

# Subject Access Request Policy

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# 1 INTRODUCTION

Individuals have a right to apply for access to information held by an organisation about themselves and in some cases, information held about other people. This is called a subject access request (SAR).

Individuals have the right to obtain:

- confirmation that personal information is being held or used by NHS Orkney
- access to personal information
- additional information about how personal information is used

An individual can make a SAR verbally or in writing, including on social media. All members of staff should be aware of this right and pass a request on to the Information Governance team with no delay.

Individuals wishing to make a Subject Access Request should be given NHS Orkney's Subject Access Request Form (**Appendix A**) and associated guidance (**Appendix B**), it is not mandatory for a requester to use this form.

Information may be held on computer, in a manual paper system, video, digital image, photograph, x-rays, email, text message or by any other new or existing medium or media. This includes an individual's medical records and employees' human resources records.

A response must be issued to a SAR within one calendar month unless the request is considered to be complex. In most circumstances NHS Orkney cannot charge a fee for dealing with a request.

NHS Orkney can only refuse to provide information if an exemption or restriction applies.

## 1.1 Legislation

- Data Protection Act 2018 (DPA) – The Data Protection Act 2018 sets out the framework for data protection law in the UK.
- UK General Data Protection Regulation (UK GDPR) – Sets out key principles, rights, and obligations for processing of personal data in the UK. Under Article 15 of the UK GDPR individuals have the right of access to personal information. This does not include the personal information of deceased individuals.
- The Access to Health Records Act 1990 – gives specific individuals the right to access health records of deceased patients.
- Freedom of Information (Scotland) Act 2002 (FOISA) – gives individuals the right to ask for any information held by public authorities (this does not include personal information relating to an individual)

## 1.2 Personal data

Personal data is any information relating to an identified or identifiable person (the 'data subject').

Certain categories of personal data are classified as being sensitive in nature and require a higher level of protection (under UK GDPR these are 'special categories of personal data'):

- race
- ethnic origin
- political opinions
- religious or philosophical beliefs
- trade union membership
- genetic data
- biometric data (where this is used for identification purposes)
- health data
- sex life
- sexual orientation

## 2 POLICY STATEMENT

NHS Orkney is committed complying fully with all relevant data protection legislation as detailed above.

NHS Orkney will:

- Ensure that records are created systematically, that they can be retrieved efficiently and can be provided promptly to any person making a request for information. This policy links to NHS Orkney's Records Management Policy;
- Make all employees aware that it is a criminal offence to alter, deface, block, erase, destroy or conceal information with the intention of preventing information being released through a SAR.
- Monitor compliance with legal requirements and undertake audits from time to time.
- Information will only be withheld in accordance with relevant exemptions.
- Protect the confidentiality of all individuals.

## 3 RESPONSIBILITIES

- The **Chief Executive** has ultimate responsibility to ensure that NHS Orkney correctly handles the data of individuals.
- The **Caldicott Guardian** oversees the arrangements for the use and sharing of patient identifiable information.
- The **Senior Information Risk Officer (SIRO)** is responsible for managing the information risks and incidents and is also the Information Governance Lead at Board Level.
- The GDPR introduces a duty to appoint a **Data Protection Officer (DPO)** to monitor internal compliance, inform and advice on data protection obligations, provide advice regarding SARs and act as a contact point for data subjects and the Information Commissioner's Office (ICO).
- All members of the **Information Governance Team** are responsible for providing advice and clarity to members of staff and data subjects regarding SARs.

- The **Freedom of Information Officer** will ensure that all policies and procedures concerning the compliance with SARs are produced, approved, implemented, and monitored. A log of all requests is maintained.
- **All members of staff** are responsible for:  
Ensuring awareness of the Subject Access Request Policy and can recognise a request for personal information.  
Respecting the data subjects' rights to confidentiality and actively responding to any concerns raised about confidentiality.

## 4 RIGHTS OF ACCESS

### 4.1 Data subject

Under GDPR any living person who is the subject of personal information held by NHS Orkney has the right to request access to that information. The data subject also has the right to an explanation of any terms they may not understand within the information (such as acronyms or technical language).

The data subject has the right to request that any inaccurate information is corrected.

NHS Orkney is not required to respond to requests for information unless it is provided with sufficient details to enable the location of requested information to be identified, and to satisfy itself as to the identity of the individual making the request.

### 4.2 Third parties

Third parties such as family members, advocates or solicitors can act as an agent on behalf of the data subject. When requests of this nature are received there must be informed, explicit consent from the data subject for the agent to act on their behalf.

Where this isn't possible due to issues with capacity, evidence of clear legal authority such as power of attorney must be provided.

If there is no evidence that a third party is authorized to act on behalf of an individual NHS Orkney is not required to comply with the SAR, although a response stating this should be issued.

### 4.3 Children and young people

The right to access information held about a child is ultimately the child's right rather than anyone else's. Before responding to a SAR for information relating to a child consideration should be given to the maturity of the child.

If a child is considered mature enough to understand their rights and information being requested the response can be issued directly to the child. A child may allow a parent or guardian to exercise the child's rights on their behalf.

If NHS Orkney is satisfied that a child is not competent, and a request has been received from someone with parental responsibility the right to access can be exercised on the child's behalf.

In Scotland, a person aged 12 years or over is presumed to be of sufficient age and maturity to be able to exercise their right of access, unless the contrary is shown.

Dealing with requests for personal information relating to children various issues should be considered including the maturity of the child, nature of the personal information, any court orders relating to parental responsibility and any relevant views or concerns of the child.

#### **4.4 Court orders**

If required NHS Orkney will provide a copy of information requested through a court order without the individual's permission.

### **5 DEALING WITH A REQUEST**

#### **5.1 Time frame**

NHS Orkney must comply with a SAR without undue delay and at the latest within one calendar month of receipt of the request (or within one month of receipt of confirmation of the requester's identify / clarification).

The time to respond can be extended by a further two months if the request is complex.

Circumstances such as large quantities of sensitive data, issues around child guardianship and clarification of potential confidentiality issues would be consisted to be complex.

The individual making a request should be made aware of the extended timeframe and given an explanation of the complexity.

#### **5.2 Clarification including verification of identity**

Clarification can be gained from the applicant if it is not clear what information the individual is requesting. The clock will be paused until clarification is received. NHS Orkney will help the applicant clarify the information being requested if needed.

When a SAR is received there will be consideration given to the information required to verify identity and consent to access.

The time scale for responding to a SAR does not begin until all requested information is received to confirm identity.

#### **5.3 Fees**

In most cases NHS Orkney cannot charge a fee to comply with a SAR.

However, a 'reasonable fee' can be charged for administrative costs of complying with a request if it is 'unfounded or excessive' or if an individual request further copies of their data following a request.

The fee may cover photocopying, printing, postage, any other transfer costs, equipment, supplies and staff time. The costs should be explained to the applicants.

#### **5.4 Approval**

Hospital medical notes must be reviewed by a clinician prior to release. The sign off form must be completed by the reviewing clinician.

Patient notes collated by departments such as physiotherapy, dietetics, radiology shall be approved for release by a senior member of the department.

Collated information which is not clinical should be approved by the Data Protection Officer (DPO) or Senior Information Risk Owner (SIRO). If the DPO or SIRO are not present then their nominated deputies should be consulted for approval instead.

If approval is not given initially the FOI Officer should make necessary amendments based on comments and re-send amended response.

#### **5.5 Response**

All information released through the SAR process will be released securely. NHS Orkney will endeavor to release information in the format requested by the applicant.

Information cannot be released electronically directly to email addresses; an alternative safe transfer system can be used to issue information electronically.

### **6 EXEMPTIONS AND REFUSAL TO RESPOND**

NHS Orkney does not have to comply with information requests if an exemption applies, a refusal can be to a whole request or partial. Not all exemptions apply in the same way and NHS Orkney will look at each exemption carefully to see how it applies to a particular request. Many of the exemptions are irrelevant to NHS Orkney, a whole list can be found on the ICO website.

The request can also be refused if it is:

- Manifestly unfounded - request is malicious in intent, request is being completed with the intent to cause disruption.
- Manifestly excess - consider if the request is clearly or obviously unreasonable. Look at the nature, content of the request and NHS Orkney's available resources. This would also include overlap with other requests.

Refusals must consider all circumstances of the request and will be looked at on a case by case basis. The applicant must also be given details of any exemptions and refusals being used by NHS Orkney.

#### **6.1 Third party personal information**

NHS Orkney will not disclose personal information to an individual about other individuals. The exemption to this rule is where an individual has consented for

disclosure or it is reasonable to comply with the request without that individual's consent.

The names of health workers will not be removed from information responses if the third party individual is a health professional who compiled the record, contributed to the record or was involved in the data subject's diagnosis, care or treatment.

## **6.2 Health data - serious harm**

If a health professional deems that the release of information would be likely to cause serious harm to the physical or mental health of any individual the information will not be released.

## **7 REQUIREMENT FOR REVIEW**

In the first instance an applicant should contact NHS Orkney if they are dissatisfied with the way a SAR has been dealt with by NHS Orkney.

If an applicant remains dissatisfied they can appeal to the Information Commissioner's Office, details of how to make a request can be viewed on the ICO's website: <https://ico.org.uk/>

## **8 MONITORING**

Quarterly reports on performance management will be sent to the Information Governance Committee.

An annual report providing greater detail will be completed for the Information Governance Committee

## **9 CONTACT DETAILS AND FURTHER INFORMATION**

### **NHS Orkney contact:**

Additional information can be obtained from the NHS Orkney's website (<http://www.ohb.scot.nhs.uk/>)

Or please contact:

Freedom of Information Officer  
The Balfour  
Foreland Road  
Kirkwall  
KW15 1NZ

Email: [ork-HB.FOIRequests@nhs.scot](mailto:ork-HB.FOIRequests@nhs.scot)

### **ICO Scotland Office contact:**

The Information Commissioner's Office – Scotland  
Queen Elizabeth House  
Sibbald Walk

Edinburgh  
EH8 8FT

Email: [Scotland@ico.org.uk](mailto:Scotland@ico.org.uk)

**Useful websites:**

<https://ico.org.uk/>

<https://www.legislation.gov.uk/>

**Related local documents:**

Freedom of Information Policy

NHS Orkney Records Management Policy

## Appendix A: Subject Access Request Form

Please fill in this application form using **BLOCK CAPITALS** and **black ink**.

### Section 1: Personal Details

Please fill in this section as fully and accurately as you can, with the personal details of the person this access request is about. This will help us trace the personal information you need.

<b>First Name:</b>		<b>Last Name:</b>	
<b>Address:</b>			
<b>Postcode:</b>		<b>Date of Birth:</b>	
<b>Home Phone Number:</b>			
<b>Other Phone Number:</b>			
<b>CHI (community health index) or hospital number (if known)</b>			
<b>Email Address</b>			

If the person this access request is about has changed their name or lived at a different address during the periods of treatment you are interested in seeing information about, please provide these details.

<b>Previous name:</b>		
<b>Previous address:</b>		
<b>Dates from and to:</b>		

## Section 2: Information you want to access

Give details in the boxes below of the records or information you want to access. E.g ward, clinic, departments or services. Also give full details of the periods of treatment or care you are interested in.

Ward, clinic, department, specialty or service	Dates from	Dates to

## Section 3: Who is Applying For Access to the Information

Please tick the relevant box that applies:

- I am the person named in Section 1 ☐ → **Go to Section 6**
- I have been asked to act on behalf of the person named in Section 1, and that person has filled in Section 5. ☐ → **Go to Section 4**
- I am the parent or guardian of the person named in Section 1, and that person is under 16 years old and has a general understanding of what it means to request access to personal information (in Scotland, the law presumes this for children aged 12 years and above), and they have filled in Section 5 ☐ → **Go to Section 4**
- I am the parent or guardian of the person named in Section 1, and that person is under 16 years old and is not able to understand the request ☐ → **Go to Section 6**
- I have been appointed by the court to manage the affairs of the person named in Section 1 and enclose proof of this (**please provide a certified copy**) ☐ → **Go to Section 7**
- I hold a welfare power of attorney in relation to the person named in Section 1 and enclose proof of this (**please provide a certified copy**) ☐ → **Go to Section 7**

#### Section 4: Details of the Person Acting on Behalf of Others

You must fill in this section if the person named in section 1 has given you permission to act on their behalf

<b>Name: (Please print)</b>	
<b>Address and postcode we should send a reply to:</b>	
<b>Contact phone number:</b>	
<b>Email Address</b>	

➔ Now please complete Section 5

## Section 5: Permission

You must fill in this section if you are the person named in Section 1 and you have given the person named in Section 4 permission to act on your behalf.

I give you, **NHS Orkney**, permission to give \_\_\_\_\_  
(enter the name of the person acting on your behalf) the personal information requested in this form. I have given them permission to act on my behalf.

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

Print Name: \_\_\_\_\_

➔ Now go to Section 6

## Section 6: Identification/Countersignature

**Everyone must complete this section UNLESS you are providing:**

- A certified copy of a Power of Attorney document
- A certified copy of a Guardianship Order

The information we hold is confidential and we must get proof of your identity and your right to receive any relevant information. There are two ways you can do this, **please place a tick in the relevant box next to your preferred option:**

**1 – Provide One Form of Identification (ID) ☐**

We require proof of identification and current address. The following is a list of documents we will accept

Proof of ID

- Copy of the identification/photographic page from a current passport
- Copy of the identification/photographic section of a current driving licence
- Other forms of photo ID including travel pass, work badge

Proof of Address

- Copy of a recent utility bill or bank statement
- Copy of current rental agreement
- Copy of recent pay slips

**Please do not send original documents.**

**Any financial details can be redacted (blacked out) or removed.**

**OR**

## 2 - Countersignature ☐

The other way to confirm a person's identity is by providing a countersignature.

You only need to confirm the identity of the person applying, and be a witness when they sign the declaration ([Section 7](#)). You do not need to see the rest of the form.

**A family member or relative should not be asked to sign.**

In some cases, we may ask the person applying for more documents as proof of their identity.

I (write your full name) \_\_\_\_\_ confirm that I have known (name of the person applying) \_\_\_\_\_ for \_\_\_\_\_ years, and I was present when they signed the declaration.

<b>Signature:</b>		<b>Date:</b>	/ /
<b>Full Name:</b>			
<b>Profession (for example teacher)</b>			
<b>Address:</b>			
<b>Postcode:</b>			
<b>Phone Number:</b>			

## Section 7: Declaration

You must sign this section, and if providing a countersignature to confirm your ID the person you have named in Section 6 (the counter signatory) must be present when you sign.

### Releasing information

Keeping personal information confidential and secure is extremely important to us.

We use Movelt Transfer, NHS Scotland's Secure File Transfer Service to send documents. Documents are sent via email through the system.

I confirm that the information I have given is correct and that I am entitled to apply for access under the conditions of the General Data Protection Regulation 2016.

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

Print Name: \_\_\_\_\_

Date:        /        /

<p><b><u>Send your filled-in form to:</u></b></p>	<p>Email: <a href="mailto:ork.dp@nhs.scot">ork.dp@nhs.scot</a> or post: Freedom of Information Officer NHS Orkney The Balfour Foreland Road Kirkwall Orkney KW15 1NZ</p>
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## Appendix B: Subject Access Request Form Guidance Notes

The General Data Protection Regulation (GDPR) gives people the right to know what personal information an organisation has about them. To use this right, you can make what is known as a 'subject access request' (SAR).

Only the following people may apply for access to personal information.

- The person who the information is about.
- Someone acting on behalf of the person who the information is about.

You have a right to know whether or not we have any information about you, and a right to have a copy of that information. You have a right to know the following.

- What kind of information we keep about you.
- The reason we are keeping it and how we use it.
- Who gave us your information
- Who we might share your information with and who might see your information.

You also have the right to have any codes or jargon in the information explained.

You won't be able to see information that could:

- cause serious harm to your physical or mental health, or anyone else's
- identify another person (except members of NHS clinical staff who have treated the patient), unless that person gives their permission.

If you need any more advice about your rights under the General Data Protection Regulation, please contact NHS Orkney's Data Protection Officer or, you can contact the Information Commissioner's Office:

Data Protection Officer  
NHS Orkney  
The Balfour  
Foreland Road  
Kirkwall  
Orkney  
KW15 1NZ  
Email: [ork.dp@nhs.scot](mailto:ork.dp@nhs.scot)

The Information Commissioner's Office – Scotland  
45 Melville Street  
Edinburgh  
EH3 7JL  
Phone: 0131 244 9001  
Email: [Scotland@ico.org.uk](mailto:Scotland@ico.org.uk)

If you want to make a subject access request, please fill in the form attached.

### Fee

Data will be provided **free of charge**. There may be a charge of a 'reasonable fee' when a request is manifestly unfounded or excessive, particularly if it is repetitive.

A reasonable fee may occur when complying with requests for further copies of the same information. This does not mean that there will be a charge for all subsequent access requests.

The fee must be based on the administrative cost of providing the information.

### Response time

The statutory timescale set out in the General Data Protection Regulation (GDPR) is one calendar month although we are able to extend the period of compliance by a further two months where a request is complex or numerous. If we have any problems getting your information we will keep you up to date on our progress.

## **How long records are kept**

The usual rules to do with keeping records are that:

- adult general hospital records are kept for six years after the date of the last entry;
- maternity records are kept for 25 years after the birth of the last child;
- children's and young people's records are kept until the child's or young person's 25th birthday; and
- mental-health records are kept for 20 years after the date of the last contact.

This may help you in considering what types of records you are applying to see.

## **Points to consider**

Making false or misleading statements to access personal information which you are not entitled to is a criminal offence.

Accessing health records and information is an important matter. Releasing information may in certain circumstances cause distress. You may want to speak to an appropriate health professional before filling in the form.

We ask for proof of ID or a countersignature (see section 6) because we have confidential information and we must get proof of your identity and your right to receive any relevant information.

## **Notes to help you fill in the form**

### **Personal information**

Personal information is information we hold about people in medical records, patient administration and information systems, clinical systems, and other databases or files. We may hold personal information on paper or on computer.

### **Health professionals**

An appropriate health professional may include your hospital doctor, nurse, midwife or health visitor, dentist, optician, pharmacist, clinical psychologist, occupational therapist, dietician, physiotherapist, podiatrist or speech and language therapist.

## **Section 1: Personal details**

This is the person to whom the data relates. Please ensure that this section is completed as fully and accurately as possible to enable us to trace all the required information.

## **Section 2: Information you want to access**

Please complete as much of this section as you can. Whether you wish to receive all the information held or only information relating to one or more specific episodes of care or treatment it will help us to find your details with the minimum of delay.

The General Data Protection Regulation covers both manual (paper) and computerised records.

If you wish to view the original record you will be invited to attend the hospital or clinic at a convenient time, along with a health professional or appropriate other person. If you wish to receive photocopies these will be produced within 30 days.

If you have only asked for a copy of the relevant records, the healthcare professional responsible for your care may invite you to see them so that they can explain the information in your record. You do not have to take up this invitation, but it may be in your best interests to do so.

### Section 3: Who is Applying for Access to the Information

The person making the application must complete this section.

- If you are the patient (see section 1 above) – sign then proceed to Section 6
- If you are acting on behalf of others (see section 4 below) the organisation will require the patient's authorisation before data can be released. The 'Permission' section of the form must be signed by the patient (section 5) The exception is if you have proof of authority – e.g. Power of Attorney/Welfare Guardianship documents. If this is the case, a certified copy will need to be provided.
- If the patient is a child i.e. under 16 years of age the application may be made by someone with parental responsibilities, in most cases this means a parent or guardian. If the child is capable of understanding the nature of the application his/her consent should be obtained or alternatively the child may submit an application on his/her own behalf. Generally children will be presumed to understand the nature of the application if aged between 12 and 16. However, all cases will be considered individually.

### Section 4: Details of the Person Acting on behalf of Others

The applicant is the person who is applying on behalf of the patient to get access to the records.

### Section 5: Permission

If applicable, the patient must complete this section authorising the organisation to release information to the named applicant.

### Section 6: Identification/Countersignature

Everyone must complete this section UNLESS you are providing:

- A certified copy of a Power of Attorney document
- A certified copy of a Guardianship Order

Because of the confidential nature of the information held by the organisation, it is essential for us to obtain proof of your identity and your right to receive any relevant information.

For this purpose it is essential that you provide either proof of your identity or get the application countersigned.

#### 1 – Provide one Form of Identification

Examples of these can be found in section 6

#### 2 – Countersignature

Anyone who knows the applicant personally can sign this section as long as it's not a family member or relative.

### Section 7: Declaration

This must be completed by the applicant.

<b><u>Send your filled-in form to:</u></b>	<b>Email: <a href="mailto:ork.dp@nhs.scot">ork.dp@nhs.scot</a> or post: Freedom of Information Officer NHS Orkney The Balfour Foreland Road Kirkwall Orkney KW15 1NZ</b>
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