

Disclosure of Records Policy

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Contents

1	Introduction	4
2	Purpose	4
3	Target population	5
4	Explanation of terms	5
4.1	Lasting Power of Attorney	6
4.2	Access to Health Records Act 1990.....	6
4.3	Third Party	6
5	Duties.....	6
5.1	Individual colleague's responsibility	6
5.2	Caldicott Guardian.....	6
5.3	Manager's responsibility.....	7
5.4	Resolution and Information Governance Teams	7
5.5	Data Protection Officer	7
5.6	Responsible committee	7
5.7	Chief Executive	8
6	Definition of a person-related record.....	8
7	Duty of confidence	8
8	GDPR Right of Access.....	8
9	Access by an individual's representative	9
10	Access to an individual's record by other agencies	10
11	Access to children's health records	10
12	Access to health records of a deceased person	11
13	Response targets and fees	12
14	Confirming identity	12
15	Providing or denying access	13
16	Vulnerable adults	13
17	Datix.....	13
18	Requests from outside the UK	14
19	Right to rectification	14
20	Right to restrict processing.....	14
21	Risk management	15
22	The Information Commissioner's Office (ICO)	15
23	Equality Impact Assessment	15
24	Consultation Process	15
25	Dissemination and Implementation	15
26	Monitoring Compliance with the Document.....	15
27	References	16

28 Associated Policy Documentation 16
Appendix A - Equality Impact Assessment 17
Appendix B - Checklist for the Review and Ratification of Procedural Documents 188
Appendix C - Procedure for formal request for records 200
Appendix D - Access to Personal Records – Information for Applicants 211
Appendix E- Access to Personal Records – Information for Colleagues 244

1 Introduction

1.1 It is important that Locala Community Partnerships protects and safeguards personal information that it gathers, process and discloses, in order to comply with the law and the relevant NHS mandatory requirements.

1.2 All colleagues working in the Locala Community Partnerships are bound by a legal duty of confidence to protect information they may come into contact with during the course of their work. This is not just a requirement of their contractual responsibilities but also a requirement within the General Data Protection Regulations 2018, the Data Protection Bill 2018 and, for health and other professionals, through their own professions Code/s of Practice. This means that colleagues are obliged to keep any personal identifiable e.g. patient and employee records information strictly confidential.

1.3 It is noted that colleagues also come into contact with non-person identifiable information which must also be treated with the same degree of care e.g. business in confidence information, financial reports.

1.4 4 This policy applies to all records containing information which can identify an individual which are held by Locala Community Partnerships

2 Purpose

This policy supports the process of disclosing or releasing records relating to an individual.

Requests for records, statements and reports are received from a wide range of individuals and organisations including:

- Patient or service user
- Relative/Person with Lasting Power of Attorney
- Solicitor acting for Locala or patient
- Police
- Coroner
- CPS (Crown Prosecution Service)
- Insurance Company
- CICA (Criminal Injuries Compensation Authority)
- Government Agency
- Locala Managers conducting investigations
- Representative from the Care Quality Commission
- Advocacy
- Any doctor or approved clinician acting on behalf of the nearest relative
- Secretary of State

Records relating to a deceased person remain subject to the provisions of the Access to Health Records Act 1990.

This procedure does not directly relate to the release of records for the Safeguarding Team

3 Target population

This policy seeks to provide clear guidance to colleagues (inclusive of bank, temporary and contracted colleagues) about the provision of disclosure requests in respect of records relating to identifiable living individuals.

2 Explanation of terms

Access to Health Records Act 1990 - This Act of Parliament governs the principles and arrangements required for the maintenance and appropriate disclosure of personal information relating to deceased patients.

Appointee/Personal Representative - an appointee/personal representative is a person or organisation entrusted with managing the daily finances of vulnerable individuals in the UK.

Appropriate access and legal right of access to records – An individual or a person with the appropriate permissions may not be entitled to see all of the information held in the health record(s), examples include:

- a) Third party information;
- b) Information the healthcare provider feels will have a significant detrimental effect on either the individual's mental health and safety or that of others.

Court of Protection - The Court of Protection has the powers to:

- a) Decide whether a person has capacity to make a particular decision for themselves;
- b) Make declarations, decisions or orders on financial or welfare matters affecting people who lack capacity to make such decisions;
- c) Appoint deputies to make decisions for people lacking capacity to make those decisions;
- d) Decide whether a Lasting Power of Attorney (LPA) or Enduring Power of Attorney (EPA) is valid;
- e) Remove deputies or attorneys who fail to carry out their duties;
- f) Hear cases concerning objections to register an LPA or EPA and make decisions about whether or not an LPA or EPA is valid.

General Data Protection Regulations 2018 (GDPR) - applies to processing carried out by organisations operating within the EU. It also applies to organisations outside the EU that offer goods or services to individuals in the EU. It is concerned with personal data relating to an identifiable living individual.

GDPR provides an individual with specific rights, including that of access to the information that the organisation holds about them, restriction of processing and rectification of any errors.

4.1 Lasting Power of Attorney

Records relating to an individual are confidential, and members of the individual's family are not allowed to see them, unless the individual provides written permission, or the family member has the appropriate power of attorney.

A lasting power of attorney is a legal document that permits the appointment of someone to make decisions for specific individuals, should that individual become incapable of making decisions themselves. The person appointed is known as the "Attorney". An attorney will be separately appointed in relation to finances, and health and welfare. The Attorney is then able to make decisions on behalf of the individual in this area. It is very important that the individual trusts the person appointed as their Attorney, so that they do not abuse their responsibility. A legal power of attorney must be registered with the Office of the Public Guardian before it can be used. Refer to the Mental Capacity Act Code of Practice Chapter 7 for further information.

4.2 Access to Health Records Act 1990

If a request is received to view the records of someone who has died, the individual will be required to apply under the Access to Health Records Act 1990. Under this Act the individual is only permitted to apply for the records of a deceased person if they:

- a) Are their personal representative - this can be substantiated by production of a Grant of Probate or Letters of Administration issued by the Probate Registry;
- b) Are their Executor/Administrator (the person named in a will who is in charge of dealing with the property and finances of the deceased person);
- c) Have a claim arising from their death.

4.3 Third Party

A generic legal term for any individual who does not have a direct connection with a legal transaction, but who might be affected by it.

5 Duties

5.1 Individual colleague's responsibility

All colleagues are responsible for following the procedures described in this policy whenever a request for access to records containing information relating to an individual are received.

5.2 Caldicott Guardian

The Caldicott Guardian has the responsibility for ensuring that Locala adheres to the Caldicott Principles, maintaining the confidentiality of any information owned and disclosed by Locala. The Director of Nursing and Quality undertakes the role within the organisation.

5.3 Manager's responsibility

It is the responsibility of all line managers to ensure that they and the people they manage are conversant with this policy and its contents.

5.4 Resolution and Information Governance Teams

The Resolution and Information Governance Teams are responsible for:

- a) Logging all requests for records relating to individuals.
- b) Ensuring that all colleagues are aware of the process for disclosure of records relating to individuals.
- c) Informing the Communications Manager at an early stage if there is a potential for media interest.
- d) Managing the day-to-day requests for disclosure of records relating to individuals under GDPR 2018/Access and Health Records Act 1990.
- e) Checking all requests and ensuring that appropriate consent has been provided before disclosure is made.
- f) Providing advice and assistance to colleagues, in carrying out their duties in relation to GDPR/Access to Health Records Act.
- g) Provide advice to members of the public in support in relation to requests made under GDPR/Access to Health Records Act.
- h) Liaising with third parties requesting the disclosure of health records owned by Locala.
- i) Providing evidence to assure the Locala Board that GDPR requirements have been upheld.

5.5 Data Protection Officer

GDPR has a mandatory requirement for Locala to have a Data Protection Officer, whose role is to monitor internal compliance, inform and advise on your data protection obligations, provide advice regarding Data Protection Impact Assessments (DPIAs) and act as a contact point for data subjects and the supervisory authority. The Compliance and Information Governance Expert has been appointed as the Data Protection Officer for Locala.

5.6 Responsible committee

The Executive Management Group undertakes the function of Information Governance committee for the organisation and oversees the development and implementation of data protection processes. The Executive Management Group reports to the Board through the Audit and Risk Committee.

5.7 Chief Executive

The Chief Executive is ultimately accountable of the implementation of these organisation-wide processes.

6 Definition of a person-related record

Person-related information means any information relating to an identified or identifiable individual. GDPR defines this as ‘someone who can be identified, directly or indirectly, by reference to an identifier such as a name, an identification number, location data, an on-line identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that person’

This includes all health records which consist of information about the physical or mental health or condition of an identifiable individual made by or on behalf of a health or social care professional in connection with the care of that individual and includes hand written clinical notes, letters, laboratory reports, x-rays and imaging reports, print- outs of monitoring equipment, photographs, videos, tape recordings of conversations and computer held health records. In Locala the majority of health records are held on SystemOne or R4.

Locala does, however, hold other person-related records such as employment, payroll, claims, and finance information which are also covered by this policy.

7 Duty of confidence

All those working for Locala, who record, handle, store or otherwise have access to person-identifiable records have a personal, common-law duty of confidence. All colleagues have a duty to maintain professional ethical standards of confidentiality.

Any personal information, given or received in confidence for one purpose may not normally be used for a different purpose or passed to anyone else, without the permission of the individual, whose record it is. Whilst there are exceptions that are covered through the Data Protection Act 2018, any consideration of disclosing or using personal information in this way must be discussed with the Resolution and Information Governance teams before action is taken.

8 GDPR Right of Access

Under GDPR, individuals have the right to obtain:

- confirmation that their data is being processed;
- access to their personal data;

An individual, or their representative with the individual's consent, has the right to apply for access to their records, see appendix D.

Requests for access can be made in writing, email or by telephone contact. In all cases the Resolution and Information Governance Teams will use all reasonable measures to verify the identity of the individual, as detailed in Appendix E.

There are limited circumstances in which Locala may determine that information cannot be provided to an individual who has made a request. These circumstances include:

- Where to release the information could cause mental or physical harm to the individual.
- Where to release the information could cause mental or physical harm to a third party.
- Where access would disclose information relating to or provided by a third person who has not consented to that disclosure.

Where an individual seeks access to their own records, the Resolution and Information Governance Teams will ensure that sufficient identity checks are carried out to ensure that Locala is satisfied that the individual is entitled to the records they are seeking.

9 Access by an individual's representative

If a request is received from an individual's representative (provided the individual has capacity) the individual is the only person allowed to authorise the release of their record. The individual's representative may be a relative, friend, legal representative or any other person that the patient consents to have access to their record, see appendix B. A template request form is available if required (Appendix E).

If an individual is unable to authorise the release of their record due to a lack of mental capacity then a person who has been legally appointed to act on the individual's behalf has the right to apply for access to the record.

When a request is received from a legally appointed representative, they will be asked to produce evidence that they hold the appropriate lasting power of attorney. A legal power of attorney must be registered with the Office of the Public Guardian.

An Independent Mental Capacity Advocate (IMCA) is a statutory form of advocacy that provides safeguards for people without representation from friends and family who lack capacity to make decisions about situations including:

- Serious medical treatment or
- Moving into, or between, care settings (including hospital).

An IMCA is entitled under the Mental Capacity Act (2005) to ask for access to the individual's records, and to take copies from these.

There may also be occasions where a representative (such as a family member) who does not have an automatic right of access to the record, seeks disclosure. Whilst there is no right for next of kin to review the records of an individual who is incapacitated, there may be circumstances where it is appropriate. Where requests of this nature are made, they will always be considered on a case by case basis by the Resolution Team.

Please see colleagues' information sheet – Access to Health Records appendix F.

10 Access to an individual's record by other agencies

There will be occasions when Locala receives requests for access to an individual's records from other Agencies. These may include the Coroner, the Police, the General Medical Council, Social Services and NHS organisations.

The Resolution and Information Governance Teams will consider carefully when information can be shared with other agencies and whether consent from the individual can and should be taken beforehand.

Where requests for an individual's records are received from a third party, Locala will consider the request carefully and on a case by case basis. Requests of this nature must always be handled by the Resolution Team.

11 Access to children's health records

If a parent or a person authorised with parental responsibility is applying for access to their child's records, consideration must be given to the child's legal competence to make decisions on their own behalf, and if they have sufficient understanding and intelligence to enable him or her to understand fully what is proposed. If the child is considered as competent, they must be fully involved in the decision making process. When the child is competent to make their own decisions, the decision is for them to make; however it is best practice to include the parents in this process where appropriate, see appendix E and Colleagues' information sheet – Access to Health Records appendix F.

Parental responsibility for a child is defined in the Children Act (2004) as 'all the rights, duties and powers, responsibilities and authority which by law a parent of a child has in relation to the child and his property'. Parental responsibility can also be acquired by the local authorities if the child is under a care order.

Parental responsibility includes:

- Safeguarding and promoting a child's health, development and welfare
- Financially supporting the child
- Maintaining direct and regular contact with the child

Parental access will not be given where it conflicts with the child's best interests and any information that a child revealed in the expectation that it would not be disclosed will not be released unless it is in the child's best interests to do so.

Divorce or separation does not affect parental responsibility and both parents will be given

reasonable access to their children's records.

Establishing parental responsibility can be complex and colleagues must always consider whether evidence of parental responsibility is required before information is shared.

The natural mother of the child will automatically have parental responsibility. However, an unmarried father will not, depending on the age of the child. If the child is born after 1st December 2003 and the father is named on the birth certificate, then he will automatically have shared parental responsibility with the mother. However, if the child was born before 1st December 2003, he will not.

Parental responsibility can be obtained by:

- Agreeing with the mother and signing a written parental responsibility agreement
- Obtaining a parental responsibility order from the Courts
- Obtaining a residence order, providing that the child lives with the requestor

12 Access to health records of a deceased person

Access to the records of a deceased person is governed by the Access to Health Records Act (1990). Under this legislation where an individual has died, their personal representative, executor, administrator or anyone having claim resulting from the death has the right to apply for access to the deceased's records, see appendix E. A template request form is available if required at appendix E.

The personal representative is the only person who has an unqualified right of access to a deceased individual's record and need give no reason for applying for access to a record. Individuals other than the personal representative have a legal right of access under the Act only where they can establish a claim arising from an individual's death, see appendix D.

There is no definition of what will be classed as a claim arising out of the patient's death. It is accepted that it would encompass those with a financial claim, determining who these individuals are and whether there are any other types of claim is not straightforward. The decision as to whether a claim actually exists lies with the record holder and will be heavily dependent upon the information provided by the applicant and the circumstances. In cases where it is not clear whether a claim arises the record holder must contact the Resolution or Information Governance Teams.

There may be circumstances where individuals who do not have a statutory right of access under Access to Health Records Act to request access to a deceased individual's record. Current legal advice is that the Courts would accept that confidentiality obligations owed by the organisation continue after death. The Department of Health, General Medical Council and other clinical professional bodies have long accepted that the duty of confidentiality continues beyond death and this is reflected in the guidance they produce. Where requests of this nature are made, they will be considered on a case-by-case basis and the Resolution or Information Governance Team must be contacted.

Whilst an individual may state that they are acting in the capacity of a Personal Representative, it is still necessary to obtain evidence of their status. It is therefore appropriate to request a copy of the will, grant of probate or letters of administration in order to confirm that the individual is a Personal Representative or legally appointed individual as claimed.

The Resolution or Information Governance Teams will write to the applicant and ensure the legal process is adhered to and prevent any unnecessarily access to records. In order to take a balanced view as to whether or not Locala is able to disclose the Deceased's records, it will be necessary to clarify.

- The nature of any intended claim,
- In what way it is believed that the disclosure of medical records would assist in that claim.

Locala may emphasise that it is not at liberty to disclose records if the above facts cannot be clearly established, and in any event disclosure will be limited to the particular circumstances and records (in relation to any claim) as outlined by the applicant.

Where records are to be disclosed, an appropriate clinician/medical adviser/senior manager will review the records prior to disclosure to ensure that no information relating to a third party, or information which may cause serious harm to an individual is inadvertently disclosed. The applicant can be invited to attend to view the records, or receive a copy of those records. Further details can be found on the colleagues' information sheet – Access to Health Records appendix F.

13 Response targets and fees

GDPR requires that all requests for access to records are complied with within 30 days of the confirmation of the applicant's identity. If the request is complex or there are multiple requests, the period of compliance can be extended by a further two months but the individual must be informed within one month of the receipt of the request with an explanation of why the extension is necessary.

The information must be provided free of charge. However, GDPR allows a 'reasonable fee' to be charged if a request is manifestly unfounded or excessive, particularly if repetitive. A reasonable fee can also be charged to comply with requests for further copies of the same information. The fee is based on the administrative cost of providing the information and will be calculated according to the volume of information that is requested. Details of costs will be provided to an individual in advance of providing the information.

14 Confirming identity

Once a request has been made by an individual, (or the individual's consent is obtained where appropriate), consideration will be given to the information submitted to confirm the identity of the individual e.g. full and previous name, date of birth, current and previous address, NHS number. Unless Locala is satisfied as to the identity of the individual or applicant, a request for evidence of identity will be made. Relevant identity documents are

provided in Appendix E.

The Resolution or Information Governance Teams will check with the applicant to confirm what details are required before processing the request. The applicant does not have to give a reason for requesting access and therefore may not wish to identify the part of the record required, in which case the entire record will be copied, or made available for viewing.

15 Providing or denying access

Before an individual's record is released the Resolution or Information Governance team will check that any third party information within the record has been redacted.

In addition, an appropriate health professional/medical adviser/senior manager will be required to check the record and consider if allowing access could result in serious harm to the physical or mental health of the patient, or of any other person

If either of these conditions applies Locala can deny or limit access to the record. In addition, if the application is for access to a deceased person's record and the record contains information that the deceased person expected to remain confidential then it must remain so.

There is no obligation to advise the applicant of the grounds on which information has been withheld and, if the fact that records are withheld may cause distress to the applicant, there is no obligation to notify the applicant that records have been withheld.

If the applicant requested to view the record then an appointment will be made. Locala will ensure that any such access to records is always supervised. If the applicant raises queries, an appointment with a health professional will be offered.

16 Vulnerable adults

Before the release of records regarding disclosure of abuse/domestic abuse, the Safeguarding Team will consider the risk and implications of perpetrators being present when records are read. The Resolution or Information Governance Teams will liaise with the Safeguarding Lead regarding the management of such requests.

17 Datix

Once a request for records is received by the Resolution or Information Governance Teams, it is entered onto the Locala's Risk Management database, Datix. Through the integrated nature of Datix, when a request is entered against a patient's name and date of birth, the database will flag up if there are any records in the other modules which match the patient's information such as claim or incident. Records in any of the modules serve as a prompt for colleagues to verify if the request needs to be escalated before sending the records out.

Once entered on Datix, if relevant, an appropriate senior health professional must be consulted. This will be the individual who is, or was, responsible for the clinical care of the

patient during the period to which the application refers. If there is more than one health professional then the most senior available health professional concerned will be approached for advice on whether to release the medical record.

Datix can generate reports on records requests, showing how often requests are received and the status of the requests.

18 Requests from outside the UK

Requests from patients living outside of the UK will be treated the same as requests from within the UK.

19 Right to rectification

If, after accessing the record, the individual feels that information recorded on their health record is incorrect then they must be advised to discuss the situation with the Resolution or Information Governance Teams. Discussions will be held with the relevant health professional/senior manager to determine if it is believed there is an error. If this is the case, the record will be appropriately amended.

Should the health professional/senior manager believe that the record is correct, a statement will be included in the record that the individual disagrees with specific parts of their record.

The individual will have the option to complain to the Information Commissioner, who may rule that any erroneous information is rectified, blocked, erased or destroyed.

20 Right to restrict processing

Under GDPR, an individual has the right to request a restriction of processing of their data in certain circumstances:

- the individual contests the accuracy of their personal data and we are verifying the accuracy of the data;
- the data has been unlawfully processed (ie in breach of the lawfulness requirement of the first principle of the GDPR and we should not have that information) and the individual opposes erasure and requests restriction instead;
- we no longer need the personal data but the individual needs us to keep it in order to establish, exercise or defend a legal claim; or
- the individual has objected to us processing their data under Article 21(1), and we are considering whether our legitimate grounds override those of the individual.

Any request to restrict processing must be passed immediately to the Resolution or Information Governance Teams for consideration and will need to confirm the identity of the individual.

GDPR requires that we must act upon the request without undue delay and at the latest within one month of receipt of the request. We can extend the time to respond by a further two months if the request is complex or we have received a number of requests from the

individual but we must let the individual know within one month of receiving their request and explain why the extension is necessary.

21 Risk management

If a request to access health records makes reference to the pre action protocol for clinical disputes, the Resolution Team must be notified immediately.

If a request for a report about an individual to a third party (e.g. Solicitor, insurance company etc.) is received colleagues must contact the Resolution or Information Governance Teams for further advice.

22 The Information Commissioner's Office (ICO)

The ICO's office address is:
Wycliff House
Water Lane
Wilmslow
Cheshire SK95AF

ICO helpline (open between the hours of 9.00am and 5.00pm, Monday to Friday)
08456 30 60 60; 01625 54 57 45; Fax: 01625 524510

23 Equality Impact Assessment

Locality Community Partnerships aims to design and implement services, policies and measures that meet the diverse needs of our service, population and workforce, ensuring that none are placed at a disadvantage over others. The Equality Impact Assessment Tool (Appendix A) provides evidence of analysis it undertook to establish whether its policies and practices would further, or had furthered, the aims set out in section 149(1) of the [Equality Act 2010]"

24 Consultation Process

Appendix B shows the stakeholders that have been consulted in the development of this policy.

25 Dissemination and Implementation

This Procedure will replace the previous Procedure. Dissemination will be via Elsie, Resolution Blog, Operational Managers and Team Leaders.

26 Monitoring Compliance with the Document

This policy will be reviewed on an annual basis, with formal ratification on a three yearly

basis.

Implementation of this policy will be monitored by the Resolution Manager with a quarterly audit of Datix data. Results of this audit will be published in the Quality Clinical Group Report, Annual Report and reviewed at Business Units meetings.

27 References

- General Data Protection Regulations 2018
- Data Protection Act 2018
- Access to Health Records Act 1990
- Freedom of Information Act 2000
- Access to Medical Reports Act 1988
- Caldicott Report 1997 and 2003
- National Data Guardian (2016), Review of Data Security, Consent and Opt-outs
- Care Quality Commission (2016), Safe Data Safe Care

28 Associated Policy Documentation

Data Security and Protection Policy 2018

Confidentiality policy 2018

Appendix A - Equality Impact Assessment

		Yes/No	Comments
1.	Does the document/guidance affect one group less or more favourably than another on the basis of:		
	Race	NO	
	Ethnic origins (including gypsies and travellers)	NO	
	Nationality	NO	
	Gender (including gender reassignment)	NO	
	Culture	NO	
	Religion or belief	NO	
	Sexual orientation	NO	
	Age	NO	
	Disability - learning disabilities, physical disability, sensory impairment and mental health problems	NO	
2.	Is there any evidence that some groups are affected differently?	NO	
3.	If you have identified potential discrimination, are there any valid exceptions, legal and/or justifiable?	NA	
4.	Is the impact of the document/guidance likely to be negative?	NO	
5.	If so, can the impact be avoided?	NA	
6.	What alternative is there to achieving the document/guidance	NA	
7.	Can we reduce the impact by taking different action?	NA	

If you have identified a potential discriminatory impact of this procedural document, please provide suggestions as the action required to avoid/reduce this impact.

Appendix B - Checklist for the Review and Ratification of Procedural Documents

	Title of document being reviewed:	Yes/No	Comments
1. Title			
	Is the title clear and unambiguous?	Yes	
	Is it clear whether the document is a guideline, procedure or protocol?	Yes	
2. Rationale			
	Are reasons for development of the document stated?	Yes	
3. Development Process			
	Is the method described in brief?	Yes	
	Are individuals involved in the development identified?	Yes	
	Do you feel a reasonable attempt has been made to ensure relevant expertise has been used?	Yes	
	Is there evidence of consultation with stakeholders and users?	Yes	
4. Content			
	Is the objective of the document clear?	Yes	
	Is the target population clear and unambiguous?	Yes	
	Are the intended outcomes described?	Yes	
	Are the statements clear and unambiguous?	Yes	
5. Evidence Base			
	Is the type of evidence to support the document identified explicitly?	Yes	
	Are key references cited?	Yes	
	Are the references cited in full?	Yes	
	Are local/organisational supporting documents referenced?	Yes	

6.	Ratification		
	Does the document identify which committee/group will ratify it?	Yes	
	If appropriate, have the Staff Side committee been consulted about the document?	N/A	
7.	Dissemination and Implementation		
	Is there an outline/plan to identify how this will be done?	Yes	
	Does the plan include the necessary training/support to ensure compliance?	Yes	
8.	Document Control		
	Does the document identify where it will be held?	Yes	
	Have archiving arrangements for superseded documents been addressed?	Yes	
9.	Process for Monitoring Compliance		
	Are there measurable standards or KPIs to support monitoring compliance of the document?	Yes	
	Is there a plan to review or audit compliance with the document?	Yes	
10.	Review Date		
	Is the review date identified?	Yes	
	Is the frequency of review identified? If so, is it acceptable?	Yes	
11.	Overall Responsibility for the Document		
	Is it clear who will be responsible for coordinating the dissemination, implementation and review of the documentation?	Yes	
12.	Executive Management Group Date		7 August 2018

Appendix C - Procedure for formal request for records

- 1 The Resolution or Information Governance Team manage all requests for individual's records. Any request must be forwarded to the Resolution or Information Governance Team within **two** working days of receipt.
- 2 The request will result in an individual's records being obtained from the sources that hold the records and a date by which the records are required will be stipulated, which is usually one week. If the records are in active use and removing them from the operational environment would create a risk, then the health professional / senior manager must advise the Resolution or Information Governance Team and agree a way forward.
- 3 Once the records have been received by the Resolution or Information Governance Team, the formal process will be applied before disclosure of the records.
- 4 It is always necessary to protect the confidentiality of the records and colleagues are required to ensure the confidentiality and privacy of any paper records during any transit, their storage and disposal and once the process of the records use is complete.
- 5 In accordance with the Department of Health Record Management: Code of Practice, on completion of the request the file is closed and placed in the archive for ten years.

Appendix D - Access to Personal Records – Information for Applicants

1 Access to records

Individuals have the right to see, and receive a copy of, information we hold about them in their records, this is known as the 'right of access'. This right is contained in:

- General Data Protection Regulations 2018 which covers access to records of living individuals;
and
- The Access To Health Records Act 1990 which covers access to records of deceased patients

2 Who can apply for access to health records?

Under the provisions of the General Data Protection Regulations, you can apply for access if you are:

- The individual, you may apply for access to your own records.
- The individual's representative.
- A person with parental responsibility for a child (unless the child is 8-14 and is capable of understanding and consenting, when their consent is also needed).
- A person authorised in writing by the individual to act on the individual's behalf.
- A person appointed by the Court to act on behalf of the individual.

Whereas under the Access to Health Records Act 1990 the only people who can apply for access are:

- Personal representative of a deceased patient and any person who may have a claim arising from the death

3 Can any information be withheld from you?

Under General Data Protection Regulations, you or your representative have the right of access to information contained within your records, except where:

- We consider that giving access to that information would cause serious harm to the physical or mental health or condition of the patient or any other person.
- Any information that identifies a third party, where that third party is not a health professional and has not consented to the disclosure.
- Where the applicant is acting as a representative of the individual, who is capable of understanding the request for access, but where that applicant is not considered to be acting with the patient's permission.
- Where the individual is not capable of understanding the request for access, and it is considered that the release of information would not be in the best interests of the individual.

- Any information which is restricted by law from disclosure under other acts of parliament, which includes:
 - Human Fertilisation & Embryology Act 1990
 - Human Fertilisation & Embryology (Disclosure of Information Act) 1992
 - NHS (Venereal Diseases) Regulations 1974
 - NHS Trust (Venereal Diseases) Regulations 1991
 - The Abortion Regulations 1991
- Under the Access to Health Records Act 1990, the patient's representative has a right of access to all records kept on or after the 1 November 1991.

All the exceptions noted above for the General Data Protection Regulations also apply to the Access to Health Records Act, and there is an additional exception, which is that access will not be given to the patient's representative, where that patient has explicitly requested that no access be given to records after their death.

4 What happens next? Informal applications

You may **verbally** ask the health professional treating you, for access to your records in their presence and to discuss it with them. These requests are not formal applications under the General Data Protection Regulations, and may occur at any time during your care. Please note that if you would like a copy of the notes you must follow the formal application procedure detailed below.

5 Formal applications under the General Data Protection Regulations or the Access to Health Records Act

Formal applications can be in writing, email or telephone contact with the Resolution or Information Governance Team. Once received, your application will be considered, you can expect to receive a copy of your records within 30 days, unless your request is particularly complex in which case we will keep you informed. If any of your record is abbreviated or has detailed terminology, which you do not understand, these will be explained to you.

If you are making an application under the Access to Health Records Act 1990, you must be the Personal Representative of the deceased patient or someone who may have a claim arising from the death.

A Personal Representative refers to a person who has been appointed as Executor or Administrator to the Estate. Such appointment can be substantiated by production of a Grant of Probate or Letters of Administration issued by the Probate Registry.

If the applicant is not a Personal Representative then the applicant must be able to demonstrate that he or she may have a claim arising out of the patient's death in order to qualify for access under this provision.

However, under this provision access can only be made in respect of information relevant to any claim that may arise out of the patient's death. It does not authorise disclosure of all of the records. Furthermore, access will not be given to any part of the

patient's record if it includes a note, made at the patient's request that he or she did not wish access to be given on such an application.

6 How do I make a formal application?

If you want you make an application for access to your records, please contact the address below.

You do not need to give detailed information but it will help us if you can tell us which particular records you wish to access so that we can locate them quickly for you.

In all cases, we will need to verify your identity and address and will need to see one each of the documents below:

Proof of Identity

Passport
HM Forces ID Card
Birth Certificate
Driving License Photo Card
Marriage Certificate
College ID

Proof of Address

Bank Statement with current address
Recent utility bill (within the last 3 months)
Council Tax Bill

Proof of relationship to the individual (where appropriate)

Proof of parental responsibility
Care order
Court order
Individual's consent

Once your request has been received by Locala, your records will be located, copies made and arrangements will be made for you to receive them within the stated time limits.

Contact details:

Resolution Team
Beckside Court (1st Floor)
286 Bradford Road
Batley, West Yorkshire, WF17 5PW

Tel: 030 3330 8831
Email: resolution@locala.org.uk

Appendix E- Access to Personal Records – Information for Colleagues

1 Access to Records

People have the right to see, and receive a copy of, information we hold about them in their records, this is known as the 'right of access'. This right is contained within two acts of parliament, namely:

- The General Data Protection Regulations which covers access to records of living individuals; and
- The Access To Health Records Act which only covers access to records of deceased patients

2 Who can apply for access to records?

Under the General Data Protection Regulations people with the right of access are:

- The individual
- Persons authorised in writing on behalf of the individual
- Persons with parental responsibility for a child
- Persons appointed by the Court to act on behalf of the individual

Under the Access to Health Records Act people with the right of access are the Personal Representative of a deceased patient, or any person with a claim arising out of that patient's death.

3 Can any information be withheld from the individual?

Under the General Data Protection Regulations, the individual or their representative has the right of access to any information contained within their record, except where:

- A Health Professional / Senior Manager considers that giving access to that information would cause serious harm to the physical or mental health or condition of the individual or any other person
- Any information that identifies a third party, where that third party is not a health professional / senior manager and has not consented to the disclosure.
- Where the applicant is acting as a representative of the individual and the individual is capable of understanding the request for access, but where the applicant is not considered to be acting with the individual's permission.
- Where the individual is not capable of understanding the request for access, and it is considered that the release of information would not be in their best interests.
- Any information which is restricted by law from disclosure under other acts of parliament, which includes:
 - Human Fertilisation & Embryology Act 1990
 - Human Fertilisation & Embryology (Disclosure Of Information Act) 1992

- NHS (Venereal Diseases) Regulations 1974
- NHS Trust (Venereal Diseases) Regulations 1991
- The Abortion Regulations 1991

Under the Access to Health Records Act, the patient's representative has a right of access to all records kept on or after the 1 November 1991. However, all the exceptions noted above for the General Data Protection Regulations equally apply to the Access to Health Records Act, and there is an additional exception, which is that access is not given to the patient's representative, where that patient has explicitly requested that no access be given to records after their death.

4 The process to follow

Applications to access records can be made either by an informal or formal route:

Informal applications

These are verbal applications made directly to health professionals/senior managers, where the individuals or their representatives only want to view the records, and **not** have a copy of them. These requests are not formal applications under the General Data Protection Regulations, and may be responded to either by:

- Handing the individual the records for inspection under supervision by a member of Locala, remembering and complying with the aspects of withholding access already noted.
- A Health Professional / Senior Manager going through the records together with the individual, remembering and complying with the aspects of withholding access already noted.

Please note, that if the applicant would like a copy of the records, in part or in full, they must follow the formal application procedure.

Please familiarise yourself with these guidance notes, and the equivalent ones for applicants. If anyone asks for access to their records, follow these procedures.

Do not attempt to deny access to any part of a record, unless your justification is covered by the exceptions noted above. If you have any queries or need any assistance please contact the Resolution or Information Governance Team.