

DPA, Caldicott & Confidentiality Policy

# Disclosure of Information to the Police Procedure

Version: 2

<b>Summary:</b>	Procedure and guidance for staff relating to the disclosure of patient/staff information to Police officers.	
<b>Keywords (minimum of 5):</b> <i>(To assist policy search engine)</i>	Police; Information sharing; consent; need to know; best interest; capacity; public interest	
<b>Target Audience:</b>	All staff employed by Southern Health NHS Foundation Trust, Non-Executive Directors and Contractors.	
<b>Next Review Date:</b>	July 2019 3 years, or sooner if required	
<b>Approved &amp; Ratified by:</b>	Information Governance Group	<b>Date of meeting:</b> 11/07/2016
<b>Date issued:</b>	July 2016	
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# Version Control

## Change Record

Date	Author	Version	Page	Reason for Change
19/05/2016	Lesley Barrington	2	All	Updated

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## DISCLOSURE OF INFORMATION TO THE POLICE

*Note: The terms 'clients' and 'patients' are commonly used in the social care and health services. For purposes of simplicity, the term 'patient' or 'individual' where appropriate, is used in this document to refer to the clients and users of service.*

### 1. Purpose / introduction

The purpose of this procedure and guidance is to help staff in making a decision as to whether to share patient information with the Police, and if so what information to share. It is the policy of Southern Health NHS Foundation Trust (the Trust) to share legitimate information with the Police in a justifiable way which upholds the patient's right to confidentiality and releases sufficient, appropriate information to assist the Police with their enquiries.

It is a fundamental principle of medical ethics that all that passes between a patient and a doctor/practitioner in the course of a professional relationship is confidential. Patients have the right to expect that information gained in the course of their treatment and care is given to no-one except those involved in their direct care and, that even then, only pertinent information is communicated.

### 2. General issues

If staff are in doubt, they should seek advice in the first instance from their Team/Line Manager. If further advice is required – please contact the Information Assurance Team on 023 8087 4189 / [hp-tr.informationassuranceteam@nhs.net](mailto:hp-tr.informationassuranceteam@nhs.net).

In Child Protection matters, Locality Safeguarding Children Boards (LCSBs), Child Protection Procedures and Hospital Child Protection Policy should also be followed. Advice should be sought from the Safeguarding Team.

Where issues relate to vulnerable adults, Hampshire's Safeguarding Adults Policy should also be followed (e.g. a patient has made a threat against a third person).

**Only give the minimum, or relevant, information, to satisfy the request:** there is a difference between disclosing general information about a patient, and releasing copies of a patient's medical record. The golden rule is for both the Trust and the Police to be able to justify the release of information being in the public interest.

**In all cases, the local Access to Records Lead must be informed, and the request to disclose information must be recorded on the SAR log, with reasons for action taken, e.g. why information was given or withheld.**

### 3. Procedure to be followed – (see Appendix 3 for decision flow diagram)

3.1 **Seek assistance:** when a member of staff receives a request for patient information from the Police, they should contact their Team Manager, and if out of hours, the Senior Clinician or Manager on Call.

3.2 **Validate the request:**

A Police officer, wishing to make enquiries into the case of a serious offence, should ask to see the Clinician or Manager of the department responsible for the care of the patient (who is suspected of involvement in the offences under investigation, either as

a victim or perpetrator). The genuine identity of the person representing themselves as a Police officer must be established (e.g. warrant card examined).

Requests from the Police to access clinical records, must always be made in writing. Such requests can be made under Section 29 (3) of the Data Protection Act 1998 and are usually made using a DP2 form (Appendix 1).

Where Police attend Trust premises in response to an incident involving a patient, the Police officer will normally ask the medical staff to determine whether the person is fit to be interviewed. It is generally considered appropriate, ideally with the patient's consent. The Police officer will often ask staff whether the patient knew what s/he was doing and whether s/he is responsible for his/her actions. In these cases the doctor should not give information without the express consent of the patient.

### **3.3 Obtain Consent:**

Where possible, practical, and safe to do so, the patient's consent to release information should be obtained by the Trust. However, there may be times when this is not possible due to the patient's condition, for example the patient does not have capacity to consent and will not gain capacity to consent in a timely manner; is unconscious or has absconded, or has been discharged from the care of the Trust, or where gaining consent is likely to result in further incidents or risk. The duty of care also requires the Trust to consider whether the patient is capable of making an informed decision.

### **3.4 Disclosure of information to the Police without the patient's Consent:**

The consultant or lead healthcare professional involved with the patient, or their deputy, has discretion, within the law, over what information may be given to the Police (whether in writing or following attendance by a Police officer to his or her Department). Where Police attend outpatient clinics, there may not always be a designated consultant with responsibility; in these cases the senior clinician will need to make the decision.

### **3.5 Circumstances where information may be released:**

- a. If the public interest and safety out-weighs the duty of confidentiality; this is likely to involve crimes of a very serious nature or where a serious offence is being investigated, such as rape, murder, kidnapping, causing death by dangerous driving or fire-arm related crimes. [Refer to section 5.4 of the Information Sharing Policy]
- b. if information relating to terrorism has been acquired;
- c. if the provisions of Section 172 of the Road Traffic Act 1988 apply (name and address). Where the investigation concerns offences involving motor vehicles staff can provide the Police with patient/occupant/driver demographic details. Under Section 168 (2) (b) of the 1972 Road Traffic Act any person (e.g. Trust staff) must give information that may lead to the identification of the driver of a vehicle, where the driver is alleged to have committed an offence under the Act. It should be noted that the information is restricted only to enable an identification of the driver and no other information should be given. (Hunter-v-Mann 1974). The Police Officer should not be permitted to examine any medical or nursing notes or any record books or administration books kept in the hospital. If unsure seek advice.

- d. if the release is for the prevention and detection of crime and is a life or death matter and the decision has been made that its release is 'in the public interest and safety' then the appropriate information must be released and the Trust's Records Manager informed. The Police must provide a completed and signed DP2 form (see Appendix 1).
- e. where public moral duty to furnish certain information about a patient to the Police over-rides the duty of confidentiality. i.e. there is sufficient public interest justification to release it.
- f. where it is evident to staff that they, colleagues or members of the public may be at risk and that involving the Police or other agencies is appropriate. However, the Caldicott Guardian, Data Protection Officer or senior managers agreement should always be obtained whenever possible. Examples include detained patients who are absent without leave or patients who are registered as missing persons.
- g. if a Court Order has been obtained.

In all cases, the authority of the Consultant or Senior Clinician in charge of the patient (or deputy) must be obtained.

See Appendix 2 for further information and guidance from the Information Commissioners Office.

### **3.6 Release of information to the Police in authorised Police break-ins or missing person cases**

The Trust should always seek to determine why the Police need the information.

There are certain emergency situations where the Police will ask, by phone, if an individual is an in-patient for example. In these cases, staff should ask for the name and rank of the officer and call the station back using the telephone number obtained from switchboard. Information may only be disclosed if it can be justified to be in the public interest, e.g. risk of serious harm or death.

There are occasions when the Police contact the hospital seeking information about missing people. Such enquiries should not be made by telephone but by a visit to the hospital or by a written request. If it is an emergency, then the above paragraph applies.

There may be situations where Police enquire as to whether someone about whom they have received reports and/or are about to engage with is known to the Trust. In these cases, the same tests apply as above with the over-riding test being consideration of the patient's best interests. The following are given by way of examples where release of information may be appropriate:

- Police have received a report about a person acting in a bizarre way. Police attend and believe the behaviour may be the result of a mental illness and wish to test if that person is known to us so that they can ensure appropriate treatment;
- in missing person cases, where the Trust knows the patient is in hospital, the Trust should ask the patient for their consent to pass the information on. If the patient does not want the information passed on (for example to relatives) then the Police should be told this. A record of the request and the outcome must be placed in the health record;

- where the patient is not in a position to give/withhold informed consent and it is seen to be in the patient's best interest to give information (e.g. the patient does not have the capacity to consent or is unconscious in intensive care unit) then information should be released based on a professional judgement/justification. Again, a record must be made in the health records. In such circumstances appropriate authorisation should be sought from a Senior Clinician, Senior Manager or Caldicott Guardian whenever possible.

### **3.7 Where Trust staff approach the Police**

In certain areas of the Trust's work it is recognised that staff are at risk of crime from patients, relatives and the public. They may also come across evidence of serious crime. All staff have the same rights and duties as any other citizen, and the Trust also has a duty not to infringe or diminish those rights or duties. The Trust recognises that in certain circumstances, involving the Police may be the appropriate way of dealing with a situation or its consequences.

In some circumstances staff will come across evidence of serious crime, for example; the possession of firearms or other weapons or drugs. Where this occurs on Trust property (e.g. as part of admission procedures) the Police should be informed. Please refer to the Trust's 'Search of Patients and their Property Policy' for full guidance. All such incidents (whether on Trust property or not) must be reported.

In addition to the above, Trust staff need to bear in mind the nature and circumstances of the patient's injuries and the possibility that they may indicate involvement in serious crime, for example, terrorism, violent battery, murder or the production of explosives. In view of anti-terrorist legislation measures, these instances must be notified to the Police immediately after seeking advice from the appropriate manager.



# HAMPSHIRE CONSTABULARY

Appendix 1

DP2

## Declaration Form for Data User RESTRICTED

**PLEASE TREAT THIS ENQUIRY AS CONFIDENTIAL**

To:

**DATA PROTECTION ACT, 1998, SECTION 28 and SECTION 29(3)**

I am making enquiries which are concerned with:

The prevention and detection of crime, or the apprehension or prosecution of offenders\*

National Security\*

The vital interests of the data subject\*

*\* One of these must be selected*

**DATA PROTECTION ACT, 1998, PRINCIPLE 1, SCHEDULE 2/3**

Information Required

Nature of enquiry

The information sought is needed to

I confirm that the personal data requested is required for that/those purpose(s) and the failure to provide the information will, in my view, be likely to prejudice that/those purpose(s).

Signed

Name

Rank

Date

Police Station

Countersigned (where necessary)





## Releasing information to prevent or detect crime (section 29) Data Protection Act

### Contents

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- Does the Data Protection Act 1998 stop me from releasing this kind of personal information?
- Who might ask me to release personal information under this exemption?
- What personal information can I release under this exemption?
- What questions do I need to ask?
- Do I have to release the personal information requested?
- Recommended good practice
- More information

The Data Protection Act 1998 (the Act) is based around eight principles of 'good information handling'. These give people specific rights in relation to their personal information and place certain obligations on those organisations that are responsible for processing it.

An overview of the main provisions of the Act can be found in The Guide to Data Protection. This is part of a series of guidance, which goes into more detail than the Guide, to help organisations to fully understand their obligations, as well as to promote good practice.

### Overview

This guidance explains what you need to consider when you are asked to release personal information because it is needed to prevent or detect a crime, or catch and prosecute a suspect. It is intended as a guide for organisations that do not normally receive requests of this kind.

### Does the Data Protection Act 1998 stop me from releasing this kind of personal information?

No. There is an exemption in the Data Protection Act 1998 (the Act) that allows you to give out personal information for these purposes (Section 29 – Crime and Taxation), but there are limits on what you can release.

### Who might ask me to release personal information under this exemption?

The Police are most likely to ask you to release personal information under this exemption. However, you may get requests from other organisations that can rely upon this exemption because they have a crime prevention or law enforcement function, for example, the Department for Work and Pensions – Benefit Fraud Section. For the sake of clarity, this guidance will continue to refer to releasing information to the Police.

### What personal information can I release under this exemption?

The exemption does not cover the disclosure of all personal information, in all circumstances. It only allows you to release personal information for the stated purposes and only if not releasing it would be likely to prejudice (that is, significantly harm) any attempt by Police to prevent crime or catch a suspect.

## What questions do I need to ask?

For every request for personal information you receive (and about each separate individual), you need to ask yourself the following questions.

- Am I sure the person is who they say they are? (For this reason particular care should be taken if the request is made over the telephone.)
- Is the person asking for this information doing so to prevent or detect a crime or catch or prosecute an offender?
- If I do not release the personal information, will this significantly harm any attempt by the Police to prevent crime or catch a suspect? (The risk must be that the investigation may very well be impeded.)
- If I do decide to release personal information to the Police, what is the minimum I should release for them to be able to do their job?
- What else (if anything) do I need to know to be sure that the exemption applies?

### Example

Why is it necessary for us to provide this personal information (can you not get this personal information from another source)?

Or

How will this personal information assist your attempts to prevent crime or catch a suspect?

There are times when you may release personal information relating to more than one person who the Police do not name, but who fit a particular description.

### Example

The Police may not have the name of the particular suspect, but they believe he is an employee of your organisation and have a particular description (for example, white male, between 20 and 30 years old with brown hair). In this situation, you may release the personal information of all the employees who match that particular description.

However, you would need to be satisfied that the Police have narrowed the description of the suspect as much as they reasonably can.

## Do I have to release the personal information requested?

We understand that most people will want to help the Police to prevent crime or catch a suspect, but it is up to you to decide to release personal information under this exemption. Even if you decide that the exemption applies, you still do not have to release the personal information.

If you have genuine concerns about releasing the personal information (for example, because you think you have other legal obligations such as the information being confidential), then you can ask the Police to come back with a court order requiring the release of the personal information. If the court decides you should release the information, you will not break the Act by obeying the order.

**Recommended good practice**

- Select a person or group of people within your organisation to make the decision whether or not to release personal information under the exemption
- Ask for the request to be made in writing and signed by someone of sufficient authority
- Make a record of each decision you make and the reasons why you came to that particular decision

**More information**

- This guidance will be reviewed and considered from time to time in line with new decisions of the Information Commissioner, Tribunals and courts.
- It is a guide to our general recommended approach, although individual cases will always be decided on the basis of their particular circumstances.
- If you need any more information about this or any other aspect of data protection, please Contact us: see our website [www.ico.gov.uk](http://www.ico.gov.uk) .

### Appendix 3:

