NHS
Manchester
Clinical Commissioning Group

SUBJECT ACCESS REQUEST POLICY

Version 1

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Supersedes:			
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Consultation/Stakeholders	Manchester CCG Governance Committee		
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Department/Team:	Information Governance		
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This document is to be read in conjunction with the following documents:
Information Governance Policy
Information Governance Procedures
Records Management Policy
Acceptable Use Policy
Risk Management Framework
Incident Management Policy

V1.2 – March 2017 – Changes to NHS Manchester CCG logo
V2 – May 2018 – Changes to reflect the GDPR and the new Data Protection Act 2018.
Split the procedures and created a new Subject Access Policy

1. INTRODUCTION

1.1 Individuals have a right to apply for access to information held about them and, in some cases, information held about other people.

Personal data is information that relates to an individual who can be identified either directly or indirectly and includes any expression of opinion about the individual.

Manchester Clinical Commissioning Group is a commissioning organisation that do not hold individual medical records except in cases such as:-

- where patient consent has been obtained for commissioning processes such as Continuing Care, Individual Funding Requests and service evaluation
- as data processor for the Manchester Care Record
- Complaint handling or for other purposes where there is a specific legal basis for doing so (e.g. s251 exemption).

We will also hold personal data relating to employees and contractors present, past or prospective, whether permanent or temporary.

1.2 The main legislative measures that give rights of access to records include:

The Data Protection Act 2018 (DPA) – rights for living individuals to access their own records. The right can also be exercised by an authorised representative on the individual's behalf.

The General Data Protection Regulations (GDPR) - Individuals have the right, under the General Data Protection Regulation (EU) 2016/679 (Articles 12 and 15) to request access to, or a copy of, information an organisation holds about them.

The Access to Health Records Act 1990 – rights of access to deceased patient health records by specified persons.

It is important that all staff understand the requirements of these Acts, and the part they have to play in ensuring that the CCG complies with these legal obligations.

Changes in the law relating to Data Protection are currently being implemented. The EU General Data Protection Regulations (GDPR) came into force in May 2018. Additionally, the Data Protection Act 1998 was also replaced by the new UK Data Protection Act 2018.

2. ROLES AND RESPONSIBILITIES

2.1 **The Accountable Officer**
The Accountable Officer has ultimate responsibility for compliance with the Acts.

2.2 **The Caldicott Guardian**
The Caldicott Guardian is the conscience of the organisation and is responsible for ensuring that patient information is used, and shared in an appropriate, justifiable and secure manner.

2.3 **The Senior Information Risk Owner (SIRO)**
The SIRO is responsible for managing information risks and incidents and is also the Information Governance lead at Board Level.

2.4 **The Data Protection Officer (DPO)**
The GDPR introduces a duty to appoint a DPO to monitor internal compliance, inform and advise on your data protection obligations, provide advice regarding Subject Access requests and act as a contact point for data subjects and the Information Commissioners Office.

2.5 **The Head of IT and Information Governance**
Ensuring all procedures within the CCG meet the requirements as set out in the current Data Protection Act and also the GDPR and for providing strategic direction and advice on data protection matters.

2.6 **Senior Information Governance Officers**
The Senior Information Governance Officers are responsible for advising staff in the CCG on requests for information under the Data Protection Act and the Access to Health Records Act.

2.7 **All CCG staff**
All staff are responsible for:

- Ensuring compliance with the requirement of the Act;
- Respecting the data subjects' rights to confidentiality and actively responding to any concerns raised about confidentiality; and
- Ensuring they are fully aware of the Subject Access Request Procedure and are following the correct process as set out in this procedure when a subject access request is received.

3. WHO CAN MAKE A REQUEST FOR RECORDS

3.1 Formal access to a record can be made by any of the following:

a) the patient
b) where the patient is a child (under 18), a person having parental responsibility for the patient **or** it may be possible to accept such a request directly from the child.
c) where the patient is incapable of managing his/her own affairs, a person appointed by the court to manage those affairs **or** a person upon whom the patient, when capable, has endowed an Enduring Power of Attorney or a Lasting Power of Attorney (LPA).
d) an agent/representative e.g. solicitor or carer.
e) where the patient has died, the patient's personal representative and any person who may have a claim arising out of the patient's death.
f) A staff member, past or present wanting access to their employee records.

However, access may also be requested from the following:

- Criminal Injuries Compensation Authority (CICA) or Department for Work and Pensions (DWP).

- The Police, who wish to have access under the Crime and Disorder Act 1998
- The Crown Prosecution Service

6. PROVISION OF INFORMATION REQUESTED

6.1 Requests for large amounts of personal data

Where a large quantity of information is processed about an individual, under GDPR, the CCG will ask the individual to specify the information the request relates to (Recital 63).

GDPR does not include an exemption for requests that relate to large amounts of data, but the CCG may be able to consider whether the request is manifestly unfounded or excessive.

6.2 Manifestly unfounded or excessive requests

Where requests are manifestly unfounded or excessive, in particular because they are repetitive, the CCG will:

- Charge a reasonable fee taking into account the administrative costs of providing the information; or
- Refuse to respond.

Where the decision is made to refuse to respond to a request, an explanation of the reason must be given to the individual, informing them of their right to complain to the Information Commissioners Office. The individual should be informed of the decision without undue delay and at the latest within one month of receipt of the request.

6.3 Rectification

Article 5(d) of GDPR requires that personal data shall be “accurate and, where necessary, kept up to date: every reasonable step must be taken to ensure that personal date that are inaccurate, having regard to the purposes for which they are processed, are erased or rectified without delay”.

6.4 Information provided by a third party

Access may also be limited or denied where it would disclose information relating to or provided by a third person who has not consented to that disclosure unless:

- The third party is a health professional who has compiled or contributed to the records or who has been involved in the care of the patient.
- The third party, who is not a health professional, gives their consent to the disclosure of that information.
- It is reasonable to disclose information without that third party’s consent.

7. FEES TO ACCESS RECORDS

7.1 GDPR removes the ability to charge fees for fulfilling Subject Access Requests, unless manifestly unfounded or excessive.

7.2 Where requests are manifestly unfounded or excessive, in particular because of their repetitive character, the CCG may either charge a reasonable fee (taking into account the administrative costs of providing the information or communication or taking the action requested) or may refuse to act on the request.

8. CONSENT REQUIREMENTS

8.1 Written consent should be less than 6 months old.

In most cases consent to access personal information will be provided by the individual who is requesting the information. However, there may be cases where the individual is unable to consent or the individual is a child.

When a requestor is not able to produce written consent from the data subject to access their information or is not able to evidence that they are entitled to access the requested information, the CCG will request further information from the requestor with regard to the request, before deciding whether it would be justifiable to release the information to the requestor. In the event that the requestor is a solicitor the subject's written authority for release must be obtained.

8.2 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 ensure that the requestor is authorised to act on the patient's behalf, that is, hold a Lasting Power of Attorney (LPA) for Health and Welfare purposes sealed by the Court of Protection.

9. CHILDREN AND YOUNG PEOPLE

9.1 A person, with parental responsibility, can make subject access requests on behalf of their children who are too young to make their own request. A young person aged 12 or above is generally considered mature enough to understand what a subject access request is. They can make their own request and would need to provide their consent to allow their parents to make the request for them. The health professional must use their own judgement to decide whether a young person aged 12 or above is mature enough to make their own request as they do not always have the maturity to do so.

Not all parents have parental responsibility. Both parents have parental responsibility if they were married at the time of the child's conception, or birth, or at some time after the child's birth. Neither parent loses parental responsibility if they divorce. However, there are circumstances in which a father who is not married to the child's mother may acquire parental responsibility for him/her.

Where a child is "looked after" by the Local Authority permission needs to be given by both the Local Authority and the parents as they share parental responsibility.

9.2 Child Protection Cases

Section 47 of the Children Act 1989 places certain duties on local authorities where they have reasonable cause to suspect that a child, who lives in their area, is suffering or is likely to suffer significant harm. Local authorities are required to make such enquiries, as they consider necessary to enable them to decide whether any action should be taken to promote a child's welfare.

10. WHERE THE PATIENT IS DECEASED

10.1 GDPR and Data Protection Act applies only to natural persons but there are limited rights of access to personal data of deceased persons under the Access to Health Records Act 1990. Requests can only be made by:

- The patient's personal representative (usually the executor of the will or administrator of the estate) or
- Any person who may have a claim arising out of the patient's death. Release of any information will only be the minimum necessary to process their claim. Only relevant information relating to any claim made should be released

10.2 The following will be taken into account:

- If it is known whether the deceased patient did not wish for their records to be disclosed or the records contain information that the deceased patient expected to remain confidential.
- If the release of the information is likely to cause serious harm to the physical or mental health of any individual.

The same rules apply to third party information as with other records. The CCG should afford the same level of confidentiality to deceased person's records as for living ones.

10.3 **Requests from the Coroner**

If a patient has died in suspicious circumstances the Coroner may receive the deceased's medical records to ensure that they are not altered, lost or destroyed. The Coroner is entitled to request access to the deceased's medical records.

The CCG has a duty to co-operate with the investigation and must disclose information relating to the deceased's medical history and treatment.

11. INDIVIDUALS LIVING ABROAD

Patients or individuals who used to live in the UK who have records held by the CCG will still have the right to make a subject access request. The same procedure would apply as for an individual living in the UK.

12. REQUEST FOR ACCESS TO LEGACY INFORMATION

Any requests received for legacy information created by Manchester Primary Care Trust will be directed to the appropriate receiving organisation if the information is no longer held by Manchester CCG by the Information Governance Team.

13. COMPLAINTS

If the requestor feels that they have not been fairly treated and that the holder of the record has not complied with the Acts, then they should first complain in writing to The Chief Operating Officer of the CCG.

If they are still unhappy after this, the requestor has the right to apply to the Information Commissioner to review the outcome of the application if necessary. To complain to the Information Commissioner, please see the Information Commissioner's Office web page at:
http://www.ico.gov.uk/complaints/getting/complain.aspx

SUBJECT ACCESS PROCEDURES

1. RECEIVING A SUBJECT ACCESS REQUEST

1.1 All subject access requests should be made in writing. The requestor does not need to mention the Data Protection Act or GDPR or even state that they are making a subject access request for their request to be valid.

A subject access request can be made via email, fax, post or by social media.

Requests must contain the following elements:

- Enough information to enable the identification and location of the information being requested.
- Adequate steps will be taken to identify the requester. Examples of suitable documentation are:
  - ✓ Valid Passport
  - ✓ Valid 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.

A reason for applying for access to records is not required, but sufficient information is required to enable the records to be located.

1.2 Subject access is most often used by individuals who want to see a copy of the information an organisation holds about them. However, under GDPR subject access goes further than this and an individual is entitled to be:

- told whether any personal data is being processed;
- given a description of the personal data, the reasons it is being processed, and
- whether it will be given to any other organisations or people;
- given a copy of the personal data; and
- given details of the source of the data (where this is available).

2. ACCESS TO HUMAN RESOURCE RECORDS

2.1 Individuals can request access to their employee records. Sufficient detail to clearly identify the individual is essential and should include the person's full name, current address and payroll details such as employee number or National Insurance Number.

Where documents provide information about other individuals as well as the individual making the request, it should not be disclosed without that third party's consent, unless it is reasonable to do so.

Viewing of personal files must be undertaken either in the presence of the relevant Manager or a member of Human Resources staff. Copies of information should be provided by arrangement with the relevant Manager in consultation with the Human Resources Advisor.

2.2 Access to Occupational Health Records

Occupational Health reports or letters are held on the employee's personal file and can be disclosed with the file. An employee wishing to view their medical records will need to supply either:

- the date employment began following a pre-employment assessment,
- a date of referral under the referral procedure,

2.3 Access to references

References which have been given in confidence should be removed from an employee's file prior to access being given.

2.4 Leavers files

Leavers' personal files should be maintained for at least six years after the employee leaves the employment of the CCG, or until the date on which the employee would reach the age of 70, whichever is the later. Ex-employees may request access to their personal file, for which an administration charge may be made.

3. MANCHESTER CARE RECORD

3.1 Manchester CCG host the Manchester Care Record on behalf of health and social care providers. A request for access to the Manchester Care Record should be forwarded onto Manchester CCG Information Governance Team and they will co-ordinate the request with the partner organisations whose clinicians have contributed to the record. This process is specified within the data sharing agreements held between the CCG and Care Provider organisations.

4. TIME LIMITS

4.1 A formal Subject Access Request must be completed within one calendar month, this starts on the day after receipt and ends on the same date of the next month (e.g. 2 January to 2 February), unless that date is a Saturday, Sunday or Bank Holiday, in which case it ends on the next working day. If that date does not exist because the following month has fewer days, it is the last day of the month (e.g. 31 January to 28 February).

Failure to comply gives the requestor a right of action in the High Court. It is therefore essential that all applications be processed as a matter of priority, thereby minimising risk to the CCG.

5. ADMINISTRATION PROCESS

5.1 Receipt of request

- ***Immediately*** upon receipt, requests should be date stamped with the date the request came in to the department and directed to:

  Information Governance Team,

Parkway 3, Parkway Business Centre, M14 7LU

- The Information Governance Team will:
  - Check that the request relates to personal data of a type likely to be held by the CCG.
  - Consider whether the requester has supplied sufficient information to identify the data required.
  - Consider whether there is sufficient evidence of identity of either the subject themselves or a third party authorised to act on their behalf.
  - In the case of a third party, consider whether they meet the legal criteria to make a request and whether they have supplied evidence to that effect (for example where appropriate written consent from the individual).
  - Record the request in the Subject Access Log.

The 1 month period begins from the date that the ID/clarification are received.

5.2 Acknowledgement

- If the request meets the criteria above an acknowledgement letter is to be sent advising the requester of the expected timescale
- If further clarification, information, documentation are required then request these as soon as possible
- Make a record of the actions.

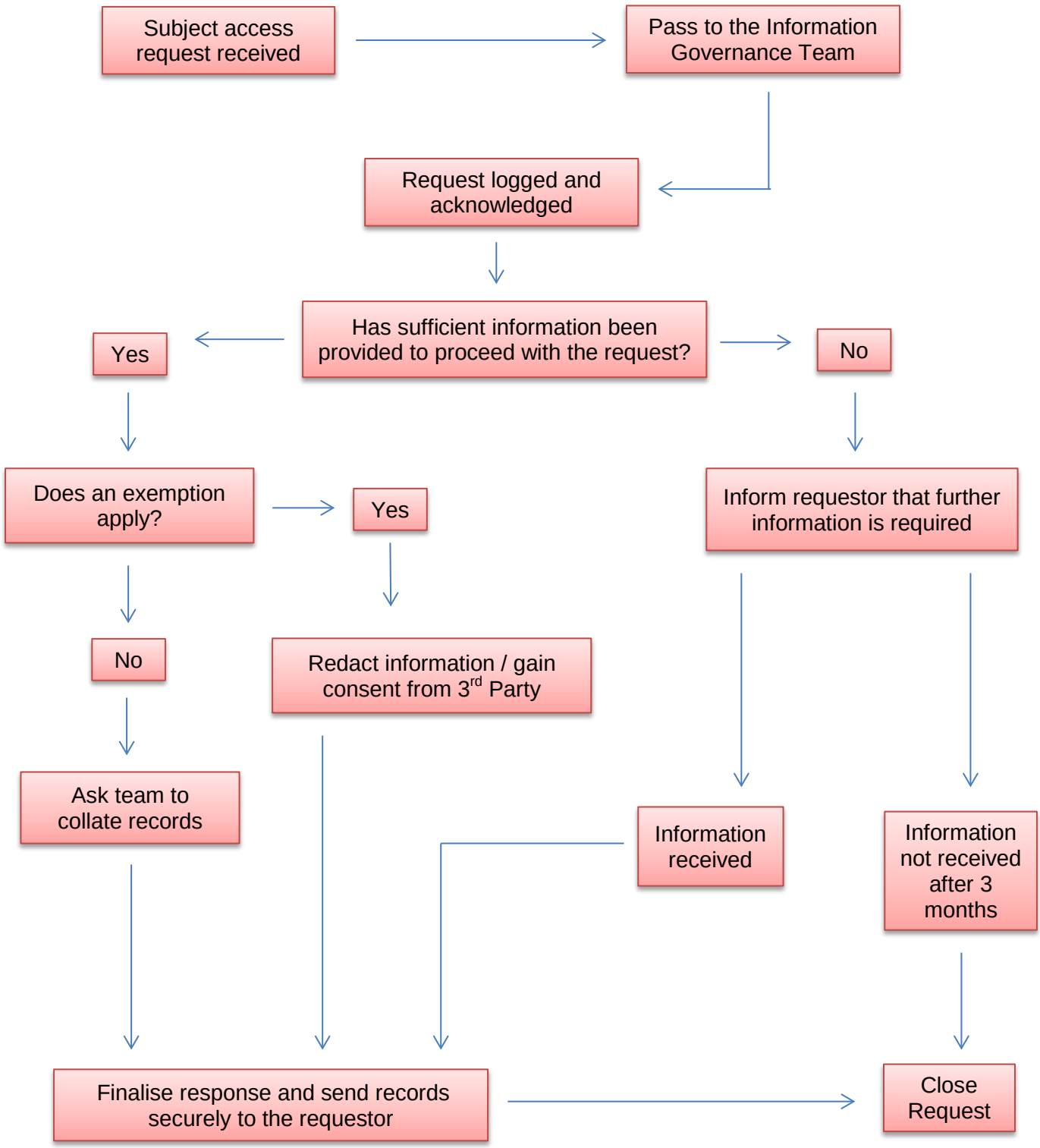
5.3 Collation

- Consider where the information may be held and ask the relevant staff to conduct a search within the parameters of the request details
- Ensure both electronic and manual filing systems are considered.
- There is no exemption for potentially embarrassing information to be redacted nor for the removal of personal comments from records. It is a criminal offence to alter, block or destroy information after receipt of a Subject Access Request.
- Information must be in an intelligible form and explanations should be provided for pseudonyms, abbreviations etc.
- It is important that the department receiving the access request should work closely with the Information Governance Team to satisfy the CCGs legal obligations under the Data Protection Act and GDPR.

5.4 Responding

- Check that you have received any additional supporting documentation requested at the time of acknowledgement
- Send the response to the requester explaining the information supplied
- The records must be sent securely by:
  - Seal the information in a robust envelope or one-use
  - Mark it ‘Private and Confidential, for the attention of the addressee only’
  - Send to a named person only
  - Send the information by Recorded/Special Delivery or collected in person, once the identification of the requestor has been confirmed.
- Make a record of the response, including any redactions or exempted information and ensure that you have a clear record of documents disclosed including copies of any redacted documents.
- Ensure that the requester is advised of his right to complain about the response given to his request and the way in which he can do this.

APPENDIX A - SUBJECT ACCESS PROCEDURE FLOWCHART



Manchester Health & Care Commissioning
A partnership between Manchester City Council and NHS Manchester CCG

MANCHESTER CITY COUNCIL

NHS Manchester Clinical Commissioning Group

APPENDIX B - SUBJECT ACCESS PROCEDURE PROFORMA

PLEASE COMPLETE IN BLOCK CAPITALS			
1.	**Details of Patient/Clients/Staff members records to be accessed**		
Surname:		SAR Ref No.:	
Forename(s):		Current Address: Full Postcode:	
If further details are available please include in a separate covering note.			
2.	**Details of applicant**		
Date of Request:		Date Request Received:	
Details of ID received or evidence of an LPA:			
2.	**Details of Records to be Accessed**		
Records dated from		**Department or services accessed**	
/ / **to** / /			
/ / **to** / /			
Date Acknowledgment sent:		Date Consent Form Received:	
Date sent to team to extract records:		Date records received:	
1 Month Deadline Date:		Date Information sent to the Requestor:	

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APPENDIX C - SUBJECT ACCESS APPLICATION/CONSENT FORM

Request for Access to Records

The Access to Health Records Act 1990 and Data Protection Act 2018 give patients/clients/staff or their representatives a right of access, subject to certain exemptions, to their records. Manchester CCG respect the rights of individuals to have copies of their information wherever possible.

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

PLEASE COMPLETE IN BLOCK CAPITALS										
1.	**Details of Patient/Clients/Staff members records to be accessed** (Please complete one form per person)									
Surname										Date of Birth
Forename(s)										Current Address
Any former names (If Applicable)										Full Postcode
Telephone Number										Previous Address (If Applicable)
NHS Number (If known/relevant)										
										Full Postcode
If further details are available please include in a separate covering note.										

2.	**Details of Records to be Accessed**
In order to locate the records you require please provide as much information as possible. Please list the department or services you have accessed that you require records from: i.e. PALs, Complaints, Continuing Healthcare or Human Resources etc (Continue on a separate sheet if required).	
Records dated from	**Department or services accessed**
/ / **to** / /	
/ / **to** / /	

3.	**Details of applicant** (Complete if different to patients/clients/staff members details)
Full Name	
Company (if Applicable)	
Relationship with individual who's records have been requested	
Address to which a reply should be sent	**Postcode:** **Tel:**

4.	**Authorisation to release to applicant** (to be completed by the patients/clients/staff member if not making their own request)

I (Print name)_____ hereby authorise Manchester CCG to release any personal data they may hold relating to me to the above applicant and to whom I authorise to act on my behalf.

Signature of patient/client/staff member **:** _____ **Date:** / /

5.	**Declaration**

I declare that information given by me is correct to the best of my knowledge and that I am entitled to apply for access to the health record(s) referred to above, under the terms of the Access to Health Records Act 1990 / Data Protection Act 2018.

Please select one box below:

- ❑ I am the patient/client/staff member (data subject).
- ❑ I have been asked to act on behalf of the data subject and they have completed section 4 -authorisation above.
- ❑ I am acting on behalf of the data subject who is unable to complete the authorisation section above (Covering letter with further details supplied).
- ❑ I am the parent/guardian of a data subject under 16 years old who has completed the authorisation section above. (Please include proof such as birth certificate)
- ❑ I am the parent/guardian of a data subject under 16 years old who is unable to understand the request and who has consented to my making the request on their behalf.
- ❑ I have been appointed the Guardian for the patient/client, who is over age 16 under a Guardianship order (attached).
- ❑ I am the deceased patient/client's personal representative and attach confirmation of my appointment.
- ❑ I have a claim arising from the patient/client's death and wish to access information relevant to my claim (Covering letter with further details to be supplied).

Please Note:

- If you are making an application on the behalf of somebody else we require evidence of your authority to do so i.e. personal authority, court order etc.
- It may be necessary to provide evidence of identity (i.e. Driving Licence).
- If there is any doubt about the applicant's identity or entitlement, information will not be released until further evidence is provided. You will be informed if this is the case.
- Under the terms of the Data Protection Act 2018/GDPR, requests will be responded to within 1 month after receiving all necessary information and/or fee required to process the request.
- For requests under the Access to Health Records Act 1990, requests will be responded to within 1 month after receiving all necessary information and/or fee required to process the request.
- Information disclosed under a Subject Access Request may have information removed; this is to ensure that the confidentiality is maintained for third parties referred to who have not consented to their information being disclosed.

Print Name		**Signed (Applicant)**		**Date**	/ /

Please complete and send this document together with the appropriate documents to:

NHS Manchester Clinical Commissioning Group
Information Governance Team
Parkway 3, Parkway Business Centre, M14 7LU