

A guide to the disclosure process

Receipt of request with payment

- Log receipt of cheque on cash sheet/ check payment received by Cashier.
- Check that the consent is appropriate (be led by patient for disclosure)
- Update Disclosure database to allocate password for encrypted CD and to record the request
- Generate correspondence for applicant and tracking sheet for Scan & Collate
- Annotate request letter with 40th day disclosure date (from date of receipt calculate 40th day to include Saturdays and Sunday but not bank holidays. If the 40th day falls at a weekend the disclosure date will be the Friday.
- Diarise the disclosure request
- Issue letter with details of the password to the applicant
- Retain the request letter, disclosure letter and record tracking sheet together
- Assess documents for disclosure utilising e.g. IPM, Insignia, HAS and TIARA and print relevant documents for retention until the health records have been retrieved. ***In respect of physiotherapy records only request if absolutely required by applicant. In all other cases only provide a copy of the attendances from the TIARA database***
- Burn the relevant images onto an encrypted CD and ensure that the CD can be opened
- Retrieve health records/ED cards. If the health records are not available file the request in your individually held pending file and monitor weekly to retrieve as soon as possible. ***Any requests that will exceed the 40th day must be referred to the team leader for escalation and the requester must be kept informed***
- Review health records and prepare for scanning denoted by green/red clips.
- Pass clipped health records, associated documents/reports with the record tracking sheet to Scan & Collate
- When the health records have been scanned ensure that the CD can be opened and undertake a quality check
- Apply the security seal to CD jacket and issue to applicant with disclosure letter and imaging CD if applicable
- Complete record tracking sheet
- Delete from diary
- Scan the record tracking sheet, request letter, consent and any other necessary documents
- File the request in the appropriate folder in the Disclosure drive

Receipt of request without payment

- Check that consent is appropriate (be led by patient for disclosure)
- Update Disclosure database to allocate password for encrypted CD and to record the request
- Generate correspondence for applicant and record tracking sheet for Scan & Collate
- Issue letter with request for payment to the applicant
- Retain the request letter, disclosure letter and record tracking sheet together

- Assess documents for disclosure utilising e.g. IPM, Insignia, HAS and TIARA and print relevant documents for retention until the health records have been retrieved.
- Burn the relevant images onto an encrypted CD and ensure that the CD can be opened
- **Await payment**
- Proceed as receipt of request with payment when application fee received

Freedom of Information Rationales

L3: Rationale for the use of Section 40 (2) (a) (b) and 3 (a) (i) “Personal Information” exemption: Applied in accordance with the requirements of both the Data Protection 1998 and Freedom of Information Act 2000 concerning Patient/Person specific information.

1a) Introduction

Plymouth Hospitals NHS Trust (PHNT) takes the view that it is not just the name, it can be a host of other details that when collated identify a person and link them to events. A jigsaw puzzle is a good example of how single pieces might not mean anything but when the pieces are fitted together, a picture emerges. In the same way, the more information placed in the public domain the clearer the picture becomes. Normally this would be right and proper and provides the evidence that supports our accountability, however, where requested information relates to individuals and events the Trust has a duty to ensure that it finds the right balance between the rights of a data subject and the requirements of the Freedom of Information Act. This is particularly important when questions are very probing and an organisation has a duty of care. The Information Commissioner expresses these concerns in the legal guidance to the Data Protection Act stating:

“The Commissioner recognises that the aim of anonymisation is to provide better data protection. However, true anonymisation may be difficult to achieve in practice.

1b) Framework

Whether information is personal data will often be obvious. The two main elements of personal data are that the information must “relate to” a living person, and that person must be identifiable. Information will “relate to” a person if it is about them, linked to them, has some biographical significance for them, is used to inform decisions affecting them, has them as its main focus or impacts on them in any way.

In considering whether the Trust should release the requested information into the public domain we considered whether its disclosure would be likely to breach any Data Protection principles and that it was not exempt from disclosure by virtue of section 10 DPA causing damage or distress. The Trust was also required to consider whether the disclosure of information to a member of the public would breach Data Protection principles if section 33 A (1) and other exemptions were disregarded despite FOIA requests being purpose blind.

1c) Our assessment of the impact of the release

1ca) Consideration of the first and second data protection principles

The Trust believes that placing the requested information in the public domain will provide information that is likely to enable the public to identify the individuals

affected because it has some biographical significance for them and has them as the main focus of the release for which the Trust cannot be assured of the impact.

The processing of the data is not necessary for any employment purposes and is not in the vital interests of the data subject. The processing is not to the Trust's knowledge necessary for the purpose of, or in connection with, any legal proceedings (including prospective legal proceedings), or for obtaining legal advice or in any other way defending legal rights.

There are certain areas of law concerning the use of information and the relations of data controllers with individuals, which have particular relevance where breaches of the first and second principles are being considered.

These are:-

- (a) Confidentiality arising from the relationship of the data controller with the data subject.
- (b) The ultra vires rule and the rule relating to the excess of delegated powers, under which the data controller may only act within the limits of its legal powers.
- (c) Legitimate expectation, that is, the expectation of the individual as to how the data controller will use the information relating to him
- (d) Article 8 of the European Convention on Human Rights (the right to respect for private and family life, home and correspondence).

On this occasion, (a) (c) and (d) apply.

1cb) The third principle – “Personal data shall be adequate, relevant and not excessive in relation to the purpose or purposes for which they are processed”.

The Trust needs to gather a considerable amount of data about patients and they would not expect information of a personal nature to be made public.

The Trust believes it has a duty to ensure that where the request is purpose blind a balance is struck between the data subject's rights and that of an applicant in accordance with an individual's rights in accordance with section 1.-(1) (b) of the FOIA.

The Trust on this occasion believes that on balance the level of disclosure requested would have been excessive if it were to be disclosed and any disclosure would impinge on the rights of data subjects.

1d) Summary for the application of Section 40 (2) (a) and (b) and (3) (a) (i)

PHNT concludes that if the exempt data was released to the applicant without reference to the identity and reasons for the request, we would breach the first, second and third principles for the reasons offered.

1e) Outcome for personal information

PHNT on this occasion can confirm that it holds the information requested in accordance with section 1.- (1) – (a) of the FOIA, but is not communicating that information as required by section 1.(1) – (b) by virtue of section 40 (2) (a) (b) and 3 (a) (i)

PHNT is issuing a refusal notice for these pieces of information in accordance with section 17.- (1). This is because the Trust considers the information personal and that the disclosure would breach data protection principles.

Freedom of Information Manager

Leaflet Governance

- Person responsible for review: Freedom of Information Manager
- Last reviewed 30/07/2014
- Next review due on 30/07/2016 or before if changes in the Acts or its guidance requires it.

Preparing Health Records for Scan & Collate

When undertaking clipping please note that the following documents held within the health records are not for disclosure by the Plymouth Hospitals NHS Trust

- Any documents that are generated by Plymouth Community Healthcare CIC (the former Plymouth teaching Primary Care Trust) eg any health records filed behind a red Rehabilitation chapter card or any correspondence bearing their logo, this also includes the Minor Injuries Unit at the Cumberland Centre.
- Any documents behind a grey RNH chapter card that are not generated by the Plymouth Hospitals NHS Trust
- Any documents generated as a result of a GP admission in any of the peripheral hospitals eg Launceston Hospital, South Hams Hospital
- Any documents generated by an admission to Liskeard Community Hospital
- Any private patient records generated by the Clinician (this does not include junior or nursing staff)
- Any documents from another hospital unless the patient was referred to the PHNT for ongoing treatment
- Any Child Protection records

Please note:

- Do not clip any irrelevant obstetric records. If the patient was not pregnant at the time of the accident/incident only clip the front cover of the obstetric pack.
- Do not clip any cardiac investigation packs unless the data is relevant to the incident/accident – only clip the front and back of the envelope
- Do not clip any CAMHS records unless they are specifically related to the accident/incident. Inform the solicitors that there are sensitive records that will only be considered for disclosure upon request (**NB CAMHS records created after 01/10/2008 do not belong to the PHT**)
- **If the complete record is requested** do not clip nursing records or results that do not relate to the accident/incident. Clip the whole **clinical** record (normally the first spine) and confine the clipping of the results and nursing notes to the **accident/incident only**

This list is not exhaustive, please seek advice before clipping any documents that you are not certain can be disclosed by the PHNT

File reference	W17F406
Key words	SARs Structure
Date of release	14/09/2017
Attachments	Yes

Freedom of Information Act Disclosure log - Reply Extract

Please provide a copy of:

Your trusts application form for Subject Access Requests

Our application form can be found via our Trust website at:
<http://www.plymouthhospitals.nhs.uk/access-to-medical-records>

Your trusts compliance procedure and compliance figures

We do not have a compliance procedure, but please see below our figures since January 2017 for Subject Access Requests only. Please some delays arise when patient appointments are prioritised. Numbers of five or fewer have been listed accordingly.

Month	No. Disclosed within 21 days	No. disclosed within 22 - 40 days	No. Disclosed after 40 days
Jan-17	19	Five or fewer	0
Feb-17	26	0	Five or fewer
Mar-17	14	Five or fewer	0
Apr-17	14	Five or fewer	Five or fewer
May-17	22	6	0
Jun-17	17	0	0
Jul-17	12	8	Five or fewer
Aug-17	12	Five or fewer	

Your Policies for SAR requests

We currently do not have a policy, we have a checklist and some guides that our staff follow, which we have attached.

An overview of your SARs activity

Please refer to above table. This covers both compliance and our activity.

Departmental structure of the SARs team (numbers of staff and bandings please)

Our Disclosure Team consists of the following:

1 x WTE Band 4 Disclosure Team Supervisor (this role is responsible for SAR's, Police requests and requests from other Hospitals).

2 x WTE Band 2 Disclosure Team Clerical Officers (these roles are responsible for completing all third party requests we receive in the Trust and other disclosure).

2 x 0.5 WTE Band 2 Disclosure Team Clerical Officers

Attachments included: Yes

Legal notes

Plymouth Hospitals NHS Trust is confirming in accordance with section 1 (a) of the Act that it holds the information requested and is supplying it in accordance with section 1(b) unless otherwise specified.

Please find the answers to your questions noting that we have redacted the data set where numbers are five or fewer. This avoids a breach of the first two Data Protection Act principles. This is in accordance with section 40.-(2)(a) and (b) by virtue of section 40.-(3)(a)(i), the personal information exemption as described in the Freedom of Information Act. A detailed rationale is provided in the attached document L3.