

NHS Borders

Subject Access Request Process



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Subject Access Request Process

1 Summary

A request to view personal information held within a medical record will be received from various different sources. Each request must be recorded and handled in a standard manner to ensure full compliance with the Data Protection Act 1998.

This document details the procedure that must be followed by any and all members of staff that service any such Subject Access Requests.

NOTE: This process applies to requests for access to information about the living only. Access to information about the deceased is covered by the Access to Health Records Act 1990 and subject to a different process. Contact Medical Records or Information Governance for further guidance.

2 The process

This process documentation should be read in conjunction with the process flow diagrams found in Appendices L to T. In addition, further information and guidance is given in the NHS Scotland document "Access to Health Data Guidance Note, November 2011". This can be found on the Information Governance microsite at <http://intranet/resource.asp?uid=17173>.

When a request is first received it may be verbal or written. A patient can be informally shown their records by a person involved in their care but this must not breach any of the provisions of the Data Protection Act. Any formal request must be received, in writing, by the Subject Access team in Medical Records.

The nature of the request can make a difference to the process that is followed. The common types of request are from:

- The data subject (the patient in the case of medical record access requests)
- A family member or the Next of Kin
- A solicitor or Insurance company acting on behalf of the subject
- The Police
- The Procurator Fiscal
- The Courts

In addition there may occasionally be requests from other organisations such as the Pensions Agency or NHS Counter Fraud Services. These will need to be handled in the same consistent manner, as detailed in this document. The exact process followed, however, will be determined on a case by case basis, depending on the requirements.

All requests that are received will be recorded in the log which is maintained by the Subject Access team. The log records details of payments made for access together with the dates that any information is sent out to the requesters. A summary of requests made, including volume, nature of request (originator category), time taken to respond, will be submitted to the Information Governance Committee on a quarterly basis.

It is important to remember that it must be possible to justify and defend the decision to either release or withhold any information requested in relation to the Data Protection Act.

3 Requests from the data subject or family members

The first stages of the process when a request is received from either the data subject or a family member/Next of Kin about the data subject are the same. An application form along with a letter explaining the process and any applicable charges is forwarded to the requester. A copy of the application form can be found in Appendix A. A copy of the explanatory letter (Letter 1) is located in Appendix B. When these documents have been sent to the requester, copies are retained by the Subject Access team until the completed application form is returned.

When the application form detailing the exact information required is returned, the health records are located and recovered from the store. The search methodology used to locate health records is shown in Appendix U. At this stage the record must be reviewed fully to ensure that there has been no misfiling of information relating to different patients and that the file itself is complete and all documentation is accurately filed in the correct order.

These are then forwarded in their entirety to the most appropriate health professional for a decision on whether the information can be released. The health professional contacted will often, but not always, be the last to have had involvement with the patient. In many cases the nature of the request will determine the most appropriate health professional to approach.

In complex cases it may be necessary to request several health professional, from different specialties, review the notes. If the request relates to a specific specialty then the health professional to approach must be employed within that same specialty.

In general, health professionals within the A&E department will only be able to advise/comment on activity that has occurred in A&E.

The Medical Records team are to monitor progress on all elements of the process and proactively follow up where delays in responses could impact on NHS Borders' ability to comply with the DPA time constraints. Instances where an appropriate Health Professional can not be identified or there are other reasons why a Health Professional is unable to comply with the request must be escalated to the Acute Board Associate Medical Director.

A letter to the health professional is included with the health records detailing the actions required of them, including a check to ensure all paperwork within the record pertains to the correct individual, and requesting authorisation to release the information to the requester. A copy of this letter (Letter 7) can be found at Appendix C.

The process a Health Professional must follow is shown in Appendix M. Again, further guidance can be found in the NHS Scotland document "Handling Requests for Access to Personal Health Data" - <http://intranet/resource.asp?uid=17173>.

3.1 Request from a family member or Next of Kin

If the data subject is under the age of 16 the health professional will advise whether, in their opinion, the data subject is sufficiently mature to understand the nature of the request and the information that will be released. In these circumstances it may be necessary to seek the consent of the child before any information can be released.

In the case of the data subject's Next of Kin or other family member being the requester then it will also be necessary to establish the authority the person has to receive that information. For example, whether the requester has parental responsibility or if there are any other concerns for the welfare of the data subject that may influence the decision to release any information.

If appropriate authority or approval is established then the request can proceed as with a request from the data subject themselves

3.2 Request from the data subject

As previously noted, a health professional will be required to pass judgement on whether information can be released to the data subject. Refusal will generally be in circumstances where physical or mental harm could be caused to the data subject if the information were to be released. Alternatively a health professional may approve the release of the information, either in its entirety or subject to certain restrictions. Any conditions imposed must be complied with by the Subject Access team.

3.3 Information to be viewed only

If the requester just requires to view the health record then there is no need to make copies. A letter will be sent to the requester asking them to contact the Subject Access team to arrange a suitable time for viewing the records (see Appendix D). Subject Access team must then arrange for either the health professional or a member of admin staff (as determined by the health professional) to be available to sit with the requester who must never be left alone with the health records. A confirmation letter will be sent to the requester advising the date and time of the viewing along with any other necessary information (see Appendix E).

3.4 Information to be copied

If the requester requires copies of the health record then a charge will apply and the amount of this will depend on how much information is required. The fee must be calculated and the requester notified by letter (see Appendix F). Until the requester accepts the fee and sends payment the health records and associated copies of letters and other documentation are retained in the Subject Access team office. When payment is received the health record can be sent for photocopying.

3.5 Time limit

In most cases there is a time limit of 40 days for the Health Board to provide the information that has been requested or alternatively a valid reason for withholding the information. The 40 day period commences when any requested fee has been received by the Health Board or, in the case no fee is payable, when the completed request form is received.

In the event the request is for information that relates to treatment that occurred within the last 40 days the time limit is reduced to 20 days.

4 Photocopying process

The person performing the photocopying of the health record must receive and review the requirements of the request. It is rare that an entire record is required: more commonly it is only a specific date range that the requester wants.

As each sheet is located for copying it must be carefully scrutinised to ensure that:

- A patient identifier label or similar is present
- The identifier refers to the correct patient
- The sheet does not identify any other person in addition to the data subject

Any errors or omissions detected must be corrected at the time. Information that could identify a third party must be removed or redacted so that it is not released to the requester. The exception to this is if consent can be obtained from the third party to release this information. Any consent must be obtained within the relevant time period for the type of request. Delay in receiving the 3rd party consent must not be used as a reason to hold back release of the rest of the requested information.

Once copied, the original file and the copied sheets are to be returned to the Subject Access team for a final check for accuracy and for third party information.

5 Solicitor or Insurance company process

If a request is received from a solicitor or an insurance company acting on behalf of the data subject then this will generally be accompanied by a mandate, signed by the data subject, authorising the release of the information. The solicitor mandates can often lack sufficient detail so the NHS Borders Application Form should be issued for completion instead (See Appendix A). A fee will still be payable so a letter detailing this will be issued to the requester (See Appendix G). Until payment is received, copies of the letters and the health records themselves are stored within the Subject Access team office.

When payment has been received the request can be processed. The time limit as detailed above applies. If there is any likelihood of the information being used in a claim against NHS Borders then Health, Risk and Safety must be made aware. Information cannot be withheld or the release delayed for reasons of potential legal action.

Unless information is supplied to the contrary, it must be assumed that the data subject will be given access to the information. With this being the case the health record must be forwarded in its entirety to the most appropriate health professional, as described in Section 3 above, for authority to release. This is the same as if the requester was the data subject or a member of their family or Next of Kin.

Once full details of the requirements have been established the request can be treated exactly as if it was a request from the data subject including the photocopying process.

6 Requests from the Police or the Procurator Fiscal

NHS Borders has a duty of confidentiality to the patient and also a legal requirement to release information to law enforcement agencies in certain circumstances.

These are covered under Sections 28 and 29 of the Data Protection Act 1998 and relate to:

- Safeguarding National Security
- Prevention or detection of a crime
- The apprehension or prosecution of offenders
- The collection or assessment of any tax or duty

If a request for information is received from the police it must be accompanied either by a signed consent form from the data subject or a completed Section 29(3) form detailing the reason that the information is required. The reason must relate to one of those listed above.

If the data subject has supplied consent it must not be automatically assumed they have the capacity to give the consent or to understand the ramifications of giving consent. It will therefore be necessary to conduct an assessment of the individual's capacity to consent to information release by the relevant clinical team, and information would then only be released if capacity to consent was established.

In order to comply with Caldicott Principles, only the minimum amount of information necessary must be released. Final approval to release in the event of doubt should be sought from the Caldicott Guardian.

Requests from the Procurator Fiscal are unlikely to have consent from the data subject but should be related to a crime or a sudden death. These requests should be complied with as quickly as possible and in any event within 7 days.

In both cases, and assuming the above conditions are met, the relevant information can be copied from the health records by following the photocopying process – original documents must not be released (see Appendix V). No fee is payable.

In April 2013 The Police Investigations and Review Commissioner (PIRC) was established. This body will act on behalf of the Crown Office and Procurator Fiscal Service (COPFS) when there is a requirement to investigate the death of a person who has had direct or indirect contact with the police. PIRC may require access to medical records or other effects of a data subject. Their requests should be handled in the same way as a request from the PF or the Courts.

7 Requests from the Courts

Requests from the Courts must be complied with. Failure to do so is contempt of court. All information requested by the Courts must be delivered within 7 days. NHS Borders policy is to provide photocopies of the health record unless the original is specifically requested. This position is supported by CEL 11 (2007) which can be found in Appendix V. In the event that the original record is to be released, a copy must first be made for retention by NHS Borders. This ensures the health record is still available in the event the data subject attends for healthcare.

Appendix A – Subject Access Request Application Form

Send your filled-in form to:

Subject Access Team
RM2/MR1
Medical Records Department
Borders General Hospital
Melrose
TD6 9BS

The Data Protection Act 1998 gives people the right to know what personal information an organisation has about them. To use this right, you can make what is known as a 'subject access request'.

Only the following people may apply for access to personal information.

- The person who the information is about.
- Someone acting on behalf of the person who the information is about.

You have a right to know whether or not we have any information about you, and a right to have a copy of that information. You have a right to know the following.

- Why we have your information.
- Who gave us your information.
- Who might see your information.

You also have the right to have any codes or jargon explained.

You won't be able to see information that could:

- cause serious harm to your physical or mental health, or anyone else's;
- identify another person (except members of NHS clinical staff who have treated the patient), unless that person gives their permission.

If you need any more advice about your rights under the Data Protection Act, please contact our data protection advisor at the address on the next page. Or, you can contact:

The Information Commissioner's Office – Scotland
45 Melville St
Edinburgh
EH3 7JL.
Phone: 0131 244 9001
E-mail: Scotland@ico.gsi.gov.uk

If you want to make a subject access request, you should fill in this form.

Fee

To **view** within 40 days of last appointment (excluding GP visits) – no charge.

To **view and/or receive a copy** outwith 40 days of last appointment (excluding GP visits) - £10 to maximum of £50

Send your filled-in form to:

Subject Access Team
RM2/MR1
Medical Records Department
Borders General Hospital
Melrose
TD6 9BS

Response time

We will deal with your request as quickly as possible, and within 40 days of receiving your filled-in application form and fee. Please do not send a cheque with your application; we will notify you of the charge when we have reviewed your request. If we have any problems getting your information, we will keep you up to date on our progress.

Retention of Records

The usual rules around the retention of records are that:

- Adult general hospital records are retained for 6 years after date of last entry;
- Maternity are retained for 25 years after date of last entry;
- Children and young people's records are retained until the patients 25th birthday; and
- Mental Health records are retained for 20 years after date of last contact.

This may assist you in considering what types of records you are applying to access.

Points to consider

Please note that making false or misleading statements to access personal information which you are not entitled to is a criminal offence.

Accessing health records and information is an important matter. Releasing certain information may in certain circumstances cause distress. If your application is likely to involve access to health information, you may want to speak to an appropriate health professional before filling the form in.

Further Notes to Assist in the Completion of the Form are included at page 9.

Please fill in this application form using **BLOCK CAPITALS** and black or blue ink.

Please note. This form should only be used to request access to the records of a living person. To request access to the records of a deceased person please use the Access to Health Records form available from the Subject Access Team.

Section 1: Personal details

Please fill in this section as fully and accurately as you can, with the personal details of the person this access request is about. This will help us trace the personal information you need.

Last name:		First name:			
Address:		Date of birth:		Sex:	
		Home phone number:			
		Other phone number:			
Postcode:		CHI (Community Health Index) or Hospital Reference Number (if known):			

If the name or address was different from the above.

Previous last name:		
Previous address:		
Dates from and to:		

Section 2: NHS contacts

Please provide as much information in this section as possible. Give full details of the treatment periods or care you are interested in. Put the name of the health-service worker in charge of the care (for example, a physiotherapist or consultant) for each treatment period in the 'Health-care professional' column.

NHS centre(s) you went to/made contact with	Ward, clinic, department, specialty or service	Name of Health-care professional (if known)	Dates From	Dates To

Extra information

Please add any more information that may help us trace the records/information you need.

Section 3: Information you want to access

Give details in the box below of the records/information you want to access.

Please specify your preference by placing an X in the appropriate sections - please discuss with staff if you are unsure.

Details	Manual (Paper)	Computerised (where available)
View original records only	<input type="checkbox"/>	<input type="checkbox"/>
Requesting copy	<input type="checkbox"/>	<input type="checkbox"/>
View records and receive copy	<input type="checkbox"/>	<input type="checkbox"/>

Section 4: Declaration

You must sign this section, and the person you have named in section 7 must be present when you sign.

Release of Information

Maintaining the confidentiality and security of personal information is of utmost importance to NHS Borders. No copies of information will be sent using external mail unless this has been arranged in advance with the NHS Borders Subject Access Team, and in these circumstances Special Delivery will be used. When collecting information two forms of identification will be required, one should be photographic identification e.g. passport, driving licence, bus pass or national identity card.

Please note: no information will be released until payment has been received.

I confirm that the information I have given is correct and that I am entitled to apply for access under the conditions of the Data Protection Act 1998.

Signature: _____

Date: / /

I am the person named in section 1. (Go to section 7.)

Or:

- I have been asked to act on behalf of the person named in section 1, and that person has filled in section 6. (Go to section 5.)
- I am the parent or guardian of the person named in section 1, and that person is under 16 years old and has filled in section 6. (Go to section 5.)
- I am the parent or guardian of the person named in section 1, and that person is under 16 years old and is not able to understand the request. (Go to section 7.)
- I have been appointed by the court to manage the affairs of the person named in section 1 and enclose proof. (Go to section 7.)

Section 5: Details of the person acting on behalf of the person applying.

You must fill in this section if you are not the person named in section 1.

Name: (Please print)	
Address and postcode we should send a reply to:	
Contact Telephone Number:	

Section 6: Permission

You must fill in this section if you are the person named in section 1 and you have given the person named in section 5 permission to act on your behalf.

I give you (<insert organisation name>) _____ permission to give (enter the name of the person acting on your behalf) _____ any personal information about me. I have given them permission to act on my behalf.

Signature: _____

Date: / /

Section 7: Countersignature

You must fill in this section if you need to confirm the identity of:

- the person named in section 1;
- the parent or guardian of the person (under 16 years old and not able to understand the request) named in section 1; or
- the person appointed by the court to manage the affairs of the person named in section 1.

We ask for a countersignature because we have confidential information and we must get proof of your identity and your right to receive any relevant information. **Note: a family member can not act as a witness to confirm identity.**

Any of the following can sign.

- A Member of Parliament
- A Member of the Scottish Parliament
- A Justice of the Peace
- A minister of religion
- A professional and qualified person (for example, a doctor, lawyer, engineer or teacher)
- A bank employee
- A civil servant
- A police officer

You only need to confirm the identity of the person applying, and be a witness when they sign the declaration (section 4).

The person signing the form does not need to see the contents of the rest of the form.

In some cases, the person applying may be asked to produce more documents as proof of their identity.

I (write your full name) _____ confirm that I have known (name of the person applying) _____ for _____ years, and I was present when they signed the declaration. I also confirm that I am not related to them.

Signature:		Date:	/ /
Full name:		Profession (e.g. teacher):	
Address:			
Postcode:		Phone number:	

NOTES TO ASSIST IN THE COMPLETION OF THE FORM**PERSONAL DATA**

Data relating to the individual held (manually or computerised) in medical records, patient administration/information systems, clinical systems, other databases or files.

HEALTH PROFESSIONAL

An appropriate health professional may include, your Hospital Doctor, Nurse, Midwife or Health Visitor, Dentist, Optician, Pharmacist, Clinical Psychologist, Occupational Therapist, Dietician, Physiotherapist, Podiatrist or Speech and Language Therapist.

TYPE OF RECORDS REQUESTED

The Data Protection Act 1998 covers both manual (paper) and computerised records. Please indicate which type of record you wish to access. Manual Records includes all your paper health records updated by health professionals. Some information about your care may also be held on computer. This will vary from hospital to hospital so please discuss this when you submit your application.

If you wish to view the original records you will be invited to attend the hospital/clinic at a convenient time in the company of a health professional or appropriate lay person. If you wish to receive photocopies these will, be produced to be collected by you within the allocated timescales specified by the Act.

Where you have only requested a photocopy of the relevant records, the Clinician responsible for your care may invite you to come and discuss them so that the meaning of the information in your record can be explained to you. You are not obliged to accept such an invitation but it would be in your best interests to do so.

NHS CONTACTS: SECTION 2

For cases where contact has been made with NHS services by telephone (such as NHS 24), you should provide as much detail as possible, including details of call, date/time, and who you spoke to.

DECLARATION (Section 4)

The person making the application must complete this section.

- a) If you are the patient, tick the first box and sign the authorisation then proceed to Section 7
- b) If you are the Applicant, the organisation will require the Patient's authorisation before data can be released. The patient whose information is being requested should be asked to complete the 'Authorisation' section of the form. (Section 6) (The exception is if you have proof of authority – e.g. Power of Attorney/Welfare Guardianship documents – a copy should be provided).
- c) If the patient is a child i.e. under 16 years of age the application may be made by someone with parental responsibilities, in most cases this means a parent or guardian. If the child is capable of understanding the nature of the application his/her consent should be obtained or alternatively the child may submit an application on his/her own behalf. Generally children will be presumed to understand the nature of the application if aged between 12 and 16. However, all cases will be considered individually.

Appendix B – Information Letter

NHS Borders

Health Records Department

Room 2MR3
Coding & Information Department
Borders General Hospital
Melrose
TD6 9BS
Telephone 01896 826491
Fax 01896 826503

www.nhsborders.org.uk

Date

Your Ref

Our Ref

Enquiries to Abigail Penman

Direct Line 01896 826848

Email abigail.penman@borders.scot.nhs.uk

Dear [person applying]

Thank you for your recent enquiry about access to information under the Data Protection Act 1998. Please fill in and sign the attached application form and return it to us with proof of your identity, as required under section 7(3) of the Data Protection Act.

We have large amounts of information which is covered by the act. To help us find the information we have about you, please tell us the type of information you believe we may have. It would be helpful if you could tell us whether you believe a particular department has the information on you, or whether you need information relating to a specific matter such as an accident at work or your care and treatment.

After we have received your application form, we will search our files and systems for information about you. We will tell you the fee you will have to pay to see or get a copy of your records, and invite you to see or collect them within 40 days of the date we receive your fee. Or, we can send them to you by Recorded Delivery<insert local procedures>.

Please find enclosed a copy of the Health Rights Information Scotland patient information leaflet, 'How to See Your Health Records'.

Yours sincerely

Abigail Penman
Health Records Team Supervisor

Appendix C – Letter to Health Professional

DATA PROTECTION ACT (1998)

Application Reference No.

To: <Health Professional name>

I have received a request from <Insert Applicant's name>, to View/Receive a copy of* (*delete as applicable) their health records under the Data Protection Act 1998. As a senior clinician involved in their care I require you to **authorise** or **refuse** this request. If, in your professional opinion, any information should be redacted (see next paragraph for guidance) you, or another medically qualified member of staff, will be required to perform the redaction or to clearly indicate what information is to be withheld and why. Medical Records staff are not qualified to identify information for redaction.

Patients or their representatives have the right to see their health records (on paper or on computer). We can only refuse access in exceptional circumstances, for example if it is likely to cause the person who has asked for the information, or any other person, physical or mental harm; if the information relates to a 3rd party or it is not allowed by law. Please confirm that there are no exceptional circumstances in this case, and say if you think the person asking for the information should be offered counselling or other support. Please fill in the short questionnaire below and return it to me by <Insert date allowing for completion of process within the 20/40 day time frame>.

- 1. Should we limit or refuse access to this person’s health record to prevent physical or mental harm to them or to another person? (Please show in the original record what information should be withheld and the reason. You will need to be able to justify this decision.)

Refuse all access **Limit Access** **Authorise full access**

- 2. If the application is in connection with access to a child's record, is the child capable of understanding the nature and purpose of the application? (The child can refuse to allow the information to be released).

Yes **No** **N/A**

- 3. Is there any information relating to another person, for example a relative or carer, which should not be shared with the person who has asked for the information? (Please indicate, in the original record, all information which should not be shared.)

Yes **No**

- 4. If the information is to be copied and issued to the requester is it recommended that it be collected in person rather than posted via Royal Mail (Special Delivery)?

Must be Collected **Can be Posted**

- 5. If the information is for view only, should a health professional or administrator be present when the person sees the record so that they can provide any explanation or counselling?

Health professional **Administrator** **N/A**

Please sign below. If a health professional is going to be present, they should also sign below.

Signed (health professional) Date

Name (health professional)

Thank you. If you would like more information or advice please contact me on 01896 826 491

Return this form to Medical Records, Borders General Hospital, TD6 9BS

Or E-mail to medical.records@borders.scot.nhs.uk

Appendix D – Sample No Information Found letter

NHS Borders
Health Records Department

Room 2MR3
Coding & Information Department
Borders General Hospital
Melrose
TD6 9BS
Telephone 01896 826491
Fax 01896 826503
www.nhsborders.org.uk

Date
Your Ref
Our Ref
Enquiries to Abigail Penman
Direct Line 01896 826848
Email abigail.penman@borders.scot.nhs.uk

Dear [person applying]

Thank you for your letter of [insert date] making a subject access request for [insert information requested].

We have now finished searching our files and systems for information about you.

Based on the details you gave us, we can confirm that we do not hold any information to be supplied under the Data Protection Act 1998, in respect of your health records. <If records were previously held and have been destroyed as per retention schedules, advise the applicant of date of destruction>

If you are not happy with how we have dealt with your request, you can contact us at:

[Name and Address of whoever handles complaints]

You must write to us within six months of the date of this letter.

You also have the right to apply to the UK Information Commissioner's Office. They do not have to take up all cases they receive and will decide whether or not to look into your complaint. Their address is:

UK Information Commissioner
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF.

If you would like to discuss this in more detail, please contact us.

Yours sincerely

Abigail Penman
Health Records Team Supervisor

Appendix E – Information to be released letter

NHS Borders
Health Records Department

Room 2MR3
Coding & Information Department
Borders General Hospital
Melrose
TD6 9BS
Telephone 01896 826491
Fax 01896 826503
www.nhsborders.org.uk

Date
Your Ref
Our Ref
Enquiries to Abigail Penman
Direct Line 01896 826848
Email abigail.penman@borders.scot.nhs.uk

Dear **[person applying]**

Thank you for your letter of **[insert date]** making a subject access request for **[insert information requested]**.

We have now finished searching our files and systems for information about you.

Based on the details you gave us, the information you are entitled to is enclosed.

[If necessary, insert paragraph about any information withheld/redacted, inaccuracies, etc. discovered]

We hope that you are happy with what we have found. However, if you are not happy with how we have dealt with your request, you can write to:

[Name and Address of whoever handles complaints]

You must write to us within six months of the date of this letter. You also have the right to apply to the UK Information Commissioner's Office. They do not have to take up all cases they receive and will decide whether or not to look into your concerns in more detail. Their address is:

UK Information Commissioner
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF.

If you would like to discuss this in more detail, please contact us.

I would be grateful if you could return the tear off slip, below, confirming safe receipt of the documents.

Yours sincerely

Abigail Penman
Health Records Team Supervisor
Enc.

Please Return to : XXXX

I acknowledge safe receipt of copy health records pertaining to XXXX

Signed _____ Designation _____

Date _____

Appendix F – Sample Request Declined letter

NHS Borders
Health Records Department

Room 2MR3
Coding & Information Department
Borders General Hospital
Melrose
TD6 9BS
Telephone 01896 826491
Fax 01896 826503

www.nhsborders.org.uk

Date
Your Ref
Our Ref
Enquiries to Abigail Penman
Direct Line 01896 826848
Email abigail.penman@borders.scot.nhs.uk

Dear [person applying]

Thank you for your letter of [insert date] making a subject access request for [insert information requested].

I regret that we cannot provide the information you requested. This is because [explain where appropriate].

If you are not happy with how we have dealt with your request, you can write to:

[Name and Address of whoever handles complaints]

You must write to us within six months of the date of this letter. You also have the right to apply to the UK Information Commissioner's Office. They do not have to take up all cases they receive and will decide whether or not to look into your concerns in more detail. Their address is:

UK Information Commissioner
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF.

If you would like to discuss this in more detail, please contact us

Yours sincerely

Abigail Penman
Health Records Team Supervisor

Appendix G – Sample appointment arranging letter

NHS Borders
Health Records Department

Room 2MR3
Coding & Information Department
Borders General Hospital
Melrose
TD6 9BS
Telephone 01896 826491
Fax 01896 826503
www.nhsborders.org.uk

Date
Your Ref
Our Ref
Enquiries to Abigail Penman
Direct Line 01896 826848
Email abigail.penman@borders.scot.nhs.uk

Dear [person applying]

Thank you for your letter of [insert date], asking for information about [insert information requested].

Please phone [or email?] me to arrange a suitable time for you to see or collect [delete as applicable] the requested information (you asked for) from your health records.

Yours sincerely

Abigail Penman
Health Records Team Supervisor

Appendix H – Sample confirmation letter

NHS Borders
Health Records Department

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Melrose
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Fax 01896 826503
www.nhsborders.org.uk

Date
Your Ref
Our Ref
Enquiries to Abigail Penman
Direct Line 01896 826848
Email abigail.penman@borders.scot.nhs.uk

Dear **[person applying]**

I would like to confirm the arrangements we made in our recent telephone conversation.

Please come to **[insert agreed arrangements]**.

As discussed, please bring two forms of identification with you, including one which has your photograph on (for example, your passport or driving licence).

When you arrive at the reception desk **[insert local arrangements]**, please ask for **[insert local arrangements]**.

The records will be available for you to see or collect until **<insert local procedures>**.

Yours sincerely

Abigail Penman
Health Records Team Supervisor

Appendix I – Acknowledgement and fee letter

NHS Borders
Health Records Department

Room 2MR3
Coding & Information Department
Borders General Hospital
Melrose
TD6 9BS
Telephone 01896 826491
Fax 01896 826503
www.nhsborders.org.uk

Date
Your Ref
Our Ref
Enquiries to Abigail Penman
Direct Line 01896 826848
Email abigail.penman@borders.scot.nhs.uk

Dear [person applying]

Thank you for returning your form for access to your information under the Data Protection Act 1998.

The fee for accessing copies of your records is [insert fee payable].

We will invite you to see or collect your records within 40 days of receiving your fee.

Yours sincerely

Abigail Penman
Health Records Team Supervisor

Appendix J – Initial letter to solicitors/Insurance companies

NHS Borders
Health Records Department

Room 2MR3
Coding & Information Department
Borders General Hospital
Melrose
TD6 9BS
Telephone 01896 826491
Fax 01896 826503
www.nhsborders.org.uk

Date
Your Ref
Our Ref
Enquiries to Abigail Penman
Direct Line 01896 826848
Email abigail.penman@borders.scot.nhs.uk

Dear [person applying]

Re:

Thank you for your letter dated ?????? in which you request the medical records be sent to you for the above named.

I now write to inform you that there is an administration fee of £ [fee payable] for this service.

Please make cheque payable to **Borders Health Board**.

Yours sincerely

Abigail Penman
Health Records Team Supervisor

Appendix K – information release letter to solicitors/Insurance companies

NHS Borders
Health Records Department

Room 2MR3
Coding & Information Department
Borders General Hospital
Melrose
TD6 9BS
Telephone 01896 826491
Fax 01896 826503
www.nhsborders.org.uk

Date
Your Ref
Our Ref
Enquiries to Abigail Penman
Direct Line 01896 826848
Email abigail.penman@borders.scot.nhs.uk

Dear Sir/Madam

Re:

Thank you for your recent cheque for £ [fee payable] in respect of payment for the provision of medical records.

In keeping with the aims of the Data Protection Act 1998 and also respect for patient confidentiality I would ask that you provide safe storage for the Record while it is in your care and only use it for the reason stated in your original request. Please do not distribute the Record or transfer the Record to any third party without any imposed form of audit and control or without the written agreement of the Director of Public Health of the Borders Health Board. When the copy of the Record is no longer required please ensure that all copies of the Record are destroyed by shredding or incineration.

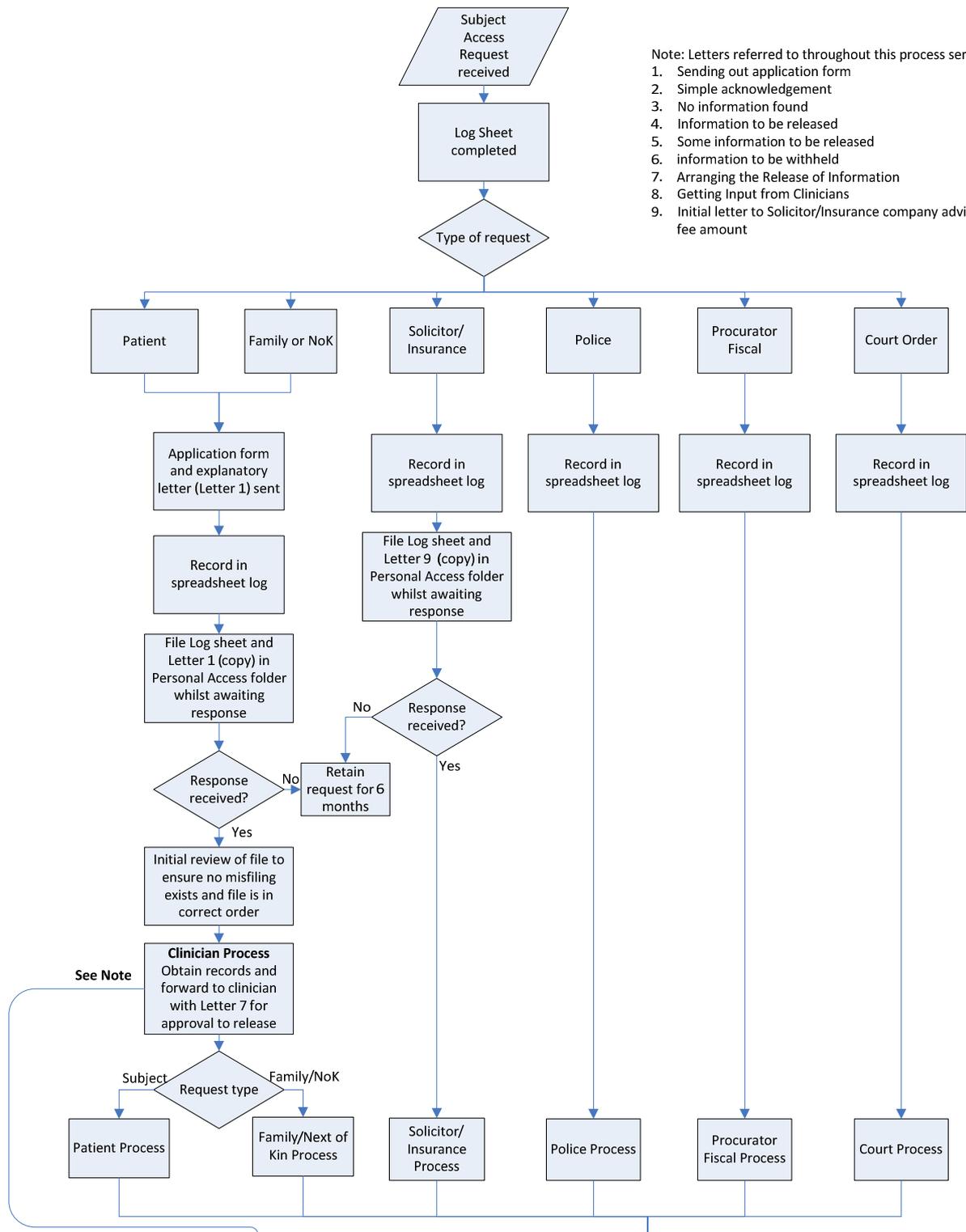
Please find copies enclosed.

Yours sincerely

Abigail Penman
Health Records Team Supervisor

Appendix L – Subject Access team process diagram

Generic Process



- Note: Letters referred to throughout this process series
1. Sending out application form
 2. Simple acknowledgement
 3. No information found
 4. Information to be released
 5. Some information to be released
 6. information to be withheld
 7. Arranging the Release of Information
 8. Getting Input from Clinicians
 9. Initial letter to Solicitor/Insurance company advising fee amount

Note: The clinician contacted will often, but not always, be the last to have had involvement with the patient. In many cases the nature of the request will determine the most appropriate clinician to approach. In complex cases it may be necessary to request several clinicians, from different specialties, to review the notes. If the request relates to a specific speciality then the clinician to approach must be employed within that same speciality.

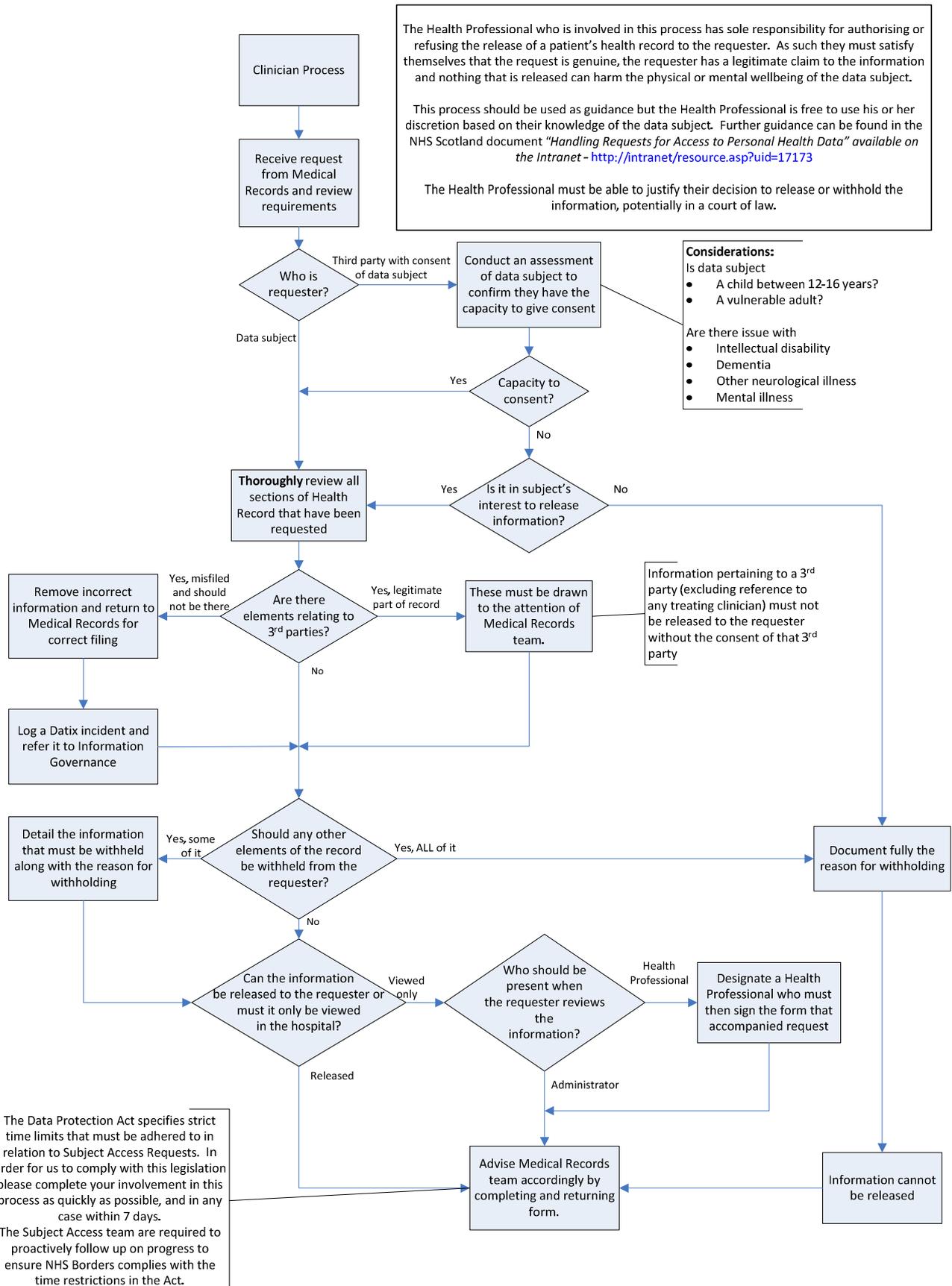
In general, clinicians within the A&E department will only be able to advise/comment on activity that has occurred in A&E.

Review the copies against the original file, checking for compliance with the request AND for the existence of 3rd party data.

Double envelope copies. Send Special delivery or arrange for collection as appropriate. Also include relevant Letter/ Court Order, etc

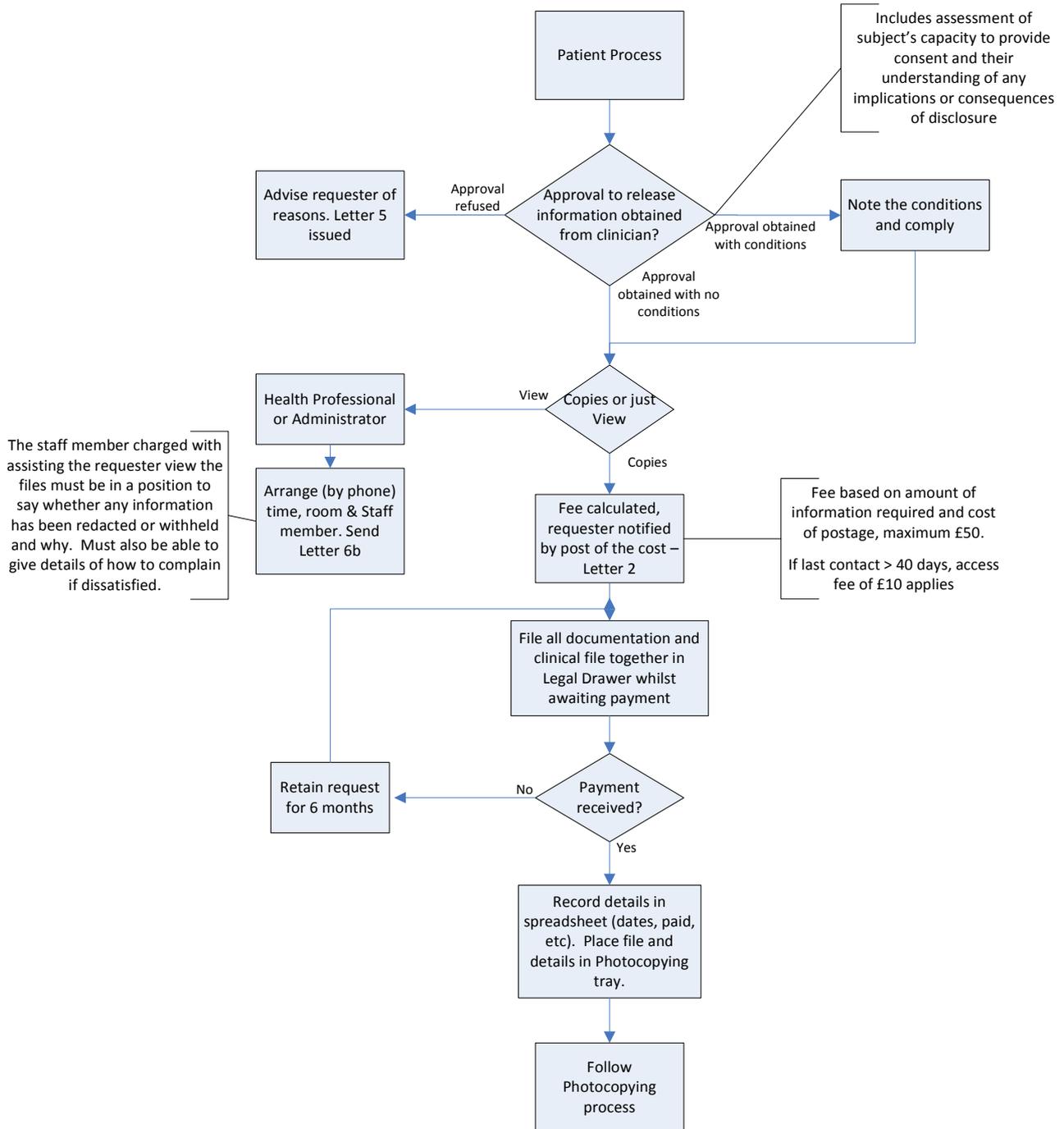
Appendix M – Clinician process diagram

Clinician Process



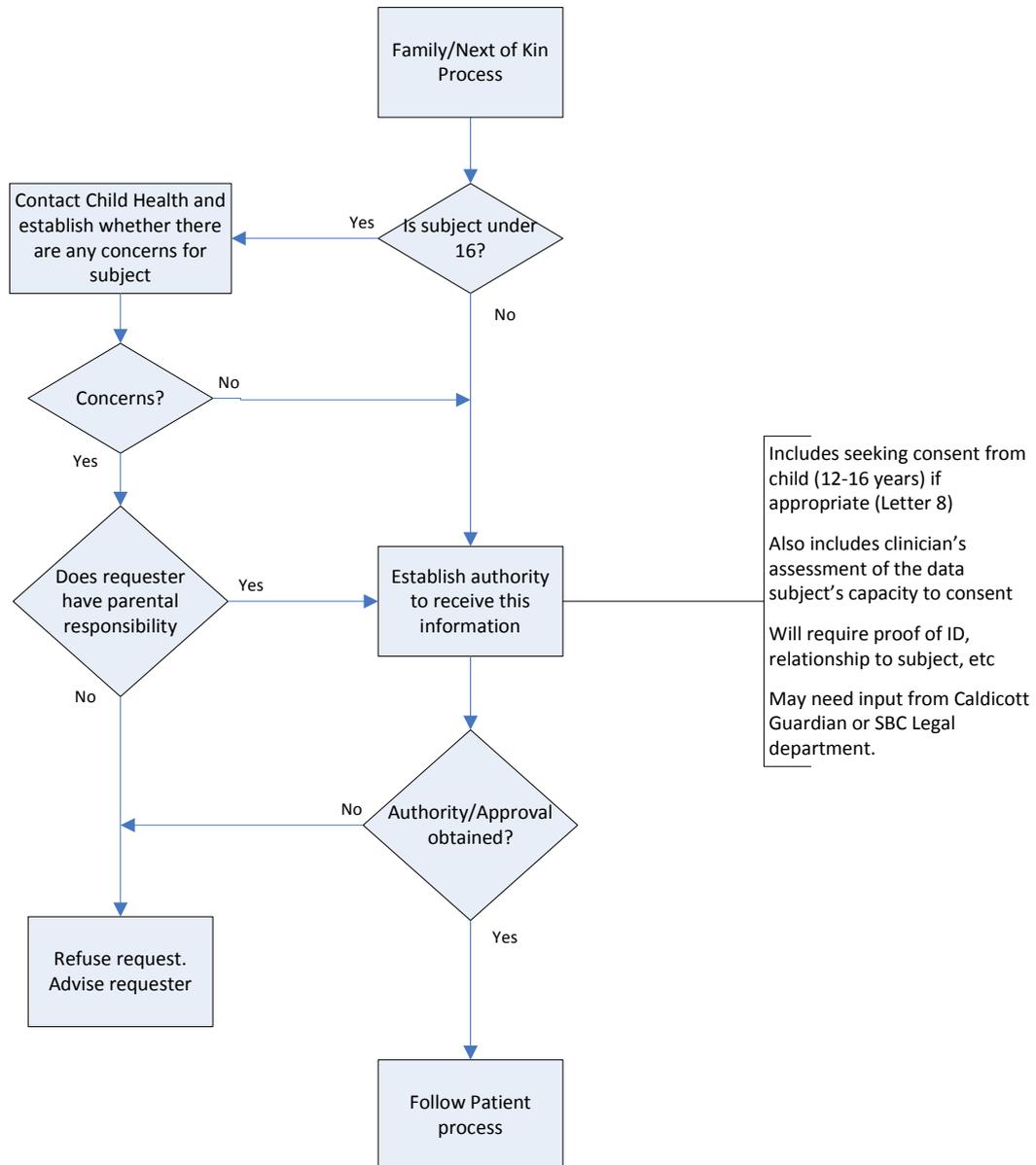
Appendix N – Subject request process diagram

Patient Process



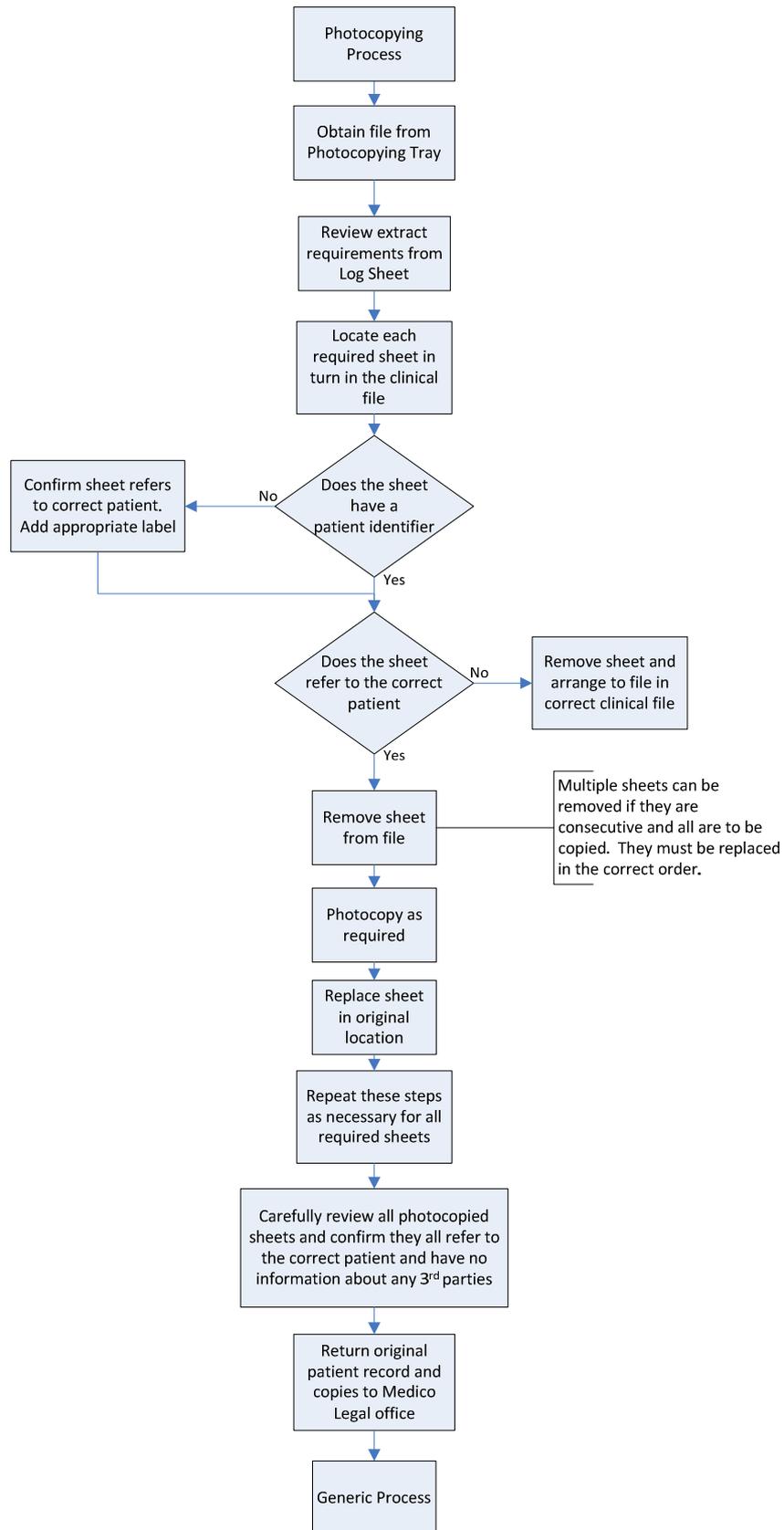
Appendix O – Family/Next of Kin process diagram

Family/Next of Kin Process



Appendix P – Photocopying process diagram

Photocopying Process



Appendix Q – Police request Process diagram

Police Process

Note: The clinician contacted will often, but not always, be the last to have had involvement with the patient. In many cases the nature of the request will determine the most appropriate clinician to approach. In complex cases it may be necessary to request several clinicians, from different specialties, to review the notes. If the request relates to a specific specialty then the clinician to approach must be employed within that same specialty.

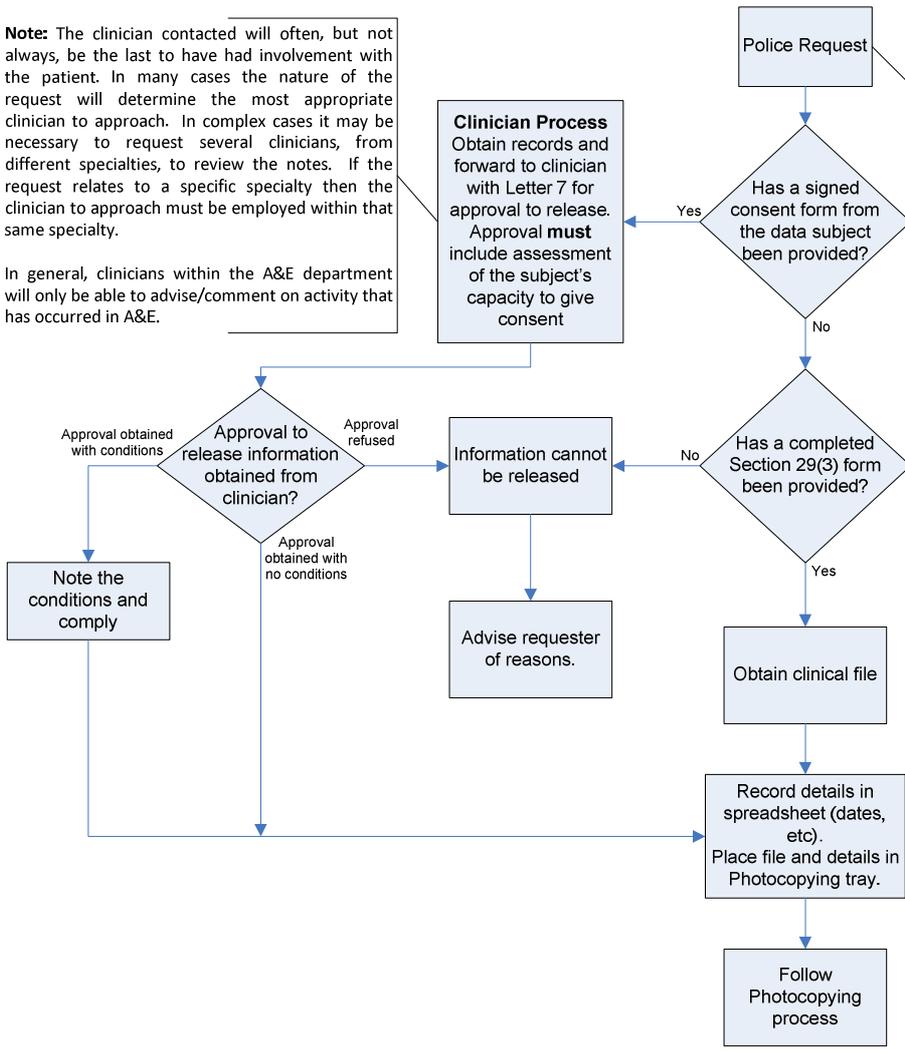
In general, clinicians within the A&E department will only be able to advise/comment on activity that has occurred in A&E.

Clinician Process
Obtain records and forward to clinician with Letter 7 for approval to release. Approval **must** include assessment of the subject's capacity to give consent

A request from the Court or Procurator Fiscal can be assumed to be genuine if it is on appropriately headed paper.
A request from a Solicitor or Police officer purporting to be on behalf of the Court must have a letter of authority from the Court or Procurator Fiscal to that effect.
Absence of a letter of authority will require that the standard Solicitor/ Insurance or Police process must be followed.

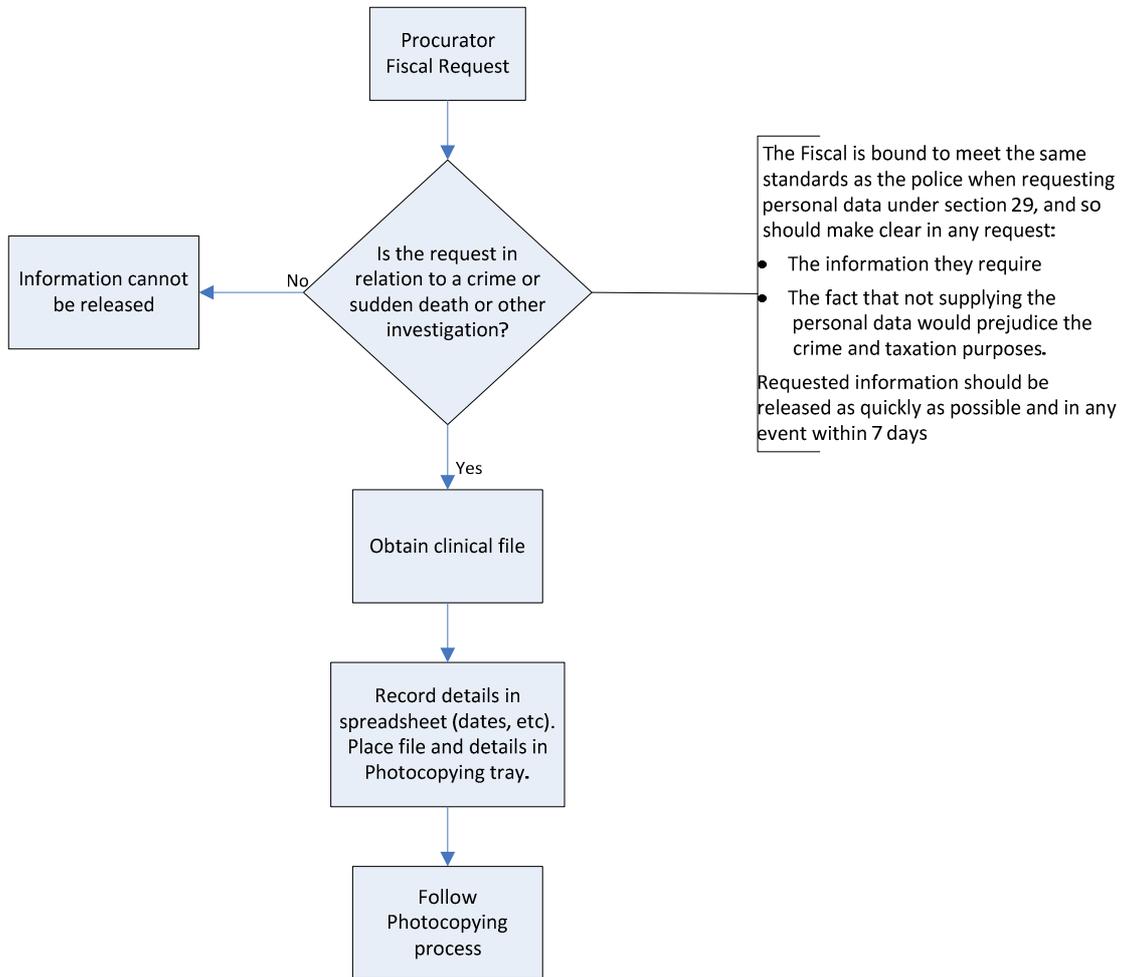
The Section 29(3) form can be submitted at a later date if the query is time critical and the situation meets the appropriate criteria:

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



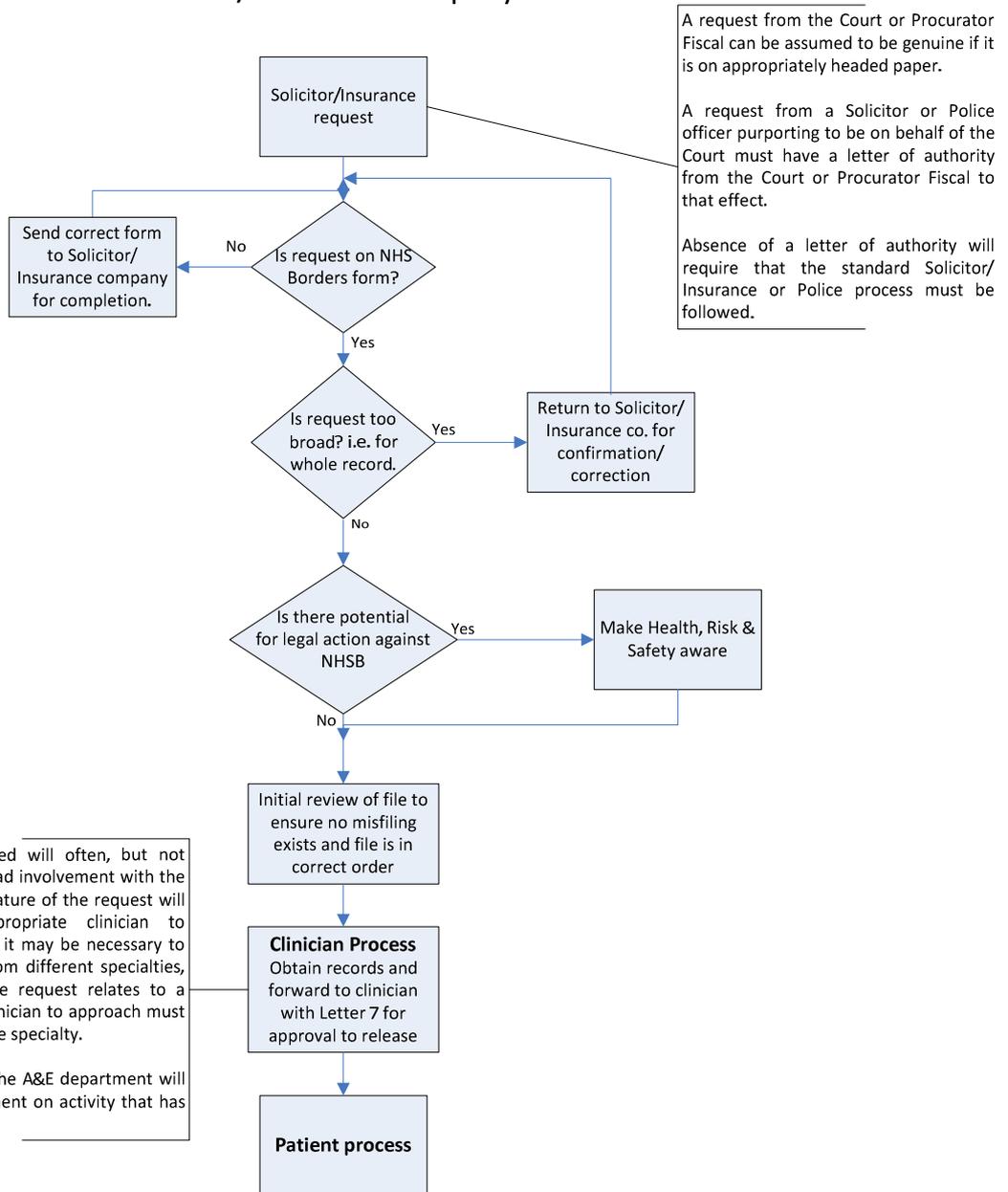
Appendix R – Procurator Fiscal request process diagram

Procurator Fiscal Process



Appendix S – Solicitor/Insurance Company process diagram

Solicitor/Insurance Company Process



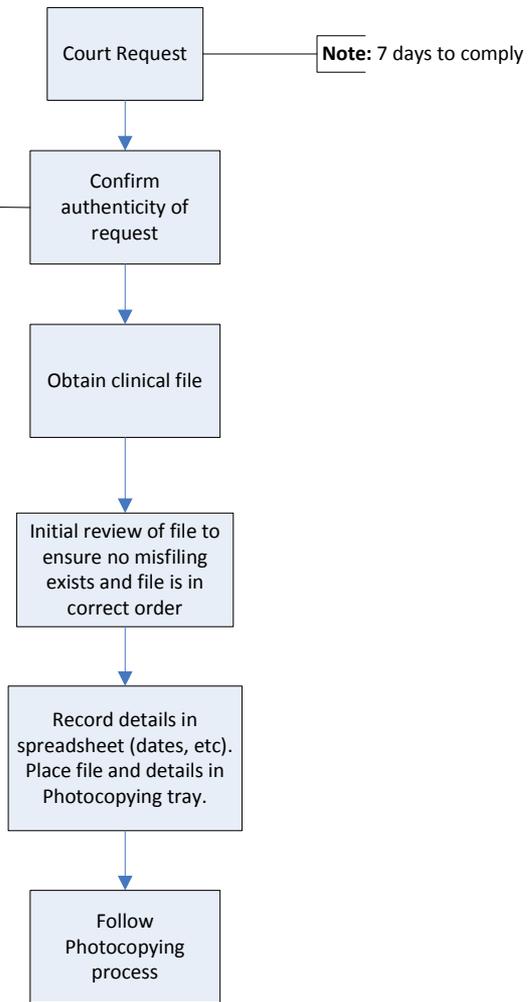
Appendix T – Court Order process diagram

Court Process

A request from the Court or Procurator Fiscal can be assumed to be genuine if it is on appropriately headed paper.

A request from a Solicitor or Police officer purporting to be on behalf of the Court must have a letter of authority from the Court or Procurator Fiscal to that effect.

Absence of a letter of authority will require that the standard Solicitor/ Insurance or Police process must be followed.



Appendix U – Search methodology for locating clinical records.

- Request received
- Search Trak for patient
- Check Casenote tracking for note location
- If casenote with secretary – phone said secretary
- If casenote on ward – Phone said ward
- If casenote in community hospital – phone community hospital
- If casenote on clinic – check the date of clinic- if the request can be completed before the date of clinic find notes in clinic bundle (clinic cupboard) – if not wait until after the clinic date and go through from beginning
- If casenote in Secondary, Main or Tertiary collect from file

Physio notes (separate requests often come for these)

- Phone the Physio dept and ask for photocopies
- If community Physio phone and ask for photocopies to be sent to Subject Access team

Pain clinic notes

- Phone Pain Clinic team secretary

Dialysis notes

- Phone dialysis dept

Mental Health

- Search ePEX for patient
- Check Assessments for location of notes
- Phone Mental Health team secretary to request notes

Appendix V – CEL 11 (2007)

Primary and Community Care Directorate

T: 0131-244 3210 F: 0131-244
E: paul.gray@scotland.gsi.gov.uk

Dear Colleague

PROVISION OF MEDICAL RECORDS BY NHS TO COURTS

This letter is to advise Board Chief Executives, Health Records Managers, Caldicott Guardians, and Data Protection Managers of changes to the procedures regarding the provision of medical records of patients for use in criminal proceedings. It needs to be forwarded to GP practices and primary care.

1. It has been agreed that the National Health Service (NHS) will no longer routinely provide the Crown with the original medical records of patients who are still alive for use in criminal proceedings. Instead, suitably authenticated copy medical records will be provided in the first instance in all cases unless the patient is deceased. However the Crown will reserve the right to request the original records in certain circumstances.

2. The Scottish Executive Data Protection and Confidentiality Unit have made representations to COPFS (Crown Office Procurator Fiscal Service) advising that the NHS have experienced problems when supplying original medical records to the Crown. The difficulty centres on the continuing need for medical personnel to retain access to original records for ongoing clinical purposes.

3. It is not unusual for medical records to be retained by the Crown for up to 3 years. NHS staff regularly experience difficulties, following the return of those records on conclusion of proceedings, when they attempt to reconcile them with other records for that patient. This can occur as a result of an additional active medical file having been opened to cover the period when the original records were with the Crown. As a consequence, there can be gaps in the clinical information available to medical personnel in both sets of records. Obviously, this can have serious consequences in the assessment of the appropriate treatment for that patient.

Revised Arrangements

4. Routinely, the NHS will now provide suitably authenticated copy medical records in all cases where patient is still alive.

St Andrew's House, Regent Road, Edinburgh EH1 3DG
www.scotland.gov.uk



CEL 11 (2007)

8 November 2007

Addresses

For action
Chief Executives
Health Records Managers
Caldicott Guardians
Data Protection Managers

For information

Enquiries to:

Dr Fiona Bisset
St Andrew's House
EDINBURGH EH1 3DG

Tel: 0131-244 2362
Fax: 0131-244 5063
<mailto:fiona.bisset@scotland.gsi.gov.uk>
<http://www.scotland.gov.uk>



5. The Crown has reserved the right to request the originals where, for example, the writing is difficult to read, there are concerns that the records are not complete or because of the particular significance which may attach to the use of different coloured inks. Local liaison is encouraged to resolve such issues, which may be of critical importance in terms of disclosure obligations, preparation for trial and evidence to be led at the trial.

6. As there is no ongoing clinical need for the NHS to retain the original medical records in cases which have resulted in a fatality, the original records will continue to be provided to the Crown.

Authentication

7. The NHS is responsible for ensuring suitably authenticated copies in terms of section 279, Schedule 8 of the Criminal Procedure (Scotland) Act 1995. Sample form attached.

8. It is good practice to produce photocopies on distinctive photocopy paper eg with a watermark stating 'Legal access request' so that any photocopies are readily recognisable.

Yours sincerely



PAUL GRAY

Form 26.1-A.11
Certified copy
listed documents
- by authorised
representative
of possessor
of originals



«NAME/PRACTICE»

CERTIFICATE OF AUTHENTICATION

Procurator Fiscal Case Reference No.

I, ¹ «Name», «Title», «Name of Practice», «Address» being the authorised representative of ² «NHS Board», etc (address) which is in possession and control of the originals of the copy documents listed and described below to which this certificate is attached hereby certify that they are true copies of the originals which are in the possession and control of ³ «NHS Board», etc of which I am the authorised representative.

Date: (Signed)

⁴ e.g. Legal Services Manager

- 1 Insert name, address and title of office held.
- 2 Insert name and address of person or body in possession and control of documents.
- 3 Insert name of person or body as at note 2 above.
- 4 Insert authorised capacity in which certificate signed.

St Andrew's House, Regent Road, Edinburgh EH1 3DG
www.scotland.gov.uk



LIST AND DESCRIBE DOCUMENTS

Medical Records Casenotes relating to :

Name

Address

Unit No.

- (i) admission record
- (ii) triage report
- (iii) preoperative check
- (iv) etc, etc

St Andrew's House, Regent Road, Edinburgh EH1 3DG
www.scotland.gov.uk

