![Lakeside Healthcare logo]

SUBJECT ACCESS REQUEST POLICY
(GDPR Right of Access)

1 Document Control

1.1 Confidentiality Notice

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1.2 Document Details

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Version	Date	Created By:	Approved By:	Comments
V0.1	May 2018	Policy Support Specialist		Policy & Forms created in-line with the new GDPR guidelines
V1.0	July 2018	Policy Support Specialist	Chief Operating Officer	Approved & published
V1.1	Aug 2019	Corporate Management Assistant		Reviewed & amended: – Removed names,
V1.2	Nov 2019	Corporate Management Assistant		Reviewed & amended: – Associated documents moved to references section.

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2   Contents

3   Introduction

The General Data Protection Regulation (GDPR) clarifies that the reason for allowing individuals to access their personal data is so that they are aware of and can verify the lawfulness of the processing and understand how and why LHG is using their data.

Under the GDPR, individuals have the right to obtain:
- Confirmation that their data is being processed,
- Access to their personal data (and only theirs),
- Other supplementary information – this largely corresponds to the information that has been provided in the privacy notice.

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

An application for access to health records may be made in any of the circumstances explained below. This policy does not apply to requests to access records of deceased patients, as the GDPR does not apply to the data of deceased patients.

4   Purpose

The purpose of this policy and protocol is to provide clear and concise guidelines to LHG staff on Subject Access Requests.

Lakeside Healthcare Group (LHG) therefore will:
- Ensure all staff are familiar with this policy and that its purpose and principles are well understood and that the associated procedures are rigorously applied,
- Regard breaches of this policy as misconduct and could lead to disciplinary proceedings.

All Employees are under a duty to comply with these rules. Failure to do so will result in disciplinary action being taken.

This policy and procedure replaces all previous policies and procedures relating to Subject Access Requests.

5   Scope

This policy applies to all clinicians, employees, partners and executives. It also applies to other people who work at LHG e.g. locum GPs, non-employed nursing staff, students, volunteers, temporary staff and contractors.

LHG will ensure that, if relevant to the job role, staff will understand the Subject Access Request Policy, and that partners, supervisors, managers and employees will be trained to enable them to apply the principles of this Policy within their roles and provide advice and guidance.

The Subject Access Request Policy forms part of LHG Induction Programme for new and transferred Employees, where this is relevant to the job role.

6   Implementation

6.1 Patient Requests

A request for access to health records in accordance with the GDPR can be made in writing to LHG. A simple form is included in this policy for patients to use, if they wish, this can be found in Appendix A – Patient Subject Access Request form. Requests for access can be made verbally, or in writing, to any member of LHG staff. A form to record verbal requests, made either face-to-face or by phone can be found in Appendix C – Recording Verbal Subject Access Requests (Face to Face or by Phone)

All requests should be documented. The documented request should then be passed on to either the Administration Team or the Information Governance lead. A list of the Information Governance Leads for LHG can be found in the LHG Policy Site Localisation Sheet on Oak. Requests must be recorded in the Subject Access Request Register.

A request does not have to include the phrase "subject access request" or "Article 15 of the GDPR" or "data protection" or "right of access".

The requester should provide enough proof to satisfy LHG of their identity (and LHG is entitled to verify their identity using "reasonable means"). LHG must only request information that is necessary to confirm who they are. LHG should request any identity verification as soon as possible after the request has been received.

The default assumption when a requester asks for "a copy of their GP record" is that the information requested by the individual is the *entire* GP record. However, LHG may check with the applicant whether all or just some of the information contained in the health record is required before processing the request. The GDPR permits LHG to ask the individual to specify the information the request relates to (Recital 63) where LHG is processing a large amount of information about the individual. As a result, the information disclosed can be less than the entire GP record by mutual agreement (the individual must agree so voluntarily and freely).

Recital 63 of the GDPR states:
"Where possible, the controller should be able to provide remote access to a secure system which would provide the data subject with direct access to his or her personal data."

A patient is under no obligation to provide a reason for the request, even if asked by LHG.

6.2 Secure Online Records Access
LHG can offer, if appropriate, for a requester to be enabled to securely access online their Summary Care Record (SCR), their Detailed Coded Record or their Full Medical Record. This would then allow them to access the information that they might be seeking. Access should follow identify verification and a review of the record.

6.3 Patients Living Abroad
For former patients living outside of the UK and whom once had treatment for their stay here, under GDPR they still have the same rights to apply for access to their UK health records. Such a request should be dealt with as someone making an access request from within the UK.

6.4 Patient Representatives
A patient can give written authorisation for a person (for example a solicitor or relative) to make an application on their behalf.

A patient's representative (e.g. solicitor or authorised person), is under no obligation to provide a reason for the request, even if asked by LHG.

LHG must be satisfied that the third party making the request *is entitled* to act on behalf of the individual, but it is the third party's responsibility to provide evidence of this entitlement. This might be a written authority to make the request, or it might be a more general power of attorney (Legal Power of Attorney for Health and Welfare) in the case of an individual who no longer has the mental capacity to manage their own health.

LHG is entitled to send the information requested *directly to the patient* if we think that the patient may not understand what information would be disclosed to a third party who has made a request on their behalf.

A next of kin has no rights of access to medical record, unless they have Health & Welfare Power of Attorney.

A form for a Subject Access Request on behalf of an individual can be found in Appendix B - Subject Access Request Form – Requests Made on Behalf of an Individual

6.5 Court Representatives

A person appointed by the Court to manage the affairs of a patient who is incapable of managing his or her own affairs may make an application. Access may be denied where the GP is of the opinion that the patient underwent relevant examinations or investigations in the expectation that the information would not be disclosed to a third party.

6.6 Children

No matter their age, it is *the child* who has the right of access to their information.

Before responding to a subject access request for information held about a child, we should consider whether the child is mature enough to understand their rights. If we are confident that the child can understand their rights, then we should usually respond directly to the child. We may, however, allow the parent to exercise the child's rights *on their behalf* if the child authorises this, or if it is evident that this is in the best interests of the child.

What matters is that the child is able to understand (in broad terms) what it means to make a subject access request and how to interpret the information they receive as a result of doing so.

When considering borderline cases, LHG should take into account, among other things:
- 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 (you should contact your local Caldecott Guardian for further advice if required);
- 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.

A person with parental responsibility is either:
- The birth mother;
- The birth father (if married to the mother at the time of child's birth or subsequently or named on the birth certificate);
- An individual given parental responsibility by a court.

(This is not an exhaustive list but contains the most common circumstances)

If the appropriate health professional considers that a child patient is Gillick competent (i.e. has sufficient maturity and understanding to make decisions about disclosure of their records) then the child should be asked for his or her consent before disclosure is given to someone with parental responsibility.

If the child is <u>not</u> Gillick competent and there is more than one person with parental responsibility, each may independently exercise their right of access. Technically, if a child lives with, for example, their mother and the father applies for access to the child's records, there is no "obligation" to inform the mother. In practical terms, however, this may not be possible and both parents should be made aware of access requests unless there is a good reason not to do so.

In all circumstances good practice dictates that a Gillick competent child should be encouraged to involve parents or other legal guardians in any treatment/disclosure decisions.

6.7 Notification of Requests
Each site will keep a Subject Access Request Register of all requests in order to ensure that requests and response deadlines are monitored and adhered to.

6.8 Fees
LHG must provide a copy of the information **free of charge**, including **not** charging for postage costs.

However, LHG may charge a reasonable fee to comply with requests for further copies of the same information. The fee must be based on the administrative cost of providing the information.

LHG may also charge a reasonable fee if the request is manifestly unfounded or excessive. The fee must be based on the administrative cost of providing the information.

6.9 Manifestly Unfounded or Excessive Requests
Where requests are manifestly unfounded or excessive, in particular because they are repetitive, LHG can:
- Charge a reasonable fee taking into account the administrative costs of providing the information;
- Refuse to respond.

Where LHG refuses to respond to a request, LHG must explain why to the individual, informing them of their right to complain to the supervisory authority and to a judicial remedy without undue delay, and at the latest within one month.

6.10   Requirement to Consult an Appropriate Health Professional
It is LHG's responsibility to consider an access request and to disclose the records if the correct procedure has been followed. Before LHG discloses or provides copies of medical records, the records must be checked, and the release must be documented and authorised.

It is the responsibility of LHG to ensure that the information to be released:
- Does not disclose anything that identifies any other data subject. The only exception to this is the identity of people involved in the care of the individual requester, such as community staff or hospital specialists;
- Does not disclose anything that is likely to result in harm to the data subject or anyone else;
- Does not disclose anything subject to a court order or that is privileged or subject to fertilisation or adoption legislation.

6.11 Grounds for Refusing Disclosure of Health Records

LHG should refuse to disclose all or part of the health record if the Health Professional is of the view that:

- Disclosure would be likely to cause serious harm to the physical or mental health of the patient or any other person;
- The records refer to another individual who can be identified from that information (apart from a health professional). This is unless:
  - o That other individual's consent is obtained,
  - o The records can be anonymised,
  - o It is reasonable in all the circumstances to comply with the request without that individual's consent, taking into account any duty of confidentiality owed to the third party.
- The request is being made for a child's records by someone with parental responsibility or for an incapacitated person's record by someone with power to manage their affairs, and:
  - o The information was given by the patient in the expectation that it would not be disclosed to the person making the request;
  - o The patient has expressly indicated it should not be disclosed to that person.

For the avoidance of doubt, we cannot refuse to provide access to personal data about an individual *simply because we obtained that data from a third party.*

6.12 Access to Medical Records Act

LHG will not provide information under a Subject Access Request made on behalf of a patient by a solicitor, insurance agency or employer, and where it is clear that such a request should be made under the Access to Medical Records Act. This would refer to reports for employment (proposed or actual) and insurance purposes (any "insurance contract" so covering accident claims, insured negligence, or anything covered by an insurance contract that requires a medical report to support an actual or potential insured claim).

If necessary, or unsure, LHG will seek clarification from both the requester and the patient concerned.

Appendix E - Subject Access Request Insurance Request Letter to Patients is to be used to contact the patient to ensure they understand what they are requesting, or what is being requested on their behalf, i.e. a whole medical record, as opposed to a more defined report.

The requester should be informed in writing that LHG is seeking further clarification from the patient and this may cause a delay.

6.13 Informing of the decision not to disclose

If a decision is taken that the record should not be disclosed, a letter must be emailed to them securely or sent by recorded delivery to the patient or their representative stating the grounds for refusing disclosure.

The letter must inform the patient or representative without undue delay and within one month of receipt of the request, and will state:

- The reasons you are not taking action;
- Their right to make a complaint to LHG;

- Their right to make a complaint to the ICO or another supervisory authority;
- Their ability to seek to enforce this right through a judicial remedy.

6.14   Disclosure of the Record

Information must be provided without delay and at the latest within one month. This is calculated from the day *after* the request is received, which will be day one, even if this is a non-working day.

The period for responding to the request begins at receipt of the request, or:
- When LHG receives any additional information required to confirm the identity of the requester
- When LHG receives any additional information requested (and required) to clarify the request

In addition to the information requested, LHG Privacy Notice will also be provided to the individual.

When the information is provided by LHG, this is for personal use only. The security and confidentiality of the records becomes the responsibility of the requestor and LHG cannot be held responsible for any onward transmission or distribution.

If a request is made verbally, for example within a GP consultation, then the GP should pass this request to the Administrative Team or ask the patient to contact the Administration directly via the Reception Team. Only if it is appropriate and possible within the consultation and, no additional ID verification is required – should the GP provide the requested information immediately, in which case the GP must make the Administration team aware of the request so that the Verbal Subject Access Request can be recorded on the Subject Access Request Register.

LHG will be able to extend the period of compliance by a further two months where requests are complex or numerous. If this is the case, LHG must inform the individual within one month of the receipt of the request and explain why the extension is necessary.

Once the appropriate documentation has been received and disclosure approved, the copy of the health record may be left for the patient or their representative to collect in person, emailed to them securely or sent via recorded delivery.

If the information requested is handed directly to the patient, then verifiable identification must be confirmed at the time of collection.

It should be assumed that if an individual makes a request electronically (i.e. by email), LHG should provide the information in a commonly used electronic format (e.g. as .pdf or .doc) and provide it to the requester by email.

If sending the information via email, LHG will:
- Check that the individual wishes to receive the information via email
- Check the email address, and send an email to the address requesting confirmation of receipt, in order to verify the address and test that the individual can receive, and access, a test email and attachment via NHSmail's [Secure] encryption service. The

individual will need to register to access the information via Trend Micro upon receipt. Guidance can be found here: https://www.igt.hscic.gov.uk/KnowledgeBaseNew/HSCIC_Sending%20an%20encrypted%20email%20from%20NHSmail%20to%20a%20non-secure%20email%20address.pdf

- If in doubt about the recipient email address, LHG will not send the information via email

- Depending on the volume of data to be sent, the information may need to be split across multiple [Secure] emails, due to the maximum attachment files size. The individual should be made aware of this where this is the case.

Collection In Person

Patients and representatives should be encouraged to collect SARs in person.

- Whilst awaiting collection, information should be stored securely and clearly addressed with patient's name, date of birth and address.

- "Office use only" checklist should be attached to the front and completed (including ID check) up on collection, refer to Appendix D - Subject Access Request – Information Being Collected in Person

- The checklist then will be scanned onto the patient's record to enable auditing of multiple requests and the original shredded.

Email

Confidential information **will not** be sent by email unless:

- The email address of the recipient is absolutely verified, and

- The information is sent *securely* as described above

- The patient clearly expresses a preference to receive unencrypted information in this way

Post

If sent by post:

- The record should be sent to a named individual

- By recorded delivery

- Marked "private and confidential"

- "For addressee only"

- LHG details should be on the reverse of the envelope.

Fax

Information or reports **should not** be sent by fax, under any circumstances as this is not a secure format.

6.15   Filing and Retention of Subject Access Requests

The log and all documentation relating to a particular request should be kept and retained for a period of three years or six years if there has been a subsequent appeal.

All SAR request forms should be scanned to the patient's record to enable auditing of multiple requests and originals must be shredded.

A copy of the disclosure letter which sets out the outcome of the request, must be retained on the data subjects record, for example, medical record, personnel file, as a record of what was disclosed/withheld.

7 Definitions

- **LHG** – Lakeside Healthcare, The Group, The Practice
- **Practice Manager** – Hub Manager, Operations Manager, Practice Manager
- **Information Commissioners Office (ICO)** – role is to uphold information rights in the public interest.
- **General Data Protection Regulation (GDPR)** – is a legal framework that sets guidelines for the collection and processing of personal information of individuals within the European Union (EU). GDPR will come into effect across the EU on May 25, 2018
- **Data Controller –** The organisation (or person) that determines the purposes for which and the way any personal data about individuals is processed.
- **Data Subject –** Is a living individual (not an organisation) who is the subject of the personal data.
- **Caldicott Guardian/Information Governance Lead –** The person responsible for ensuring that the organisation is compliant with the confidentiality requirements of the Data Protection Act 1998.
- **Subject Access Request (SAR)** – Is any request made by an individual or an individual's representative for information held by LHG about that individual

8 Additional resources, FAQs & References

Resources

- **ICO Guide to GDPR** – https://ico.org.uk/for-organisations/guide-to-the-general-data-protection-regulation-gdpr/
- **CQC Guide to GDPR** – https://www.cqc.org.uk/guidance-providers/gps/nigels-surgery-85-data-security-protection-%E2%80%93-expectations-general-practice
- **BMA & GDPR** – https://www.bma.org.uk/advice/employment/ethics/confidentiality-and-health-records/general-data-protection-regulation-gdpr
- **GMC & GDPR** – https://www.gmc-uk.org/ethical-guidance/learning-materials/understanding-the-new-data-protection-law
- **IGA Records Management Code of Practice for Health and Social Care 2016** – https://digital.nhs.uk/data-and-information/looking-after-information/data-security-and-information-governance/codes-of-practice-for-handling-information-in-health-and-care/records-management-code-of-practice-for-health-and-social-care-2016

Associated Documents

- Grievance Policy,
- Disciplinary Policy,
- Equality & Diversity Policy,
- Data Protection & Security Policy,
- Confidentiality Policy,
- Privacy Notice.

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9 Appendixes

Appendix A – Patient Subject Access Request form

Full Name		Date of Request	
Date of Birth		NHS Number (if known)	
Email			
Full Address			

Details of Request	Please detail exactly what information you would like. *For example, information between two dates, information relating to a particular medical condition, hospital letters only, or your entire GP record.*
How would you like the information to be provided?	Please indicate your preferred format: ☐ Email – Please ensure an up-to-date and <u>secure</u> email address is supplied above ☐ Printed – To be collected in person ☐ On-line – Access via Detailed coded record (For Detail Coded Record access, the appropriate forms will need to be completed and proof of ID seen) *Please note it may not always be possible to supply the information in your preferred format.*

Declaration:
This Subject Access Request is for my personal information. I understand that the information provided to me by Lakeside Healthcare Group is for my personal use only. The security and confidentiality of any information provided will become the responsibility of the requestor and Lakeside Healthcare Group cannot be held responsible for any onward transmission, distribution or loss.

Patient's signature: **Date:**

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Appendix B - Subject Access Request Form – Requests Made on Behalf of an Individual

Patients Full Name		Date of Request	
Patients Date of Birth		NHS Number (if known)	

Patients Full Address	

Name and Address of Person Making the Request	
Email	

Please indicate the basis for applying on behalf of another individual:
□ Authorisation from the patient
□ I hold Lasting Power of Attorney for the patient
□ I am appointed as an independent Mental Capacity Advocate on behalf of the patient
□ I have parental responsibility and the patient is under 18, and lacks capacity to understand the request
□ I have parental responsibility and the patient is under 18, and has consented to the request

Please note that Lakeside Healthcare may contact you for further information and verification of the above.

OFFICE USE ONLY: Proof of the above seen? Yes / No

Details of Request	Please detail exactly what information you would like. *For example, information between two dates, information relating to a particular medical condition, hospital letters only, or your entire GP record.*
How would you like the information to be provided?	Please indicate your preferred format: □ **Email** – Please ensure an up-to-date and secure email address is supplied above □ **Printed** – To be collected in person □ **On-line** – Access via Detailed coded record (For Detail Coded Record access the appropriate forms will need to be completed and proof of ID seen) *Please note it may not always be possible to provide this in your preferred format.*

Declaration: I am the representative of the above individual and would like to make a Subject Access Request for their personal information. I understand that the security and confidentiality of any information provided to me by Lakeside Healthcare Group will become the responsibility of me as the requestor and Lakeside Healthcare Group cannot be held responsible for any onward transmission, distribution or loss. I understand that I might be contacted by LHG for further information, or clarification about the request, if needed.

Patient's signature: **Date:**

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Appendix C – Recording Verbal Subject Access Requests (Face to Face or by Phone)

Do not proceed until you are certain of the patient's identity.

Patients Full Name		**Date of request**	
Patients Date of Birth		**NHS Number (if known)**	
Request made?	□ Face-to-face □ Telephone	**Patient Identity Checked?**	YES / NO
Patients Full Address			
Is the request made on behalf of another individual?	**YES / NO** *Please make the requester aware that Lakeside Healthcare Group will need to contact them to verify the basis of making a request on behalf of a patient.*		
Name and contact details of the requester			
Email			
Details of request	Please detail exactly what information you would like. *For example, information between two dates, information relating to a particular medical condition, hospital letters only, or your entire GP record.*		
How does patient want the information to be provided?	Please indicate your preferred format: □ Email – Please ensure an up-to-date and <u>secure</u> email address is supplied above □ Printed – To be collected in person □ On-line – Access via Detailed coded record (For Detail Coded Record access the appropriate forms will need to be completed and proof of ID seen) ***Please note it may not always be possible to provide this in your preferred format.***		

Remind the patient that they might be contacted by Lakeside Healthcare Group for further information, identity verification or clarification about the request, if needed

Completed By: **Signature:**   **Date:**

<u>**Pass this form to the Administration Team for logging and action.**</u>

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Appendix D - Subject Access Request – Information Being Collected in Person

FOR OFFICE USE ONLY

Patients Full Name		**Date of Original Request**	
Patients Date of Birth		**NHS Number (if known)**	
Proof of ID	Details of ID seen ID photocopied? Yes / No		
Details of the information being collected			

Declaration:
By signing this form, I confirm that I have safely received the information, and that I am responsible for this information and that it is kept safe, secure and confidential at all times.

Signature of Patient	
Date	
Signature of Staff Member Handing Over Information	
Date	

**Remind the patient that it is their responsibility to ensure that the information they are given is kept safe, secure and confidential at all times. We cannot be held responsible for any loss of the information provided to them. **

Pass this completed form back to the Clinical Administration Team for future reference

Appendix E - Subject Access Request Insurance Request Letter to Patients

Dear [Patient]

We are writing to you as [your insurance company] has requested your full medical record.

You will already be aware of this as you have agreed for the [insurance company] to make a Subject Access Request – as enclosed. We understand that you have signed a form of consent; however, we need to be satisfied that you have provided specific and informed consent for [your full medical records] to be shared with the [insurance company]. This is because your records may include extremely sensitive information which you may not expect to be shared, or may not need to be shared, as part of your application for [insurance or the assessment of any claim].

As the guardian of your GP medical record we are responsible for ensuring only necessary and relevant information held on your record is shared with an [insurance company], however we also have a duty to comply with a Subject Access Request made by you as a patient, and do not want to cause any delays to your application.

We are therefore giving you a choice. We can provide you with a copy of your [full medical record] under a Subject Access Request. This would not be considered as excessive as we are providing the information to you, not the [insurance company]. It is then entirely your decision whether you give your medical record to the [insurance company] in full, or not.

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

Please therefore let us know if you would like a copy of your [full medical records] under a Subject Access Request or whether you plan to ask your [insurer] to seek a medical report.

Yours sincerely