

# ACCESS TO HEALTH RECORDS POLICY & PROCEDURE

Primary Intranet Location	Version Number	Next Review Year	Next Review Month
Legal Services	V5	2021	July

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<b>Date</b>	13.09.2018
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<b>Related Policies and Procedures</b>	Freedom of Information policy Claims Management policy Health Records Management policy Information Governance policy Openness and Candour policy
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<b>Stakeholders</b>	Legal Services Complaints Department Information Governance Committee Health Records Management Committee
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Version	Date	Author	Author's Job Title	Changes
V1	16.07.2007	Karl Perryman	Head of Legal Services	Initial development
V2	14.07.2011	Karl Perryman	Head of Legal Services	Updated in accordance to new policy template
V3	10.11.2014	Claire Roberts	Associate Director of Patient Experience	Updated in accordance with new policy template plus additional section regarding restrictions on staff accessing own records.
V3.1	09.01.2018	Martin Heywood	Legal Services Manager	End date of January 2018 extended by 6 months at IG Committee because of changes coming in under the GDPR in spring 2018.
V4	24.05.2018	Martin Heywood	Legal Services Manager	Updating to include the provisions of the Data Protection Act 2018
V5	06.09.2018	Martin Heywood	Legal Services Manager	General update, post GDPR and DPA 2018

### Summary of the guidance

This policy and procedure summarises the statutory requirements and national guidance on Access to Health Records and sets out the Trust procedures in place to ensure the organisation's compliance with these requirements.

### Key words to assist the search engine

Access to Health records, Data Controller, Appropriate Health Professional, Rectification

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# Access to Health Records Policy & Procedure

## 1 INTRODUCTION

- 1.1 The Access to Health Records Policy & Procedure for The Queen Elizabeth Hospital King's Lynn NHS Foundation Trust complies with the Data Protection Act 2018 (DPA 2018) which came into effect on 25 May 2018. It replaces and repeals the entire DPA 1998.
- 1.2 **The Data Protection Act 2018** – provides rights for living individuals (data subjects) to access their own personal records. The right can also be exercised by an authorised representative on the individual's behalf. The Information Commissioner's Office is the independent public body that is responsible for governing Data Protection compliance: [www.ico.gov.uk/](http://www.ico.gov.uk/)
- 1.3 **The Access to Health Records Act 1990** – provides rights of access to deceased patient health records by specified persons.
- 1.4 **The Medical Reports Act 1988** – provides rights for individuals to have access to reports relating to them, provided by medical practitioners for employment or insurance purposes.

## 2 PURPOSE

- 2.1 To provide guidance to members of staff on how to respond to a request for access to health records in accordance with current legislation.
- 2.2 To define responsibilities of staff members in relation to access to health records.

## 3 DEFINITIONS (under the Data Protection Act 2018)

### 3.1 Health Record

#### 3.1.1 means a record which—

- (a) consists of data concerning health, and
- (b) has been made by or on behalf of a health professional in connection with the diagnosis, care or treatment of the individual to whom the data relates.

3.1.2 A health record can be recorded in an electronic or manual form or in a mixture of both. It may include such things as: hand-written clinical notes, letters to and from other health professionals, laboratory reports, radiographs and other imaging records, e.g. X-rays and not just X-ray reports, printouts from monitoring equipment, photographs, videos and tape-recordings of telephone conversations.

### **3.2 Data Controller**

3.2.1 The Trust is the registered Data Controller for all personal information held by the Trust.

### **3.3 Appropriate Health Professional**

3.3.1 The Data Protection Act 2018 has a very wide definition of health care professional.

## **4 RESPONSIBILITIES**

### **4.1 Board of Directors**

4.1.1 The Board of Directors is responsible for ensuring that all valid subject access requests are managed in accordance with the DPA 2018. The Trust will ensure that a member of staff is appointed to manage all subject access requests in accordance with the Act and this policy and procedure.

### **4.2 Medical Director**

4.2.1 The Medical Director has executive responsibility for ensuring compliance with the requirements of the DPA 2018.

### **4.3 Legal Services Manager**

4.3.1 The Legal Services Manager has delegated managerial responsibility for the day to day management of all subject access requests in accordance with the DPA 2018 and this policy and procedure.

### **4.4 Legal Services Support Officer**

4.4.1 The Legal Services Support Officer is responsible for the day-to-day administration of requests and acts as the agent of the 'Data Controller'.

### **4.5 Information Governance Committee**

4.5.1 The Information Governance Committee is the overview committee for subject access requests and will ensure that these are managed in accordance with the DPA 2018 and this policy and procedure.

## **5 EXCEPTIONS**

5.1 A request for access can be refused initially if the Trust is not supplied with reasonable information as to the identity of the applicant. Despite the current legislation providing a

very open approach to information, the Data Controller (the Trust) is still entitled to take steps to verify the identity of a requester to prevent inadvertent disclosure to unauthorised persons. The use of standard forms (see the appendices) enables the requestor to be given the opportunity to provide accurate details.

- 5.2 Information can also be withheld if disclosing the personal data would reveal information regarding a third party, (e.g. regarding a relative, or information provided by another identified person), unless that person has consented to the disclosure or it is reasonable to comply with the request without that consent. This exception does not apply to staff involved in the care of a patient.

## **6 RESPONDING TO ACCESS REQUESTS**

- 6.1 A request for access should be submitted in writing or by email; no reason for the request needs to be given.

- 6.2 The requester should provide enough proof to satisfy the data controller of their identity and to enable the data controller to locate the information required. If this information is not contained in the original request the data controller should obtain additional information as required.

- 6.3 Where requests are made on behalf of the individual patient, the data controller should be satisfied that the individual has given consent to the release of their information.

- 6.4 Subject to any applicable exception, the applicant will be given a copy of the information and, where the data is not readily intelligible, an explanation (e.g. of abbreviations or medical terminology).

- 6.5 No fee can be charged for access and this includes the case of an application for a deceased patient's records.

- 6.6 Where a subject access request has previously been complied with, the DPA 2018 permits data controllers to make a charge for disclosure in response to a subsequent identical or similar request if they can be regarded as manifestly unfounded or excessive. There is no current definition of "manifestly unfounded or excessive" but regard will be given to the nature of the data and how often it is added to. The reason for the request(s) will also be considered.

- 6.7 When the necessary information is obtained, the request should be recorded on the Trust's Datix system and complied with within one month. In exceptional circumstances where this is not possible, the applicant will be informed and a response provided within this period of time.

## **7 PATIENTS LIVING ABROAD REQUIRING ACCESS TO THEIR HEALTH RECORDS**

- 7.1 Former patients living outside the UK but who received treatment in the UK have the same rights to apply for access to their UK health records.

- 7.2 Original health records must not be given to patients to keep or take to a new GP outside the UK. However, the patient may request a summary report from their GP and/or request a copy of their record under the access to health records regulations.

## **8 PARENTAL ACCESS TO A CHILD'S HEALTH RECORD**

- 8.1 Normally a person with parental responsibility will have the right to apply for access to their child's health record. However, in exercising this right a health professional should give careful consideration to the duty of confidentiality owed to the child.
- 8.2 The law regards young people aged 16 or 17 to be adults in respect of their rights to confidentiality. Children under the age of 16, who have the capacity and understanding to take decisions about their own treatment, are also entitled to decide whether personal information may be passed on and generally to have their confidence respected. However, good practice dictates that the child should be encouraged to involve parents or other legal guardians in their healthcare.

## **9 VIEWING HEALTH RECORDS**

- 9.1 The DPA 2018 does not provide an express right to directly inspect records, although it is permitted with the agreement of the patient and the hospital, and there are justifiable circumstances.
- 9.2 If it is agreed that the patient or their representative may directly inspect their health records, it should be considered whether access should be supervised by a health professional or a lay administrator. If the applicant raises queries, an appointment with a health professional should be offered.
- 9.3 **Members of staff do not** have permission to access their own health records or those of near relatives, friends or colleagues. This includes accessing the results of diagnostic tests, scans or x-rays. Staff wishing to access current or previous health records and results must do so via the health professional providing their current care at an appointment, or by applying for access in accordance with the processes laid out in this policy. If a member of staff is found to have breached this requirement, that person will be subject to disciplinary measures in accordance with the Trust's Disciplinary Policy and Procedure.

## **10 ACCESS TO DECEASED PATIENTS' HEALTH RECORDS**

- 10.1 The Access to Health Records Act 1990 provides certain individuals with a right of access to the health records of a deceased individual. These individuals are defined under Section 3(1)(f) of that Act as, 'the patient's personal representative and any person who may have a claim arising out of the patient's death'. A personal representative is the executor or administrator of the deceased person's estate. The personal representative is the only person who has an unqualified right of access and individuals other than the personal representative have a legal right of access under the Act only where they may have a claim arising from a patient's death.
- 10.2 The data controller must satisfy him/herself as to the identity of applicants. Where an application is being made on the basis of a claim arising from the deceased's death, applicants may be asked to provide evidence to support their claim and this should be discussed with the Trust's Legal Officer before disclosure.

- 10.3 Disclosures in the absence of such statutory basis should be in the public interest, be proportionate, and judged on a case-by-case basis. The public good that would be served by disclosure must outweigh both the obligation of confidentiality owed to the deceased individual and any other individuals referenced in a record. Key issues for consideration include any preference expressed by the deceased prior to death, the distress or detriment that any living individual might suffer following the disclosure, and any loss of privacy that might result and the impact upon the reputation of the deceased.
- 10.4 Disclosing a complete health record will require a stronger justification than a partial disclosure of information abstracted from the record. If the point of interest is the latest clinical episode or cause of death, then disclosure, where this is judged appropriate, will be limited to the pertinent details. No charge may be made for disclosure.
- 10.5 If the decision about disclosure is not simple or straightforward the Caldicott Guardian or Information Governance Lead should be consulted. In the most complex cases legal advice should be sought from the legal services manager.

## **11 RIGHTS OF RECTIFICATION**

- 11.1 Where an applicant considers that information contained in their health records is wrong or inaccurate, they may apply for a correction or 'rectification' to be made in accordance with the DPA 2018. The legal Services Support Officer should in these circumstances consult the appropriate health professional.
- 11.2 If the health professional is satisfied that the information is inaccurate, i.e. incorrect, misleading or incomplete, the health records may be corrected. If the health professional is not satisfied that the applicant's concerns are justified, a note of the applicant's comments may be appended in the part of the record to which the comments relate. Please note, a mere difference of opinion between individuals over the same facts does not mean that inaccuracy is present.
- 11.3 Whether or not the record is corrected, the Trust will supply the applicant with a copy of the correction/appended note. Care must be taken not to obliterate information significant to the future care and treatment of the patient.
- 11.4 If the Trust's attempt to rectify the records and resolve the concerns is not accepted, the patient may be advised to pursue the matter through the Trust's Complaints Procedure or if unwilling to follow this route, to apply to the Court for an order, or to the Information Commissioner's Office for an enforcement notice. Either which may require that the inaccurate data and any expression of opinion based on it, is rectified, blocked, erased or destroyed.
- 11.5 However, where the data is inaccurate but accurately records information given by the data subject or another person, the Commissioner may instead order that the record should be supplemented by a statement of the true facts as approved by the Court/Commissioner.



## **12 FEES TO ACCESS AND COPY HEALTH RECORDS**

12.1 The DPA 2018 has abolished all fees and charges created by the DPA 1998. See s6 above.

## **13 FREEDOM OF INFORMATION (FOI)**

13.1 The FOI Act 2000 is not intended to allow people to gain access to private sensitive information about themselves or others, such as information held in health records. Those wishing to access personal information should apply under the DPA 2018. The Information Commissioner has provided guidance to the effect that health records of the deceased are also exempt from the provisions of FOI due to their sensitive and confidential content.

## **14 ACCESS TO MEDICAL REPORTS**

14.1 The Access to Medical Reports Act 1988 governs access to medical reports made by a medical practitioner who is, or has been responsible for the clinical care of the patient, and who has been asked to produce a report for insurance or employment purposes.

14.2 In general an applicant insurer or employer cannot ask a patient's medical practitioner for a medical report without the patient's knowledge and consent. Patients have the option of declining to give consent for a report about them to be written. The patient can apply for access to the report at any time before it is supplied to the employer/insurer, subject to certain exemptions.

14.3 Before giving consent, the patient can ask for any part of the report that they think is incorrect to be amended. If an amendment is requested, the medical practitioner should either amend the report accordingly, or, at the patient's request, attach to the report a note of the patient's views on the part of the report which the doctor is declining to amend.

14.4 A medical practitioner may make a reasonable charge for supplying the patient with a copy of the report.

14.5 The medical practitioner is not obliged to give access to any part of a medical report whose disclosure would in the opinion of the practitioner:

- cause serious harm to the physical or mental health of the individual or others or;
- identify a third person, who is not a health professional involved in the individual's care and who has not consented to the release of that information.

## **15 PROCEDURE**

15.1 Upon receipt of a telephone enquiry or letter from a person requesting access to their health records, personal records or the health records of a deceased patient, the appropriate application form will be sent to the person together with an information leaflet (see Appendices 2, 3 and 4).

- 15.2 When the completed and signed form is returned, the request will be logged onto the Request for Information (RFI) part of Datix. The form will be carefully checked to ensure that it has been completed correctly and countersigned to ensure the identity of the applicant is validated and an acknowledgement letter sent to the applicant.
- 15.3 The records will be disclosed within one month of receipt of a completed application form or otherwise provision of the same information in any other acceptable format.
- 15.4 If copies of the full set of records have been requested, the health records will be scanned by the Records Department and Legal Services in accordance with the current local agreement in force. The date the records are requested (and subsequently provided) will be entered onto the Datix database.
- 15.5 Copies of the paper or electronic health record, along with any appropriate printouts or downloads from the Pathology, Radiology and the Emergency Department EDIS databases, will be sent to the patient with a covering letter. Specialist digital radiological images will not be disclosed unless specifically requested as the information is already contained within the written radiology report.
- 15.6 If only parts of the health records have been requested, photocopies of the appropriate sections will be provided. The original health records will then be returned to the Health Records Library and Patient Centre updated accordingly.
- 15.7 If the Legal Services Support Officer is concerned about the applicant or the information requested, the request will be checked with the appropriate health professional prior to disclosure.

## **16 TRAINING**

- 16.1 The Legal Services Support Officer will be provided with specific training in order to effectively meet the duties required within the role.

## **17 EQUALITY IMPACT STATEMENT**

- 17.1 This policy has been subject to an equality impact assessment and provision is made within the policy and procedure to ensure that no individuals with the protected characteristics are disadvantaged by the arrangements therein.

## **18 REFERENCES**

- 18.1 • Data Protection Act (2018),  
<http://www.legislation.gov.uk/ukpga/2018/12/contents/enacted>
- 18.2 • The Access to Health Records Act 1990  
<http://www.legislation.gov.uk/ukpga/1990/23/contents>
- 18.3 • The Medical Reports Act 1988  
<http://www.legislation.gov.uk/ukpga/1988/28/contents>
- 18.5 • Information Governance Commissioner's Office  
<https://ico.org.uk/>

## **19 DISSEMINATION OF DOCUMENT**

- 19.1 This document will be distributed to relevant staff by publication on the intranet under policies and procedures / legal services.

## 20 MONITORING COMPLIANCE

Key elements	Process for Monitoring	By Whom (Individual / group /committee)	Responsible Governance Committee /dept	Frequency of monitoring
Individual responsibilities	Appraisal and re-validation	Line manager	Workforce Committee	Annual
Committee responsibilities	Annual report	Chairperson IG Committee	Quality Committee	Annual
Compliance with performance measures	Report to IG Committee on departmental performance	Head of Legal Services	IG Committee	6 monthly
	Review of complaints from those requesting access to health records	Head of Legal Services	IG Committee	6 monthly

## **APPENDICES**

## EQUALITY IMPACT ASSESSMENT

## STAGE 1 - SCREENING

<b>Name &amp; Job Title of Assessor:</b> Claire Roberts Associate Director of Patient Experience		<b>Date of Initial Screening:</b> 28 <sup>th</sup> June 2011	
		<b>Date of Review:</b> 11 <sup>th</sup> November 2014	
<b>Policy or Function to be assessed:</b> Access to Health Records			
		<b>Yes/No</b>	<b>Comments</b>
<b>1.</b>	<b>Does the policy, function, service or project affect one group more or less favourably than another on the basis of:</b>		
	• Race & Ethnic background	No	
	• Gender including transgender	No	
	• Disability:- This will include consideration in terms of impact to persons with learning disabilities, autism or on individuals who may have a cognitive impairment or lack capacity to make decisions about their care	Yes	Additional support will be provided to any individual attempting to access their own health records who may find it difficult due to impaired cognitive functioning or a learning disability. Such individuals will be referred to an advocate for support.
	• Religion or belief	No	
	• Sexual orientation	No	
	• Age	Yes	Provision is made within the policy to provide confidentiality for children and adolescents.
<b>2.</b>	<b>Does the public have a perception/concern regarding the potential for discrimination?</b>	No	

If the answer to any of the questions above is yes, please complete a full Stage 2 Equality Impact Assessment.

Signature of Assessor: Claire Roberts

Date: 11.11.2014

Signature of Line Manager: Catherine Morgan

Date: 11.11.2014

Reaffirmed Martin Heywood

Date: 06.09.2018

## STAGE 2 – EQUALITY IMPACT ASSESSMENT

If you have indicated that there is a negative impact on any group in part one please complete the following, is that impact:

		Yes/No	Comments
1.	<b>Legal/Lawful under current equality legislation?</b>	Yes	This policy is fully compliant with all statutory legislation on Data Protection and Access to Health Records and with current Department of Health guidance.
2.	<b>Can the negative impact be avoided?</b>	Yes	Through supportive measures as indicated in Stage 1.
3.	<b>Are there alternatives to achieving the policy/guidance without the impact?</b>	No	
4.	<b>Have you consulted with relevant stakeholders of potentially affected groups?</b>	No	
5.	<b>Is action required to address the issues?</b>	No	

It is essential that this Assessment is discussed by your management team and remains readily available for inspection. A copy including completed action plan, if appropriate, should also be forwarded to the Equality & Diversity Lead, c/o Human Resources Department.



**APPLICATION FORM FOR ACCESS TO HEALTH RECORDS  
IN RESPECT OF A DECEASED PATIENT**

**PLEASE COMPLETE IN BLOCK CAPITALS WITH A BLACK PEN**

All access to health records requests are dealt with in compliance with the Access to Health Records Act 1990 as amended by the Data Protection Act (2018).

**PLEASE GIVE US THE FOLLOWING INFORMATION ABOUT THE PATIENT:**

Surname:		Mr/Mrs/Ms	Date of Birth:	
Forenames:			Hospital Ref: (if known)	K
Last Address			Post Code:	
			Date of Death	

If the Patient's name or address was different from the above during the period(s) to which your application relates, please give details below:

Previous Surname:	(1)	(2)
Address:		
Applicable dates:		

**PATIENT'S HOSPITAL or CLINIC CONTACTS**

Please give full details of all the information you wish to have access to: -

Data requested	Hospital/Ward/Clinic	Relevant Dates	Consultant (if known)
Copies of Medical Records			



**DECLARATION**

I declare that the information given in this form is correct to the best of my knowledge, and that I am entitled to this information as I am the patient's

Next of kin or\* executor/administrator of the estate \*Please delete

Applicant's Name: (print in CAPITALS)  
.....

Address to which reply should be sent: (if different from overleaf)

Signature: ..... Date: .....

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**COUNTERSIGNATURE** (to be completed by the person required to confirm identity)

I (insert full name): ..... certify that the applicant (insert full name)  
..... has been known to me as an employee/client/patient/personal friend for .....  
years and that I have witnessed the signing of the above declaration.

Signature: ..... Date: .....

Name: ..... Profession:.....

Address:  
.....

Daytime telephone number:

Please return completed form to: Access to Health Records, Legal Services, The Queen Elizabeth Hospital,  
Gayton Road, King's Lynn PE30 4ET

### APPLICATION FORM FOR ACCESS TO HEALTH RECORDS

#### PLEASE COMPLETE IN BLOCK CAPITALS WITH A BLACK PEN

All access to health records requests are dealt with in compliance with the Data Protection Act (2018).

#### PLEASE GIVE US THE FOLLOWING INFORMATION ABOUT THE PATIENT

Surname:		Mr/Mrs/Ms	Date of Birth:	
Forenames:			Hospital ref: (if known)	K
Current Address			Post Code:	
			Telephone Number:	

If your name and/or address was different from the above during the period(s) to which your application relates, please give details below:

Previous Surname:	(1)	(2)
Address:		
Applicable dates:		

#### PATIENT'S HOSPITAL or CLINIC CONTACTS

Please give full details of all the information you wish to have access to: -

Data requested	Hospital/Ward/Clinic	Relevant Dates	Consultant (if known)
Copies of Medical Records			

**DECLARATION**

I declare that the information given in this form is correct to the best of my knowledge, and that:

\*I am the person named overleaf

\*I am acting on behalf of the person named overleaf (\*delete as appropriate)

**IMPORTANT NOTE:**

- ◆ This section of the form must be signed in the presence of the person who countersigns your application.
- ◆ If you are acting on behalf of another person, PART 1 of the AUTHORISATION section below must also be completed.
- ◆ In the case of a person under 18 years, PART 2 of the AUTHORISATION section below must also be completed

Applicant's Name: (print in CAPITALS) .....

Address to which reply should be sent: (if different from overleaf)

Signature: ..... Date: .....

**AUTHORISATION**

**PART 1 — ON BEHALF OF THE PATIENT**

I hereby authorise The Queen Elizabeth Hospital Kings Lynn NHS Trust to release the requested medical information to:

.....(enter name of person acting on your behalf)

Signature: ..... Date: .....

**PART 2** (in the case of a person under the age of 18, a responsible adult should certify, where appropriate, that the child understands the nature of the application)

I, (Name) .....

of (Address) .....

certify that the applicant understands the nature of this application.

Signature: ..... Date: .....

**COUNTERSIGNATURE** (to be completed by the person required to confirm identity)

I (insert full name): ..... certify that the applicant (insert full name) ..... has been known to me as an employee/client/patient/personal friend for ..... years and that I have witnessed the signing of the above declaration.

Signature: ..... Date: .....

Name: ..... Profession: .....

Address: .....

Daytime telephone number: .....

Please return completed form to: Access to Health Records, Legal Services, The Queen Elizabeth Hospital, Gayton Road, King's Lynn PE30 4ET

**APPLICATION FORM FOR ACCESS TO PERSONAL RECORDS**  
**PLEASE COMPLETE IN BLOCK CAPITALS**

All access to personal records requests are dealt with in compliance with the Data Protection Act (2018).

**DETAILS OF PERSON FOR WHOM DATA IS REQUESTED:**

Surname:		Mr/Mrs/Ms	Date of Birth:	
Forenames:			Hospital Ref: (if known)	
Current Address			Post Code:	
			Telephone Number:	

If your name and/or address is different from the above during the period(s) to which your application relates, please give details below:

Previous Surname:	(1)	(2)
Address:		
Applicable dates:		

Please give full details of all the information you wish to have access to:-

Data requested	Relevant Dates

DECLARATION

I declare that the information given in this form is correct to the best of my knowledge, and that:

- \* I am the person named overleaf
- \* I am acting on behalf of the person named overleaf (\*delete as appropriate)

IMPORTANT NOTE:

- ◆ This section of the form must be signed in the presence of the person who countersigns your application.
- ◆ If you are acting on behalf of another person, PART 1 of the AUTHORISATION section below must also be completed.
- ◆ In the case of a person under 18 years, PART 2 of the AUTHORISATION section below must also be completed

Applicant's Name: (print in CAPITALS) .....

Address to which reply should be sent: (if different from overleaf)

.....

Signature: ..... Date: .....

AUTHORISATION

PART 1 – ON BEHALF OF THE PATIENT

I hereby authorise The Queen Elizabeth Hospital King's Lynn NHS Foundation Trust to release the requested personal records to:

.....(enter name of person acting on your behalf)

Signature: ..... Date: .....

PART 2 (in the case of a person under the age of 18, a responsible adult should certify, where appropriate, that the child understands the nature of the application)

I, (Name) .....

of (Address) .....

certify that the applicant understands the nature of this application.

Signature: ..... Date: .....

COUNTERSIGNATURE (to be completed by the person required to confirm identity)

I (insert full name): ..... certify that the applicant (insert full name) .....has been known to me as an employee/client/patient/personal friend for ..... years and that I have witnessed the signing of the above declaration:

Signature: ..... Date: .....

Name: ..... Profession: .....

Address: .....

Daytime telephone number: .....

Please return completed form to: Access to Health Records, Legal Services, The Queen Elizabeth Hospital, Gayton Road, King's Lynn PE30 4ET