

1.5.2

Information Governance Sub-Committee

*Presenter: Huw Thomas*

PPPACCommitteeSubCommitteeReport - IGSC - July 2020

249 - Access to Health Records Policy



<b>Name of Sub-Committee:</b>	<b>Information Governance Sub-Committee (IGSC)</b>
<b>Chair of Sub-Committee:</b>	<b>Karen Miles, Director of Planning, Performance and Commissioning</b>
<b>Reporting Period:</b>	<b>10<sup>th</sup> July 2020</b>
<b>Key Decisions and Matters Considered by the Sub-Committee:</b>	
<p><b>Information Governance Managers Advisory Group (IGMAG)</b>  The IGSC noted that there had been a significant amount of work undertaken by IGMAG during the COVID-19 period, with a number of Data Protection Impact Assessments having to be completed for the plethora of systems that were implemented during and as a result of COVID-19. As a result of the pandemic, a new Privacy Notice has been developed and released throughout Hywel Dda University Health Board (HDdUHB).</p> <p>There were considerable discussions relating to the Track Trace Protect Project. Meetings were convened with other health boards across Wales as well as with Local Government to discuss the Data Protection Impact Assessment and the Information Sharing Agreement. The documents were sent to HDdUHB for acceptance, however further amendments may be made and HDdUHB will be informed of any amendments accordingly.</p> <p><b>Information Asset Owners Group (IOAG)</b>  The main topic discussed was the IAOG work update and which services were engaging with Information Governance. Concerns were raised that Primary Care was an outlier. It was agreed that the members of the Information Governance Team would contact the lead officer for Primary Care to discuss the need to complete their Information Asset Registers. The IGSC approved 3 Information Asset Registers;</p> <ul style="list-style-type: none"> <li>• Carmarthenshire Locality</li> <li>• Nursing</li> <li>• Information Services.</li> </ul> <p><b>Clinical Coding</b>  HDdUHB's clinical coding completeness position for 2019/20 provisionally ended the year at approximately 89.99% (approximately 8% lower than the target). Compliance did fluctuate during the year between 44% and 86% due to COVID-19. There were approximately 13,000 un-coded episodes for 2019/20 and the Team are reviewing these for completeness. The IGSC were informed that additional resources have been assigned to the Clinical Coding Team to appoint 3.5 wte Clinical Coders and 2 wte Clinical Coding Clerks. It was noted that each Clinical Coder will contribute 2% to the overall completeness compliance. The resource will also allow for internal quality audits to take place which will improve the quality of clinical coding within HDdUHB. The above will be included in a revised Clinical Coding Strategy for HDdUHB.</p> <p><b>Data Quality Update</b>  The IGSC welcomed the annual review of data quality which demonstrated that the HDdUHB is moving forward in relation to data quality and there is evidence of improvements year on year. The report specifically highlighted some of the trends that the Data Quality Team have identified and these will form the forthcoming work plan, which will include i.e. Welsh Community Care Information System (WCCIS), Electronic Staff Record (ESR) and also Endoscopy to establish whether the compliance can be improved and to achieve as close to 100% as possible.</p>	

### Health Records Modernisation – A&E Storage Cards

The IGSC received the updated paper on the need to scan and destroy historic Accident & Emergency (A&E) clinical assessment services cards, and also noted the issues relating to space and costs of storage. In principle, the paper was accepted by the IGSC. However, it is noted that the Chair would write to the Director of Operations, detailing the recommendation of IGSC which was that it is understood that there are pressures of having to store the records, however due to the embargos placed upon health boards, HDdUHB is not in a position to destroy A&E cards at the present time.

### National Intelligent Integrated Auditing Solution (NIAS) Staff Accesses

As at the end of June 2020, the number of staff accesses were as follows:

	Current Month (June 2020)	Year on Year Comparison	Trend
Those accessing their own record	8	12 (- 50%)	
Those accessing a family record	8	8 (-)	

Staff are continued to be reminded of their data protection responsibilities regarding the accessing of records as part of their working role in a variety of ways including posters, screensavers and presentations from the IG Team. Inappropriate use is also covered in Welsh Patient Administration System (WPAS)/Welsh Clinical Portal (WCP) training.

Although HDdUHB has plateaued at around 8 accesses per month for both own record and family records, the IGSC felt that further communications should be undertaken to reinforce the importance of not accessing your records.

In previous IGSC meetings, the IG Team have presented a proposed approach to the reporting of staff accesses to systems, which is very labour intensive and requires a great deal of automation before the enforcement of staff accesses can be approved by the IGSC. As outlined previously, this is a very complex issue, in that there are over 4,500 members of staff who have access to the system, much of which are undertaking appropriate activities.

The IGSC received a revised process to ascertain whether the IG Team are able to routinely monitor the staff accesses. Members noted the complexities of the process and accepted the revised process and the proposed 3 month pilot.

### Data Protection Impact Assessments (DPIAs)

The IGSC received a number of DPIAs that have been developed by the Service Users with the Information Governance Team. All of the DPIAs have also been reviewed and approved by the Deputy Senior Information Risk Owner. The DPIAs approved were;

- Consultant Connect
- Dr Doctor
- Microsoft Teams – Bookings App
- Staff Benefit Portal.

The IGSC was informed that a number of DPIAs are in production and will be presented at future

meetings.

### **IG Activity Report Quarter 1**

The Head of Information Governance, provided an update to the IGSC, and the following were noted:

- There had been an increase in the number of enquiries on Data Protection Framework and Information Sharing. This was due to receiving a substantial number of enquiries relating to what can be shared and how can the Personal Identifiable Information (PII) be shared securely during the COVID-19 outbreak.
- There was a decrease in the number of Personal Data Breaches notifications, although one was deemed necessary to report to the Information Commissioner's Office (ICO) and is currently being investigated.
- The IG Team has also received fewer subject access requests from patients/staff to access their records. There were fewer FOI requests and police requests.
- There was a slight increase in the ESR IG Training compliance rate compared with last quarter.

### **Tregaron Hospital – Information Governance Audit Inspection**

The IGSC received an audit of Tregaron Hospital, following the identification of a number of records, both patient and corporate records, which have sustained water damage. The IG Team visited the site and undertook an audit, noting that a number of boxes had been water damaged and of those damaged, a number had patient information within them. A full report has been completed and provided to the site manager to respond to. The responses will be monitored by IGSC and a further review will be undertaken in 6 months. The IGSC also requested that the IG Team make contact with the Director of Estates, Facilities and Capital Management, to undertake a baseline assessment of how many storage containers are within HDdUHB in order that an update audit can be undertaken to ascertain whether any patient or corporate records are held within them. The IGSC were reminded that records that are damaged and are still within their retention period, are in breach of the Data Protection Act, which could result in action from the ICO.

### **General Data Protection Regulation (GDPR) Update**

The IGSC were provided with an update on the GDPR Compliance Action Plan which indicated that 6 actions are green (complete and compliant), 8 actions are amber (in progress and on target) and 3 actions are red (behind schedule). The 3 red action relate to the Information Asset Registers (IARs) and data mapping work that the IG Service is currently undertaking.

The IGSC were informed that the IARs are progressing steadily with the completion of the 49 Information Asset registers. However, this number can change if a new service area evolves, for example, the COVID-19 Command Centre will be required to be added as they are processing personal data.

- **76%** of Information Asset Registers have been submitted to IG.
- **55%** of Information Asset Registers have been assured by IAOG.
- **37%** of Information Asset Registers have been assured by their Directors – *there are currently 8 IARS waiting for approval with their Directors (Carmarthenshire Locality, Nurse Workforce & Professional Practice, Unscheduled Care WHG, CaNISc, Nursing, Workforce).*
- **35%** of Information Asset Registers have been assured by IGSC.
- **12** service areas are yet to be visited and mapped.

**Matters Requiring People Planning and Performance Assurance Committee Level Consideration or Approval:**

- PPPAC are requested to ratify the following policy that has been approved by IGSC:
  - 249 - Access To Health Records Policy

**Risks / Matters of Concern:**

- No matters of concerns or risk were raised.

**Planned Sub-Committee Business for the Next Reporting Period:**

**Future Reporting:**

- Information Asset Owners and Information Asset Mapping update
- Health Records Group Update
- Data Quality and Clinical Coding
- Information Governance Risk Register
- Information Governance Toolkit
- IG Training Strategy
- Clinical Coding Plan
- Update on Cyber Security
- IGSC Annual Report
- Caldicott Register to be returned to the IGSC meetings

**Date of Next Meeting:**

Wednesday, 2nd September 2020, 09:00 a.m. – 12:00 noon.



# Access to Health Records Policy

Policy Number:	249	Supersedes:		Classification	Corporate
LOCSSIP reference:		NATSSIPS Standards	List standard ( <a href="#">NATSSIPS Standards</a> )		
Version No	Date of EqIA:	Approved by:	Date of Approval:	Date made Active:	Review Date:
V2		People, Planning & Performance Assurance Committee			3 years

Brief Summary of Document:	This policy sets out guidelines for responding appropriately to patients and their representatives requesting access to health records, ensuring compliance with the relevant legislation.
Scope:	This policy has been written as guidance for Hywel Dda University Health Board staff in dealing with both <i>formal</i> and <i>informal</i> requests for access to health records under data protection legislation. This policy applies to all staff working for the Health Board, including permanent, temporary or contacted staff (including Executive and Non-Executive Directors).
To be read in conjunction with:	191 – Health Records Management Strategy 192 – Health Records Management Policy 193 – Retention and Destruction Policy 225 – Data Protection Policy General Data Protection Regulations (EU) 2016/679, the Data Protection Act 2018 and any subsequent data protection legislation
Patient information:	<b>Include links to</b> <a href="#">Patient Information Library</a>

# HYWEL DDA UNIVERSITY HEALTH BOARD

Owning Committee/ Group	Information Governance Sub-Committee
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Executive Director:	Andrew Carruthers	Job Title	Director of Operations
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Reviews and updates		
Version no:	Summary of Amendments:	Date Approved:
1	New Policy	April 2019
2	Revised	December 2019
3	Full review in line with revised Data Protection legislation	December 2019

## Glossary of terms

Term	Definition
Data Protection Legislation	General Data Protection Regulations (EU) 2016/679, the Data Protection Act 2018 and any subsequent data protection legislation
Right of Access	Provided under Article 15 of the GDPR
SAR	Subject Access Request
Personal information (can be referred to as personal data)	Information that relates to a living individual who is or can be identified from the information or, from the information together with other information that is in, or likely to come into, the possession of an organisation i.e. the Health Board
Unauthorised individual	Individual who does not have a valid or legitimate reason for having access to information either a staff member or member of the public.
Information sent securely	<u>Electronically</u> – information will be sent via Secure File Share Portal <u>Hard copy/paper</u> – information will be posted and tracked via Royal Mail Recorded or Special Delivery
Information Asset Owner (IAO)	Senior individuals within the Health Board who have been identified to take responsibility for ensuring that Information assets are handled and managed appropriately within their respective departments or service areas.
Information Commissioner's Office (ICO)	The UK independent regulator set up to uphold information rights.

Keywords	Access to Health Records, Access to Personal Health Information
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- *Appendix 5 – Third Party Organisation Request for Information Form*
- *Appendix 6 – Application for Access to Medical Records Form (Patients)*
- *Appendix 7 – Certificate of Patient/Applicant’s Identity*
- *Appendix 8 – Medical consent form*



# HYWEL DDA UNIVERSITY HEALTH BOARD

## 1. Introduction

This policy sets out the Access to Health Records Policy for Hywel Dda University Health Board (H DUHB). The policy clearly explains what H DUHB will do to meet their legal obligations under the Right of Access provisions of Article 15 of the General Data Protection Regulations (GDPR) (EU) 2016/679 as applied by the Data Protection Act 2018.

Individuals have the right of access to data concerning their health, including the data in their health records containing information such as diagnoses, examination results, assessments by treating physicians and any treatment or interventions provided. This policy reflects relevant legislation and NHS guidance to ensure H DUHB provide appropriate and timely access for patients and their authorised representatives to all types of personal health records held by the Health Board.

It is essential that staff understand the requirements in this policy and their responsibilities when responding to an individual exercising their right of access to their health information.

## 2. Policy Statement

Hywel Dda University Health Board processes personal information and is required to comply with data protection legislation, including the individual's right of access.

## 3. Scope

A health record exists to provide an account of a patient's contact with the Health Board. Health records can be recorded in electronic form, however, some are in a manual form or a mixture of both. This policy covers all health records, held both electronically and on paper.

The legislation recognises that health records contain special category data (sensitive information about the individual's health) and disclosure is subject to certain safeguards, including obtaining approval from the most relevant health professional that release of the data would not be likely to cause serious harm to the physical or mental health of the data subject or another individual.

This policy has been written as guidance for Health Board staff in dealing with both *formal* and *informal* requests for access to health records under data protection legislation. This policy applies to all staff working for the Health Board, including permanent, temporary or contacted staff (including Executive and Non-Executive Directors).

## 4. Aim

The policy will provide the Health Board with a framework that will ensure compliance with the individual's right of access and underpin any operational procedures and activities connected with complying with this legislation.

## 5. Objectives

The objective of this policy is to provide all Health Board staff with clear guidance on how to appropriately respond to both formal and informal requests for access to patient information.

The policy and associated procedures will provide robust assurance that all access requests are dealt with in a standardised manner, in accordance with legal requirements and are designed to reflect best practice.

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The policy will support compliance with the legal time limits and application of the exemptions associated with all access for health records requests.

### 6. The Right of Access

Patients who wish to see what is written about them in their individual health record have a legal right to do so. A request by a patient, or a request by a third party who has been authorised by the patient, for access under data protection legislation is called a Subject Access Request (SAR).

SARs can be made electronically, in writing or verbally and it is not necessary for patients to give reasons as to why they wish to access their records. Before access is provided the identity of the person making the request must be verified using 'reasonable means'.

Once identity and entitlement to the information has been verified, the request is valid and the individual must be provided with a copy of their data without undue delay, at the latest within 28 days from the date of the request. Sometimes, additional information is needed to clarify the request before copies can be supplied. In such cases, the 28-day time limit will begin as soon as the additional information has been received. The flow chart in [Appendix 1](#) shows the process for formal requests to the Health Board.

There is nothing in data protection legislation that prevents health professionals from informally showing patients (or proxies) their records as long as no other provisions of data protection legislation are breached. However, before the information can be released an appropriate health professional should consider whether disclosure of the information 'is likely to cause serious harm to the physical or mental health of the data subject or another individual'. This assessment is known as the 'serious harm' test.

As part of this assessment, the authorising clinician or appropriate health professional should also consider the below as this could affect whether or not the records can be released:

- Whether disclosure would reveal that the individual was born as the consequence of human fertilisation or has completed gender reassignment.
- Whether information has been provided by the patient in the expectation of confidentiality and that it would not be shared or disclosed to the applicant.
- Whether any part of the health record discloses information relating to or that would identify a third party (unless that person has consented to disclosure or is a health professional involved in the care of the patient).
- The capacity of the patient to consent to the disclosure of their health record to a third party.
- Whether the patient has at any time indicated a wish not to give access to all or part of their record.

Once the information has been assessed, as above, the relevant health professional should authorise and sign off the record as being fit to provide to the requester (see [Appendix 2](#)).

Only copies of the originals should be supplied under the right of access and must be accompanied by an explanation of any terms that might be unintelligible to the patient or person requesting access to the records. Under no circumstances should original records be released. We have a responsibility to safeguard the integrity of the information we hold and keep it secure at all times. Any information provided must be sent via secure means.

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## 7. Who can apply for access?

### 7.1 Patients with capacity

Subject to certain exemptions ([Appendix 3](#)), patients with capacity have a right to access their own health records via a SAR. Patients may also authorise a third party such as a solicitor to do so on their behalf. Competent young people may also seek access to their own records.

### 7.2 Children and young people under 18

Where a child is competent, they are entitled to make or consent to a SAR to access their record. Children have the same individual information rights as adults so they should be helped to understand what we do with their information and how they can exercise their information rights.

Children over 16 years are presumed to be competent. Children under 16 in England & Wales must demonstrate that they have sufficient understanding of what is proposed in order to be entitled to make or consent to a SAR. However, children who are aged 12 or over are generally expected to have the competence to give or withhold their consent to the release of information from their health records. When assessing a child's competence, it is important to explain the issues in a way that is suitable for their age.

Where, in the view of the appropriate health professional, a child lacks competency to understand the nature of his or her SAR application, the Health Board is entitled to refuse to comply with the SAR.

Where a child is considered capable of making decisions about access to his or her medical record, the consent of the child must be sought before a parent or other third party can be given access via a SAR.

### 7.3 Next of kin

Despite the widespread use of the phrase 'next of kin', this is not defined, nor does it have formal legal status. A next of kin cannot give or withhold their consent to the sharing of information on a patient's behalf. As next of kin they have no rights of access to medical records.

### 7.4 Solicitors

A patient can authorise a solicitor acting on their behalf to make a SAR. Health professionals releasing information to solicitors acting for their patient should ensure that the solicitor provides evidence that the patient has given their explicit written consent.

The consent must cover the nature and extent of the information to be disclosed under the SAR (for example, past medical history), and who might have access to it as part of any legal proceedings. Where there is any doubt, health professionals should confirm with the patient before disclosing the information. Should the patient refuse, the solicitor may apply for a court order requiring disclosure of the information.

## 8. Requests for access made on behalf of others

Data protection legislation does not provide subject access rights to third parties when they are acting on behalf of an individual who is lacking in competence or capacity. The right of access lies only with the individual data subject. However, those acting on their behalf may still be able to access the information.

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## 8.1 Parents

Parents may have access to their children's records if this is not contrary to a child's best interests or a competent child's wishes. For children under 18, any person with parental responsibility may apply for access to the records.

Not all parents have parental responsibility. In relation to children born after 1 December 2003, both biological parents have parental responsibility if they are registered on a child's birth certificate. In relation to children born before this date, a child's biological father will only automatically acquire parental responsibility if the parents were married at the time of the child's birth or at some time thereafter. If the parents have never been married, only the mother automatically has parental responsibility, but the father may acquire that status by order or agreement. Neither parent loses parental responsibility on divorce. Where more than one person has parental responsibility, each parent may independently exercise rights of access.

Where a child lives with one parent and the other parent applies for access to the child's records. In such circumstances there is no obligation to inform the other parent that access has been sought.

Where a child has been formally adopted, the adoptive parents are the child's legal parents and automatically acquire parental responsibility.

In some circumstances people other than parents acquire parental responsibility, for example by the appointment of a guardian or on the order of a court. A Local Authority acquires parental responsibility (shared with the parents) while the child is the subject of a care or supervision order. If there is doubt about whether the person seeking access has parental responsibility, legal advice should be sought.

The Health Board is entitled to refuse access to a parent, or an individual with parental responsibility where the information contained in the child's records is likely to cause serious harm to the child, or another person.

## 8.2 Adults who lack capacity

Patients with a mental disorder or some degree of cognitive impairment should not automatically be regarded as lacking capacity to give or withhold consent to disclosure of confidential information. Most people suffering from a mental impairment can make valid decisions about some matters that affect them.

An individual's mental capacity must be judged in relation to the particular decision being made. If a patient has capacity, request for access by relatives or third parties require his or her consent.

When patients lack mental capacity, health professionals are likely to need to share information with any individual authorised to make proxy decisions such as an individual acting under the authority of a lasting power of attorney.

The Mental Capacity Act 2005 contains powers to nominate individuals to make health and welfare decisions on behalf of incapacitated adults. The Court of Protection in England & Wales can also appoint deputies to do so. This may entail giving access to relevant parts of the incapacitated person's medical record, unless health professionals can demonstrate that

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it would not be in the patient's best interests. These individuals can also be asked to consent to requests for access to records from third parties.

Where there are no nominated individuals, requests for access to information relating to incapacitated adults should be granted if it is in the best interests of the patient, in all cases, only information relevant to the purposes for which it is requested should be provided.

### 8.3 Deceased patients

The Access to Health Records Act 1990 provides the statutory rights of access to a deceased patient's records by the patient's *personal representative* or by any person *who may have a claim arising out of the patient's death*. This Act covers manual health records made since 1<sup>st</sup> November 1991, although access must also be given to information recorded before these dates if this is necessary to make any later part of the records intelligible.

Data protection legislation does not apply to data concerning deceased persons. However, the Health Board has an ethical obligation to respect a patient's confidentiality that extends beyond death. This duty of confidentiality needs to be balanced with other considerations, such as the interests of justice and people close to the deceased person. Health professionals should therefore counsel their patients about the possibility of disclosure after death and solicit views about disclosure where it is obvious that there may be some sensitivity. Such discussions should be recorded in the records.

Unless the patient has requested confidentiality while alive, their personal representative and any other person who may have a claim arising out of their death has a right of access to information in the records which is directly related to their claim. No information which is not directly relevant to a claim should be disclosed.

In order to clarify entitlement to the information, the patient's personal representative should provide evidence of their identity and a copy of the deceased's death certificate. Any person who may have a claim arising out of the patient's death should provide evidence to support their claim. The decision as to whether a claim actually exists will be made in conjunction with the Caldicott Guardian. In cases where it is not clear, legal advice should be sought.

As with living patients' records, approval should be sought from the most relevant health professional that release of the data would not be likely to cause serious harm to the physical or mental health of any individual.

## 9. Third party requests

Various organisations and agencies are likely to request access to patient's health records at different times for different reasons. Each of these requests should be made in writing on the appropriate third party request form ([Appendix 5](#)), considered individually and advice sought from the Information Governance team should there be any doubt in regard to what can or can't be disclosed.

### 9.1 Requests from the police

Police do not have an automatic right to access to patient information. The third party request form should be completed by the requesting Police Officer and counter signed by a Senior Police Officer. The form requires the Police to provide justification for the request, for example for the prevention or detection of crime. Only the specific information requested should be disclosed and consider the removal of any information that identifies other individuals, if not relevant to the Police investigation.

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## 9.2 Requests from insurers

The use of SARs to obtain medical information for life insurance purposes is an abuse of subject access rights and insurance companies who request full medical records risk breaching data protection legislation.

This does not mean that the Health Board can refuse to respond to a SAR from an insurer outright. When a SAR from an insurer is received, the patient should be contacted to explain the extent of the information to be disclosed. It is more appropriate to provide the patient themselves with their medical record rather than releasing it directly to the insurance company. The patient then has choice whether, having reviewed the record, they choose to share it with the insurance company or not.

There is a clear distinction between the use of SARs by a solicitor, who can be seen as an agent of the patient and who is acting on the patient's behalf, and the use of SARs by insurance companies. The individual making the request will be responsible for providing the patient's clear written consent for the release of the information.

## 9.3 Other third parties

Other third party requests can include Department of Work and Pensions, Coroner and Courts, Local Authorities. All requests should be made on the formal third party request form, which includes the justification for requesting the information and the purposes for which it will be used.

If information containing personal information is requested for research, explicit consent must be obtained from the patient. Patients and service users are generally aware and supportive of research, but it is not reasonable to assume that they are likely to consent to each and every research proposal. If it is sufficient for the purposes of the research to make data anonymous or pseudonymised, consent is not required.

## 10. Health information held by external organisations

In some cases, external organisations receive SARs for information that they hold about an individual, which contains information that was originated by the Health Board within their records e.g. social care files.

Before the external organisation can authorise release of this information to the data subject, it should be reviewed by an appropriate health professional to consider whether disclosure of the information 'is likely to cause serious harm to the physical or mental health of the data subject or another individual'. This is known as the 'serious harm' test. These requests are processed by the IG team.

On receipt of a serious harm request from another organisation, the IG team contacts the relevant department where the health document originated, who identify the appropriate health professional as either author of the attached document or, if the author is no longer with the Health Board, someone who is in a similar role and able to make the 'serious harm' decision.

The department should inform the IG team within the timescales set on the request whether the serious harm test is met and whether authorisation has been given to release the information to the data subject. Where it is considered that release of the information is likely to cause serious harm to the physical or mental health of the data subject or another individual and therefore not



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authorised for release, the rationale for this decision should be justified and recorded. This rationale will be shared with the external organisation for their information.

## 11. Responsibility for processing access requests

All requests for access to records will come under one of the following categories:

### 11.1 Informal request for health information

Informal requests are best dealt with on the spot by clinical staff in line with the agreed process in [Appendix 4](#). A person can make an informal request during a consultation or admission and the appropriate health professional is happy that release of the data would not be likely to cause serious harm to the physical or mental health of any individual.

### 11.2 Formal request for health information

If a member of staff receives a formal request that they believe is for personal information held within a health record, they should direct to the Access to Health Records team.

- Via email to [access.healthrecords.hdd@wales.nhs.uk](mailto:access.healthrecords.hdd@wales.nhs.uk)
- Via post to Access to Health Records, Hywel Dda University Health Board, Amman Valley Hospital, Folland Road, Glanamman, Ammanford, Carmarthenshire, SA18 2BQ

### 11.3 Requests for other personal information (non-health records)

- Via email to [information.governance.hdd@wales.nhs.uk](mailto:information.governance.hdd@wales.nhs.uk)
- Via phone to 01437 773969/70
- Via post to Information Governance, IT Building, Withybush General Hospital, Haverfordwest, Pembrokeshire, SA61 2PZ

If staff are not sure whether the request is for personal information held within a health record or corporately, they should contact the Information Governance Team for advice.

## 12. Complaints

If the individual is dissatisfied with the handling of their request, they can ask for an internal review. Internal review requests should be submitted within two months of the date of release and should be addressed to:

- The Data Protection Officer, Information Governance, IT Building, Bronglais General Hospital, Caradoc Road, Aberystwyth, SY23 1ER
- Or via email to: [DPO.hdd@wales.nhs.uk](mailto:DPO.hdd@wales.nhs.uk)

If they are not satisfied following the outcome of a review, they can make an appeal to the Information Commissioner, who is the statutory regulator. The individual also has the right to lodge a complaint with the Information Commissioner, at any time, if they are unhappy with the way their personal data has been processed. The Information Commissioner's Office can be contacted at:

- Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, SK9 5AF
- Or via email to [caseworker@ico.org.uk](mailto:caseworker@ico.org.uk)

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## 13. Responsibilities

### 13.1 Chief Executive & Hywel Dda University Health Board

The Chief Executive and Hywel Dda University Health Board have a duty to ensure that the requirements of current data protection legislation are upheld and the Chief Executive has overall responsibility for implementation of this policy.

### 13.2 Deputy Chief Executive & Director of Operations

The Deputy Chief Executive & Director of Operations has delegated responsibility for ensuring that this policy is distributed to and understood by all staff and that the requirements are followed by all staff within the Health Board, Counties, Localities, Services and Directorates.

### 13.3 Caldicott Guardian, Senior Information Risk Owner & Data Protection Officer

The Caldicott Guardian is responsible for the strategic management of confidentiality within the organisation and for providing advice on confidentiality issues. The Caldicott Guardian, as guardian of patient data, must approve each new or changed agreement to share personal data with bodies such as acute hospitals, social services, police, prisons and private health care.

The Senior Information Risk Owner (SIRO) is responsible for the strategic management in regards to the use of information within the organisation and for providing advice on information risk and incidents. The SIRO as an advocate for protecting information is concerned with all information assets.

The Data Protection Officer (DPO) is responsible for advising the Health Board on all issues which relate to the protection of personal data and monitor compliance with data protection legislation on behalf of the Health Board. Data subjects may contact the DPO directly with regard to the processing of their personal data or their information rights.

### 13.4 Senior Managers and Service Managers

All senior managers and service managers have a responsibility for ensuring that this policy is known to all staff, e.g. discussed at staff meetings and that its requirements are followed by all staff within their directorate/service/division/department.

### 13.5 Employees

All employees whether permanent, temporary or contracted should be aware of this policy and adhere to the principles set out within it. Staff should be aware how to access this policy.

### 13.6 Clinicians

All clinicians are responsible for ensuring that they are fully aware of this policy and that the patient records they utilise on a daily basis are maintained to the highest standards possible and that the content is legible, accurate, comprehensive and understandable. They must maintain an awareness of confidentiality, record keeping standards and the patient's right of access to their health record, and implications that this has on current record keeping practices.

### 13.7 Appropriate Health Professional

The 'appropriate health professional' is normally the individual clinician who is or was responsible for the clinical care of the patient during the period to which the application



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refers or the last health professional that was involved in the care of the patient. Where this is not possible other arrangements must be made to ensure that an appropriate health professional is able to undertake this role and in some cases this may require the approval of the Caldicott Guardian.

Relevant health professionals have a responsibility to assess whether release of information from any part of the health record is likely to cause serious harm to the physical or mental health of the patient, data subject or a third party.

### **13.8 Health Records Group**

The Health Records Group has the responsibility for reviewing this policy and ensuring there is effective implementation and distribution across the necessary staff groups within the Health Board. The Health Records Group is also responsible for monitoring and regularly reviewing compliance levels associated with data protection legislation and the right of access, through the agreed reporting methods.

### **13.9 Health Records Manager**

The Health Records Manager has delegated responsibility for ensuring that this policy is distributed to all Health Records staff and that these staff fully understand the policy and that the requirements are followed. The Health Records Manager must ensure staff have the relevant knowledge and skills to adhere to the requirements and provide specific training when gaps are identified. The Health Records Manager, will provide specialised advice and assistance for any contentious or complicated request and monitor compliance levels with legal timescales.

### **13.10 Access to Health Records Clerks**

The access to health records clerks are responsible for ensuring they have reviewed and fully understood this policy and they follow the requirements explicitly. They are responsible for processing all requests in conjunction with this policy and data protection legislation. Staff must ensure they review each request in detail, read all the enclosed documentation, follow the agreed process, only release the information that has been requested and consented to, and provide the requesters with the relevant information within the legal timescales.

### **13.11 Information Governance Department**

The Information Governance Department will provide specialised advice and assistance for any contentious or complicated requests, as and when required.

### **13.12 Information Governance Sub-Committee**

The Information Governance Sub-Committee (IGSC) has the responsibility to approve this policy and should disseminate to other relevant committees/boards for information. The IGSC should also monitor compliance with this policy and the relevant data protection legislation.

### **13.13 Legal Services**

The Legal Services Team will support the Health Records service and staff with any contentious requests for release of patient information that could either cause harm or distress or result in potential litigation against the Health Board. Legal Services will act as the designated link between the Health Records service and the Health Board's solicitors. This process will ensure detailed and expert advice is received as and when required.

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## 14. References

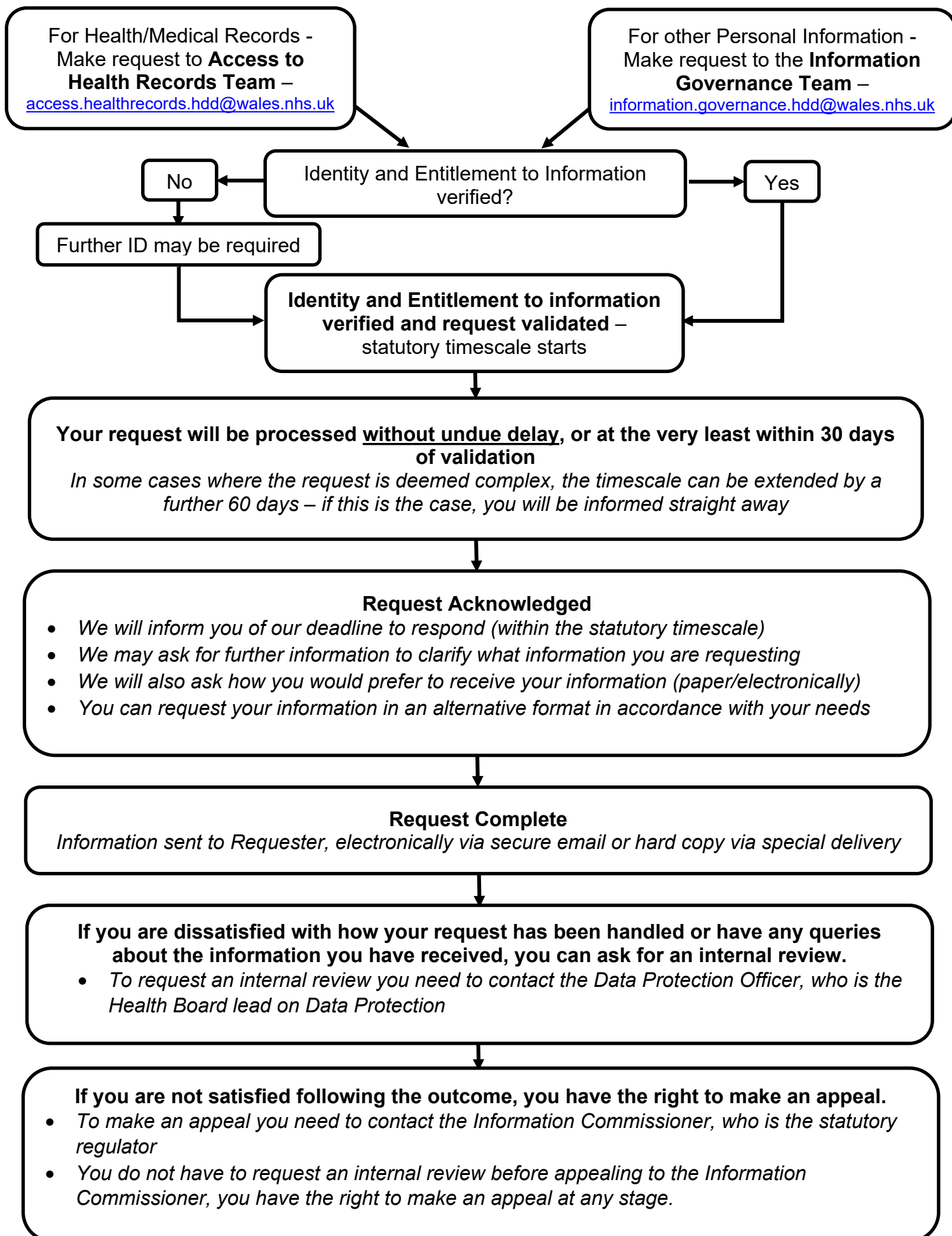
- Access to Health Records Act (1990) [Access to Health Records Act 1990](#), London: HM Government
- BMA (2018) [Access to Health Records – updated to reflect GDPR](#), London: British Medical Association
- Caldicott, F (2013) [Information: to share or not to share? Information Governance Review](#), London: Department of Health
- DPA (2018) [Data Protection Act 2018](#), London: HM Government
- GDPR (2016) [General Data Protection Regulations \(EU\) 2016/679](#), EU: European Union
- ICO (2019) [Right of Access](#), UK: Information Commissioner's Office

## 15. Appendices

- [Appendix 1](#) – *Formal Requests for Access to Personal Information held by the Health Board*
- [Appendix 2](#) – *Request for Authorisation for Formal Access to Health Records*
- [Appendix 3](#) – *Exemptions*
- [Appendix 4](#) – *Guidance for Informal Access to Health Information*
- [Appendix 5](#) – *Third Party Organisation Request for Information Form*
- [Appendix 6](#) – *Application for Access to Medical Records Form (Patients)*
- [Appendix 7](#) – *Certificate of Patient/Applicant's Identity*
- [Appendix 8](#) – *Medical consent form*

# HYWEL DDA UNIVERSITY HEALTH BOARD

## Appendix 1 Formal Requests for Access to Personal Information held by the Health Board



# HYWEL DDA UNIVERSITY HEALTH BOARD

## Appendix 2 Request for Authorisation for Formal Access to Health Records

### HEALTH RECORDS DEPARTMENT APPLICATION FOR ACCESS TO HEALTH RECORDS

To: Medical Secretary/\_\_\_\_\_ DATE:\_\_\_\_\_

Patient Label
---------------

We have received an application for access to health records from the patient/the patient's representative.

They have requested to have access to the record via the following method:

- Provision of copies of the record
- Inspection of the record with Health Records representation  
*(copies may be provided following inspection)*
- Inspection of the record with a Health Professional present  
*(copies may be provided following inspection)*
- Other (please specify): \_\_\_\_\_

Applicants are normally entitled to view the whole record except:

- Where access would disclose information that is likely to cause serious harm to the physical or mental health of the patient or any other individual. Clinicians need to also consider the following issues, although this list is not exhaustive:
  - *Gender Change, Human Fertilisation & Embryology Act, Genetics, Sexual Health Information, Mental Health Information*
- Where access would disclose information relating to or provided by an individual other than the patient who could be identified by the information.
- Where information has been provided by the patient in the expectation that it would not be disclosed to the applicant.

The application and the patient records are provided for your urgent attention as the relevant health professional. Please could you either provide your signature below confirming your authorisation for access to the patient record or contact us immediately if there are any reasons for withholding disclosure, so we can ensure we comply with the legal timescales associated with access requests.

I have no objection to authorising access to the patient's records.

**Signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_

# HYWEL DDA UNIVERSITY HEALTH BOARD

## Appendix 3 Exemptions

Data protection legislation sets out exemptions from some of the circumstances where information can be withheld and not disclosed to the data subject under their right of access. Whether or not you can rely on an exemption often depends on why we process the data.

Exemptions should not be routinely relied upon or applied in a blanket fashion. You must consider each exemption on a case-by-case basis. If an exemption has been applied, the reasons for relying on the exemption should be justified and documented.

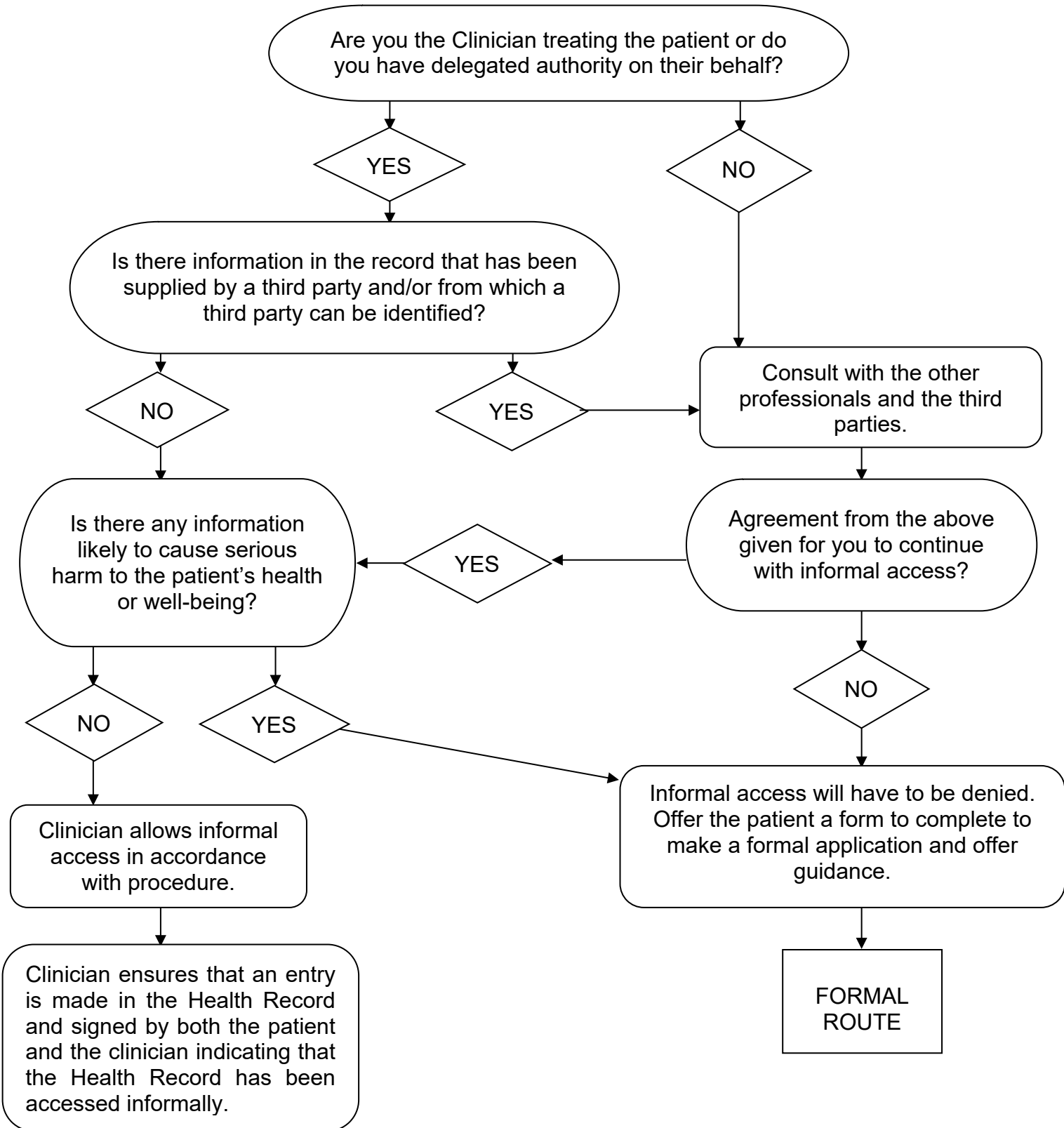
Exemptions include:

- Crime and taxation
- Information required to be disclosed by law or in connection with legal proceedings
- Legal professional privilege
- Self-incrimination
- Disclosure prohibited or restricted by an enactment
- Immigration
- Functions designed to protect the public
- Audit functions
- Regulatory functions relating to legal services, the health service and children's services
- Journalism, academia, art and literature
- Research and statistics
- Archiving in the public interest
- Child abuse data
- Protection of the rights of others

For more detailed information on the exemptions available, go to the [ICO website](#).

# HYWEL DDA UNIVERSITY HEALTH BOARD

## Appendix 4 Guidance for Informal Access to Health Information



# HYWEL DDA UNIVERSITY HEALTH BOARD

## Appendix 5 Third Party Organisation Request for Information Form

### Request for disclosure of personal data under Schedule2(1)(2) or Schedule2(1)(5) of the Data Protection Act 2018

Hywel Dda University Local Health Board will only disclose personal data where it is permitted under the Data Protection Act 2018. This form is designed to ensure that your request is clear and that the legal basis for disclosure is established. **It does not, however, guarantee that we will disclose the data which you request.** We need to ensure that we stay within the law.

#### Your Details:

Name:	
Position:	
Organisation:	
Phone Number:	
Email Address:	
Postal Address:	

#### Information Requested:

What is/are the full name(s) of the data subject(s) – the person(s) about whom you are requesting personal data?	
Please provide other relevant information to identify the data subject(s) - <i>for example:</i> <i>Address;</i> <i>date of birth;</i> <i>National insurance number.</i>	
Specifically, what personal data are you requesting?	

## HYWEL DDA UNIVERSITY HEALTH BOARD

What date(s) or period(s) does this request relate to?	
If possible, please say which area(s) or service(s) within Hywel Dda University Local Health Board are likely to hold this information	

### Crime and taxation

Schedule2(1)(2) allows us to disclose personal data for any of the purposes (listed below), where informing the data subject(s) may prejudice an investigation.

Do you need the data for the purpose of preventing and detecting crime?	Yes / No
Do you need the data in order to apprehend or prosecute an offender?	Yes / No
Do you need the data in order to assess or collect a tax or duty?	Yes / No
If you have answered 'yes', please state how informing the data subject about the source of the personal data may prejudice your investigation.	
If you are requesting this data to collect a tax or duty, please state which tax or duty the request relates to.	

### Laws, Enactments and Court Orders

Schedule2(1)(5)(2) allows us to disclose personal data where disclosure of the data is required by an enactment, a rule of law or an order of a court or tribunal, to the extent that the application of those provisions would prevent the controller from making the disclosure.

Are you asking for the data because a Law, Enactment or Court Order requires you to have the information?	Yes / No
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If so, please state which Law or Enactment and the relevant Section number. For a Court Order, please send a copy of the Order	
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### Legal proceedings

Schedule 2(1)(5)(3) allows us to disclose personal data where this is necessary in connection with existing or prospective legal proceedings, for obtaining legal advice or to establish, exercise or defend legal rights.

Do you need the data for the purpose of, or in connection with, legal proceedings (including prospective legal proceedings)?	Yes / No
Do you need the data for the purpose of obtaining legal advice?	Yes / No
Do you need the data for the purposes of establishing, exercising or defending legal rights,?	Yes / No
If you have answered 'yes', please provide further clarification and state why it is necessary for the Health Board to disclose the personal data	

### Declaration

**This Data Request Should Be Treated In Confidence and Not Disclosed Under Any Circumstances**

I confirm that the personal data requested is required for that / those purpose(s) and failure to provide the information will, in my view, be likely to prejudice that / those purpose(s).

I understand that if any information on this form is omitted or wrong, I may be committing an offence under Section 170(1) of the Data Protection Act, 2018.

Signature

Rank

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-----

-

Name

Date

-----

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-

# HYWEL DDA UNIVERSITY HEALTH BOARD

Countersignature

Rank

-----

-----

Name

-

Date

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-

Should any advice or guidance be required in completing this application, please contact:

Head of Information Governance  
Hywel Dda University Health Board  
Bronglais General Hospital  
Aberystwyth  
Ceredigion  
SY23 1ER

Email: [Information.Governance.HDD@wales.nhs.uk](mailto:Information.Governance.HDD@wales.nhs.uk)  
Tel: 01970 635442

# HYWEL DDA UNIVERSITY HEALTH BOARD

## Appendix 6 Application for Access to Medical Records Form (Patients)

### APPLICATION FOR ACCESS TO MENTAL HEALTH AND MEDICAL RECORDS

DETAILS OF PATIENT			
<b>Surname</b>		<b>Forename(s)</b>	
<b>Address</b>			
<b>Telephone Number Mobile Number</b>		<b>Hospital Number (if known)</b>	
<b>Email Address</b>			
<b>Date of Birth</b>		<b>Date of Death</b>	
<b>Hospital Number (if known)</b>		<b>Treatment/Attendance Approx Date</b>	
DETAILS OF APPLICANT (if different from above)			
<b>Surname</b>		<b>Forename(s)</b>	
<b>Address</b>			
<b>Email Address</b>			
<b>Relationship (please tick one box)</b>	<input type="checkbox"/>	I am the patient	
	<input type="checkbox"/>	I have been asked by the patient and attach his/her written consent.	
	<input type="checkbox"/>	I am acting in loco parentis and the patient is under the age of 16	
	<input type="checkbox"/>	I am the personal representative of the deceased patient and attach confirmation of my appointments. <i>(Documentary evidence is required eg Grant of Probate or letter from the solicitors stating that you are the executor.)</i>	
	<input type="checkbox"/>	I am appointed by the Courts to manage the affairs of the patient. <i>(Documentary evidence is required eg proof of Power of Attorney)</i>	

REASON FOR REQUEST – FOR DECEASED PATIENTS OR PATIENTS WITHOUT MENTAL CAPACITY

TYPE OF REQUEST: (please tick the appropriate box)				
<b>View /Read Only Medical Health Records</b>		<b>Full Copy of Medical Health Records</b>		<b>Partial copy of Medical Health Records</b>
<b>View /Read Only Mental Health Records</b>		<b>Full Copy of Mental Health Records</b>		<b>Partial copy of Mental Health Records</b>
If applicable, please let us know if there is a particular period of care you are interested in, providing as much information as possible e.g. A&E treatment, specific service, treatment by a named consultant.				
<b>Are X-Rays/Scans required?</b>	<b>Yes / No Delete as appropriate</b>	<b>CD Disc or Paper format?</b>		
<b>secure email?</b>		<b>Are you prepared to receive electronic copies of the requested records via</b>		
		<b>Yes / No Delete as appropriate</b>		

# HYWEL DDA UNIVERSITY HEALTH BOARD

**I declare that the information given in this form is correct to the best of my knowledge and that I am:**

The Patient	A Third Party acting on the patient's behalf and have attached the patient's written authorisation
<b>Signed:</b> .....	<b>Date:</b> .....
<b>DECLARATION</b>	
<p>I declare that the information, given by me, is correct to the best of my knowledge and that I am entitled to apply for the Medical Records referred to above, under the terms of the General Data Protection Regulation 2016 and/or Access to Medical Records Act 1990</p> <p style="color: blue;">You are advised that making false or misleading statements in order to obtain access to personal information to which you are not entitled is a criminal offence.</p>	
<b>Signed:</b> .....	<b>Date:</b> .....

# HYWEL DDA UNIVERSITY HEALTH BOARD

## Appendix 7 Certificate of Patient/Applicant's Identity

### CERTIFICATE OF PATIENT/APPLICANT'S IDENTITY

<b>COUNTERSIGNATURE – To be completed by the person required to confirm your identity.</b>			
<b>I certify that I am (first and last name):</b>			
<b>Of (give your address):</b>			
<b>And that I have known the applicant for ..... years as an Employee / Client / Patient / Personal Friend / and have witnessed the applicant read and sign this form.</b>			
<b>Signed:</b>		<b>Date:</b>	
<b>Telephone Number:</b>		<b>Profession:</b>	

**Please provide one form of proof of Identification along with completed application form i.e. copy of Passport, Driving License, Utility Bill, Bank / Building Society Statement showing your current address.**

**Please return this form to:**

Access to Health Records Department , Hywel Dda University Health Board, Amman Valley Hospital, Folland Road, Glanamman, Ammanford, Carmarthenshire, SA18 2BQ.

# HYWEL DDA UNIVERSITY HEALTH BOARD

## Appendix 8 Medical Consent Form

### MEDICAL CONSENT FORM

Name of Victim:	_____	D.O.B.	_____
Date Incident:	_____	Time Incident:	_____
Type of Incident (eg assault):	_____		

\* delete as necessary

1. I hereby consent to being medically examined by a qualified Medical Practitioner.
2. I hereby consent for the above named child to being medically examined by a qualified Medical Practitioner.
3. On the (date) ..... I / the above named child was medically examined by ..... at .....
4. I authorise the examining Doctor (or a colleague) to supply to the Police:
  - a. A statement concerning the examination / any injuries / treatment received as a result of the above incident.
  - b. A copy of any medical notes made appertaining to the examination / injuries / treatment relating to the above incident.

Signed:	.....
Print Name:	.....
Relationship to child if applicable:	* PARENT / GUARDIAN
Address:	.....
	.....
	.....