



*North East Hampshire and Farnham
Clinical Commissioning Group*

**Data Subject Access Request Policy in accordance with the Data
Protection Act 1998**

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Author:	Information Governance Team, NHS South, Central and West Commissioning Support Unit North East Hampshire & Farnham Clinical Commissioning Group
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For action by:	All NHS North East Hampshire & Farnham Clinical Commissioning Group staff, Data Custodians, Information Governance Team.
Policy statement:	This policy informs staff of the process for supplying individuals with the right of access to personal data under the Data protection Act 1998.
Responsibility for dissemination to new staff:	NHS North East Hampshire & Farnham Clinical Commissioning Group Managers
Training Implications:	No specific training required.
Further details and additional copies available from:	Governance Team
Equality Impact Assessment Completed?	The content of this policy does not raise any equality and diversity issues in relation to the protected characteristics
Consultation Process	Corporate Review Group Audit and Risk Committee
Approved by:	Corporate Review Group
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Amendments Summary:

Amend No	Issued	Page(s)	Subject	Action Date
1		5	Deletion. NHS England SARs process no longer used by CCG	November 2015
2		6	Inclusion of Equality & Diversity section	November 2015
3		8	Update capacity section and include children section	November 2015
4		23	Inclusion of subject access request register	November 2015
5		Throughout document	References to South CSU removed, replaced with South Central & West CSU	November 2015

Review Log:

Include details of when the document was last reviewed:

Version Number	Review Date	Name of Reviewer	Ratification Process	Notes
2.0	November 2015	Jackie Thomas, CSU IG Manager		Reviewed November 2015

Contents

1. Introduction.....	5
2. Aim and Purpose.....	5
3. NHS related legislation.....	5
4. Responsibilities.....	6
5. Monitoring & Audit.....	6
6. Equality and Diversity.....	6
Appendix 1 - Request Processing	8
Appendix 2 - Subject Access Request Tracking Sheet.....	11
Appendix 3 - Subject Access Request (SAR) form.....	13
Appendix 4 - Access to Records Authorisation Form.....	16
Appendix 5 - Response Letter to Applicant.....	17
Appendix 6 - Letter to Applicant Requesting Required Fee	18
Appendix 7 - Letter to Applicant Acknowledging Receipt of Fee and Enclosing Record.....	19
Appendix 8 - Letter to Applicant informing them that access to some part of the notes has been denied by the Professional.....	20
Appendix 9 - Access to Records - Living.....	21
Access to Records – Deceased.....	22
Appendix 10 - Subject Access Request Register.....	23

1. Introduction

- 1.1 The Data Protection Act 1998 (hereinafter called the Act) details rights of access to both manual data (which is recorded in a relevant filing system) and computer data for the data subject. This is known as a Data Subject Access Request
- 1.2 Under the Act, organisations are required to respond to subject access requests within 40 calendar days. Failure to do so is a breach of the Act and could lead to a complaint being made to the Information Commissioner's Office (ICO). A previous Minister for Health stated the Health Service would endeavour to respond to requests within 21 days. If it is anticipated that a request will take longer than the 21 day period, the CCG should inform the applicant giving an explanation of the delay.
- 1.3 The CCG will charge for any subject access requests made in line with legislative guidelines.
- 1.4 All requests for personal information must be reported to the Head of Corporate Governance, Corporate Services Manager and the CSU Information Governance Team who will then log the request and ensure the request is dealt with in the appropriate manner.

2. Aim and Purpose

- 2.1 This guidance has been written to ensure that all staff are aware of their responsibilities to provide information if requested by the CSU IG Team or NHS England direct.
- 2.2 The Act details how the CCG will meet its legal obligations and NHS requirements concerning Data Subject Access Requests which is the key piece of legislation covering requests of personal information.

3. NHS related legislation

- 3.1 Where individuals are applying for access to a deceased person's records the Access to Health Records Act 1990 should be followed.

4. Responsibilities

- 4.1 The Accountable Officer has overall responsibility for the Data Subject Access Policy within the CCG. The implementation of, and compliance with this Policy is delegated to the CCG Associate Director of Development and Business Services, who is a member of the Audit and Risk Committee which is the responsible committee for the oversight of IG for the CCG. They also have responsibility for ensuring Information Governance issues are brought to the attention of the CCG Governing Body.
- 4.2 It is strictly forbidden for employees to knowingly browse, search for or look at any information relating to themselves, their own family, friends or other persons, without a legitimate purpose. Action of this kind will be viewed as a breach of confidentiality and the Data Protection Act.
- 4.3 Members of staff who would like access to their personal confidential information must submit a subject access request under the Data Protection Act 1998 to the CSU Information Governance Team.
- 4.4 The process for dealing with Data Subject Access requests for personal information held by the CCG are outlined in Appendices 1 – 9.

5. Monitoring & Audit

- 5.1 This policy will be monitored and reviewed by the Corporate Review Group to ensure any legislative changes that occur before the review date are incorporated. All exceptions will be reported to the Audit and Risk Committee. This policy will also be reviewed every 2 years.

6. Equality and Diversity

- 6.1 The Public Sector Equality Duty (Equality Act 2010) places a statutory duty on the CCG, in the exercise of its functions, to have due regard to the need to eliminate unlawful discrimination, harassment and victimisation, advance equality of opportunity, and foster good relations. The equality duty covers the following protected characteristics: age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation.
- 6.2 Advancing equality of opportunity involves having due regard to the need to remove or minimise disadvantages suffered by people due to their protected characteristics, and taking steps to meet the needs of people with certain protected characteristics where these are different from the needs of other people. This includes making reasonable adjustments for people with disabilities.
- 6.3 The implications for the implementation of this policy are that if a person making a subject access request has a disability (for example a visual impairment), then the staff member processing the request will need to ask if the information and response are required in a format that is accessible to that individual (large print, Braille, email or audio format).
- 6.4 Also where the person making the subject access request speaks little or no English, then a foreign language interpreter (telephone or face-to-face) may need to be

accessed to facilitate the process. Information requested and the response may also need to be translated into the language spoken by the person making the subject access request.

- 6.5 Where alternative formats, translation or interpretation are required the CCG will normally meet the cost involved. Before agreeing to meet the cost however the CCG will assess (in line with the Data Protection Act) whether to do so would be “disproportionate effort”. That is, whether in order to comply with a request it would result in an amount of work or expense that would outweigh the individual’s right of access to their personal data. Staff processing requests will assess each case individually, including arranging quotes for document translation into another language or alternative format.

Appendix 1 - Request Processing

When a subject access request is received it should immediately be reported to the CSU Information Governance Team who will then coordinate the response. Teams may be required to provide further information relating to this request.

If you are asked to provide information, you will need to consider the following before deciding how to respond:

- Individuals have a right under Section 7 of the Act to:
 - know whether their personal information is being processed (which includes being held or stored)
 - be given a description of the data held, the purpose for which it is processed and to whom the data may be disclosed
 - be given a copy of the information held
 - be given information as to the source of the data
- Requests must be made in writing.
- The type of access you must provide and the fee you are allowed to charge may vary depending on how the records are held. It does not have to state 'Subject Access Request' or 'Data Protection' to constitute a request under the Act.
- If a request has already been complied with and an identical or similar request is received from the same individual there is no obligation to comply with the second request unless a reasonable interval has elapsed.
- The Statutory response time is 40 calendar days, however, the NHS has committed to responding within 21 days or sooner if possible.
- Requests should include the full name and address of the person seeking access to their information. To comply with the Act, information relating to the individual must only be disclosed to them or someone with their written consent to receive it.
- The CCG is required to record all incoming requests for information and track them through to completion. The CCG will acknowledge all requests for information and record the key dates and information relating to the request in a central register.
- Adequate steps will be taken to identify the requester. Examples of suitable documentation are:
 - Valid Passport
 - Driving Licence
 - Birth Certificate along with some other proof of address e.g. a named utility bill (no longer than 3 months old) or a Medical Card

Fees

A £10 charge may be made for all types of records whether held in manual or electronic format.

Subject access requests made by a representative or third party

Anyone with full mental capacity can authorise a representative/third party to help them make a subject access request, for example solicitors/advocates. Before disclosing any information, the CCG must be satisfied that the solicitor/advocate has the authority to make the request on behalf of the requestor and that the appropriate authorisation to act on their behalf is included.

Subject access requests made on behalf of people who lack capacity

If an adult lacks capacity and a representative is making the request on their behalf, the person dealing with the request must satisfy themselves that the requestor is authorised to act on the patients behalf ie. holds a sealed, Lasting Power of Attorney for Health and Welfare purposes or a Deputyship Order for Health and Welfare purposes sealed by the Court of Protection.

Subject access requests made on behalf of a child

Individuals/authorities that hold parental responsibility can submit a subject access request for a child's health records. However children over the age of 16 must consent to the release of their own health records and some children under the age of 16 are deemed to be 'Gillick competent' in that they have the sufficient understanding to consent to the release of their own health records. This would need to be reviewed on a case by case basis.

What information should be provided?

All information should be provided subject to any data protection exemptions that may apply, for example information provided by third parties or information that may cause harm or distress to the data subject or others.

Where the record contains the personal information on more than one person, consideration should be given to the interests of all the parties before deciding whether or not you may disclose the information.

Information must be supplied to the individual in permanent form, if requested, unless to do so would involve 'disproportionate' effort. For manual records this would involve photocopies. For computerised records these can be supplied in electronic format but must contain explanations of codes or abbreviations where appropriate. If the 'disproportionate' effort issue arises, the records can be shared with the individual on a face to face basis who can be asked to visit the premises to view their records.

Original records must not be released because of the potential detriment to the individual should the records be lost. Copies must always be provided.

Disclosure of information that may harm someone's health – Statutory Instrument 2000 No. 413

A medical professional may believe that providing an individual with access to certain information might cause serious harm to their physical or mental health or to that of another person. If so, the Data Protection (Subject Access Modification) (Health) Order 2000 allows a data controller to withhold information. However, only a medical professional can make such a decision, and it must be fully documented. This exemption does not apply to information the individual already knows.

If an individual disputes some of the information held within their record this should be discussed with the CSU IG Team.

Complaints

If an individual is dissatisfied with the way you have dealt with their subject access request, they should be advised to invoke the CCG complaint process. If they are still dissatisfied, they can complain to the Information Commissioner's Office.



**North East Hampshire and Farnham
Clinical Commissioning Group**

Appendix 2 - Subject Access Request Tracking Sheet

Name _____				Date of Birth _____		GP _____		
Address _____				NHS No _____				
Request Date	Start Date	Start Date + 21 Days	Stop Date	Elapsed Days	Restart Date	Final Expiry Date	No of pages copied and sent	Final Charge Made
Tracking Steps <i>(Need not be completed in this order)</i>			Date	Completed	Comments			
Service responsible for request								
Letter received and logged on tracking sheet								
Identity of Applicant confirmed (where further information is required from the Applicant the clock may be stopped pending receipt)								
Databases checked and episodes identified								
Information requested/pulled								
Applicant informed of charges								

Professional consulted			
Health Professional permission received			
3 rd Party checks made			
Fee received			
Copies made and sent out			
Copies of records sent to applicant			
Applicants name if different named individual relationship to named individual			
Evidence of Authority checked			

Appendix 3 - Subject Access Request (SAR) form

a) Details of person requesting information (the Applicant):

Full name:

Date of birth:

Address:

Telephone Number:

b) Are you the Data Subject (for example the named individual who the requested records refer)?

YES: If you are the data subject please go to question e)

NO: Are you acting on behalf of the Data Subject with their written authority? If so, the written authority must be included. Please answer questions c) and d).

c) Details of the Data Subject if different to those given in answer to question a).

Full name:

Date of birth:

Address:

Telephone Number:

d) Please describe your relationship with the Data Subject that leads you to make this request for information on their behalf:

.....
.....
.....
.....

e) Please give details as to the information you would like to review:

The date range(s) for the information held (approximate dates are acceptable):

f) Please read and sign the following declaration:

I certify that the information given on this Subject Access Request (SAR) Form is true. I understand that it is necessary for NHS South, Central and West Commissioning Support Unit to confirm my/the Data Subject's identity to maintain confidentiality. I understand that it may be necessary for NHS South, Central and West Commissioning Support Unit to request proof of my/the Data Subject's identity. I understand that any attempt to mislead NHS South, Central and West Commissioning Support Unit may lead to prosecution.

NOTES:

NHS organisations will normally respond to a Subject Access Request within 21 days. This period will not commence until the organisation is satisfied as to the identity and authority of the Applicant.

The organisation may seek further information from the Applicant as to the specific information requested. Any request for clarification will suspend the 21 day period until the required information is received.

The organisation is allowed to charge for the Subject Access Request. The current fee is £10 and up to £50 for photocopying.

The records may not be released until the fee has been paid. The Applicant will be informed of the fee required.

In accordance with the Data Protection Act 1998, we wish to inform you that your details may be used for management and audit purposes.

Please return this completed Subject Access Request (SAR) Form and any requested documentation to the address below:

IG Team

NHS South, Central and West Commissioning Support Unit

Omega House

112 Southampton Road

Eastleigh

Hampshire

Appendix 4 - Access to Records Authorisation Form

To be used when authorisation to release records is required

I, as the Data Subject

.....(Insert full name of the Data Subject)

Address.....

.....

Date of Birth..... NHS No:

Hereby Authorise (**Name and address of organisation**)

.....

.....

To disclose my Records:

.....

.....

This request is made in accordance with the Data Protection Act 1998.

Please release the following:

.....

.....

Data Subject signature:

Dated:

Appendix 5 - Response Letter to Applicant

Ref: Subject Access Request under the Data Protection Act 1998 or Access to Health Records Act.

Dear Mr/Mrs.....

Thank you for your correspondence of with reference to your application for access to personal information in respect to

.....

I can confirm that we will respond to your request within the 21 day period adopted by the NHS under the Data Protection Act 1998.

The law allows us to take reasonable steps to establish and confirm your identity before providing any such personal information. However, the 21 days rule may be suspended whilst your identity is checked.

We would be grateful if you would provide a **copy** of your;

1. Driving licence **or**
2. Passport or birth certificate, with additional proof of address, e.g. a utility bill (no longer than 3 months old) etc.

Under the Data Protection Act 1998, we are entitled to charge you a fee for copying records. You will be advised of the amount of this fee, when the amount of data to be provided is known.

In accordance with the Data Protection Act 1998 we wish to inform you that your details may be used for management and audit purposes.

Yours sincerely

Appendix 6 - Letter to Applicant Requesting Required Fee

Ref: Subject Access request under the Data Protection Act 1998

Dear Mr/Mrs.....

Your request for a copy of personal information is now complete and the fee for this information is £

On receipt of payment, copies of the records will be released.

Please make cheques payable to.....
.....

Yours sincerely

Appendix 7 - Letter to Applicant Acknowledging Receipt of Fee and Enclosing Record

Ref: Subject Access Request under Data Protection Act 1998

Dear Mr/|Mrs.....

We acknowledge receipt of the fee for providing copies of your records as requested under the Data Protection Act 1998.

Please find enclosed a copy of the information as requested.

If you have any queries, please do not hesitate to contact the NHS South, Central and West Commissioning Support Unit, Omega House, Southampton Road, Eastleigh, Hampshire

Yours sincerely

Appendix 8 - Letter to Applicant informing them that access to some part of the notes has been denied by the Professional

Ref: Subject Access Request under Data Protection Act 1998

Date

Your ref

Dear Mr/Mrs

I refer to your correspondence of, with reference to your application for access to your records.

I can confirm that your request has been processed and I enclose copies of the records that you require. However, access to the whole record has been denied by the NHS South, Central and West Commissioning Support Unit.

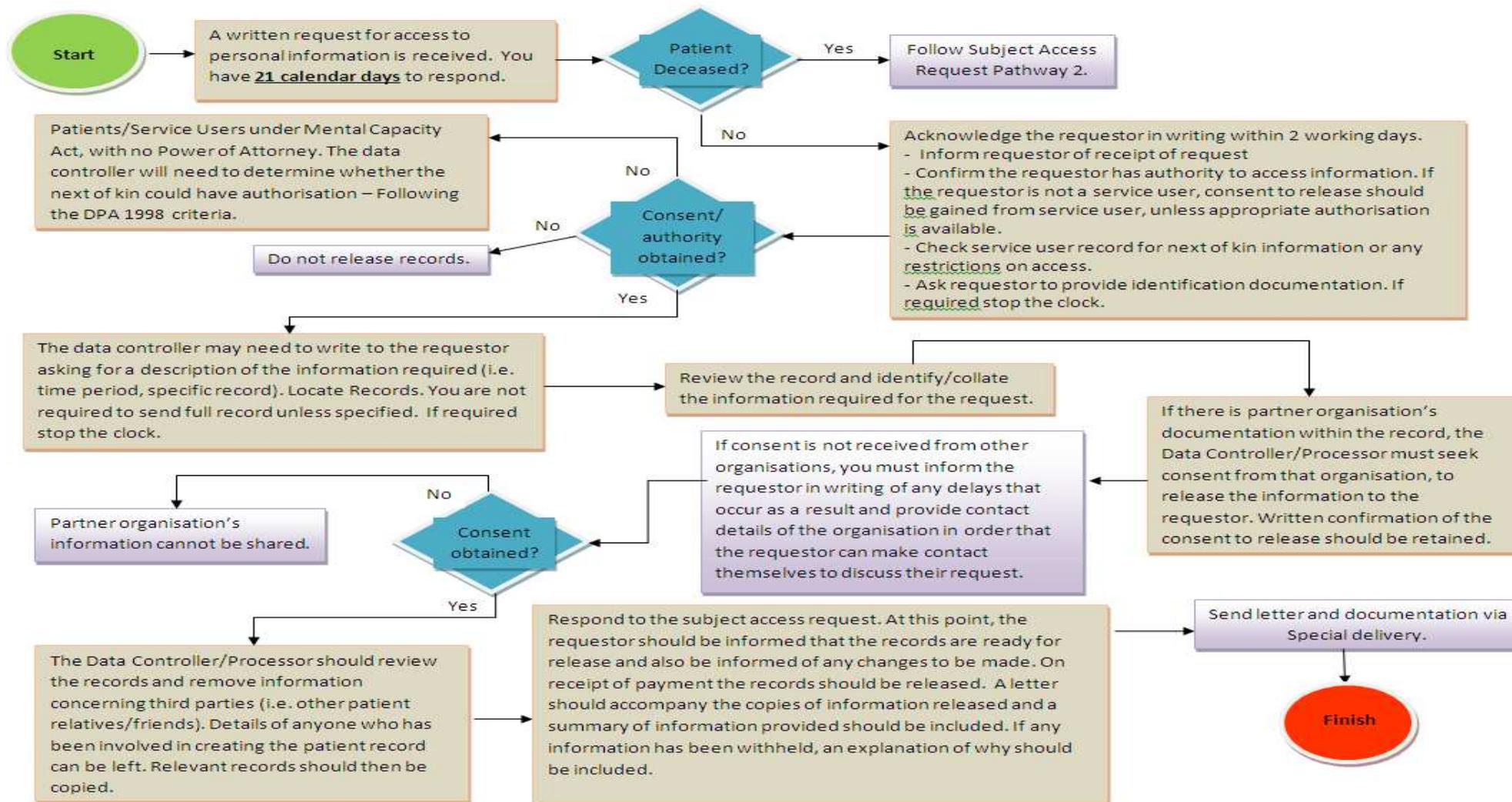
for the following reasons:

- a) It has been considered by to contain certain information that should not be shared
- b) Third Party information has been removed.

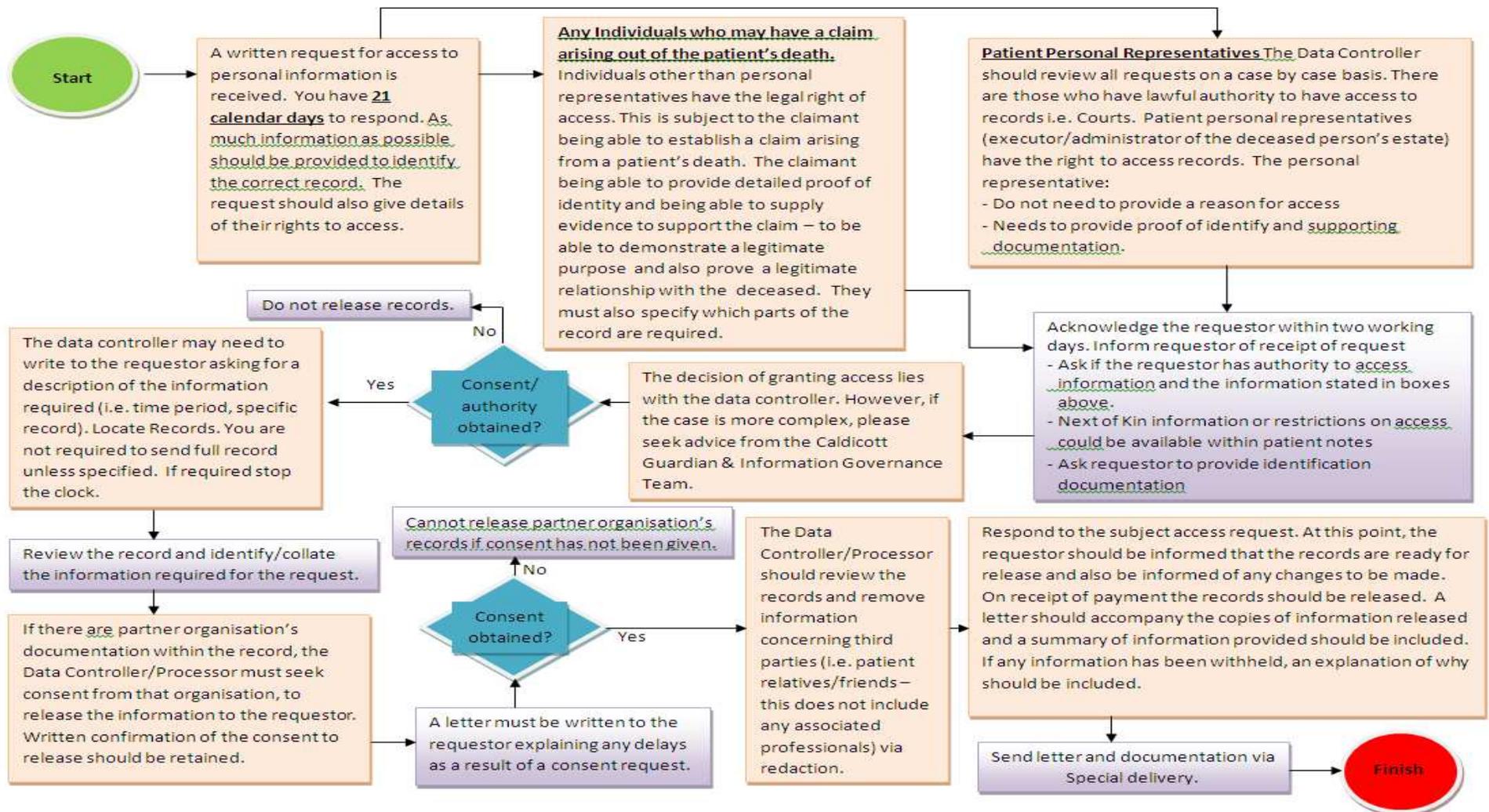
If you wish to discuss this further please contact the NHS South, Central and West Commissioning Support Unit.

Yours sincerely

Appendix 9 - Access to Records - Living



Access to Records – Deceased



Appendix 10: Subject Access Request Register

Reference	Patient name	Requestor	Date Received	Service requested from	Date of Acknowledgement & Request for Consent	Date consent received	Date of payment	Completion