

## DATA PROTECTION ACT 2018/GENERAL DATA PROTECTION REGULATION 2016

### A Guide for Applicants

#### WHAT DOES THE ACT MEAN FOR YOU?

The Data Protection Act 2018 came into force on 25<sup>th</sup> May 2018 alongside the General Data Protection Regulation 2016. It sets rules for processing personal information and applies to some paper records as well as those held on computer systems. The Data Protection Act works in two ways. It gives you certain rights. It also states that those who record and use personal information must be open about how information is used and must follow the principles of “good information handling”.

#### DEFINITIONS

**Personal Data** – data which relates to a living individual who can be identified from that data, or from that data and other information which is in the possession of or is likely to come into the possession of the data controller.

**Health Record** – this applies to all health records relating to the physical or mental health of an individual and which has been made by, or on behalf of a health professional in connection with the care of an individual.

**Health Professional** – includes a registered medical practitioner, a registered nurse or midwife and professions allied to medicine, e.g. physiotherapists, occupational therapists etc.

**Data Subject** – an individual who is the subject of personal data.

**Data Controller** – in this case the Royal Devon and Exeter NHS Foundation Trust.

#### WHO CAN APPLY FOR ACCESS?

You, the data subject. Should a parent/guardian wish to apply on behalf of their child, access will be granted by the health professional in charge of the clinical care, if deemed in the best interest of the child.

#### HOW DO YOU APPLY?

- SARs can be made verbally or in writing and to make it easier we have produced tailored application forms that capture all the information we need to process your request. You do not have to complete our form, however we would ask you to read it to ensure you have provided everything we need in order to handle your request efficiently.
- You will be asked to indicate what data you require, e.g. specific illness, attendance or specialty.
- You must supply a photocopy of one of the following to confirm your identity: driving licence, passport or birth certificate. If you are requesting the health record on behalf of the data subject, you will need their signed permission and must provide copies of identification for both yourself and the data subject. If you are acting on behalf of a patient who is incapable of making or understanding the request, a certified copy of a Power of Attorney is required.

It will be up to the health professional concerned (doctor, dentist, nurse, physiotherapist, etc) to decide whether full access to the entries may be given to you.

#### EXCEPTIONS

Access will not be given in the following circumstances:

- Where the holder of the record is not satisfied that the applicant is acting with the patient's permission.

- Where the health professional concerned believes that access would cause serious harm to the physical or mental health of the patient (or any other individual).
- Where the information in the record relates to another person or was provided by another person, who is not the applicant but who may be identified from the record.

### **INACCURATE ENTRIES**

Following access, a data subject/representative may request that a correction is made to an entry; this application must be made in writing. If the holder of the record (in conjunction with the health professional/manager concerned) is satisfied that the information is inaccurate, then a correction may be made, but the original entry will not be obliterated. If the holder is not satisfied that the information is inaccurate, then a note will be made in the record to show the applicant's view of the matter alongside the entry concerned.

### **INFORMAL ACCESS**

You may verbally or informally request access to your record at any time from the health professional concerned. This may be during your time as an inpatient or as an outpatient. You will, however, only be permitted to access the records relevant to the health professional in charge of your care at that time. Having made your request, it is for the health professional concerned to decide whether or not viewing of the record at that time would be appropriate or viable.

## **PLEASE NOTE**

**All releases of information are via NHS secure email unless requested otherwise but copies of X-ray images are provided on disc only – please note that these discs will not work on a MAC.**

**You must state clearly on the form whether or not you wish to have copies of your Health Record, Radiology Images or both.**

**Under the General Data Protection Regulations 2016 the Trust has one calendar month to comply with the request. This can be extended to three months for complex requests but we will inform you within one calendar month if your request is complex.**

**If you have any particular accessibility or communications requirements, please let us know of these at the time of request so that they can be considered.**