

Ref: FOI/GS/ID 4198

Please reply to:
FOI Administrator
Trust Management
Maidstone Hospital
Hermitage Lane
Maidstone
Kent
ME16 9QQ
Email: mtw-tr.foiadmin@nhs.net

17 August 2017

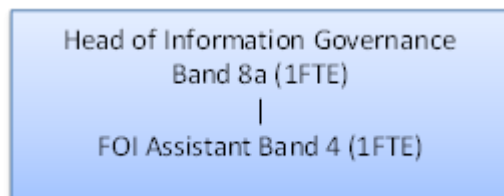
Freedom of Information Act 2000

I am writing in response to your request for information made under the Freedom of Information Act 2000 in relation to SAR and FOI requests.

Please could you provide me with the following information?

1. *Copy of your information governance structure with bandings*
2. *Copy of your information governance SLA, or equivalent*
3. *Policy for managing SAR and FOI*
4. *Completion of the attached table*

1.



2.

Maidstone and Tunbridge Wells NHS Trust do not have such a document.

3.

Please see the following policies.

Freedom of Information Act 2000

Policy and Procedures

Requested/ Required by:	Information Governance Committee
Main author: Consultant	Information Governance External
Other contributors:	Head of Information Governance
Document lead:	Director of Health Informatics Contact details: 01622 228511
Directorate:	Corporate
Specialty:	Trust Management
Supersedes:	Freedom of Information Policy and Procedure (Version 2.0: September 2010)
Approved by:	Information Governance Committee Date: 13 March 2013
Ratified by:	Trust Management Executive Committee Date: 20 March 2013
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Document history

Requirement for document	<ul style="list-style-type: none"> This policy required under the Freedom of Information Act 2000
Cross references:	<ul style="list-style-type: none"> Freedom of Information Act 2000 www.legislation.gov.uk/ukpga/2000/36/contents Information Commissioner's Website www.ico.gov.uk HMSO website www.legislation.hmso.gov.uk/acts/en/2000en36.htm Department of Constitutional Affairs – Standard Paragraphs. www.dca.gov.uk/foi/FOI_standardparas.pdf Information leaflet for the public www.ico.gov.uk/upload/documents/library/freedom_of_information/introductory/your_guide_to_openness.pdf Freedom of Information factsheet for the public www.ico.gov.uk/upload/documents/library/freedom_of_information/introductory/freedom_of_information_factsheet.pdf
Associated documents:	<ul style="list-style-type: none"> Maidstone and Tunbridge Wells NHS Trust. <i>Information Security Policy and Procedure</i> Maidstone and Tunbridge Wells NHS Trust. <i>Information Governance Policy and Procedure</i> [RWF-OPPCS-NC-TM9] Maidstone and Tunbridge Wells NHS Trust. <i>Information Governance Strategy</i> [RWF-OPPCS-NC-TM4] Maidstone and Tunbridge Wells NHS Trust. <i>Freedom of Information Publication Scheme</i> [published on the Trust public web site].

Version Control		
Issue	Description of changes	Date
1.0	Original MTW policy	November 2004
2.0	Reviewed: policy developed from document published by the Cumbria Teaching Primary Care Trust	September 2010
3.0	Major rewrite to remove detail unnecessary for staff other than the FOI administrator.	March 2013
3.1	The FOI complaints procedure (previously RWF-OPPCS-NC-TM8, standalone document) was added as an appendix.	October 2014

Policy statement for

Freedom of Information Act 2000 Policy

- This policy ensures legal compliance with the Freedom of Information Act 2000.
- The Trust will use all appropriate and necessary means to ensure that it complies with the Freedom of Information Act 2000 and associated Codes of Practice issued by the Lord Chancellor's Department pursuant to sections 45(5) and 46(6) of the Act (and future iterations of the Code).

Freedom of Information Act 2000 Procedures

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1.0 Introduction and scope

The Freedom of Information Act 2000 (the Act), is part of the Government's commitment to greater openness in the public sector. The intention is to promote an open culture in the public sector. It enables members of the public to have sufficient information to question the decisions of public authorities more closely and ensures that the services we provide are efficiently and properly delivered.

The Freedom of Information Policy applies to all requests for information under the Act received by the Maidstone and Tunbridge Wells NHS Trust.

2.0 Definitions

FOI	Freedom of Information Act 2000
The Act	as above

3.0 Duties

The Head of Information Governance is responsible for overseeing day to day Freedom of Information requests; developing and maintaining policies, standards, procedures and guidance and coordinating requests.

All staff are responsible for passing any request for information to their line manager immediately, who will pass the request to the FOI administrator.

There is a short legal time limit for answering the request so all unnecessary delays must be avoided. Therefore, if the FOI administrator requests information it should be supplied to them without delay.

Since a request via email may be valid, all staff who use corporate email should ensure they have their out-of-office reply activated when away from the office and include the following statement:

If this is a request for information under the Freedom of Information Act 2000, please resend your email to the following address:

Mtw-tr.foiadmin@nhs.net or FOI, Trust Management, Maidstone Hospital, Maidstone and Tunbridge Wells NHS Trust, Hermitage Lane, Maidstone. Kent. ME16 9QQ

4.0 Training / competency requirements

All staff will be made aware of their responsibilities in relation to the Freedom of Information Act 2000 through generic and specific training programmes and guidance.

Anyone may request corporate information. Personally Identifiable information is dealt with under the Data Protection Act 1998.

The request for information must be made in writing and include a name and valid physical or electronic address. Requests may be made via email, letter or fax.

When a request is made, it is not necessary for the requestor to mention they are using the Act so staff should be aware that **any** written question about the Trust business **may** be a valid request.

If you are unsure, you should seek advice from your line manager or the FOI administrator.

5.0 Procedures

When a request for information is received by the Trust, it will be passed to the FOI administrator without delay.

The FOI administrator will assess the request and determine if it is valid:

- that the request is in writing
- that the request is for corporate information (not personally identifiable data)
- determine if the information is held by the Trust
- coordinate the collation of information that is held
- determine if any exemptions apply to the information
- arrange for a response to the requestor within the 20 working days limit.

In the event that the requester is not satisfied with the response from the Trust, the Act allows them to make a complaint. The procedure for complaints is given in **Appendix 4**.

6.0 Monitoring and audit

- Compliance with this policy and procedure will be audited as part of the Information Governance Toolkit audit on an annual basis.
- The Trust Board will review, on a regular basis, Trust compliance with the Freedom of Information Act 2000.

Process requirements

1.0 Implementation and awareness

Communication plan

This policy needs to be communicated to all staff, this will be achieved by:

- Once approved the document lead or author will submit this policy/procedural document to the Clinical Governance Assistant who will activate it on the Trust approved document management database on the intranet, under 'Trust policies, procedures and leaflets'.
- A monthly publications table is produced by the Clinical Governance Assistant which is published on the Trust intranet under "Policies"; notification of the posting is included on the intranet "News Feed" and in the Chief Executive's newsletter.
- On reading of the news feed notification all managers should ensure that their staff members are aware of the new publications.
- Making paper copies available
- Informing staff of the policy during Induction and IG training sessions
- Making staff aware of the policy during IT application training sessions

Decision about who the policy and procedural document will need to be brought to the attention of for implementation

The consultation group was selected to provide a representative cross-section from the Trust.

Training needs analysis

IG training is provided to all staff at induction. The Trust intends to provide additional training sessions specifically designed to address the IG requirements of different staff groups.

Plan for implementation of training

IG training is given to all staff at Induction. The Trust plans to implement a programme of IG training sessions targeted at specific staff groups.

2.0 Review

The policy will be reviewed once every three years. If substantive changes are required to the policy before then it will be resubmitted to the review group.

3.0 Archiving

The Trust approved document management database retains all superseded files in an archive directory [obsolete register] in order to maintain document history. Documents submitted as part of the Trust

Information Governance Toolkit and similar audit returns will be retained for a minimum of three years.

APPENDIX TWO

Consultation on: Freedom of Information Act 2000 Policy and Procedure

Please return comments to: Head of Information Governance

By date: Within 10 working days of receipt of the policy

Name:	Date sent	Date reply received	Modification suggested? Yes / No	Modification made? Yes / No
SIRO	13-02-2013	-	N	N/a
Head of Information Governance	13-02-2013	-	N	N/a
Caldicott Guardian	13-02-2013	-	N	N/a
Head of Information	13-02-2013	-	N	N/a
Trust Counter Fraud Specialist	13-02-2013	-	N	N/a
Health Records Manager	13-02-2013	-	N	N/a
Staff Side Chair	13-02-2013	-	N	N/a
Interim Director of ICT	13-02-2013	-	N	N/a
Clinical Governance Assistant	13-02-2013	19-02-2013	Y	Y
Clinical Directors	27-02-13	-	N	N/a
Matrons	27-02-13	-	N	N/a
General Managers	27-02-13	-	N	N/a
Heads of Functions	27-02-13	-	N	N/a
Executive Directors	27-02-13	-	N	N/a
Associate Directors	27-02-13	-	N	N/a
The role of those staff being consulted upon as above is to ensure that they have shared the policy for comments with all staff within their sphere of responsibility who would be able to contribute to the development of the policy.				

APPENDIX THREE

Equality Impact Assessment

In line with race, disability and gender equalities legislation, public bodies like MTW are required to assess and consult on how their policies and practices affect different groups, and to monitor any possible negative impact on equality.

The completion of the following Equality Impact Assessment grid is therefore mandatory and should be undertaken as part of the policy development and approval process. Please consult the Equality and Human Rights Policy on the Trust intranet, for details on how to complete the grid.

Please note that completion is mandatory for all policy development exercises. A copy of each Equality Impact Assessment must also be placed on the Trust's intranet.

Title of Policy or Practice	Freedom of Information Act 2000 Policy and Procedure
What are the aims of the policy or practice?	To ensure all staff are aware of their Information Governance responsibilities
Identify the data and research used to assist the analysis and assessment	
Analyse and assess the likely impact on equality or potential discrimination with each of the following groups.	Is there an adverse impact or potential discrimination (yes/no). If yes give details.
Males or Females	No
People of different ages	No
People of different ethnic groups	No
People of different religious beliefs	No
People who do not speak english as a first language	No
People who have a physical disability	No
People who have a mental disability	No
Women who are pregnant or on maternity leave	No
Single parent families	No
People with different sexual orientations	No
People with different work patterns (part time, full time, job share, short term contractors, employed, unemployed)	No
People in deprived areas and people from different socio-economic groups	No
Asylum seekers and refugees	No
Prisoners and people confined to closed institutions, community offenders	No
Carers	No
If you identified potential discrimination is it minimal and justifiable and therefore does not require a stage 2 assessment?	N/A
When will you monitor and review your EqlA?	On review of the policy/procedure
Where do you plan to publish the results of your Equality Impact Assessment?	As Appendix Three of this policy/procedure on the Trust approved document management database

FURTHER APPENDICES

The following appendices are published as related links to the main policy /procedure on the Trust approved document management database on the intranet (Trust policies, procedures and leaflets):

No.	Title	Unique ID
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4	FOI Complaints Procedure	RWF-OPPM-CORP200
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MAIDSTONE AND TUNBRIDGE WELLS NHS TRUST

Policy and Procedure for the Management of Subject Access and Third Party requests for information

Requested/ Required by:	Health Records Committee
Main author:	Health Records Manager
Other contributors:	Head of Information Governance Head of Patient Safety
Document lead:	Health Records Manager Contact details: ext 24359/38891
Division:	Corporate
Specialty:	Trust Management
Supersedes:	Health Records Policy and Procedure: SOP12 Patient access to case notes (Version 4.0: August 2011) [RWF-OPPM-CORP25]
Approved by:	Health Records Committee, 12th July 2012
Ratified by:	Information Governance Committee, 22nd August 2012
Review date:	August 2015

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Document History

Requirement for document:	The Information Commissioners under Information Governance toolkit IG9-205 requires that the Trust has a policy in place to respond to Subject Access Requests under the Data Protection Act 1998.
Cross references:	<ul style="list-style-type: none"> • The Data Protection Act 1998 http://www.hmso.gov.uk/acts/acts1998/19980029.htm • Access to Health Records Act 1990 • NHS Code of Confidentiality http://www.dh.gov.uk/en/publicationsandstatistics/publications/publicationspolicyandguidance/DH_4069253 • Information Governance Toolkit • Freedom of Information Act 2000 http://www.opsi.gov.uk/acts/acts2000/pdf/ukpga_20000036_en.pdf • Fraser Guidelines - Department of Health, Best practice guidance for doctors and other health professionals on the provision of advice and treatment to young people under 16 on contraception, sexual and reproductive health (DH, 2004) • <i>Gillick v West Norfolk & Wisbech Area Health Authority and Department of Health & Social Security</i> (1985)
Associated documents:	<ul style="list-style-type: none"> • Maidstone and Tunbridge Wells NHS Trust. <i>Health Records Policy and Standards Operational Procedures</i> [RWF-OPPCS-NC-TM31] • Maidstone and Tunbridge Wells NHS Trust. <i>Safe Haven - Safe Transfer of Person Identifiable Information, Policy and Procedure for the</i> [RWF-OPPCS-NC-TM16] • Maidstone and Tunbridge Wells NHS Trust. <i>Data Protection Policy and Procedure</i> [RWF-OPPCS-NC-TM5] • Maidstone and Tunbridge Wells NHS Trust. <i>Claims Policy and Procedure</i> [RWF-OPPPCS-NC-CG30] • Maidstone and Tunbridge Wells NHS Trust. <i>Disclosure of Person Identifiable Information to the Police Policy and Procedure</i> [RWF-OPPCS-NC-TM7].

Version Control:		
Issue:	Description of changes:	Date:
1.0	First iteration of policy	August 2012

Policy Statement for

Policy for the Management of Subject Access and Third Party Requests for information

Under Section 7 of the Data Protection Act (DPA) individuals have the right to apply for access to their health records and personal records for those patients living. Under the Access to Records, individuals i.e. next of kin, claim arising from death have the right to apply for access to deceased patients' health records and personal records.

The purpose of the policy is to ensure that a prompt, efficient, open and honest response is provided to any request. All Subject Access Requests (SAR) will be logged on the Trust's secure SAR database.

Maidstone & Tunbridge Wells NHS Trust has a duty to maintain the confidentiality of patient and personal information and to be confident that the applicant is entitled to have access before releasing the records.

Maidstone & Tunbridge Wells NHS Trust is legally required to comply with this request, subject to exceptions referred to in Section 6 (DPA) within 40 days of receipt of the request. Failure to do so is a breach of the Act.

Policy and Procedure for the Management of Subject Access Requests

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1.0 Introduction and scope

MTW is required to ensure that it has a policy in place and procedures to receive and respond to Subject Access Requests under the Data Protection Act 1998.

This policy deals with the rights of data subjects provided under Section 7 of the Act whereby individuals can request access to their data.

The Act gives individuals the right, subject to certain exceptions, to see (view) and obtain a copy of all personal data about themselves that is held in either computerised or manual formats. Requestors have access rights to all records irrespective of when they were created.

This policy and appended procedures give guidance to requestors and staff to ensure that the Trust gives accurate and timely disclosure of applicable records.

2.0 Definitions

Subject Access Request (SAR) – a request for information held by the organisation relating to health and personal records.

Health Record – all records concerning the patient's care delivered by Maidstone & Tunbridge Wells NHS Trust and its employees and contractors. This includes paper records and electronic records held centrally and by specialties either in paper or electronic form including national, regional and Trust databases.

Information Commissioner

The Information Commissioner's Office is the UK's independent authority set up to promote access to official information and to protect personal information.

Standard Operational Procedures (SOPs) state the processes, protocols and procedures for specific aspects of case note management. These are based on best practice, guidance from Health Care Commissioner, Information Governance Toolkit and other National legislation and to ensure staff are clear of their duties.

3.0 Duties

The Director responsible for Information of Governance (IG) and Senior Information Risk Officer (SIRO) health records requests.

MTW has identified nominated leads for specific areas or department, i.e.:

- 1. Health Records Manager:** All patient Health Records including Accident & Emergency, Allied Health Professionals for Adults and Children
- 2. Head of Workforce:** Personnel Files
- 3. Head of Occupational Health:** Occupational Health Records

Health Records Manager, Risk & Legal Manager and Head of Information Governance is responsible for providing advice to staff on exemptions and exclusions under the Data Protection Act.

All Health Care Professionals and administration & clerical staff are responsible in adhering to the policy and guidance.

A failure to adhere to the policy and associated procedures may result in disciplinary action.

4.0 Training / competency requirements

Mandatory Training: All Staff working for Maidstone & Tunbridge Wells NHS Trust will complete the Information Governance mandatory training either by attendance in person or online through the Trust's mandatory training procedure.

Specialist Training Workshops and e-learning: Staff responsible for the management of Subject Access Requests and their line managers will attend specialist training provided by the Trust Legal experts and will complete the advanced level modules within the Information Governance e-training package.

5.0 Procedures

Refer to **Appendix 4** for full Standard Operating Procedures (SOP's). To support protocols, guidance notes are detailed as follows:

5.1 Who may make an application

Applications for access to personal and health records may be made in the following circumstances:

5.1.1 The patient

Patients or ex patients do not need to give a reason for applying to see their records. Maidstone & Tunbridge Wells NHS Trust actively encourages patients to access their health records on an informal basis where the patient may have concerns about the treatment they have received, notes made or worried that something said has been misinterpreted.

Staff are encouraged to try to understand and allay any concerns and offer an opportunity of early resolution. The Department of Health's Code of Practice on Openness in the NHS, as referred to in the HSG (96) 18 Protection and Use of Patient Information will still apply to informal requests. Access may be denied where a health professional is of the opinion that releasing such information may be injurious to the patient's health. All requests for access to health records whether formal or informal must be documented.

5.1.2 Person acting on the patient's behalf including court representatives

A person acting on the patient's behalf (e.g. a relative, carer, solicitor, Independent Mental Capacity Advocate or individual(s) acting under lasting Power of Attorney or a Court order to manage the affairs of a patient who is incapable of managing their own affairs) may apply for a copy of the patient's records providing the process set out in this procedure is adhered to and subject to the same restrictions as available to the patient and the Trust is assured of the patient's consent.

5.1.3 Staff who are or have been employed by Maidstone & Tunbridge Wells

NHS Trust

All staff who are or have been employed by the Trust can apply for access to their personal files held by the Trust in the Workforce or Occupational Health departments. Such requests will be made and managed in line with this policy and Standard Operating Procedures.

5.2 Access to children's health records

Children of 16 years or over:

If a mentally competent child is 16 years or over then they are entitled to request or refuse access to their records. If anyone other than the individual requests access the patient's consent must be obtained prior to their release.

Children under 16 years:

Parental responsibility is defined in the Children Act 1989 as all the rights, duties, powers, responsibilities and authority which by law a parent of a child has in relation to the child and their property and included in the parental rights which would fulfil the parental responsibilities are those:-

- having the child live with the person with responsibility or having a say in where the child lives

- if the child is not living with him/her having a personal relationship and regular contact with the child

- controlling, guiding and directing the child's upbringing.

and includes:

- married parents unless a Court has removed that status from either party,

- a separated or divorced parent who no longer lives with the child unless the Court has removed that status from either party

- adopted parents acting under an adoption order

- legally appointed guardians

- individuals acting under a Parental Order where parent responsibility is conveyed to a married couple of a child born in surrogacy where at least one member of the couple is a genetic parent

- any individual or authority acting under an Emergency Protection Order, or

- an Interim or Full Care Order.

Fraser Guidelines / Gillick competency were developed to make professional judgements about whether a child has sufficient maturity and understanding to make decisions. If a child patient is Fraser Guidelines / Gillick competent, the child should be asked for their consent before disclosure is given to someone with parental responsibility. If the child is not Fraser Guidelines / Gillick competent, and there is more than one person with parental responsibility, each may independently exercise their right of access and both persons with parental responsibility should be made aware of access requests unless there is a good reason not to do so.

5.2.1 Children & Family Court Advisory & Support Service (CAFCASS)

Where CAFCASS has been appointed in relation to child welfare issues Maidstone & Tunbridge Wells NHS Trust will comply with providing information as requested. Before records are disclosed the patient or parental consent should be obtained. If this is not possible and in the absence of a court order Maidstone & Tunbridge Wells NHS Trust will balance its duty of confidentiality against the need for disclosure without consent where this is necessary to:-

- protect the interests of the patient or others
- prevent or detect any unlawful act where disclosure is in the public interest e.g. serious crime and seeking consent would prejudice those purposes

5.3 Access to a deceased patient's health records

Where the patient has died the patient's personal representative or any person who may have a claim arising out of the patient's death may make an application. Access shall not be given to any part of the record which in the opinion of a health professional would disclose information which is not relevant to any claim which may arise out of the patient's death. Any request for a person's records when they were deceased prior to 1991 will be dealt with under the Freedom of Information Act 2000.

5.4 Records of Vulnerable Adults and Children

Where the request refers to or the responsible officer has a concern regarding a vulnerable adult or child relating to a safeguarding issue, advice will be sought from the Trust Matron for Safeguarding Vulnerable Adults or the Paediatric Safeguarding team before agreeing to disclose the records

5.5 Records of patients domiciled outside the United Kingdom

For former patients living outside of the United Kingdom and whom once had treatment for their stay, under the Data Protection Act 1998 they still have the same rights to apply for access to their UK health records.

5.6 Requests from solicitors / insurance / medical companies

Solicitors/Insurance/Medical Companies who are acting in civil litigation cases for patients should obtain consent from the patient using the form that has been agreed with the British Medical Association and the Law Society. Guidance on third party requests received by Legal Services is given in the Claims Policy and Procedure [RWF-OPPPCS-NC-CG30], and particularly in its appendices 4 and 5 [RWF-OWP-APP400 AND RWF-OWP-APP401]. For further advice please contact the Patient Safety and Risk Manager.

5.7 Requests from the police

Police requests may be made under The Data Protection Act 1998 and The Crime Disorder Act 1998. Maidstone & Tunbridge Wells NHS Trust may release confidential health records with or without consent subject to the Police providing a Request for Disclosure of Personal Information Form. Please see the Trust *"Disclosure of Person Identifiable Information to the*

Police Policy and Procedure” [RWF-OPPCS-NC-TM7]. For further advice please contact the Head of Information Governance.

5.8 Court proceedings

The Trust may be ordered by a Court of Law to disclose all or part of the health record if it is relevant to a court case.

5.9 Amendments to or deletions from records

If, after a request for a copy of their health records, a patient is of the opinion that information recorded on their health records is incorrect then they should document their concerns in writing to the Health Records Manager. If the patient feels that further processing of this data could cause damage and distress, this should also be documented.

The Health Records Manager will respond to these requests within 21 days. The patient has a right under the Data Protection Act to request that personal information contained within their health records is rectified, blocked, erased or destroyed if this has been inaccurately recorded.

Advice needs to be taken when the accuracy of a healthcare professional opinion is raised by a patient. This is subject to separate guidance from the Information Commissioner and the Information Governance Manager and/or the Caldicott Guardian should be approached before any amendment to a record is recorded.

The Trust should take reasonable steps to ensure that the notes are accurate and if the patient believes these to be inaccurate that this is noted in the records. The patient may further complain to the Information Commissioner who may rule that any erroneous information is rectified, blocked, erased or destroyed.

6.0 Process to be followed on receiving the Subject Access Request

Maidstone & Tunbridge Wells NHS Trust will receive applications for access to health and personnel records via a number of different sources and responsible staff will co-ordinate / correspond with the applicant and follow the following process (**Appendix 4: Standard Operating Procedure: Processing Access Requests**). For further advice please contact the Associate Director of Workforce and the Head of Occupational Health (Occupational Health work with guidance issued by their professional body).

6.1 Patient request for access to health records

Any request for access to health records should be made in **writing only** by completing the Trust proforma (**Appendix 2 of SOP 12**) with the patient signature on the form.

Where the subject is unable to make a request on their own behalf, but has mental capacity to do so, it is permissible for an advocate to make the request, however staff need to assure themselves that the requester has the consent of the subject. Where the subject does not have mental capacity, staff should assure themselves that the requester has a legal right to make the request such as an enduring/lasting power of attorney or Court Order.

The request will be logged onto the Trust's secure web based SAR database on receipt and the necessary information (including consent and agreed payment) requested by the responsible officer.

Where applicable or highlighted as required, an appropriate health professional will check the patient's health records, as under the Data Protection Act they may limit or deny access to an individual's health record request.

Maidstone & Tunbridge Wells NHS Trust has permission from all consultants to disclose information in health records without explicit permission. Permission must be reviewed annually. Any new Consultants must be consulted upon joining.

6.2 Disclosure of a deceased patient's health records

The same procedure used for disclosing a living patient's records should be followed when there is a request for access to a deceased patient's records. Access should not be given if:-

- the appropriate health professional is of the view that this information is likely to cause serious harm to the physical or mental health of any individual or
- the record contains a note made at the request of the patient before his / her death that he / she did not wish access to be given on application. (if whilst still alive, the patient asks for information about his / her right to restrict access after death, this should be provided together with an opportunity to express this wish in the notes)
- the deceased person gave information or underwent investigations with the expectation that the information would not be disclosed to the applicant.
- the Trust considers that any part of the record is not relevant to any claim arising from the death of the patient
- the records contain information relating to or provided by an individual (other than the patient or a health professional) who could be identified from that information (unless that individual has consented or can be anonymised)

6.3 Grounds for refusing disclosure to health records

Maidstone & Tunbridge Wells NHS Trust should refuse to disclose all or part of the health record(s) if a Health Professional is of the view that:-

Disclosure would be likely to cause serious harm to the physical or mental health of the patient or any other person

The records refer to another individual who can be identified from that information (apart from a health professional). This is unless:

that other individual's consent is obtained or
the records can be anonymised or
it is reasonable in all the circumstances to comply with the request without that individual's consent, taking into account any duty of confidentiality owed to the third party or

if the request is being made for a child's records by someone with parental responsibility or
for an incapacitated person's record by someone with power to manage their affairs and the:

information was given by the patient in the expectation that it would not be disclosed to the person making the request or
the patient has expressly indicated it should not be disclosed to that person

6.3.1 Informing of the decision not to disclose

If a decision is taken that the record (or part of the record) should not be disclosed a letter must be sent by recorded delivery to the patient or their representative stating that disclosure would be likely to cause serious harm to the physical or mental health of the patient or to any other person. The responsible officer/department should inform the patient if records are to be withheld on this basis. An explanatory note with details of information withheld must be made on the SAR database.

If however the appropriate health professional thinks that telling the patient will effectively amount to divulging that information or this is likely to cause serious physical or mental harm to the patient or another individual then the Trust may decide not to inform the patient in which case an explanatory note with details of information withheld must be made on the SAR database.

Although there is no right to appeal to such a decision it is the Trust's policy to give a patient the opportunity to have their case investigated by invoking the Complaints Procedure. The patient must be informed in writing that every assistance will be offered to them if they wish to do this. In addition the patient may complain to the Information Commissioner for an independent ruling on whether non disclosure is proper. Should this be the case, the responsible officer will have a full record of the steps taken recorded on the SAR database and in hard copy.

6.4 Disclosure of a patient's records to police

Maidstone & Tunbridge Wells NHS Trust can release confidential information if the patient has given their consent preferably in writing and understands the consequences of making that decision. There is however no legal obligation to disclose information to the police unless there is a court order or this is required under statute (e.g. Road Traffic Act). The police must provide a "Request for disclosure of personal information form" (See **Appendix 5**). The Trust does however have a power under the Data Protection Act and s115 of The Crime Disorder Act to release confidential health records without consent for the purposes of the prevention or detection of crime or the apprehension or prosecution of offenders. The release of the information must be necessary for the administration of justice and is only lawful if this is necessary:

- to protect the patient or another persons vital interests or
- for the purpose of the prevention or detection of any unlawful act where seeking consent would prejudice those purposes and disclosure is in the substantial public interest (e.g. where the seriousness of the crime means there is a pressing social need for disclosure)

- only information which is strictly relevant to a specific police investigation should be considered for release and only then if the police investigation would be seriously prejudiced or delayed without it. The Police should then be asked to provide written reasons why this information is relevant and essential for them to conclude their investigations.

Please also see the Trust *“Disclosure of Person Identifiable Information to the Police Policy and Procedure”* [RWF-OPPCS-NC-TM7].

6.5 Requests made by telephone

No patient information may be disclosed to members of the public by telephone. However, it is sometimes necessary to give patient information to another NHS employee over the telephone. Before doing so, the identity of the person requesting the information must be confirmed by telephoning the person’s official office and asking to be put through to their extension.

6.6 Disclosure of the record

Once the appropriate consent documentation and agreed payment have been received and disclosure approved, the copy of the record together with confirmation of the scope of the information disclosed, will be sent to the patient or their representative in a sealed/tamper proof envelope by **recorded delivery**.

The record should be sent to the named individual marked ***confidential for addressee only***.

Only copy records should be sent not originals.

No confidential information should be sent by fax or e-mail unless via an encrypted service such as NHS Mail Account or to another NHS Mail account.

6.7 Time scales

For living individuals the Data Protection Act 1998 superseded the Access to Health Records Act 1990 which requires requests to be complied with within 40 days. Ministers gave a commitment to Parliament (Hansard Ref 25/10/2000 Col 464) that the 21 day response period contained within the Access to Health Records Act 1990 would be retained for the NHS and extended to all requests; not just those where the record has been recently amended. Best practice requires that Maidstone & Tunbridge Wells NHS Trust will endeavour to comply with requests within this (21 day) time limit.

Where further information is required by the Trust to identify the record required or validate the request (including payment of invoiced charges) this must be requested within 14 days of receipt of the application and the timescale for responding will commence on receipt of the full information.

Where the Trust is unable to disclose all the requested information within the 40 day timescale, the requestor will be notified at least 5 days before the deadline with an explanation. A telephone discussion should occur with the requester to agree partial disclosure if agreeable/appropriate and a new deadline agreed.

The Trust is committed to complying with these timescales for all Subject Access Requests including those for personal and occupational health records. Failure to comply with a request for subject access, without valid justification is treated as a serious matter which must be reported to the Head of Information Governance as soon as possible and could be investigated by the Information Commissioner

6.8 Charges

- Copies of electronic patient health records a maximum charge of £10.00 will be requested to cover administrative fees.
- Copies of manual patient health records or a mixture of electronic and manual will be charged at £50.00 to cover administrative fees
- Viewing of health records will be charged at £10.00 to cover the administrative fee (time).

The Trust retains the right not to charge for copies should it choose not to do so.

6.9 Safe haven

Confidential health records should not be sent by fax unless there is no alternative. All staff should be aware that safe haven procedures apply to the sending of confidential information by fax for whatever reason and that only the minimum information should be sent. SafeHaven procedures require that the intended recipient must be alerted to the fact that confidential information is being sent and that a confirmation of receipt is required.

6.10 Shared records

There are situations where a subject access request involves a health record that is shared between healthcare organisations. The modernisation of health and social care will place a greater emphasis on shared records. In developing integrated health and social care service, the Trust will consider its arrangements for managing the requirements of the Data Protection Act 1998 and Subject Access requests with its partners as part of any service reconfiguration or development.

The following principles will be followed where this is the case:

- Obligations under the Act are, in general placed on the holder of the record. If records are shared between two health or NHS bodies, they will be joint data controller
- Responsibility for ownership of the record rests with the Secretary of State for Health although essentially, where both organisations are joint data controllers for the shared record, both are controlling how they are used.
- In order to deal with Subject Access requests effectively, the organisation receiving the request will take responsibility for processing and for obtaining consent or refusal for the release of parts of the record relating to the other Trust.
- Each organisation is obliged to deal with the access request and the authorisation to release the parts of the record in order to ensure the request is processed within the 40-day timescale.

- Each organisation takes responsibility for the access request and joint liability for their release where each Trust has authorised its release.
- If the organisation processing the access request ignores a decision made by the other Trust to exclude data from release and subsequently releases that element of the record, it will accept full liability.
- It is incumbent on each organisation to record the reasons why the release of a record is refused.
- If there is a refusal to disclose the record from the partner organisation, the organisation dealing with the access request should, in their response to the applicant explain the reason for the refusal and refer him/her to the other partner organisation directly if he/she wishes to contest the refusal.

7.0 Monitoring and audit

Using the tools indicated in the Information Commissioners toolkit IG9-205 entitled ***There are appropriate procedures for recognising and responding to individuals' requests for access to their personal data***, the Trust will monitor and audit subject access requests through Trust committees.

Measuring will be managed through a Customer Satisfaction Survey.

Human Resources and Occupational Health departments will monitor locally and through local governance processes.

The Health Records Manager will report all breaches of the 40 day timescale to the Health Records Committee by exception reports having conducted a full investigation into the circumstances leading to the breach.

Additional ad hoc reports will be presented at the request of the Health Records Committee.

APPENDIX ONE

Process Requirements

4.0 Implementation and awareness

- 1.1 Once approved this policy/procedural document will be published on the Trust intranet by the Clinical Governance Assistant.
- 1.2 A monthly publications table will be produced by the Clinical Governance Assistant; this will be published on the Bulletin Board (Trust intranet) under "Trust Publications", and notification of the posting will be included on a bi-weekly notification email circulated Trust wide by the COMMS team.
- 1.3 On receipt of the Trust wide Bulletin Board notification all managers should ensure that their staff members are aware of the new publications.

2.0 Review

- 2.1 It is essential that standards and protocols remain accurate and up-to-date. This policy and procedural document will be reviewed three

years after approval, or sooner if there are changes in practice, new equipment, law, national and local standards that would require an urgent review of the policy/procedure. It is the responsibility of the Document Lead for this policy/procedure to ensure this review is undertaken in a timely manner.

- 2.2 The Document Lead should review the policy/procedure and, even when alterations have not been made, undertake the consultation process

3.0 Archiving

The Trust intranet retains all superseded files in an archive directory in order to maintain document history.

APPENDIX TWO

CONSULTATION ON: Policy and Procedure for the Management of Subject Access and Third Party requests for information

Consultation process –

Please return comments to: Health Records Manager

By date: 18th July 2012

Name: <i>List staff to be included in the consultation. See Section 5.5 of the "Production, Approval and Implementation of Policies and Procedures" policy and procedure for guidance.</i>	Date sent dd/mm/yy	Date reply received	Modification suggested? Y/N	Modification made? Y/N
The following staff MUST be included in ALL consultations:				
Clinical Governance	18/06/2012			
Head of Nursing	18/06/2012			
Members of Quality and Standards	18/06/2012			
Health Records Manager	18/06/2012			
Medical Director	18/06/2012			
Head of Information	18/06/2012			
EPR Manager	18/06/2012			
IM&T Director	18/06/2012			
Clinical Coding Manager	18/06/2012			
Information Governance Lead	18/06/2012	10/07/2012	Y	Y
Human Resources	18/06/2012			
Occupational Health	18/06/2012			
The role of those staff being consulted upon as above is to ensure that they have shared the policy for comments from all staff within their sphere of responsibility which would be able to contribute to the development of the policy.				

The following list of staff is **not compulsory** but simply intended to act as an aide-memoir. You may wish to consider selecting staff from the following list as appropriate:

Directors, Director of Infection Control, Divisional Directors, Associate Director Operations, Deputy Director Nursing, General Managers, Divisional Risk Lead, Clinical Governance Leads, Senior Nurses Clinical Governance, Head of Estates, Director of Facilities, Corporate Business Manager, Head of Quality and Governance, Risk Manager, Quality and Patient Safety Manager, Audit & Research Manager
Staff Side chair, Director of ICT, Associate Director of ICT, Pembury New Build, Head of Policy and Information, HR Communications Manager

APPENDIX THREE

Equality Impact Assessment

In line with race, disability and gender equalities legislation, public bodies like MTW are required to assess and consult on how their policies and practices affect different groups, and to monitor any possible negative impact on equality.

The completion of the following Equality Impact Assessment grid is therefore mandatory and should be undertaken as part of the policy development and approval process. Please consult the Equality and Human Rights Policy on the Trust intranet, for details on how to complete the grid.

Please note that completion is mandatory for all policy development exercises. A copy of each Equality Impact Assessment must also be placed on the Trust's intranet.

Title of Policy or Practice	Policy and Procedure for the Management of Subject Access Requests and Third Party requests for information
What are the aims of the policy or practice?	To outline consistent and appropriate processes for developing and managing Subject Access Requests in Maidstone and Tunbridge Wells NHS Trust.
Identify the data and research used to assist the analysis and assessment	
Analyse and assess the likely impact on equality or potential discrimination with each of the following groups.	Is there an adverse impact or potential discrimination (yes/no). If yes give details.
Males or Females	NO
People of different ages	NO
People of different ethnic groups	NO
People of different religious beliefs	NO
People who do not speak English as a first language	Translation can be arranged on request
People who have a physical disability	NO
People who have a mental disability	NO
Women who are pregnant or on maternity leave	NO
Single parent families	NO
People with different sexual orientations	NO
People with different work patterns (part time, full time, job share, short term contractors, employed, unemployed)	NO

People in deprived areas and people from different socio-economic groups	NO
Asylum seekers and refugees	NO
Prisoners and people confined to closed institutions, community offenders	NO
Carers	NO
If you identified potential discrimination is it minimal and justifiable and therefore does not require a stage 2 assessment?	
When will you monitor and review your EqIA?	Alongside this policy/procedure when it is reviewed.
Where do you plan to publish the results of your Equality Impact Assessment?	As Appendix Three of this policy/procedure on the Trust Intranet.

FURTHER APPENDICES

The following appendices are published as related links to the main policy /procedure on the Trust Intranet (Policies and Guidelines).

No.	Title	Unique ID
4	Standard Operational Procedures for Processing Subject Access and Third Party Requests for patient information [SOP1]	RWF-OPPM-CORP111
5	Application for access to personal health records	RWF-OPF-CS-NC-TM2

4.

To provide data in the format requested would exceed the 18 hour limit.
Please find below a table showing the available data.

Period	No. of SAR received	No. of SAR completed beyond 40 days	No. of FOI received
4 March - 10 May 2015	384	8	120
11 May - 30 June 2015	318	21	75
1 July - 31 August 2015	357	0	112
1 September - 12 November 2015	404	0	121
12 November 2015 - 19 January 2016	354	10	84
20 January - 4 March 2016	306	4	80
5 March - 10 May 2016	332	4	113
11 May - 16 June 2016	196	0	59
17 June - 31 August 2016	433	5	143
1 September - 31 October 2016	324	13	94
1 November - 31 December 2016	283	19	98

1 January - 28 February 2017	242	41	134
1 March - 30 April 2017	173	4	132
1 May - 30 June 2017	*	*	96
1 July - 31 July 2017	*	*	60

In the period 1 January 2016 to 31 March 2017 101 requests were open beyond the 20 day statutory period.

* Data not yet available