

Subject Access Requests/ Access to Health Records Policy & Procedure

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Contents

Policy Statement.....	3
What is subject access?	3
What is personal data?	3
Time limits.....	4
Fees and cost limits	4
Making reasonable adjustments for disabled people	4
Sharing information with other health professionals.....	5
Administrative staff.....	5
Disclosure with consent	5
Disclosure without consent	5
Access to a patient’s records after death.....	6
Access to a child or young person’s records, including medical records.	6
Access to the medical records of an incapacitated patient.....	7
Police access to personal data	7
Procedure	7
Aim and Scope of the Procedure	7
Staff Responsibilities.....	8
Method:	8
Staff training requirements	9
Reference and Acknowledgements.....	10
Appendix 1 - SAR Timescales & Fees summary	
Appendix 2 - Access to Health Records of a deceased Individual	
Appendix 3 – Patient Subject Access Request Application form	
Appendix 4 - Employee or Volunteer Subject Access Request form	
Appendix 5 – General Subject Access Request application form	
Appendix 6: Police – Personal Data Requests	
Annex 1 – Police form 277	

Please Note the Intention of this Document

This policy deals with the granting of access to personal and personal sensitive information held by the Charity.

The policy is intended to show how the Charity will comply with the current Data Protection Act (1998) and the General Data Protection Regulations/UK Data Protection Bill (when they come fully into force on the 25th May 2018) in regard of responding to Data Subject Requests across the whole of the Charity.

Review and Amendment Log

Version No	Type of Change	Date	Description of change
One	Update	17/01/18	Formatting, referencing and filing

Policy Statement

What is subject access?

Enabling individuals to find out what personal data you hold about them, why you hold it and who you disclose it to is fundamental to good information-handling practice. The Data Protection Act 1998 (DPA) gives individuals the right to require you to do this. This right, commonly known as subject access, is set out in section 7 of the DPA. Individuals may exercise the right by making a written 'subject access request' (SAR).

Although the DPA will be replaced by the General Data Protection Regulations (GDPR) on the 25 May 2018 and does make changes to the DPA requirements the general principles remain the same. The differences are connected with timescales for completing a SAR and the charges that may be made. These changes are noted in the text below and illustrated in Appendix 1.

At the present time, December 2017, the UK Data Protection Bill (DPB) is proceeding through the houses of Parliament and is expected to become law by the 25th May 2017. This Bill will include the requirements of the GDPR plus additional law such as establishing the age of consent for children to be able to control access to their records to be 13 years of age as opposed to the current 12 years of age under the DPA.

The majority of SARs processed by the Charity are in relation to health records and this policy is written with this in mind. However, SARs could be received from staff, volunteers, customers or supporters and the same principles apply. In all cases the Information Commissioner's Office, 'Subject Access Code of Practice 2017' should be followed.

When a SAR relates to a deceased person the Access to Health Records Act 1990 is the legislation that applies rather than the DPA or the GDPR but the process with dealing with them is very similar.

What is personal data?

In the context of this policy personal data is data that could identify an individual and also any sensitive data relating to that individual e.g. a persons' health record. Under the right of subject access, an individual is entitled only to their own personal data, and not information relating to other people (unless they are acting on behalf of that person e.g. healthcare staff involved in a patient's care). Before you can respond to a SAR, you need to be able to decide whether information you hold is personal data and, if so, whose personal data it is.

- The requestor is not obliged to complete these forms if they prefer to give the required information in some other form.
- Requests from the Police for access to Patients/data subjects records should be authorised by a DPA form 277, see Appendix 6.
- Once the required information is received the head of department arranges for the required records to be collated and for appropriate redactions or omissions to be made.
- For health records, the health professional most directly concerned is permitted to withhold information which she/he believes might cause serious harm to the physical or mental well-being of the patient, or which might identify a third party. However the justification for this should be documented in the patients' record.
- Details of a health record SAR should be included within the patients' record. Details of employee or volunteer SARs should be included within personnel files. This should include details of any rejected requests, details of withheld information and information redacted.
- The information in the records should be understandable and the use of complex terms or codes within the records should be explained to the requestor.
- The completed SAR may be reviewed by Caldicott Guardian for health SARs and other SARs will be reviewed and approved by the HR Director.
- Once reviewed the head of department will arrange to send out the records to the requestor, or arrange a viewing as required.
- The timescales and fees permitted for completing SARs are shown in Appendix 1. The starting point for the permitted timescale starts when the Charity has all the information it needs, including any fees, to process the SAR.
- Each head of department will maintain a record of the SARs received in their department.
- When data subjects are sent the information they have requested this must be done by secure means and proof of receipt obtained.

Staff training requirements

All staff and volunteers will be made aware of this policy and procedure. Staff responsible for co-ordinating and responding to requests for access to health records will have had training in the provisions of the Data Protection Act 1998 (and GDPR requirements) and be aware of professional guidance on record keeping for clinical staff.

Reference and Acknowledgements

References:

GMC, Confidentiality – <https://www.gmc-uk.org/guidance/Data-Protection-Act-1998-ethical-guidance/30387.asp>
Data Protection Act 1998 – www.legislation.gov.uk/ukpga/1998/29/contents

Access to Health Records Act 1990 – www.legislation.gov.uk/ukpga/1990/23/contents

Mental Capacity Act Code of Practice – <https://www.gov.uk/government/collections/mental-capacity-act-making-decisions#mental-capacity-act-code-of-practice>

Information Commissioner's Office, Subject Access Code of Practice 2017 – www.ico.org.uk

General Data Protection Regulations (to be fully implemented by 25 May 2018) See www.ico.org.uk

Acknowledgements:

The General Medical Council "Access to Health Records" and "Confidentiality: good practice in handling patient information" documents are recognised as the source of much of the content of this policy.

The SAR request forms (Appendices 2 to 6) are based on those provided by NHS Digital.

Appendix 1 - SAR Timescales & Fees summary

Access to Health Records and Subject Access Requests (SAR) – Timescales & Fees

Data Protection Act 1998 (until 25 May 2018) or Access to Health Records Act 1990								25 th May 2018 onwards - GDPR or Access to Health Records Act 1990			
SAR type	DPA Time limit for responding	Access to Health Records Act 1990 Time limit	Charity Policy	View paper record only	Charges permitted (Copy of whole or part of Electronic record only)	Charges permitted (paper record) Copy whole or part	Charges permitted (combination of paper and electronic) Copy whole or part	GDPR Time limit for responding	Charity Policy	Charges permitted	Format of output
Health, living person	40 days	n/a	20 days	No charge	£10	£50	£50	1 month (28 days)	20 days	None	On request, a commonly used electronic format
Health, living person Added to within 40 days of SAR	40 days	n/a	20 days	No charge	£10	£50	£50	1 month (28 days)	20 days	None	On request, a commonly used electronic format
Deceased person	n/a	40 days	20 days	No charge	£10	£50	£50	n/a	20 days	None	Copy
Deceased person, record added to within 40 days of SAR	n/a	20 days	20 days	No charge	No charge	No charge	No charge	n/a	20 days	None	Copy
Employee	40 days	n/a	40 days	£10	£10	£10	£10	1 month (28 days)	1 month (28 days)	None	On request, a commonly used electronic format

Data Protection Act 1998 (until 25 May 2018) or Access to Health Records Act 1990								25 th May 2018 onwards - GDPR or Access to Health Records Act 1990			
SAR type	DPA Time limit for responding	Access to Health Records Act 1990 Time limit	Charity Policy	View paper record only	Charges permitted (Copy of whole or part of Electronic record only)	Charges permitted (paper record) Copy whole or part	Charges permitted (combination of paper and electronic) Copy whole or part	GDPR Time limit for responding	Charity Policy	Charges permitted	Format of output
Volunteer	40 days	n/a	40 days	£10	£10	£10	£10	1 month (28 days)	1 month (28 days)	None	On request, a commonly used electronic format
Customer	40 days	n/a	40 days	£10	£10	£10	£10	1 month (28 days)	1 month (28 days)	None	On request, a commonly used electronic format
Supporter	40 days	n/a	40 days	£10	£10	£10	£10	1 month (28 days)	1 month (28 days)	None	On request, a commonly used electronic format
Other	40 days	n/a	40 days	£10	£10	£10	£10	1 month (28 days)	1 month (28 days)	None	On request, a commonly used electronic format

Notes:

- Health records – living person. Data Protection Act 1998 applies
- Health records – Deceased person – Access to Health Records Act 1990 (AHRA) applies
- Applicable from 25th May 2018 – after GDPR becomes law (or the UK Data Protection Bill which will incorporate the GDPR)

The GDPR does not replace the Access to Health Records Act 1990 (AHRA), however the AHRA refers to the costs described in the Data Protection Act 1998 hence costs for AHRA change in line with GDPR but the timescales and output requirements do not (as they are directly specified within the AHRA).

Under GDPR if the initial SAR was made electronically then an electronic response should be provided in a 'common electronic format'

Other than timescales and fees, other aspects of completing a subject access request for the health records of a deceased person should, in general, follow the Information Commissioners "Subject access code of practice".

The timescale count does not start until all the information necessary and any fees (while fees are still permitted) have been provided.

Appendix 2 - Access to Health Records of a deceased Individual

Access to Health Records of a Deceased Individual

Under the

ACCESS TO HEALTH RECORDS ACT 1990

Please read the following information carefully:

Your request must be made **in writing** - preferably using the forms in this Appendix.

You will be asked to indicate the data you require, i.e. whether you wish to see a certain part of the record or the record in its entirety.

Cornwall Hospice Care is required to take advice from our medical staff before making a decision about disclosure.

The right of access is for the personal representative of the deceased person and not simply a surviving family member. An applicant must provide evidence to Cornwall Hospice Care that they have a right of access under the Access to Health Records Act 1990.

Access may not be permitted if the following circumstances apply:

1. If it is considered that the patient would not have wished disclosure.
2. If access would lead to the identification of someone else not involved in the patient's care.
3. If access would cause serious mental or physical harm to someone else not involved in the patient's care.

Where access is allowed we will supply photocopies. In line with the Act, we may charge a maximum fee of £50.00 per application – see Appendix 1 for details of charges and timescales.

From 25 May 2018 onwards there will be no charges.

Unless you are the patient's next of kin and can be identified by the patient's medical records we will require proof of your relationship to the patient (e.g. birth/marriage certificate). If you are not related to the patient, you will be asked for documentation supporting your claim for access to the patient's records

Use of the "**Access to Health Records of a Deceased Individual – application form**" below will assist us greatly in complying with your request.

**Access to Health Records of a Deceased Individual –
application form Section 1: Details of the person the request**

is about (data subject) Title: _____

Surname: _____

First Name: _____

Former Surname: _____

Date of Birth: _____

Sex (Male/Female): _____

Home Address: _____

Postcode: _____

NHS Number (if known): _____

Telephone Number (day): _____

Email Address: _____

If the above has been known by a different name or has lived at a different address during the period to which the information required relates, please give details below:

Name: _____ From (date): _____ To (date): _____

Address: _____

Postcode _____

Name: _____ From (date): _____ To (date): _____

Address: _____

Postcode _____

Section 2: Your name and

address Title: _____

Surname: _____

First Name: _____

Address: _____

Post code: _____

Telephone number (day): _____

Email address: _____

Section 3: Your relationship to the patient

- I am the patients personal representative (please attach proof of relationship see section 5 for further details)
- I am the executor of the estate (please attach confirmation of your appointment)
- I have been designated the administrator (designated by the rules of intestacy) of the patient (please attach confirmation of your appointment)
- I have a claim arising from the patient's death (please provide details of this claim below)

Details of claim: (please continue on additional pages if necessary)

Section 4: Helping us to find the information

Please use the space below to provide details of which health records you require access to, if possible which periods and parts of those records you require, along with any other details you may feel have relevance e.g. consultant name etc.

Please supply as much detail as possible in order that we may locate the information required and interrogate the most appropriate systems to provide the most relevant information in relation to your request.

Section 5: Proof of Identity

It will be necessary to confirm the identity of **all** parties included on this form. Please supply a photocopy of **one** document from sections A and B, and **all** relevant documents from section C with the application if relevant.

- A. Confirmation of name¹
- Full driving licence
 - Passport
 - Birth certificate
 - Marriage certificate
- B. Confirmation of address
- Utility bill
 - Bank statement
 - Credit card statement
 - Benefit book
 - Pension book
- C. As a 3rd party - to access someone else's health records, you must provide:
- Proof of relationship to subject i.e. patients personal representative
 - Confirmation of appointment as executor of the estate of a deceased person
 - Confirmation of appointment of administrator (designated by the rules of intestacy) of a deceased person

I am providing the following types of identification, which are attached to this document.

- A. Confirmation of name _____
- B. Confirmation of address _____
- C. 3rd Party confirmation _____

¹ Where there has been a change of name we will require evidence of the name for which you are seeking information e.g. a birth certificate will not be considered as evidence for searches on a married name.

Section 6: Declaration:

Please tick as appropriate and sign below:

I confirm I am the patient's personal representative and have enclosed evidence of executor of the will/administrator of the estate and evidence of my identity.

I confirm I have a claim arising out of the patient's death and have enclosed proof of my identity and documented evidence of my claim.

Signature: _____ Date: _____

Please note that your information will be posted to you by special delivery which will require a signature upon receipt. However, if the Royal Mail are unable to deliver to the address given and need to return the documentation to Cornwall Hospice Care this will be returned by normal post (i.e. not under confidential cover).

Your Checklist

Is your contact information correct?

Have you enclosed acceptable identification?

Have you signed the form?

Have you completed all the sections?

Please return completed form(s) marked Confidential to:

Director of Patient Services
Cornwall Hospice Care
Mount Edgumbe Hospice
St Austell, Cornwall
PL26 6AB
Tel: 01726 65711

Appendix 3 – Patient Subject Access Request Application form

Surname of Patient

First Name (s)

Patient's Date of Birth

Address:

.....

.....

Post Code:

Type of Request:

Please tick relevant boxes.

Do you wish to view the information?

Collect a copy form Cornwall Hospice Care?

Have a full copy of Health Records sent by post?

Additional information

Please provide as much information as possible and specify if you only require a particular part of the health record. Please use another blank sheet if necessary. Useful information such as any previous addresses, dates of consultations, names of health professionals will be helpful.

.....

.....

.....

IDENTIFICATION

To be shown to clinical staff if picking up or seeing records at Cornwall Hospice Care or to be sent by post if records required by post.

It will be necessary to confirm the identity of **all** parties included on this form. Please supply a photocopy of **one** document from sections A and B.

- A. Confirmation of name²
- Full driving licence
 - Passport
 - Birth certificate
 - Marriage certificate
- B. Confirmation of address
- Utility bill
 - Bank statement
 - Credit card statement
 - Benefit book
 - Pension book

I am providing the following types of identification, which are attached to this document.

A. Confirmation of name _____

B. Confirmation of address _____

Signature: _____ Date: _____

Please note that, where required, your information will be posted to you by special delivery which will require a signature upon receipt. However, if the Royal Mail are unable to deliver to the address given and need to return the documentation to Cornwall Hospice Care this will be returned by normal post (i.e. not under confidential cover).

² Where there has been a change of name we will require evidence of the name for which you are seeking information e.g. a birth certificate will not be considered as evidence for searches on a married name.

Your Checklist

- Is your contact information correct?
- Have you enclosed acceptable identification?
- Have you signed the form?
- Have you completed all the sections?

Please return completed form(s) marked Confidential to:

Director of Patient Services
Cornwall Hospice Care
Mount Edgcumbe Hospice
St Austell, Cornwall
PL26 6AB
Tel: 01726 65711

3rd Party DISCLOSURE – to be filled in by the person requesting the records (if not the patient)

Name of Patient:

Date of Birth of Patient (DD/MM/YY):

Details of person requesting the records:

Surname

First Name (s)

Relationship to Patient:

Address

.....

.....Post Code

Contact Telephone No: Date:

IDENTIFICATION

To be shown to the clinical staff if picking up or seeing records at Cornwall Hospice Care or to be sent by post if records are required by post.

It will be necessary to confirm the identity of **all** parties included on this form. Please supply a photocopy of **one** document from sections A and B, and **all** relevant documents from section C with the application if relevant.

A. Confirmation of name³

- Full driving licence
- Passport
- Birth certificate
- Marriage certificate

B. Confirmation of address

- Utility bill
- Bank statement

³ Where there has been a change of name we will require evidence of the name for which you are seeking information e.g. a birth certificate will not be considered as evidence for searches on a married name.

- Credit card statement
- Benefit book
- Pension book

C. As a 3rd party - to access someone else's health records, you must:

- be acting on their behalf with their consent, or
- have legal authority to make decisions on their behalf (power of attorney), or
- have another legal basis for access (evidence required)

I am providing the following types of identification, which are attached to this document.

- A. Confirmation of name _____
- B. Confirmation of address _____
- C. 3rd Party confirmation _____

Signature: _____ Date: _____

Please note that, where requested, the information will be posted to you by special delivery which will require a signature upon receipt. However, if the Royal Mail are unable to deliver to the address given and need to return the documentation to Cornwall Hospice Care this will be returned by normal post (i.e. not under confidential cover).

Your Checklist

- Is your contact information correct?
- Have you enclosed acceptable identification?
- Have you signed the form?
- Have you completed all the sections?

Please return completed form(s) marked Confidential to:

Director of Patient Services
 Cornwall Hospice Care
 Mount Edgcumbe Hospice
 St Austell, Cornwall
 PL26 6AB
 Tel: 01726 65711

Appendix 4 - Employee or Volunteer Subject Access Request form

Surname of Employee/Volunteer.....

First Name (s)

Date of Birth

Address:

.....

.....

Post Code:

Type of Request:

Please tick relevant boxes.

Do you wish to view the information?

Collect a copy form Cornwall Hospice Care?

Have a full copy of Records sent by post?

Additional information

Please provide as much information as possible and specify if you only require a particular part of your records. Please use another blank sheet if necessary. Useful information such as any previous addresses or dates of relevant events will be helpful.

.....

.....

.....

IDENTIFICATION

To be shown to Human Resources staff if picking up or seeing records at Cornwall Hospice Care or to be sent by post if records required by post.

It will be necessary to confirm the identity of **all** parties included on this form. Please supply a photocopy of **one** document from sections A and B.

- A. Confirmation of name⁴
- Full driving licence
 - Passport
 - Birth certificate
 - Marriage certificate
- B. Confirmation of address
- Utility bill
 - Bank statement
 - Credit card statement
 - Benefit book
 - Pension book

I am providing the following types of identification, which are attached to this document.

- A. Confirmation of name _____
- B. Confirmation of address _____

Signature: _____ Date: _____

Please note that, where required, your information will be posted to you by special delivery which will require a signature upon receipt. However, if the Royal Mail are unable to deliver to the address given and need to return the documentation to Cornwall Hospice Care this will be returned by normal post (i.e. not under confidential cover).

⁴ Where there has been a change of name we will require evidence of the name for which you are seeking information e.g. a birth certificate will not be considered as evidence for searches on a married name.

Your Checklist

- Is your contact information correct?
- Have you enclosed acceptable identification?
- Have you signed the form?
- Have you completed all the sections?

Please return completed form(s) marked Confidential to:

Director of Human Resources
Cornwall Hospice Care
Mount Edgcumbe Hospice
St Austell, Cornwall
PL26 6AB
Tel: 01726 65711

3rd Party DISCLOSURE – to be filled in by the person requesting the records (if not the employee/volunteer)

Name of employee/volunteer:

Date of Birth of employee/volunteer (DD/MM/YY):

Details of person requesting the records:

Surname

First Name (s)

Relationship to employee/volunteer.....

Address

.....

.....Post Code

Contact Telephone No: Date:

IDENTIFICATION

To be shown to Human Resources staff if picking up or seeing records at Cornwall Hospice Care or to be sent by post if records are required by post.

It will be necessary to confirm the identity of **all** parties included on this form. Please supply a photocopy of **one** document from sections A and B, and **all** relevant documents from section C with the application if relevant.

A. Confirmation of name⁵

- Full driving licence
- Passport
- Birth certificate
- Marriage certificate

B. Confirmation of address

- Utility bill
- Bank statement

⁵ Where there has been a change of name we will require evidence of the name for which you are seeking information e.g. a birth certificate will not be considered as evidence for searches on a married name.

- Credit card statement
- Benefit book
- Pension book

- C. As a 3rd party - to access someone else's records, you must:
- be acting on their behalf with their consent, or
 - have legal authority to make decisions on their behalf (power of attorney), or
 - have another legal basis for access (evidence required)

I am providing the following types of identification, which are attached to this document.

- A. Confirmation of name _____
- B. Confirmation of address _____
- B. 3rd Party confirmation _____

Signature: _____ Date: _____

Please note that, where requested, the information will be posted to you by special delivery which will require a signature upon receipt. However, if the Royal Mail are unable to deliver to the address given and need to return the documentation to Cornwall Hospice Care this will be returned by normal post (i.e. not under confidential cover).

Your Checklist

- Is your contact information correct?
- Have you enclosed acceptable identification?
- Have you signed the form?
- Have you completed all the sections?

Please return completed form(s) marked Confidential to:

Director of Human Resources
 Cornwall Hospice Care
 Mount Edgcombe Hospice
 St Austell, Cornwall
 PL26 6AB

Tel: 01726 65711

Appendix 5 – General Subject Access Request application form

Surname of requestor.....

First Name (s)

Date of Birth

Address:

.....

.....

Post Code:

Type of Request:

Please tick relevant boxes.

Do you wish to view the information?

Collect a copy form Cornwall Hospice Care?

Have a full copy of Records sent by post?

Additional information

Please provide as much information as possible and specify if you only require a particular part of your records. Please use another blank sheet if necessary. Useful information such as any previous addresses or dates of relevant events will be helpful.

.....

.....

.....

IDENTIFICATION

To be shown to Human Resources staff if picking up or seeing records at Cornwall Hospice Care or to be sent by post if records required by post.

It will be necessary to confirm the identity of **all** parties included on this form. Please supply a photocopy of **one** document from sections A and B.

- A. Confirmation of name⁶
- Full driving licence
 - Passport
 - Birth certificate
 - Marriage certificate
- B. Confirmation of address
- Utility bill
 - Bank statement
 - Credit card statement
 - Benefit book
 - Pension book

I am providing the following types of identification, which are attached to this document.

- A. Confirmation of name _____
- B. Confirmation of address _____

Signature: _____ Date: _____

Please note that, where required, your information will be posted to you by special delivery which will require a signature upon receipt. However, if the Royal Mail are unable to deliver to the address given and need to return the documentation to Cornwall Hospice Care this will be returned by normal post (i.e. not under confidential cover).

⁶ Where there has been a change of name we will require evidence of the name for which you are seeking information e.g. a birth certificate will not be considered as evidence for searches on a married name.

Your Checklist

- Is your contact information correct?
- Have you enclosed acceptable identification?
- Have you signed the form?
- Have you completed all the sections?

Please return completed form(s) marked Confidential to:

Director of Human Resources
Cornwall Hospice Care
Mount Edgcumbe Hospice
St Austell, Cornwall
PL26 6AB

Tel: 01726 65711

Section B - 3rd Party DISCLOSURE:

To be filled in by the person requesting the records of another person

Name of the person whose records are requested:

Date of Birth (DD/MM/YY):

Details of person requesting the records:

Surname

First Name (s)

Relationship to person whose records requested.....

Address

.....

Post Code

Contact Telephone No: Date:

IDENTIFICATION

To be shown to Human Resources staff if picking up or seeing records at Cornwall Hospice Care or to be sent by post if records are required by post.

It will be necessary to confirm the identity of **all** parties included on this form. Please supply a photocopy of **one** document from sections A and B, and **all** relevant documents from section C with the application if relevant.

A. Confirmation of name⁷

- Full driving licence
- Passport
- Birth certificate
- Marriage certificate

B. Confirmation of address

- Utility bill
- Bank statement

⁷ Where there has been a change of name we will require evidence of the name for which you are seeking information e.g. a birth certificate will not be considered as evidence for searches on a married name.

- Credit card statement
- Benefit book
- Pension book

C. As a 3rd party - to access someone else's records, you must:

- be acting on their behalf with their consent, or
- have legal authority to make decisions on their behalf (power of attorney), or
- have another legal basis for access (evidence required)

I am providing the following types of identification and evidence of the legal basis for accessing the records, which are attached to this document.

A. Confirmation of name _____

B. Confirmation of address _____

C. 3rd Party authority _____

Signature: _____ Date: _____

Please note that, where requested, the information will be posted to you by special delivery which will require a signature upon receipt. However, if the Royal Mail are unable to deliver to the address given and need to return the documentation to Cornwall Hospice Care this will be returned by normal post (i.e. not under confidential cover).

Your Checklist

Is your contact information correct?

Have you enclosed acceptable identification?

Have you signed the form?

Have you completed all the sections?

Please return completed form(s) marked Confidential to:

Director of Human Resources
Cornwall Hospice Care
Mount Edgcombe Hospice
St Austell, Cornwall
PL26 6AB

Appendix 6: Police – Personal Data Requests

According to the Information Commissioners Office (ICO) the disclosure of personal data under the section 29 exemption does not need to be received in a certain manner, the Charity simply needs to be satisfied that the request is genuine and that the information being requested is required for the prevention or detection of crime, and the prosecution or apprehension of offenders. This provides an exemption from informing the individuals, or seeking their consent to disclose the information.

Under section 29 of the Data Protection Act 1998 the Police may request personal data for any of the following purposes:

- (a) The prevention or detection of crime,
- (b) The apprehension or prosecution of offenders, or
- (c) The assessment or collection of any tax or duty or of any imposition of a similar nature.

However, this does not give the Police the automatic right to ask for any information that they may wish to have.

Any information requested must demonstrably be required to meet at least one of the above purposes.

For instance while the Police may be justified in asking to see specific details about an individual in respect of a criminal investigation they would not be justified in asking to look at the whole (for arguments sake) personnel file for every employee just in case they could find evidence of a crime.

Each request from the Police should be justified and for only one persons' information. Where information about more than one person is required there should be a separate request for each person.

Where there is evidence that the data subject has given consent for the police to access personal data there is no issue and the data should be provided. However, depending on the age and mental capacity of a child data subject, we will require parental consent or that of an adult with legal guardianship

For Devon and Cornwall Constabulary access to personal data requests should be presented on a Devon and Cornwall Constabulary Form 277 – see annex 1

The 277 form should be authorised by a police officer more senior than the police officer making the request, if the police are unable to provide an explanation regarding the requirement to access personal data (usually due to the nature of the offence being investigated) then the form should be signed by a Superintendent.

The Police right of access to peoples' information has to be justified and it is therefore important that in addition to the details on the 277 form they do provide some indication of what is being investigated if at all possible. This will help the Charity determine whether the request is exempt from requiring consent, lawful and genuine e.g. for the purposes of prevention or detection of crime; apprehension or prosecution of offenders; or assessment or collection of tax, duty or imposition of a similar nature.

This is because we have to ensure that the request is proportionate and justifiable e.g. you would not need someone's personnel or health record to investigate a case of dropping litter in the street but you might for investigation of fraud.

All requests from the Police to access health records must be authorised by the Caldicott Guardian.

All other requests from the Police must be authorised by the HR Director.

Where the Charity does not believe the police request is justified the police should be informed of this and given an explanation of the Charity's position

The Caldicott Guardian and the HR Director may require legal advice in complex cases, and it should be noted that the police can apply for a Court Order in order to access personal information and Court Orders must be complied with by the Charity.

A separate request form should be submitted for each individual data subject about whom information is required.

The Police should give details of the specific information they require about the data subject for the purpose stated in the form i.e. only the relevant information should be provided rather than all the information held – unless that is what has been asked for.

It should be established how the required information will be given to the police as it may simply require the police to view a record or they may need a copy of the information. When a copy of information is required this should be provided by secure means, preferably collected in person, and a signature provided as confirmation of receipt. Evidence of receipt is also required when information is sent by secure post or secure email.

Annex 1 – Police form 277



RESTRICTED (when complete) Form No.: 277

Personal Data Request Form

To (name and position if known):

Organisation and address:

This request for personal data and other information is made under the powers invested in me as a constable/a member of police staff of the Devon & Cornwall Constabulary by the Police Act 1996 (Section 30(1) or under the Police Reform Act 2002.

The personal data I require relates to the following individual(s) (include identifying details of the person where known, such as full name, Address and date of birth):

I require the following personal data:

I have the following information to assist you in locating the personal data and other information to assist with my enquiry:

I confirm the personal data and other information is required for the following purpose(s) (tick the relevant box(es) and complete the other row where necessary):

Purpose	Legal Basis	Tick
For the prevention, investigation and/or detection of crime (Section 29(3) Data Protection Act 1998)	Police Acts, Common Law	<input type="checkbox"/>
For the apprehension and/or prosecution of offenders (Section 29(3) Data Protection Act 1998)	Police Acts, Common Law	<input type="checkbox"/>

To prepare a file for the Coroner's court (Section 35(2) Data Protection Act 1998)	On request of the Coroner(s) Act	<input type="checkbox"/>
To identify if there are children at the address to negate any harm caused by police action	Children Act 2004	<input type="checkbox"/>
To locate a missing person to ascertain their well-being (Schedule 2 and 3 DPA 1998)	Police Acts, Common Law	<input type="checkbox"/>
Other (please specify, and if no Data Protection Act exemption applies obtain countersignature by Superintendent)		<input type="checkbox"/>

I request that the personal data and other information should be provided to the police in the following manner:

In person by post by fax by secure e-mail

This Section to be completed by the officer requesting the personal data and other information

I confirm that tick appropriate box(es)

- this information will be used in connection with this enquiry and held and used only as long as this is required for policing purposes and any subsequent criminal justice proceedings.
- the conditional right of the data subject under Human Rights Act 1998, Article 8
- has been considered in this case.

If this personal data is not disclosed it will prejudice the purpose indicated above.

Please **Note:** A response to this request is required within

Signed: _____ Force No.: _____ Date: _____

Print name: _____ Post: _____

BCU/Dept. address: _____

Phone: _____ Fax: _____ E-mail: _____

If the nature of the enquiries is such that, no explanation can be given, this form will be countersigned by a Superintendent.

Signed:
Print name:

Force No.:
Post:

Date:

This section to be completed by the recipient of request for personal data and information

Response

Please reply to all requests so that we know they have all been considered and to help prevent duplication.

As part of your decision making process, please take into account the requirements upon you/ your organisation in relation to the request, for example the Crime and Disorder Act 1998, (any person or organisation has a power to provide information to a relevant **authority in order to achieve** a crime and disorder objective), the Local Government Act, Children Acts 1989 and 2004, and other legislation relevant to your organisation.

Signature:

Date:

Name:

Position:

Organisation and Dept.:

- The information requested above has been approved for disclosure and is attached
- The information requested above has not been approved for disclosure

Please explain why you have decided not to disclose the information so that we know whether you need additional information or for us consider presenting to the Court to obtain a Disclosure Order:

The subject of the request should not be given any indication that this request has been made prior to consultation with the requesting officer. If your organisation subsequently receives a request for a copy of this document (e.g. under the Data Protection Act or Freedom of Information Act) for this information, please contact the Devon & Cornwall Constabulary Data Protection Officer or Freedom of Information Officer.