

Requests for Information: how to make them and what we do

Ref CORP-0006-001-v2

Status: Approved

Document type: Procedure

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1 Purpose

Following this procedure will help the Trust to comply with the requirements of:-

- Data protection law which includes the General Data Protection Regulation 2016 and Data Protection Act 2018
- Freedom of Information Act 2000
- Access to Health Records Act 1990
- Health and Social Care Act 2012
- Re-use of Public Sector Information Regulations 2005
- Environmental Information Regulations 2004
- Caldicott Revised Principles 2013

2 Related documents

This procedure describes what you need to do to implement the disclosure control objectives in the Information Governance Policy (CORP-0006)

This procedure also describes what you need to do to request or implement lawful disclosure of information about patients, staff and business activity. Information can also be required to be disclosed about deceased patients.

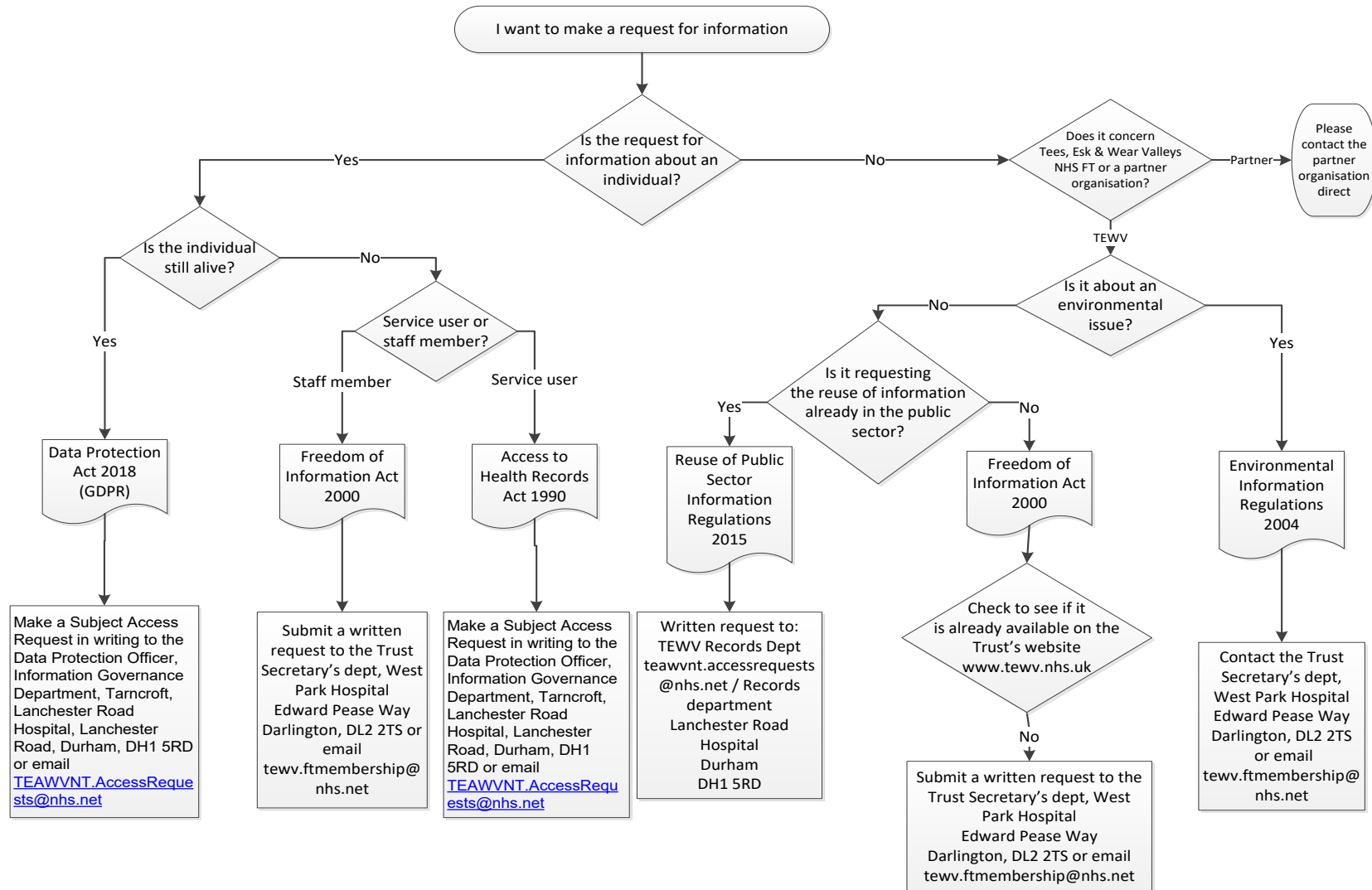


The Information Governance Policy defines the control objectives which you must read, understand and be trained in before carrying out the procedures described in this document.

This procedure also refers to:-

- ✓ Records Management Policy
- ✓ Confidentiality and Sharing Information policy
- ✓ Information Security and Risk Policy
- ✓ Minimum standards for clinical record keeping
- ✓ Minimum standards for corporate record keeping

3 Process



4 Data Protection Act 2018 (GDPR)

The Data Protection Act gives rights to individuals in respect of personal data held about them by others, these are:

- The right to be informed of the processing of personal information.
- The right of access to personal information.
- The right to rectification of personal information.
- The right to erasure of personal information.
- The right to restrict processing of personal information.
- The right to data portability of personal information.
- The right to object to processing personal information.
- Rights in relation to automated decision making and profiling.

Revised data protection legislation introduced from the 25th May 2018 includes the General Data Protection Regulation 2016 and Data Protection Act 2018 and strengthens the rights of data subjects.

4.1 Making a request

Requests must be made in writing, although we may ask requesters to complete an additional form to clarify their requirements.

Staff who have access to Paris and who are also service users with a Paris record must not access their Paris record just because they can. Members of Trust staff who are also service users must request access to their paper and electronic patient records by requesting them through the formal request process.

Requests for information about living (patients and staff) and deceased individuals (patients only) must be made to the Trust's Data Protection Team based in the Information Governance Department:

Organisations have one month to comply with a request for personal information. This period may be extended by a period of two further months where necessary taking into account the complexity and number of requests.

Please contact:

Email: TEAWVNT.AccessRequests@nhs.net

Post: Data Protection Officer
Records Office
Lanchester Road Hospital
Durham
DH1 5RD

Tel: 0191 333 6330

4.1.1 Requests from third parties

A service user with capacity may authorise a third party such as a solicitor or family member to seek access to their records on their behalf. The third party must provide proof that they are acting on the service user's behalf (consent) and must also provide proof of their identity.

4.1.2 If the service user is a child

Where the service user is under 18, any person with parental responsibility may apply for access to their record. Where more than one person has parental responsibility, each may independently exercise their right of access. Access will only be given with the child's consent, if the child is 12 years old and over and capable of understanding the impact of allowing parental access to their record. If the child lacks the capacity to understand the application, but access would be in their best interests, we will grant it.

4.1.3 If the service user is incapable of managing their own affairs

Where the service user is incapable of managing their own affairs, a person appointed by a court to manage those affairs may seek access to the records. Access will be restricted to the information necessary for the appointee to carry out their functions. A person holding a Lasting Power of Attorney for Health and Welfare may be granted access to a patient's records.

4.1.4 If the service is capable of making some decisions

Where a service user does have *some* capacity to make their own decisions the lead clinician will have to complete a capacity assessment of the service user's ability to decide whether they have the capacity to make their own decision regarding the sharing of their own personal information.

If the outcome of the assessment is that the service user is incapable of making the decision of whether to share or not to share then a best interests decision will be made. This will be organised by the lead clinician and will include key stakeholders such as carer(s).

4.1.5 Requests from the Police

If the Police want copies of information from paper or electronic patient records they must submit a completed Personal Data Request form. Consent from the service user may or may not be required depending on the specific circumstances. The Police must also complete a Personal Data Request form if they want copies of information from staff records.

4.2 Recording the disclosure

The Data Protection team maintains a disclosure log which allows the organisation to monitor the progress of every request for personal information.

We also record unauthorised disclosures (disclosures not facilitated by the Data Protection team) together with details of any action taken to ensure that such disclosures are not repeated.

Unauthorised disclosures must be reported and recorded as per Trust procedures and processes for managing information security incidents. Staff who are service users who have accessed their own patient information through Paris or paper records outside of a formal access request will be investigated by the Privacy Officer.

4.3 Exemptions to the Act

There are a number of reasons why we may not disclose information under data protection law when it is requested. These reasons include:

- an appropriate health professional considers that disclosure is likely to cause serious harm to the physical or mental health of the data subject or another individual;
- the information is about or has come from third parties who have not given consent for their information to be disclosed.

There are also a number of reasons we may share information that would otherwise be non-disclosable. These include:

- the prevention or detection of crime;
- the capture or prosecution of offenders; and
- the assessment or collection of tax or duty.

5 Freedom of Information Act 2000 (FOI)

The Freedom of Information Act 2000 provides public access to information held by public authorities.

It does this in two ways:

- public authorities are obliged to publish certain information about their activities; and
- members of the public are entitled to request information from public authorities.

The Act covers any recorded information that is held by a public authority in England, Wales and Northern Ireland, and by UK-wide public authorities based in Scotland. Information held by Scottish public authorities is covered by Scotland's own Freedom of Information (Scotland) Act 2002.

Requests for information under the Act will arise from two main sources	
Publication Scheme	<p>The Trust must make certain classes of information routinely available (usually via our website), such as policies and procedures, minutes of meetings, annual reports and financial information.</p> <p>We must respond within 5 days to routine information requests under the Publication Scheme.</p> <p>The Deputy Trust Secretary will review the Publication Scheme for the accuracy of the information it contains on an annual basis.</p>
General right of access	<p>All other applications for information must be received in writing. This includes letters and emails.</p> <p>We must respond within 20 working days to information requests under the Act.</p>

5.1 Making a request

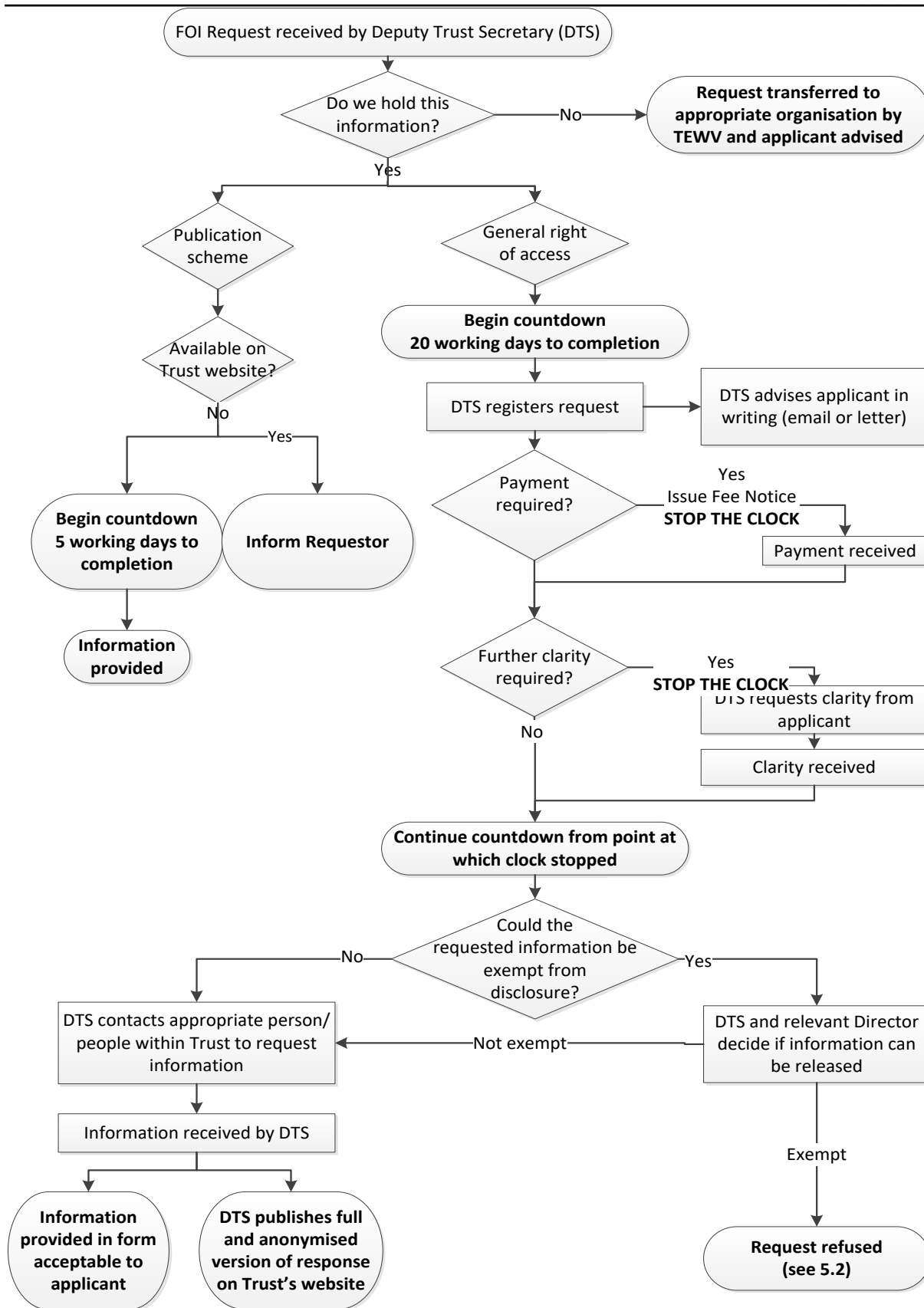
The Deputy Trust Secretary is responsible for rights of access to information under the Freedom of Information Act 2000 and reports directly to the Trust Secretary.

Contact details are:

Deputy Trust Secretary
Tees, Esk and Wear Valleys NHS Foundation Trust
West Park Hospital
Edward Pease Road
Darlington
DL2 2TS

Email: tewv.ftmembership@nhs.net

The flow diagram over the page describes the request process.



5.2 Refusing a request

Refusal may apply to all or part of the information requested by an applicant, if:

- the information is exempt from disclosure under Part II of the Act;
- the cost of compliance exceeds the appropriate limit;
- a fees notice or charge has not been paid within three months beginning on the day the fees notice was given to the applicant/the applicant was notified of the charge;
- the request is demonstrably vexatious or repeated.

If the Trust chooses to refuse a request for information under any of the above clauses, we will inform the applicant of:

- the relevant exemption that has been applied within twenty working days;
- the Trust's internal appeals process;
- their right to complain to the Information Commissioner following an internal appeal.

5.3 Transferring requests for information

If the Trust receives an FOI request and we only hold **part** of the information which it requests, the Deputy Trust Secretary may request that remaining information from the third party or agency which owns or holds it to satisfy the request in full.

If the Trust holds information, regardless of whether or not we produced it, we are still obliged to provide it under FOI. We may, however, need to seek permission from the information owner to provide it.

5.4 Third party information

5.4.1 Where a request affects legal rights of a third party

Sometimes disclosing information needs the consent of a third party. In such cases we will seek their consent to the disclosure, unless such a consultation is not practicable, for example because the third party cannot be located or because the costs of consulting them would be disproportionate.

5.4.2 Consultation in non-legal circumstances

Where the interests of the third party do not give rise to legal rights, consultation may still be appropriate, e.g. in cases where the views of the third party may help the authority decide:

- Whether an exemption under the Act applies to the information requested; or
- Where the public interest lies under section 2 of the Act.

The Deputy Trust Secretary may consider that consultation is not appropriate where the cost of consulting with third parties would be disproportionate. In such cases the most reasonable course of action will be taken to meet the requirements of the Act and the individual circumstances of the request.

Consultation will be unnecessary where:

-
- we do not intend to disclose the information relying on some other legitimate ground under the terms of the Act;
 - the views of the third party can have no effect on our decision, for example, where there is other legislation that prevents or needs this information to be disclosed;
 - no exemption applies and the information must be provided.

5.4.3 Consultation with a number of third parties

Where the interests of a number of third parties may be affected by a disclosure and those parties have a representative organisation which can express views on their behalf, the Deputy Trust Secretary will consult with that representative organisation.

If there is no representative organisation, it may be sufficient to consult a representative sample of the third parties in question.

5.4.4 Where there is no response or a refusal to consent by the third party

A refusal to consent to disclosure, or a failure to respond to a request for consent by a third party, does not mean information should be withheld.

5.4.5 Accepting information in confidence from third parties

We will not agree to hold information received from third parties 'in confidence' which is not confidential in nature.

5.5 Charges and fees

5.5.1 Under the Publication scheme

Information from the Trust's publication scheme that is available from the Trust's website or that can be transmitted by email will be provided free of charge.

Leaflets and brochures produced by the Trust will be provided free of charge. However, we will charge for hard copies of other information or copying onto media (e.g. CD ROM). The charges will vary according to how the information is made available.

5.5.2 Under the General right of access

The Trust will levy a fee in line with Fees Regulations made under the Act for requests made under the general right of access.

5.5.3 Timescales

If a request is subject to a fee, the 'clock stops' to comply with the twenty working day timescale, only restarting upon payment.

Applicants will have three months beginning on the day they were given the Fees Notice/notified of the charge to pay the fee/charge.

6 Access to Health Records Act 1990 (AHRA)

The duty of confidentiality continues after a patient has died. Under the Access to Health Records Act 1990, the personal representative of the deceased and people who may have a claim arising from the patient's death are permitted access to the records. This applies to information provided after November 1991. Disclosure will be limited to that which is relevant to the claim in question.

Where a death is sudden and unexpected, a limited amount of information about the circumstances of the death may be disclosed verbally to support grieving relatives. Records must be checked before any disclosure to check if the patient had requested that no information should be disclosed to family members. If this is documented in the patient records then no information may be disclosed about the patient's care and treatment.

6.1 Making a request

Requests under AHRA must be made **in writing** to:

Email: TEAWVNT.AccessRequests@nhs.net

Post: Data Protection Officer
Records Office
Lanchester Road Hospital
Durham
DH1 5RD

Tel: 0191 333 6330

7 Environmental Information Regulations 2004 (EIR)

The Environmental Information Regulations 2004 provides public access to environmental information held by public authorities.

The Regulations do this in two ways:

- public authorities must make environmental information available proactively;
- members of the public are entitled to request environmental information from public authorities.

The Regulations apply only to the environmental information held by public authorities. The Freedom of Information Act 2000 gives people access to most other types of information held by public authorities. Only recorded and documented information can be taken into account when considering a request.

We do not have to create new information or speculate as to the future.

7.1 Making a request

Anyone can make a request for information under the Regulations and the request can be received in any form – it does not have to be in writing.

Requests under EIR should be made to:

Deputy Trust Secretary
Tees, Esk and Wear Valleys NHS Foundation Trust
West Park Hospital
Edward Pease Road
Darlington
DL2 2TS

Email: tevw.ftmembership@nhs.net

8 Re-use of Public Sector Information Regulations 2015 (RoPSI)

Public Sector Information (PSI) is information produced by central and local government or any other public body. Public sector information constitutes a vast, diverse and valuable pool of resources. Re-use of public sector information provides enormous opportunities for economic and social benefits, while also promoting transparency and accountability of the public sector.

By 're-use', we mean using a document or content for a purpose other than its original one. Anybody can ask to use any information we hold, recorded in any form, whether in writing or stored in electronic form or as a sound, visual or audio-visual recording, other than a computer program.

Under this Directive, information can only be re-used if:

- we own the intellectual property rights;
- you have our permission to re-use it; or
- it appears in the Information Asset Register.

8.1 Making a request

Requests for any further re-use under the Regulations (for example, if you want to reproduce our website material for commercial purposes) should be made in writing, specifying:

- the name of the applicant and an address for correspondence;
- the document or information requested; and

- the purpose for which the document or information is to be re-used.

Please direct your written requests to:

TEWV Records Dept,
 Lanchester Road Hospital
 Durham
 DH1 5RD

Email: teawvnt.accessrequests@nhs.net

9 Provision of information

All information will be provided in a format that meets the needs of the person requesting it.

10 Definitions

Term	Definition
Absolute exemption	Applied to information that does not have to be released to the applicant either through a Publication Scheme or through the general right of access under the Act. Information to which an absolute exemption applies does not require a public authority to take a test of prejudice or the balance of public interest to be in favour of nondisclosure. Reference to absolute exemptions can be found in Part I, section 2 and Part II of the Act.
Applicant	The individual(s), group or organisation requesting access to information under the Acts.
Appropriate Health Professional	The health professional who is currently, or was most recently responsible for the diagnosis, care or treatment of the data subject in connection with the matters to which the data relates.
Data Controller	The person who (either jointly or in common with other persons) determines the purposes for which and the manner in which any personal data are, or are to be, processed The Data Controller is usually a company or organisation and is not an individual within that company or organisation. Tees, Esk and Wear Valleys NHS Foundation Trust is the data controller of all of the systems in use within this organisation and is registered with the Information Commissioner (formerly the Data Protection Commissioner) as such.
Data Protection Officer	The representative of the data controller who is charged with ensuring compliance with the terms of the law. The minimum tasks of the DPO are: <ul style="list-style-type: none"> • To inform and advise the organisation and its employees about

	<p>their obligations to comply with the GDPR and other data protection laws.</p> <ul style="list-style-type: none"> • To monitor compliance with the GDPR and other data protection laws, including managing internal data protection activities, advise on data protection impact assessments; train staff and conduct internal audits. • To be the first point of contact for supervisory authorities and for individuals whose data is processed (employees, customers etc).
Data Subject	Any living individual who is the subject of personal data. For example, staff and patients.
Information Commissioner	The Information Commissioner enforces and oversees the Data Protection Act 1998 and the Freedom of Information Act 2000. The Commissioner is a United Kingdom (UK) independent supervisory authority reporting directly to the UK Parliament and has an international role as well as a national one. In the UK the Commissioner has a range of duties including the promotion of good information handling and the encouragement of codes of practice for data controllers, that is, anyone who decides how and why personal data, (information about identifiable, living individuals) are processed.
Processing	The act of obtaining, recording or holding information or data, or carrying out any operation or set of operations on that information or data.
Personal Data	Data that relates to a living individual who can be identified either from those data and/or other information that is in the possession of, or is likely to come into the possession of, the data controller. This includes any expression of opinion about the individual and any indication of the intentions of the data controller or any other person in respect of the individual
Personal Health Data	Data relating to the physical and / or mental health of a living individual.
Third Party Information	In relation to personal data, this means any person other than – (a) the data subject, (b) the data controller, or (c) any data processor or other person authorised to process data for the data controller or processor

11 How this procedure will be implemented

- | |
|--|
| <ul style="list-style-type: none"> • This procedure will be published on the Trust's intranet. |
| <ul style="list-style-type: none"> • Line managers will disseminate this procedure to all Trust employees through a line management briefing. |

11.1 Training needs analysis

Staff/Professional Group	Type of Training	Duration	Frequency of Training
Data Protection Officer	Data Protection Officer	Four days	Once
Data Protection Assistants	Update training	Half a day	Annually
Staff with key roles in : <ul style="list-style-type: none"> • Information Security • Information Risk Management • Privacy • Claims 	Update training	Half a day	Annually
Information Asset Owners and Information Asset Administrators	Awareness workshops	Half day	Once

12 References

- Freedom of Information Act 2000
- [Code of Practice issued by the Lord Chancellor pursuant to section 45\(5\) of the Freedom of Information Act 2000](#)
- Data Protection Act 1998
- Access to Health Records Act 1990
- Health and Social Care Act 2012
- Reuse of Public Sector Information Regulations 2015
- Environmental Information Regulations 2004
- [Caldicott Review 2013: To Share, or Not to Share](#)
- [General Data Protection Regulation](#)
- [Information Commissioner's Office](#)
- [Subject Access Code of Practice \(ICO\)](#)

13 Document control

Date of approval:	10 May 2018	
Next review date:	10 November 2021	
This document replaces:	Ref CORP-0006-001-v1	
Lead:	Name	Title
	Louise Eastham	Head of Information Governance
Members of working party:	Name	Title
	Theresa Parks	Information Governance Manager
	Donna Oliver	Deputy Trust Secretary
This document has been agreed and accepted by: (Director)	Name	Title
	Elizabeth Moody	Director of Nursing and Governance
This document was approved by:	Name of committee/group	Date
	Digital Safety and Information Governance Board	10 May 2018
An equality analysis was completed on this document on:	December 2018	

Change record

Version	Date	Amendment details	Status
1	Jan 2016	New procedure	Withdrawn
2	May 2018	<p>Data Protection Act 1998 changed to General Data Protection Regulation 2016 and Data Protection Act 2018.</p> <p>Text edited to reflect changes that will be implemented by new data protection legislation – additional data subject rights.</p> <p>Deadline for Subject Access Request disclosures changed from 40 calendar days to one month plus deadline extension of two months in specific circumstances.</p>	Approved
2	12 April 2021	Review date extended till 10 Nov 2021	published

Appendix 1 - Equality Analysis Screening Form

Please note; The Equality Analysis Policy and Equality Analysis Guidance can be found on InTouch on the policies page

Name of Service area, Directorate/Department i.e. substance misuse, corporate, finance etc.	Trustwide – applies to all clinical and corporate teams.			
Name of responsible person and job title	Theresa Parks, Information Governance Manager			
Name of working party, to include any other individuals, agencies or groups involved in this analysis	n/a			
Policy (document/service) name	Requests for Information Procedure			
Is the area being assessed a...	Policy/Strategy	<input type="checkbox"/>	Service/Business plan	<input type="checkbox"/>
	Procedure/Guidance	<input type="checkbox"/>	X	Code of practice
	Other – Please state			
Geographical area covered	Trustwide			
Aims and objectives	The document describes the legalities and processes associated with sharing information; personal information and business information.			
Start date of Equality Analysis Screening (This is the date you are asked to write or review the document/service etc.)	May 2017			
End date of Equality Analysis Screening (This is when you have completed the equality analysis and it is ready to go to EMT to be approved)	EA completed in December 2018.			

You must contact the EDHR team if you identify a negative impact. Please ring Sarah Jay on 0191 3336267/3046

1. Who does the Policy, Service, Function, Strategy, Code of practice, Guidance, Project or Business plan benefit?

It benefits individuals who want to request information and benefits staff who need to understand the process for requesting information from TEWV Trust.

2. Will the Policy, Service, Function, Strategy, Code of practice, Guidance, Project or Business plan impact negatively on any of the protected characteristic groups below?

Race (including Gypsy and Traveller)	No	Disability (includes physical, learning, mental health, sensory and medical disabilities)	No	Gender (Men, women and gender neutral etc.)	No
Gender reassignment (Transgender and gender identity)	No	Sexual Orientation (Lesbian, Gay, Bisexual and Heterosexual etc.)	No	Age (includes, young people, older people – people of all ages)	No
Religion or Belief (includes faith groups, atheism and philosophical belief's)	No	Pregnancy and Maternity (includes pregnancy, women who are breastfeeding and women on maternity leave)	No	Marriage and Civil Partnership (includes opposite and same sex couples who are married or civil partners)	No

Yes – Please describe anticipated negative impact/s

No – Please describe any positive impacts/s

The right of access to information applies to all individuals irrespective of any protected characteristics.

3. Have you considered other sources of information such as; legislation, codes of practice, best practice, nice guidelines, CQC reports or feedback etc.? If 'No', why not?	Yes	X	No	
Sources of Information may include: <ul style="list-style-type: none"> • Feedback from equality bodies, Care Quality Commission, Equality and Human Rights Commission, etc. • Investigation findings • Trust Strategic Direction • Data collection/analysis • National Guidance/Reports 	<ul style="list-style-type: none"> • Staff grievances • Media • Community Consultation/Consultation Groups • Internal Consultation • Research • Other (Please state below) 			
4. Have you engaged or consulted with service users, carers, staff and other stakeholders including people from the following protected groups?: Race, Disability, Gender, Gender reassignment (Trans), Sexual Orientation (LGB), Religion or Belief, Age, Pregnancy and Maternity or Marriage and Civil Partnership				
Yes – Please describe the engagement and involvement that has taken place				
Discussed right of access under data protection law with individuals who attended privacy notice focus groups during 2018. Focus groups will continue in 2019. Have good links with TEWV's Experts by Experience regarding the disclosure of personal information.				
No – Please describe future plans that you may have to engage and involve people from different groups				

5. As part of this equality analysis have any training needs/service needs been identified?					
Yes	Please describe the identified training needs/service needs below All Trust staff need to be reminded of their role in access requests. An access request for personal or business information could come into the Trust at any point and all Trust staff need to be able to recognise these and know what to do when they receive a request. Staff do not need specific training – they just need an awareness. Awareness articles will be published in e-Bulletin at regular intervals in 2019.				
A training need has been identified for;					
Trust staff	Yes	Service users	No	Contractors or other outside agencies	No
Make sure that you have checked the information and that you are comfortable that additional evidence can provided if you are required to do so					
The completed EA has been signed off by: You the Policy owner/manager: Type name: THERESA PARKS					Date: 17/12/2018



Your reporting (line) manager:

Type name: LOUISE EASTHAM

Date:

17/12/2018

If you need further advice or information on equality analysis, the EDHR team host surgeries to support you in this process, to book on and find out more please call: 0191 3336267/3046