**Subject Access Request Exemptions Guidance**

A data subject is entitled to access the personal data held by the Trust, subject to specific exemptions which are set out in the Data Protection Act 2018. This guidance gives you a summary of the exemptions and provides examples of the ones most relevant in the health sector.

Exemptions should be considered on a case by case basis and should only be relied on if the disclosure would be likely to prejudice the purpose for which you process the data or prevent or seriously impair your ability to process the data in the way which is required and necessary. If you cannot justify why you are applying an exemption, you should not rely on it and the data should be disclosed.

Data subjects are not entitled to access information relating to other people even though it may be on their records unless the other individual has consented to the disclosure or it is reasonable to comply with the request without that individual’s consent.

In deciding whether it is reasonable to disclose the information, you must take into account all of the relevant circumstances, including:

* the type of information that you would disclose;
* any duty of confidentiality you owe to the other individual;
* any steps taken to seek consent from the other individual;
* whether the other individual is capable of giving consent; and
* any express refusal of consent by the other individual.

Although you may sometimes be able to disclose information relating to a third party, you 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 rights. If the other person consents to you disclosing the information about them, then it would be unreasonable to withhold it. However, if there is no such consent you must decide whether to disclose the information anyway. If, for example the information is known to the data subject, there is no need to withhold it.

You cannot refuse to provide 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 both information about the individual who is the subject of the request and information about someone else.

Information which is frequently on a health record which should be redacted include:-

* Names of staff who did not provide clinical care;
* E-mail addresses of non-clinical staff;
* Other personal details/narrative data/combination of information that can result in such a person being identified.

**The exemptions**

|  |  |  |
| --- | --- | --- |
| **Data Protection Act 2018**  | **When/What does it apply?** | **Example** |
| Crime and taxationSch 2 Part 1 (1)(a)(b)(c) | Processing personal data for the purpose of:Prevention of crime, apprehension or prosecution of offenders, assessment or collection of tax or duty. | CCTV footage may show an assault which could significantly affect an investigation. This exemption allows disclosure of footage without anyone’s consent. |
| Crime and taxation: risk assessment Sch 2 Pt 1 (3)  | Risk assessment operated by the government, local authority. Assessment or collection of tax, or the prevention of crime or where the offence involves unlawful use of public money. | Police request an employee’s details. The employer needs to be satisfied that the exemption applies.  |
| ImmigrationSch 2 Pt 1 (4) | Process data for the purpose of maintaining effective control of immigration work. |  |
| Information required to be disclosed by law or in connection with legal proceedingsSch 2 Pt 1 (5) | This only applies if complying with this would prevent you from meeting your legal obligation to make personal data available to the public. |  |
| Functions designed to protect the publicSch 2 Pt 2 (7) | If you process personal data for a specified function, designed to protect the public, including health and safety |  |
| Audit functionsSc 2 Pt 2 (8) | Process for the purpose of discharging a function conferred by law |  |
| Bank of England functionsSch 2 Pt 2 (9) | Process data for the purpose of discharging a monetary authority  |  |
| Functions relating to legal services, the health service and children’s servicesSc 2 Pt 2 (10) | Data processed for discharge of considering a complaint under s14 of the NHS Redress Act 2006; s113(1) or (2), or s114(1) or (3) of the Health and Social Care (Community Health and Standards) Act 2003; s24D or 26 of the Children’s Act 1989. |  |
| Parliamentary privilegeSch 2 Pt 2 (13) | Required to avoid the privileges of either House of Parliament being infringed.  |  |
| Judicial appointments, Independence and proceedingsSch 2 Pt 2 (14) | Processing data for the purpose of assessing a person’s suitability for judicial office  |  |
| Crown honours, dignities and appointmentsSch 2 Pt 2 (15) | Processing data to assess a person’s suitability for specific appointments. |  |
| Protection of the rights of othersSch 2 Pt 3 (16) | Where disclosure would involve information relation to another  | The names of admin staff or third party family members  |
| Assumption of reasonableness for health workers, social workers and education workersSch 2 Pt 3 (17) | Assumed to be reasonable for health worker to disclose without consent where health data test is met |  |
| Legal professional privilegeSch 2 Pt 4 (19) | If you process personal data to which a duty of confidentiality is owed by a professional legal adviser to his client. | This would apply to advice sought and given in relation to a claim for clinical negligence or an employment tribunal. |
| Self incriminationSch 2 Pt 4 (20) | To the extent that disclosing the information would reveal information of the commission of an offence which could expose that person to prosecution  |  |
| Corporate financeSch 2 Pt 4 (21) |  |  |
| Management forecastsSch 2 Pt 4 (22) | Processed for the purpose of management forecasting or planning if it is likely to prejudice the conduct of the business | Restructuring proposals |
| NegotiationsSch 2 Pt 4 (23) | Information records intention of data controller in relation to negotiation with the data subject | Management proposals in relation to redundancy negotiations  |
| Confidential referencesSch 2 Pt 4 (24) | Data consists of information given or to be given for purpose of prospective employment, education or training  | A reference received for a prospective employee |
| Exam scripts and exam marksSch 2 Pt 4 (25) | Data consisting of information recorded by candidates during an exam.. shall not be disclosed prior to the exam results day  |  |
| Journalism, academia, art and literatureSch 2 Pt 5 (26) | Processing personal data for journalistic purposes, academic purposes, artistic purposes or literary purposes.  |  |
| Research and statisticsSch 2 Pt 6 (27& | Processing for scientific and historical research or statistical purposes if disclosure would seriously risk or impair the purpose of the research etc. Applies if the processing is subject to appropriate safeguards for individual’s rights and freedoms; not likely to cause damage or distress and processing is not used for measures or decisions about particular individuals except for approved medical research. |  |
| Archiving in the public interestSch 2 Pt 6 (28) | Processing personal data for archiving purposes in the public interest.  |  |
| Health data-processed by a courtSch 3 Pt 2 (3) | Health data that is processed by the court. Exemption only applies if the data is supplied in a report or evidence given in court proceedings. |  |
| Health Data-an individual’s expectations and wishesSch 3 Pt 2 (4) | Applies to data from someone with parental responsibility for an individual who is under the age of 18 or someone appointed by the court to manage the affairs of an individual.  |  |
| Health Data-serious harmSch 3 Pt 2 (5) | The exemption only applies to the extent that compliance with the right of access would be likely to cause serious harm to the physical or mental health of any individual. Can only be relied if you are a health professional or within the last six months you have obtained an opinion from an appropriate health professional that the serious harm test for health data is met. | Information held on a child’s record which identifies concerns about safeguarding issues. This could be information provided by a family member of the observations of a health professional.  |
| Health Data-restriction of the rights to accessSch 3 Pt 2 (6) | A restriction from disclosing health data, unless you are a health professional or within the last six months you have obtained an opinion from an appropriate health professional that the serious harm test for health data is not met. |  |

**The health data test**

The health data test is met if:-

The information is contained in a health record and the other individual is a health professional who has complied or contributed to the health record or been involved in the diagnosis, care or treatment of the data subject.

The social work and education data tests are framed in similar ways.

 For any advice and guidance please contact us at ccs.accesstoinfo@nhs.net