



CHUMS

**Mental Health and
Emotional Wellbeing
Service for Children
and Young People**

Subject Access Request Policy

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1. Introduction

1.1 Individuals have the right under the General Data Protection Regulation (GDPR), subject to certain exemptions, to have access to their personal records that are held by CHUMS. This is known as a 'subject access request' (SAR). Requests may be received from members of staff, service users and people acting on behalf of service users or any other individual who CHUMS has had dealings with and holds data about that individual. This will include information held both electronically and manually and will therefore include personal information recorded within electronic systems, spreadsheets, databases or word documents and may also be in the form of photographs, x-rays, audio recordings and CCTV images etc.

1.2 The General Data Protection Regulation applies only to living persons but there are limited rights of access to personal data of deceased persons under the Access to Health Act 1990 (see section 7 below)

1.3 CHUMS has developed this policy to guide staff in dealing with Subject Access Requests that may be received.

2. Recognising a Subject Access Request (SAR)

2.1 A subject access request (SAR) is simply a request made by or on behalf of an individual for a copy of information held by CHUMS. The General Data Protection Regulation (GDPR) entitles all individuals to make requests for their own personal data.

A request may be made by

- the person that the data is about (the data subject);
- a parent/carer (or separated/divorced parent) of the data subject
- a representative of the data subject who has their written consent such as a solicitor;
- a person who has been appointed by the Court of Protection;
- a person with enduring Power of Attorney;
- a person appointed as an Independent Mental Health Advocate under the Mental Capacity Act 2005.

The above list is not exhaustive

2.2 The request does not have to be in any particular form or media nor does it have to include the words 'subject access' or make any reference to the General Data

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Protection Regulation (GDPR). A SAR may be a valid request even if it refers to other legislation and should therefore be treated as a SAR in the normal way.

2.3 The person making the request does not have to tell you the reason for making the request or what they intend to do with the information, although it may help us to find the relevant information if they do explain the purpose of the request.

2.4 The following are some of the more common types of requests received:

- I would like a copy of all the information you hold about me in my HR file
- I would like a copy of my medical notes
- I would like a copy of my child's medical notes
- I am a solicitor acting on behalf of my client and request a copy of his medical records. A signed authority is enclosed

2.5 Requests may sometimes be received from the Police or HMRC for the following purposes:

- The prevention or detection of crime
- The apprehension or prosecution of offenders
- The assessment or collection of tax or duty

The request should be signed by a senior officer from the relevant authority. The request must make it clear that one of the above purposes is being investigated and that not receiving the information would prejudice the investigation.

3. Dealing with a Subject Access Request (SAR)

3.1 Under GDPR, the information requested must be responded to as soon as possible, but no later than one calendar month of receiving a valid request. (see also 3.2 Decisions about what information can be provided in response to a SAR should be made by a senior member of staff with sufficient knowledge of current data protection regulations. See section 4 below where the request involves clinical data or third-party data which may need to be redacted.

3.3 All staff should be aware of how to deal with a SAR as the request may be received by any department. An acknowledgement that the request has been received will normally be sent within 3 working days. In some cases, we may need to seek clarification to:

- narrow down our search and to respond to the request
- establish the legitimacy of the request where this is uncertain. In such circumstances the timescale to respond to the request is delayed until this is established. (See also 3.4)

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3.4 Proof of ID may be required from the person making the request plus a valid signed authorisation where they are making a request on behalf of an individual.

3.5 Before copies of the requested documents are given to or sent out to the person making the subject access request, a check should be carried out by two suitable members of staff to confirm that the documentation is in order and is 'good to go'. The check should be recorded and dated.

3.6 A record should be maintained of all requests received, detailing:

- date received
- applicant's details
- information requested
- who is dealing with the request
- information provided
- any information not provided and the reasons why
- in what format the information was provided and how e.g. paper copies by special delivery, encrypted email etc.
- date that the request was finally responded to

3.7 The person dealing with the request should satisfy themselves as to the validity of the request. This may require confirming and verifying the identity of the applicant and/or the data subject or confirming that they are authorised to act on behalf of the data subject. Requests received from separated parents require careful consideration in terms of the age of the data subject and how it impacts on their confidentiality.

4. Redacting Data

4.1 All requests for clinical data should be reviewed by a suitable clinician. Where it is considered that there is information held which, were it to be provided to the service user, is likely to cause serious harm to the mental or physical health of that individual or others then this information must not be provided. The final decision as to what information to provide and what not to provide should be made by a senior clinician such as the Caldicott Guardian. See the Information Governance policy for further information about the role of the Caldicott Guardian and the Caldicott Principles.

4.2 When personal records contain details of third parties, all references to third parties must be removed, redacted or blanked out unless consent has been obtained by them for their details to be released. Please note that this does not normally apply to health professionals.

5. Refusing Requests

5.1 There are times when requests by individuals for access to personal information can be refused, for example where providing the information

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- Would be likely to prejudice any of the following:
 - o Prevention or detection of crime
 - o The apprehension or prosecution of offenders
 - o The assessment or collection of any duty or tax
 - o Confidential references given by the data controller
 - o Legal professional privilege
- Would result in self incrimination
- Where there is a statutory or court restriction on disclosure eg adoption records
- In respect of confidential references provided by us

6. Fees

6.1 Under GDPR, information provided in response to a SAR must be provided free of charge. However, a 'reasonable' fee can be charged when the request is manifestly unfounded or excessive, particularly if it is repetitive. Any fee charged can only cover administration costs.

7. Access to Records of Deceased Individuals

7.1 The Common Law Duty of Confidentiality extends beyond death. Certain individuals have rights of access to deceased records under the Access to Health Records Act 1990.

- The patient's personal representative (ie Executor or Administrator of the deceased's estate)
- Any person who may have a claim arising out of the patient's death

7.2 A next of kin has no automatic right of access to a deceased relative's records but professional codes of practice allow for a clinician to share information where concerns have been raised. Guidance should be sought from a suitable clinician in relation to requests for deceased records.

8. References

Subject Access Code of Practice, Information Commissioner's Office

<https://ico.org.uk/media/for-organisations/documents/1065/subject-access-code-of-practice.pdf>

CCTV Code of Practice, Information Commissioner's Office

<https://ico.org.uk/media/for-organisations/documents/1542/cctv-code-of-practice.pdf>

Overview of the General Data Protection Regulation, Information Commissioner's Office

<https://ico.org.uk/for-organisations/data-protection-reform/overview-of-the-gdpr/>

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Appendix 1

**General Data Protection Regulation
Request for Access to Employment/Personnel Records**

1. Staff's details
First name(s):
Surname:
Date of birth:
Address:
Postcode:
Contact phone number:
Email:
Payroll Number (if known):

2. Please tell us what information you are asking for
<i>Please be as specific as possible about exactly what information you are asking for and over what period.</i>

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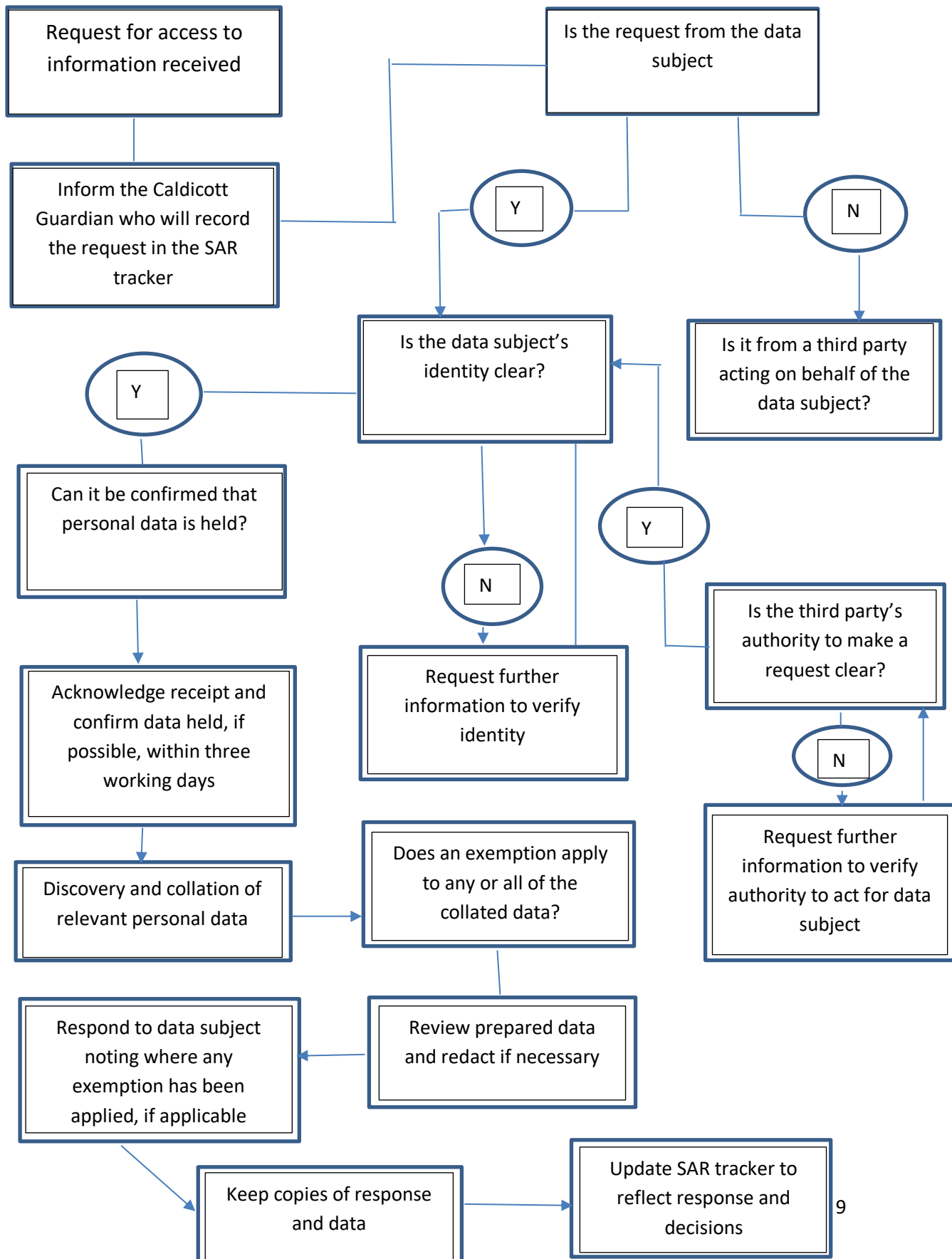
3. Details of the person making the request if you are not the person named above
First name(s):
Surname:
Address:
Postcode:
Contact phone number:
Email:
Your relationship to the person named in part 1 above:

DECLARATION	
I declare that the information given by me is correct to the best of my knowledge and that I am applying for access to the above records in the following capacity	
I am the employee	<input type="checkbox"/>
I am acting on behalf of the employee and attach the employee's signed authorisation	<input type="checkbox"/>
I am the employee's legal representative or have been appointed by the Court to act on their behalf and attach proof of my appointment	<input type="checkbox"/>
Signed:	Date:



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Appendix 2 - Subject Access Request Procedure Flowchart



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Governance Committee Authorisation

Signature*

Name Print Jasmer Chauhan (Clinical Director)

Position/Role: Clinical Director, Chair, Governance Committee

Date: 7th April 2020

Date of review: 7th April 2023

*Authorised signatory must be the chair (or deputising chair) of Governance Committee