

SUBJECT ACCESS REQUEST (SARs) PROCEDURES

DOCUMENT CONTROL

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| Document objectives: This policy details the procedures NHS Brighton and Hove CCG will follow to ensure compliance with the Data Protection Act 1998 when dealing with all requests for access to personal data held by NHS Brighton and Hove CCG. | | | |
| Intended Recipients: All CCG employees, trainees, contractors, temporary staff, researchers, trainers and consultants who may be involved in the processing of information at any level in the organisation, or who have access to areas where information is stored within the Trust. | | | |
| Approved by | Information Governance Committee (12 February 2016) Performance and Governance Committee (23 February 2016) | | |
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| Contact for Review | Information Governance Manager | | |

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1. Introduction

The Data Protection Act 1998 entitles 'data subjects' to have access to personal information that is held about them. This document details the issues that need to be taken into consideration when responding to a 'Subject Access Request.'

2. Individuals entitled to receive copies of personal records held by the CCG

Personal information must not be disclosed unless and until authorisation is obtained from the patient/member of staff, or the request is for the purposes of crime or taxation; or is otherwise permitted under the Data Protection Act 1998. Detailed information can be found in *Confidentiality: NHS Code of Practice* and a flowchart showing a 'Quick Guide' to the SARS process can be seen at Appendix 1.

The following individuals have access to personal records, or, in the case of deceased persons, through the Access to Health Records Act.

- the individual themselves (i.e. patient/user/staff member);
- those with parental responsibility (parent/legal guardian of patient/user);
- a representative nominated by the individual e.g. solicitor acting on behalf of their client (and with the full consent of that client);
- in the case of deceased patient the person who has a claim on the estate;
- or in the case of an incapacitated person (in certain restricted circumstances) the next of kin or person granted an attorney or agent of the Court of Protection on behalf on an adult who is incapable of consent;
- Requests for access to a patient's healthcare record from the police without the written consent of the patient should be referred to the Caldicott Guardian for approval.

3. Responsibilities

Delegated Operational Responsibilities – The IG Manager will oversee the systems and procedures that support the implementation of SAR's procedures.

The IG Manager is responsible for:

- Ensuring consent is obtained from the individual for the release of their records, in accordance with the requirements of the Data Protection Act 1998 and CCG *Guidelines and Procedures for Subject Access Requests under the Data Protection Act 1998*.
- Providing advice to nominated Directorate Leads and/or Heads of Service/Senior Managers on exemptions and exclusions under the Data Protection Act.
- Liaising with other organisations to process the access request in the event of shared records/data.
- Co-ordinating the release of the information and ensure that sufficient identification is given by the applicant.

All service heads will be responsible for:-

- Ensuring they have in place a system to respond to requests with a responsible individual identified to assist or manage the process.

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- Responding to requests promptly within the agreed timescales, following CCG *Guidelines and Procedures for Subject Access Requests under the Data Protection Act 1998*
- Ensuring the record/data is reviewed by an appropriate professional and the identification of exemptions, and third party information in accordance with the Act.
- Where a specific request for components of a record or specific information is received, to identify and confirm these components for release. Approval for their release is undertaken by a senior and appropriate professional and this approval undertaken as a priority.
- Ensuring their staff are aware of, and in all cases follow the Trusts *Guidelines and Procedures for Subject Access Requests under the Data Protection Act*'.

4. Receiving a request for personal information

A request for access to an individual's personal information held by the CCG must be received in writing. Written applications can be received by the staff, team managers or department heads in the area that holds the records and should be forwarded to the Information Governance lead for administration purposes. The received date should be recorded on the written requests for records.

The application must contain sufficient information to enable the relevant team/department to locate the information requested as well as a copy of an identification document. The IG Manager will check that the application fulfils the following criteria:

- Ensure full name, address and date of birth of applicant is provided.
- Ensure identification document is enclosed as per instructions.
- Ensure the application is signed and dated by the applicant.
- Ensure the additional agent's authorisation is appropriate if someone else is acting on behalf of the applicant.
- Ensure the application provides enough data to identify where the records are being held.

Administration - the IG Manager will:

- Log details of request.
- Record date the application was received.
- Send acknowledgement of application (using the letter template in Appendix).
- Record date request was sent to appropriate staff member and to whom it was sent.
- Record date information was returned from appropriate staff member.

If the application is deemed to be incomplete, the IG Manager will log details of request. The IG Manager will then issue a subject access application form (see Appendix) with covering letter (see Appendix). If after 3 months no reply has been received, the request will be destroyed using confidential means.

The request should then be forwarded to the service manager for processing (see section 4). This should be done within 5 days of receipt of the request.

Where an access request has previously been complied with under the Act, the CCG does not have to respond to a subsequent identical or similar request unless a reasonable interval has elapsed since the previous compliance (The Information Commissioner's office has defined a reasonable interval to be 12 months).

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The Data Protection Act 1998 imposes a 40 day limit on disclosing personal records. However there is a statutory Instrument in place for health record disclosure which asks that every effort will be made to disclose within a 21 day limit.

5. Viewing Records

In some cases it may be considered more appropriate for the individual (who may prefer) to view their records instead of receiving copies. This applies particularly in the case of electronic health records. An appropriate representative of the Trust should be in attendance when an individual views the records. Where there are health records to be viewed, they will need to have been checked by a health professional before viewing takes place.

The standard procedure (see appendix 1) would generally apply to any request to view records. If, however, for example a health professional is asked formally by the patient during a consultation if they can view their records then and there, it may be appropriate to bypass the usual procedure. Where the health professional concerned is most suitable to inspect the patient records and is happy that the information contained in the records is not covered by any of the exemptions that restrict release, it may be practical to let them view the records there and then, instead of going through the normal process. This should be noted in the records. If the health professional is not happy at that stage to allow access, they should inform the patient of the process they should go through to gain access, again this should be noted.

Where requested, the CCG will allow data subjects to view the information held about them. Arrangements will be agreed with the data subject and relevant CCG managers/healthcare professionals to facilitate this within the timescales allowed by the Act.

6. Acknowledging a request for personal information

Once a written request has been received by the IG Manager, the request will be logged on a "subject access register". If the correct subject access form and supporting evidence for proof of identity have not been provided, an acknowledgement letter will be sent to the applicant stating that the CCG is currently processing their request (see letter template, Appendix).

Supporting evidence for proof of identity must be the original version or authenticated copies from a solicitor of one of the following:

- Driving licence
- Birth certificate
- Passport
- Marriage certificate
- Court order establishing legal guardianship over a child or incapacitated individual
- Testimony or will from a solicitor establishing entitlement to a claim on the estate

If the records are held by another organisation, the request will be forwarded to that organisation/Trust and a letter will be sent by the IG Manager to the applicant informing them that this is the case. In this way, the responsibility for the SAR will be discharged from the CCG. 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 controllers. 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 21/40-day

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timescale. Each organisation processing the access request will accept full responsibility for their own decisions with regard to that request.

If the original application does not contain the appropriate information, a SAR application request form (see Appendix) will be sent to the applicant for completion. The deadline of 40 calendar days for response will start from the date of receipt of the completed application.

7. Consent

Where a patient is unable to manage his/her own affairs then the CCG will only accept an application by a person appointed by the Courts e.g., under the Court of Protection (or acting within the terms of a registered Enduring Power of Attorney). Further guidance is included in the CCG Implementing the Mental Capacity Act Policy.

A young person over 16, but under 18, or a child under 16 who is considered to be Fraser competent (see DOH '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' 2004) may exercise their right of access to his/her health records under the Act.

8. Processing a request for personal information

Communications with the health professional and applicant concerned should be held until the application has been completed and closed. The IG Manager will follow-up the application at 15 days and 25 days after receipt of the application, with a final reminder to the service manager on day 30, informing them that the application must be completed with 40 calendar days of receipt of the request and asking the service manager to confirm to the IG Manager that the request has been processed. The IG Manager will update the 'subject access register/log' accordingly.

There will not normally be a charge for SAR requests. However, if it is estimated that the cost of processing the request might exceed £50, (through the use of any resources including paper or staff time), fees may be levied on the request at a maximum of £50 (including postage and packing). If this fee is to be charged, the applicant must be notified of this via a letter or email prior to the request being completed, (see template letter, Appendix).

9. Reviewing the personal records

It will be necessary to review the information before release to verify:

- a. if there are any references to third parties.

Responding to a subject access request may involve providing information that relates both to the individual making the request and to another individual. The Act says you do not have to comply with the request if to do so would mean disclosing information about another individual who can be identified from that information, except where:

- the other individual has consented to the disclosure; or
- it is reasonable in all the circumstances to comply with the request without that individual's consent.

So, although the CCG may sometimes be able to disclose information relating to a third party, we need to decide whether it is appropriate to do so in each case. This decision will involve balancing the data subject's right of access against the other individual's

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rights in respect of their own personal data. If the other person consents to us disclosing the information about them, then it would be unreasonable not to do so. However, if there is no such consent, we must decide whether to disclose the information anyway.

For the avoidance of doubt, we cannot refuse to provide subject access to personal data about an individual simply because you obtained that data from a third party. The rules about third party data apply only to personal data which includes information about the individual who is the subject of the request and information about someone else.

Third party, in relation to personal data, means any person other than:

- i. the data subject,
 - ii. the data controller, or
 - iii. any data processor or other person authorised to process data for the data controller or processor.
- b. If there are any abbreviations or complex terms which require explanations as to the content or their meaning (for example use of codes, jargon or acronyms). If the information is terminologically difficult or of a technical nature, the CCG can offer to 'go through' the information with the data subject to explain the meanings.
- c. If there are grounds to withhold information under other exemptions in the DPA.

A record must be made of information withheld, along with justification of the exemptions that were applied. It is the responsibility of the service manager or lead 'appropriate health professional' to review the record prior to its release and to decide what information, if any, should be released and what should be withheld. Advice on Data Protection/Confidentiality is available from the IG Manager or www.ico.gov.uk.

On inspection of the health records, the healthcare professional can advise that certain personal information is not released on the grounds that its release would be likely to cause serious harm to the physical or mental health of the patient or to any other individual. There is no requirement to tell the patient or their representative that this information has not released.

The third party exemption would not normally apply to health professionals who are included in the records if they are currently or have previously contributed to the care of the patient concerned. Release of the health professional's information, however, can be restricted if disclosure may result in serious harm to the health professional or their relationship with the patient.

10. Finalising the request

A letter should accompany the information intended for release. The letter should confirm the response to the original request.

Records will not be forwarded on to third parties but will only be sent to the original applicant. A copy of the information will normally be supplied in hard copy format except where the individual agrees or where it is impossible or would involve undue effort or cost. An alternative would be to allow the individual to view the information. Copies will not be sent via fax or email.

Copies of records sent externally in the post should be:

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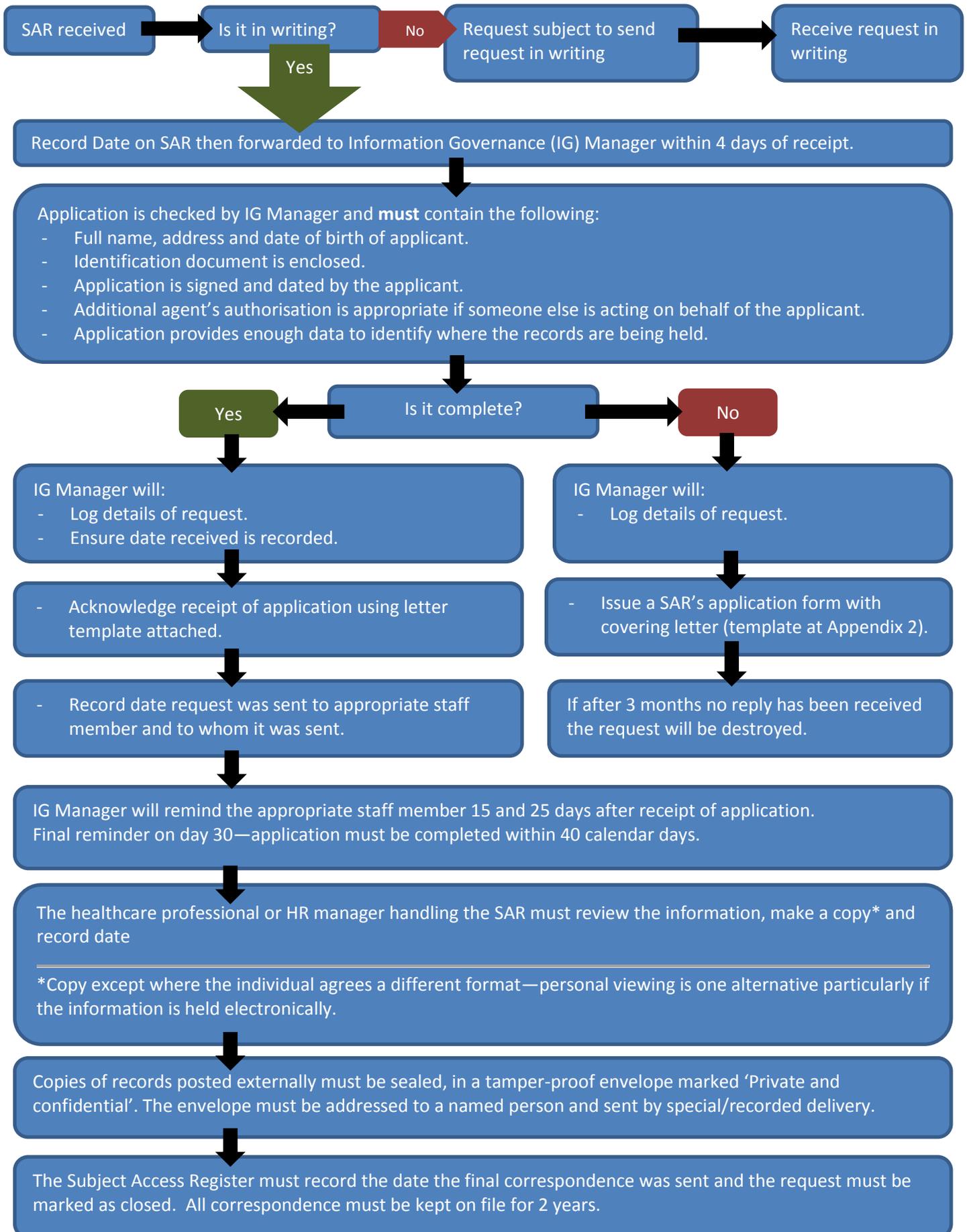
- In a sealed, tamper-proof envelope e.g. self-sealing jiffy bag
- Addressed to a named person
- Marked 'Private and Confidential
- Sent by special/recorded delivery

Copies of records sent internally should be as above but sent by internal secure courier.

The “subject access register” should contain a record of the date the final correspondence was sent and the request should then be marked in the register as “closed”. All correspondence must be kept on file for two years, in case any further action is required. If the data subject themselves indicates that information about him or her is inaccurate or claims that the processing causes them damage or distress, it will be necessary for the IG Manager to liaise with the relevant manager to investigate. Further guidance is available from the Information Commissioner, *“Data Protection Act Incorrect information- what can I do”*.

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Appendix 1 - Subject Access Request (SAR) Procedure Flow Chart



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Appendix 2 - Template Response to Applicant

The following are example paragraphs to be used when responding to a subject access request.

*Delete where not applicable.

Dear

Thank you for your letter dated xx\xx\xx.

* Your request is being dealt with and we will reply as soon as possible but certainly within the 40 days of receipt of your application letter as set out in the Data Protection Act 1998.

* In accordance with the Act, we are entitled to receive a fee for producing records (up to a maximum of £50). You will be advised if fees will be applied to this application once the information requested is known.

* To maintain confidentiality, the law allows us to take reasonable steps to establish and confirm your identity before we can provide any information. We would be grateful if you could provide us with proof of your identity in the form of the original version or authenticated copies from a solicitor of:

- Driving license
- Birth certificate
- Passport
- Marriage certificate
- Court order establishing legal guardianship over a child or incapacitated individual
- Testimony or will from a solicitor establishing entitlement to a claim on the estate

* To enable us to search for the records you have requested, we may require some additional details and would ask that you fill in the attached application form. In accordance with the Data Protection Act 1998, the 40 days we are allowed in producing you or your client's records may be suspended while we await receipt of the information requested.

* With reference to your letter of xxxx regarding access to your records, we can confirm that your request has been processed and I enclose copies of the records that you require.

* Access to parts of the records have been declined because a) it has been considered by the clinician to contain certain information that should not be shared, or b) third party information has been removed.

* We are pleased to inform you that your request for a copy of your personal records is now complete and that the fee for extracting this information and providing copies is £xx. In accordance with the Data Protection Act, the 40 days we are allowed for producing the records may be suspended whilst we await receipt of your payment. Cheques or postal orders must be made payable to xxxxxxxxxx.

* The records which you have requested are held by another organisation. Your application will therefore be forwarded to (organisation/Trust).

If you have any queries, please do not hesitate in contacting me at the details given above.

Yours sincerely

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SUBJECT ACCESS REQUEST FORM

Personal information collected from you by this form, is required to enable your request to be appropriately processed, this personal information will only be used in connection with the processing of this Subject Access Request.

This form is only to be used when making application for access to personal data held by NHS Brighton and Hove Clinical Commissioning Group. **If the request is for Patient Medical Information then the request needs to be directed to the care provider.**

1. Details of the person requesting the Information:

| | |
|---|--|
| Full Name: | Former Name(s): |
| Current Address: | Former Address (Inc. dates of change): |
| Date of Birth: | NHS Number: (if known) |
| Contact Phone Number (including area code): | E-mail address: (Optional) |

2. Are you the Data Subject? (tick box that applies)

I AM the Data Subject and enclose evidence of my identity e.g. photocopy of driving licence, birth certificate, passport, marriage certificate.

I am NOT the Data Subject, but am acting on their behalf as their personal representative. I have written authority, which I enclose and evidence of their identity e.g. photocopy of driving licence, birth certificate, marriage certificate, passport.

I am NOT the Data Subject, but I am acting on their behalf as their parent or legal guardian and enclose evidence of their identity e.g. photocopy of birth certificate, passport.

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3. Details of the Data Subject (if different to 1.)

| | |
|---|--|
| Full Name: | Former Name(s): |
| Current Address: | Former Address (Inc. dates of change): |
| Date of Birth: | NHS Number: (if known) |
| Contact Phone Number (including area code): | E-mail address: (Optional) |

4. Describe the specific information you are requesting: please provide as much detail as possible, such as relevant dates, references etc.

5. Declaration

I declare that the information given by me is, to the best of my knowledge correct and that I am entitled to apply for access to the information referred to above, under the terms of the Data Protection Act 1998.

| | |
|------------|------------------|
| Signature: | Date of request: |
|------------|------------------|

Once NHS Brighton and Hove CCG has all the required information, and fee, where relevant, your request should be complied with within 21 days. In exceptional circumstances where it is not possible to comply within this period you will be informed of the delay and given a timescale for when your request is likely to be met.

In certain circumstances, the Data Protection Act 1998 permits the Trust to withhold information, for example information likely to cause serious harm to the physical or mental health or condition of you, or any other person. Information relating to or provided by a third person who has not consented to the disclosure, including images removed or obscured. This exemption does not apply where that third person is a health professional involved in care of a patient.

Where to send your request:

Information Governance Manager, NHS Brighton and Hove CCG,
Hove Town Hall, Norton Road, Hove, BN3 3AH

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