

Subject Access Request Policy

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	Give reasons for exemption if no:

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Version No	Revision date	Revision by	Nature of revisions
V1.0	31/10/2019	Beverley Gallagher	Policy rewritten
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Contents

1 Introduction	4
2 Purpose	4
3 How to make a Subject Access Request.....	4
5 Responsibilities	7
6 Should you be unhappy with a SAR response	8
7 Implementation plans and monitoring effectiveness.....	9
8 Update and review	10
9 Other relevant policies.....	10
Appendix 1: Legal and Regulatory Framework	11
Appendix 2 Equality Impact Assessment	12

1 Introduction

- 1.1 NHS Kernow Clinical Commissioning Group (NHS Kernow) has a legal obligation to comply with all appropriate legislation in respect of data/information management and IT security. It also has a duty to comply with guidance issued by the Government, the Department of Health, NHS England, NHS Digital, the Information Commissioner, and other advisory groups to the NHS as well as guidance issued by professional bodies.
- 1.2 The Data Protection Act provides individuals with the right of access, commonly referred to as 'subject access'. This entitles an individual or their representative to obtain a copy of their personal data as well as other supplementary information held by the organisation, by submitting a written request.
- 1.3 Members of the public can view the types of information processed and reasons for information processing by NHS Kernow by visiting:
<https://www.kernowccg.nhs.uk/get-info/information-governance/>

2 Purpose

- 2.1 This policy explains how the general public are able to make a SAR to NHS Kernow by the submission of a written request either by post or email.
- 2.2 This policy provides an outline of the requirement for NHS Kernow staff to ensure the provision of comprehensive, appraised, appropriately redacted and accurate information in response to Subject Access Requests (SAR) and in line with Data Protection Act 2018.
- 2.3 This policy explains to staff what the legal requirements are for NHS Kernow to respond to requests and what the legal right of individuals are under Data Protection Act 2018.
- 2.4 This policy applies equally to personal data, and special categories of personal data, that may be used to administer the provision of healthcare services, to inform research or to manage and administer NHS Kernow workforce, and all other business functions of NHS Kernow.

3 How to make a Subject Access Request

- 3.1 In order to assist NHS Kernow to deal with requests efficiently, individuals wishing to make a SAR request should:

- Clearly mark the request for personal information as a SAR (though any formal request for copies of personal information will be treated as such)
- Include the date on your request
- Include your name and any aliases if relevant
- Include your up to date contact details
- Include any reference number you may have such as your NHS number
- Explain as much as possible what information is being requested and any additional information which may help NHS Kernow identify which members of staff might hold the information
- Provide any relevant details or dates which the information may relate to
- Explain how you would like to receive the information in response to your request

- 3.2 All requests for personal information should be made in writing using the form available on NHS Kernow website <https://www.kernowccg.nhs.uk/get-info/information-governance/subject-access-requests/> and emailed to kccg.caldicottincidents@nhs.net or by post to:

Head of Information Governance
Sedgemoor Centre
Priory Road
St Austell
PL25 5AS

- 3.3 When NHS Kernow acknowledges your request, you will be informed of the date a response can be expected. In very exceptional circumstances NHS Kernow may need extra time to consider your request and are allowed to take up to an extra two months. If this is the case, you will be informed within the first 30 days.
- 3.4 NHS Kernow will advise if your personal information is not held but will normally provide copies of any information requested.
- 3.5 When a response to a SAR has been provided by NHS Kernow for a specified period of time, it is envisaged any subsequent requests and responses will only be provided for differing periods of time.
- 3.6 When NHS Kernow receives a request from a legal representative/advocate or someone acting on behalf of the data subject, consent will be required. This must be a hard copy signature explicitly consenting to the release of the data subject information indicated in the request. It must also be clear where the data subject would like the response to be sent. However, NHS Kernow may request additional documented proof of identity and confirmation of the request from the data subject.

- 3.7 The response letter will also include:
- details on your rights to challenge the accuracy of your information, to have it deleted, or to object to its use
 - your right to complain to the ICO
- 3.8 Should requesters of information require a response to be provided in a particular language, format or method, including easy read format, then this need will be met by NHS Kernow wherever possible making use of translation services available.
- 3.9 Information is typically provided in a printed copy when responding by post and PDF document when responding by email. When an email response is provided to a requester email account the information will pass across the open network. NHS Kernow can encrypt the PDF document, on request, using secure software which will require a password to be set up by the requester on receipt of the email. Once the password is set up and entered, the encrypted document can be opened.

4 Responding to SARs

- 4.1 Requests may arrive into NHS Kernow by post or email and the CCG has 30 days from the date of receipt to:
- Gather information from all work areas
 - Collate the information gathered
 - Appraise and apply any legal exemptions which may apply such as for third party content, legal privilege or information which has the potential to cause harm
 - Remove duplication where necessary
 - Redact and respond
- 4.2 The response clock begins ticking on the day of receipt and a response must be provided by the same date of the following month.

For example:

- i. NHS Kernow receives a request on 3 September. The time limit starts on that day and the response must be sent on 2 October to be compliant.
- ii. The day of receipt is regarded as day one of the countdown. However, requests received after office hours, 5.00pm on Friday evening, will not activate the response clock until the following Monday morning when office hours begin again.
- iii. If the response date falls on a Saturday, Sunday or Bank Holiday, the 30 days ends on the next working day.

- 4.3 All requests for personal information, regardless of the format or method of requests, received into NHS Kernow must be sent to the Head of Information Governance (HOIG) immediately in order that the process can begin.
- 4.4 Specific details of receipt and response date requirements will be contained within the operating procedure for SARs and can also be found on the Information Commissioner website <https://ico.org.uk/your-data-matters/time-limits-for-responding-to-data-protection-rights-requests/>

5 Responsibilities

- 5.1 This policy applies to all staff, or those working on behalf, or representing NHS Kernow in the management of all personal data that is collected, stored, processed and destroyed by NHS Kernow.
- 5.2 Breaches of this policy may be managed through NHS Kernow Disciplinary Policy and Procedure, which is available on NHS Kernow Document library along with all other associated policies.
- 5.3 **The HOIG, Data Protection Officer** duties are to:
- Act as the central point for receipt and management of SARs
 - Ensure the identity of the requester is appropriate to the request, taking account of any ongoing relationship between NHS Kernow and the individual
 - Ensure that where requests are made on behalf of data subjects that the appropriate checks are made with regard to identity, consent and addresses for responses
 - Acknowledge receipt of the request and provide to the requester with an expected response time
 - Ensure relevant teams are contacted to undertake timely, robust and comprehensive searches
 - Ensure the collation of all information provided by staff in all formats in a timely manner
 - Review the content of all information provided by staff to ensure appropriate content and removal of duplication where necessary
 - Ensure the application of exemptions where necessary for example removal of third party personal information, legal privilege, removal of information with the potential to cause harm
 - Ensure the provision of a response to the requester in a requested format or method of provision
- 5.4 **Managers** will ensure that staff:

- Understand and adhere to the principles of the Data Protection Act 2018 and associated legislation as provided within the annual Information Governance training
- Who receive information requests send them to HOIG immediately
- Perform a thorough search for information when requested by HOIG and provide it within the timescale set out in that request

5.5 Staff are expected to:

- Have knowledge of this policy and adhere to the Data Protection Act 2018 and Caldicott Principles, in accordance with their employment contract clauses and data security training
- Send any requests for personal information to the HOIG immediately (any verbal requests for information must also be directed to the HOIG)
- Ensure that a thorough search of all information storage areas takes place in response to any request from the HOIG
- Respond promptly to requests for information from the HOIG within the stated timeframe to ensure NHS Kernow is capable of responding within the 30 day deadline

5.6 All staff should be aware that due to the timescales involved in dealing with requests for information, it is sometimes necessary during prolonged staff absence to access individual accounts such as email in order to carry out searches and retrieve the required information.

5.7 The Data Protection Act provides for penalties that could be imposed upon NHS Kernow or its employees for non-compliance with relevant legislation and NHS guidance. Data protection and confidentiality both form part of staff contractual clauses and are applicable at all times, even after the contract has terminated.

5.8 Under no circumstances should staff delete any person identifiable information after receiving a SAR.

5.9 Staff have the same rights under the Data Protection Act as any member of the general public and are therefore entitled to make a SAR for their own information.

6 Should you be unhappy with a SAR response

6.1 In the event that you are unhappy with a response to your SAR provided by NHS Kernow, you should contact HOIG and request a review of the request and response to allow this to be resolved informally.

- 6.2 If you think personal information is missing or has not been provided, you should clearly list, in writing, what other information you think NHS Kernow hold. This will help with a review of records.
- 6.3 In the event that an informal complaint resolution regarding a SAR cannot be reached internally, the Information Commissioners Office (ICO) has a general duty to investigate complaints from members of the public who believe that an organisation has failed to respond correctly to a request for information. A complaint to the ICO can be sent in writing to:

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

Telephone: 0303 123 1113
Fax: 01625 524510

<https://ico.org.uk/make-a-complaint/your-personal-information-concerns/personal-information-concerns/personal-information-concerns-report/>

7 Implementation plans and monitoring effectiveness

- 7.1 Compliance with this policy will be monitored through the Information Governance Sub-Committee and the Workforce Committee. Relevant requirements include:
- Data Security and Protection Toolkit
 - Audit(s) completed by NHS Kernow Internal Auditors
 - SAR Log – all requests received and actions
- 7.2 SARs will be logged and reported to the Information Governance Sub-Committee in anonymised or statistical format.
- 7.3 Breaches of this policy will be managed, where appropriate, through NHS Kernow Disciplinary Policy and Procedure, which is available on NHS Kernow document library along with all other associated policies.
- 7.4 As requests continue to be dealt with, audit of response times and process reviews will take place and any new learning will be incorporated into future versions of this document.

8 Update and review

- 8.1 This policy will typically be reviewed in 3 years, but will be re-considered and updated sooner, if needed. Ongoing review will take place to ensure effectiveness, taking account of any learning from requests and responses dealt with.

9 Other relevant policies

- 9.1 There is a wide range of legislation and policies which link to this policy which can be found in Appendix 1.

Appendix 1: Legal and Regulatory Framework

Information Governance currently encompasses the following local, national and legal regulations:

- Data Protection Act 2018
- General Data Protection Regulations
- Data Protection Policy
- Information Governance Policy
- Freedom of Information Act 2000
- Freedom of Information Policy
- Human Rights Act 1998
- Access to Health Records Act 1990
- Confidentiality: NHS Code of Practice
- BS ISO/IEC 27000 series of Information Security Standards
- Caldicott Guardian Manual and Reviews 2006 and 2013
- Common Law Duty of Confidentiality
- Records Management: NHS Code of Practice
- Health and Social Care (Safety and Quality) Act 2015
- Access to Medical Records Act 1988
- Electronic Communications Act 2000
- Environmental Information Regulations 2004
- Health and Social Care Act 2012
- Information Security Management: NHS Code of Practice
- Information Security Policy
- Regulation of Investigatory Powers Act 2000 (and Lawful Business Practice Regulations 2000)
- Mental Capacity Act 2005
- NHS Constitution
- Public Records Act 1958
- Data Security and Protection Toolkit
- Email Policy

The above list is not exhaustive.

The Information Commissioner website is a useful source of advice and guidance:

<https://ico.org.uk/your-data-matters/official-information/>

Appendix 2 Equality Impact Assessment

An Equality Impact Assessment is used to establish how a policy or similar document may impact on individuals, communities or equality groups to identify and minimise or remove any disproportionate impact.

Name of policy/ service to be assessed	Subject Access Request Policy		
Department/ Section	Corporate Governance	Date of assessment	31/10/2019
Person/s responsible for the assessment	Beverley Gallagher	Is this a new or existing policy?	Existing
1. Describe the aims, objectives and purpose of the policy.	The policy outlines NHS Kernow's legal obligations under Data Protection Act 2018 and provides documented evidence of the organisational commitment to dealing with requests for personal information appropriately, efficiently and in compliance with legislation.		
2. Who is intended to benefit from this policy, and in what way?	Policy is intended for staff and public guidance		
3. What outcomes are wanted from this policy?	Clear description of legal obligation for reader understanding of who is allowed to ask for what and what the timescale is which needs to be met by the organisation when a request is received. An organisational statement of intent to meet its legal obligation. Staff guidance in dealing with requests for information both internally and from the general public.		
4. What factors/ forces could contribute/ detract from the outcomes?	Timeframe for meeting requests for information could be missed if staff do not understand the quick turnaround needed from them to allow the organisation to meet its obligations.		
5. Who are the main stakeholders in relation to the policy?	Main stakeholders are NHS Kernow, its staff and members of the public requesting information held about them.		
6. Who implements the policy, and who is responsible	Head of Information Governance, Information Governance Sub		

for the policy?	Committee,
7. What is the differential impact on people from the perspective of race, nationality and/ or ethnic origin? Does this have a positive or negative impact on black, Asian and minority ethnic (BAME)? Consider relevance to eliminating unlawful discrimination, promoting equality of opportunity and promoting good race relations between people of different racial groups. Issues to consider include people's race, colour and nationality, Gypsy, Roma, Traveller communities, employment issues relating to refugees, asylum seekers, ethnic minorities, seasonal workers, language barriers, providing translation and interpreting services, cultural issues and customs, access to services, prejudice, discrimination, harassment and abuse, attitudes towards accessing healthcare.	
There are no differential impacts from this policy as every request is dealt with in the same way and will follow internal process, regardless of who it is from. Should there be a need for an individual to receive a response in a particular language, format or method, then this need will be met by the organisation wherever possible.	
How will any negative impact be mitigated?	Should requests require a specific language, format or method of response, use will be made of translation services available, technology/electronic/hard copy provision of the information and any external guidance available.
8. What is the differential impact on people from the perspective of sex? Does this have a positive or negative impact on people who identify as male, female or intersex? Consider what issues there are for men and women, e.g. responsibilities for dependants, issues for carers, access to training and employment issues, attitudes towards accessing healthcare.	
No impact has been identified for this protected characteristic.	
How will any negative impact be mitigated?	No negative impact identified.
9. What is the positive or negative differential impact on people from the perspective of disability? Consider what issues there are around disabilities, e.g. access to building and services, how we provide services and the way we do this, producing information in alternative formats and employment issues. Consider the requirements of the NHS Accessible Information Standard. Consider attitudinal, physical and social barriers. This can include physical disability, learning disability, autism, sensory impairment, mental health conditions, people with long term conditions, communication needs arising from a disability.	
There are no differential impacts from this policy as every request is dealt with in the same way and will follow internal process, regardless of who it is from. Should there be a need for an individual to receive a response in a particular language, format or	

method, then this will be met by the organisation wherever possible. . Information can be provided in easy read format if needed, or provided in differing languages making use of any translating services needed. As part of the redaction and review process consideration would also be given to the potential of harm to the individual.	
How will any negative impact be mitigated?	There are no aspects of the policy which have a negative impact on people with a disability. Where redaction process has been rigorous, individuals have the right to redress.
10.What is the differential impact on people from the perspective of sexual orientation? Does this have a positive or negative impact on people who identify as heterosexual, lesbian, gay, bisexual, pansexual or asexual? Consider what issues there are for the employment process and training and differential health outcomes amongst lesbian and gay people. Also consider provision of services, for example, older and younger people who identify as lesbian, gay, bi-sexual.	
There are no differential impacts in this policy for people of differing sexual orientation.	
How will any negative impact be mitigated?	No negative impact identified.
11.What is the positive or negative differential impact on people from the perspective of age? Consider what issues there are for the employment process and training. Some of our services impact on our community in relation to age, e.g. how do we engage with older and younger people about access to our services? Consider safeguarding, consent and child welfare, feelings of stigma and discrimination, lack of respect and social isolation.	
There are no positive or negative differential impacts in this policy for people of any age. Information can be provided in easy read format if needed, or provided in differing languages making use of any translating services needed.	
How will any negative impact be mitigated?	No negative impact identified.
12.What is the positive or negative differential impact on people from the perspective of religion or belief? Consider what issues there are for the employment process and training. Also consider the likely impact around the way services are provided, e.g. dietary considerations, religious holidays, days associated with religious observance, culture and customs, places of worship. Consider what issues there may be for someone who has a religion or belief. Are they likely to be different to those faced by a person who does not hold a religious belief?	
There are no positive or negative differential impacts in this policy for people of any religion or belief.	
How will any negative impact be mitigated?	No negative impact identified.
13.What is the positive or negative differential impact on people from the perspective of marriage and civil partnership? NB: this is particularly relevant for employment policies. This characteristic is relevant in law only to employment, however, NHS Kernow will strive to consider this characteristic in all	

aspects of its work. Consider what issues there may be for someone who is married or in a civil partnership. Are they likely to be different to those faced by a single person? What, if any are the likely implications for employment and does it differ according to marital status?	
There are no positive or negative differential impacts in this policy for people regardless of marital status.	
How will any negative impact be mitigated?	No negative impact identified.
14. What is the differential impact on people from the perspective of gender re-assignment? Does this have a positive or negative impact on people who identify as Trans/ transgender, non-binary or gender fluid? Consider what issues there are for people who have been through or a going through transition from one sex to another. How is this going to affect their access to services and their treatment when receiving NHS care? What are the likely implications for employment of a transgender person? This can include issues such as privacy of data and harassment, gender neutral language, dress codes.	
There is no differential impact on people from the perspective of gender re-assignment	
How will any negative impact be mitigated?	No negative impact identified.
15. What is the differential impact on people from the perspective of pregnancy and maternity? Does this have a positive or negative impact on people who are pregnant, breast feeding mothers, or those on maternity leave? This characteristic applies to pregnant and breast feeding mothers with babies of up to six months, in employment and when accessing services. When developing a policy or services consider how a nursing mother will be able to nurse her baby in a particular facility and what colleagues may need to do to enable the baby to be nursed. Consider working arrangements, part-time working, infant caring responsibilities.	
There is no differential impact on people from the perspective of pregnancy and maternity	
How will any negative impact be mitigated?	No negative impact identified.
16. Other identified groups: Consider carers, veterans, different socio-economic groups, people living in poverty, area inequality, income, resident status (migrants), people who are homeless or living in unstable accommodation, long-term unemployed, people who are geographically isolated, people who misuse drugs, those who are in stigmatised occupations, people with limited family or social networks, and other groups experiencing disadvantage and barriers to access.	
No differential impact on other identified groups has been identified.	
How will any negative impact be mitigated?	No negative impact identified to be mitigated.
17. How have the core Human Rights Values of fairness, respect, equality, dignity and autonomy been considered in the	

formulation of this policy/ service/ strategy? If they haven't please reconsider the document and amend to incorporate these values.	
Reference to the legislation is included within the document. Data Protection Act 2018 and therefore data subject rights take account of rights under the Human Rights Act Article 8.	
18. Which of the Human Rights Articles does this document impact?	
The right:	Yes / No:
<ul style="list-style-type: none"> To life 	No
<ul style="list-style-type: none"> Not to be tortured or treated in an inhuman or degrading way 	No
<ul style="list-style-type: none"> To liberty and security 	No
<ul style="list-style-type: none"> To a fair trial 	No
<ul style="list-style-type: none"> To respect for home and family life, and correspondence 	Yes
<ul style="list-style-type: none"> To freedom of thought, conscience and religion 	No
<ul style="list-style-type: none"> To freedom of expression 	No
<ul style="list-style-type: none"> To freedom of assembly and association 	No
<ul style="list-style-type: none"> To marry and found a family 	No
<ul style="list-style-type: none"> Not to be discriminated against in relation to the enjoyment of any of the rights contained in the European Convention 	No
<ul style="list-style-type: none"> To peaceful enjoyment of possessions 	No
19. What existing evidence (either presumed or otherwise) do you have for this?	Review of the Human Rights Statement and Guidance has taken place and consideration made of the articles.
20. How will you ensure that those responsible for implementing the policy are aware of the Human Rights implications and equipped to deal with them?	Reference to the Human Rights Act is contained within the document.
21. Describe how the policy contributes towards eliminating discrimination, harassment and victimisation. Does this make the system fairer? Does it challenge,	N/A

positively change the culture?	
22. Describe how the policy contributes towards advancing equality of opportunity. Are you using positive action to increase inclusion? Is this helping groups who may be less often heard?	N/A
23. Describe how the policy contributes towards promoting good relations between people with protected characteristics. Does it educate, integrate, support?	N/A
24. If the differential impacts identified are positive, explain how this policy is legitimate positive action and will improve outcomes, services and/ or the working environment for that group of people.	N/A
25. Explain what amendments have been made to the policy or mitigating actions have been taken, and when they were made.	N/A
26. If the negative impacts identified have been unable to be mitigated through amendment to the policy or other mitigating actions, explain what your next steps are using the following Equality Impact Assessment Action Plan.	If applicable, please complete table below. The following action plan should be completed if the Equality Impact Assessment has identified that additional steps need to be taken to address adverse outcomes for particular protected groups, or to collect additional evidence to inform the analysis. Please list below any recommendations for action that you plan to take as a result of this impact assessment.

Equality Impact Assessment Action Plan

Issues to be addressed	Action required	Responsible person	Timescale for completion	Action taken	Comments
None identified					

Signed (completing officer): Beverley Gallagher

Date: 29/01/2020

Signed (Head of Department/ Section): Trudy Corsellis

Date: 03/02/2020

Please ensure that a signed copy of this form is sent to both the Corporate Governance Team with the policy and the Equality and Diversity lead.