and confirming that no harm will come to the patient or another person by releasing the records.
- Ensuring that all information provided to applicants has been redacted of relevant third-party data and provided via secure means or liaising with relevant department(s) to arrange access where viewing is requested.
- Monitoring current applications to ensure that legal deadlines are met, with appropriate action taken in the database to record any appropriate 'stop clock' actions, escalating any potential breaches to the Information Governance Manager and Data Protection Officer and reporting actual breaches through the Incident Management system.

## 5.4 Legal team

The legal team is responsible for providing necessary advice and guidance to staff and managing Litigation claims against the organisation.

## 5.5 Safeguarding team

The Safeguarding team is responsible for providing guidance to the IG Service, when appropriate, regarding access of the records requested for Children and Vulnerable adults.

## 5.6 Clinicians

Where patients make a request for their health records the Data Protection Act 2018 requires that a relevant health professional is consulted to advise if, in their opinion, the release would likely cause harm to the patient or another person. Guidance regarding this decision can be obtained from the Legal team.

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The clinician is not required to review and redact third party information; this is carried out by the Information Governance team.

## 5.7 Document author

The document author is responsible for identifying the need for a change in this document as a result of becoming aware of changes in practice, changes to statutory requirements, revised professional or clinical standards and local/national directives, and resubmitting the document for approval and republication if changes are required.

## 5.8 Target audience – as indicated on the cover page of this document

The target audience are obliged to adhere to this policy and provide information to the Information Governance team when requested to do so, in order to support the organisation in complying with this policy and fulfilling legislative requirements.

## 6 Monitoring compliance and effectiveness of implementation

The arrangements for monitoring compliance are outlined in the table below: -

Measurable document objectives	Monitoring / audit method	Monitoring responsibility (individual/group /committee)	Frequency of monitoring	Reporting arrangements (committee / group to which monitoring results are presented)	What action will be taken if gaps are identified?
Compliance with legislative time frames	Electronic log	IG Manager and DPO	Continuous	IG POG	Incident reporting
Compliance reporting	Documented report	IG Manager and DPO	Quarterly	IG POG	Documented review and action plan
Compliance reporting	Documented report	IG Manager and DPO	Annually	Audit Committee	Documented review and action plan
Compliance reporting	Documented report	IG Manager and DPO	Annually	Executive Committee	Documented review and action plan
Incident Reports	Incident Management System	IG Manager and DPO	Continuous	IG POG	Incident Management

## 7 Review date and consultation process

### 7.1 Review Date

This document will be fully reviewed every 3 years (or after 1 year if the document is new) in accordance with the Wiltshire Health and Care agreed process for reviewing its documents. Changes in practice, to

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statutory requirements, revised professional or clinical standards and/or local/national directives are to be made as and when the change is identified.

## 7.2 Consultation Process

The following is a list of consultees in formulating this document and the date that they approved the document:

<b>Job Title / Department</b>	<b>Date Consultee Agreed Document Contents</b>
Project Manager, Transformation Team	01/09/2021
Information Governance Officer, IG Team	20/08/2021
Legal and Business Support Officer, IG Team	20/08/2021

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## Appendix A – Quality Impact Assessment Tool

<b>Purpose</b>		
To assess the impact of individual policies and procedural documents on the quality of care provided to patients by Wiltshire Health and Care.		
<b>Process</b>		
The impact assessment is to be completed by the document author. In the case of clinical policies and documents, this should be in consultation with Clinical Leads and other relevant clinician representatives.		
Risks identified from the quality impact assessment must be specified on this form and the reasons for acceptance of those risks or mitigation measures explained.		
<b>Monitoring the Level of Risk</b>		
The mitigating actions and level of risk should be monitored by the author of the policy or procedural document or such other specified person.		
High Risks must be reported to the relevant Executive Lead.		
<b>Impact Assessment</b>		
Please explain or describe as applicable.		
1.	Consider the impact that your document will have on our ability to deliver high quality care.	N/A
2.	The impact might be positive (an improvement) or negative (a risk to our ability to deliver high quality care).	N/A
3.	Consider the overall service – for example: compromise in one area may be mitigated by higher standard of care overall.	N/A
4.	Where you identify a risk, you must include identify the mitigating actions you will put in place. Specify who the lead for this risk is.	N/A
<b>Impact on Clinical Effectiveness &amp; Patient Safety</b>		
5.	Describe the impact of the document on clinical effectiveness. Consider issues such as our ability to deliver safe care; our ability to deliver effective care; and our ability to prevent avoidable harm.	N/A
<b>Impact on Patient &amp; Carer Experience</b>		
6.	Describe the impact of the policy or procedural document on patient / carer experience. Consider issues such as our ability to treat patients with dignity and respect; our ability to deliver an efficient service; our ability to deliver personalised care; and our ability to care for patients in an appropriate physical environment.	N/A
<b>Impact on Inequalities, and Parity of Esteem</b>		
7.	Describe the impact of the document on inequalities in our community. Consider whether the document will have a differential impact on certain groups of patients (such as those with a hearing impairment or those where English is not their first language).	None identified

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## Appendix B – Application Form



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Wiltshire Health and Care  
Chippenham Community Hospital  
Rowden Hill  
Chippenham  
Wiltshire  
SN15 2AJ

Email: [whc.recordsrequests@nhs.net](mailto:whc.recordsrequests@nhs.net)

### Request for Access to Records

- If you are making a request for a copy of your own records please complete Sections 1, 3 and 4a
- If you are requesting a copy of another person's records please complete Sections 1, 2, 3, 4 a or c and obtain a signature in Section 4b from the data subject (patient/staff member)

Section 1: Details of the data subject (patient/member of staff)			
Surname		Title	
Forename(s)			
Former Names			
Date of Birth		NHS No.	
Current Address			
Telephone / Mobile			
Email Address			

Section 2: Details of the requester, if not the data subject listed above			
Surname		Title	
Forename(s)			
Current Address			
Telephone / Mobile			

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Email Address	
<p>Your relationship to the patient and relevant documentation required</p> <p>Please tick appropriate box</p>	<ul style="list-style-type: none"> <li><input type="checkbox"/> I have been asked to act by the patient and attach the patient's written authorisation. If the patient is unable to provide consent - I have enclosed a photocopy of Power of Attorney or Order by the Court.</li> <li><input type="checkbox"/> Legal Parent/Guardian of the patient who is a minor and they are incapable of understanding the request / has consented to my making this request (strike off as appropriate). I have enclosed a photocopy of the patient's birth certificate or order issued by the Court.</li> <li><input type="checkbox"/> I am the deceased patient's personal representative and I have enclosed a photocopy of the Will or Grant of Probate.</li> <li><input type="checkbox"/> I am making a claim arising from the patient's death and wish to access information relevant to my claim. I have enclosed an explanation of my claim and a photocopy of evidence that I am making a claim.</li> </ul>

Section 3: Description of information requested	
<p>To allow us to respond to your request as quickly as possible, please describe the information that you believe we hold and that you would like Access to, i.e. which service(s), location(s) dates and/or, time frame(s).</p>	

Section 4: Declaration – please complete either Part A, B or C	
<p><b>Part A: I am the Data Subject (Patient/Staff Member) / Legal Parent / Guardian of the individual who is Incapable of understanding the request / Has consented to my making this request</b> (delete as appropriate).</p> <p>I, the undersigned declare that the information given by me is correct to the best of my knowledge and that I am entitled to apply under the Data Protection Act 2018 for access to personal data that Wiltshire Health &amp; Care holds about me / my child under the terms of that Act.</p> <p>Full Name (Print): _____</p> <p>Signature: _____ Date: _____</p>	

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**Part B: I am the data subject (Patient/Staff Member) giving authority to a representative to act on my behalf.**

I hereby give my consent for the named requester, as detailed in Section 2 of this form, to make a Subject Access Request on my behalf under the Data Protection Act 2018. I certify that the information given in this form is true.

Full Name (Print): \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

**Part C: I am requesting access to the records of a deceased individual.**

I declare that the information given by me is correct to the best of my knowledge and I am entitled to apply under Access to Health Records Act 1990. I have enclosed relevant documentation to prove my declared right of access and understand that in accordance with the Common Law of Confidentiality, that I may be refused access to the records if that was the patient's wish.

Full Name (Print): \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Please return the completed application form, along with copies of relevant documentation to either:

**Post:** Information Governance Team, Chippenham Community Hospital, Rowden Hill, Wiltshire, SN15 2AJ

**Email:** whc.recordsrequests@nhs.net

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