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Public Interest Information Sharing Policy

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Document Information

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Links or overlaps with other policies:			
<p>We are committed to preventing discrimination, valuing diversity and achieving equality of opportunity. No person (staff, patient or public) will receive less favourable treatment on the grounds of the nine protected characteristics (as governed by the Equality Act 2010): Sexual Orientation; Gender; Age; Gender Reassignment; Pregnancy and Maternity; Disability; Religion or Belief; Race; Marriage and Civil Partnership. In addition to these nine, the Trust will not discriminate on the grounds of domestic circumstances, social-economic status, political affiliation or trade union membership.</p> <p>We are committed to ensuring all services, policies, projects and strategies undergo equality analysis. For more information about equality analysis and Equality Impact Assessments please refer to the Equality and Diversity Policy.</p>			

Amendment History

Issue	Status	Date	Reason for Change	Authorised
0.1	Draft	Sept 2020	New policy	Information Governance Steering Group
2	Final	July 2021	No change	Information Governance Steering Group
2.1	Final	Nov 2021	Removal of duplication	Information Governance Steering Group
2.2	Final	Feb 2023	No change	Information Governance Steering Group
3	Final	Feb 2024	Minor updates	Information Governance Steering Group
4	Final	Jan 2025	No change	Information Governance Steering Group
5	Final (this version)	Feb 2026	Update to assurance routes to reflect new Trust structures	Information Governance Operational Group

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1. Introduction

- 1.1. Sharing personal Information can bring many benefits. It can support more efficient, easier to access services. It can help to make sure that the vulnerable are given the protection they need and organisations can co-operate to deliver the care those with complex needs rely on.
- 1.2. This document sets out the obligations and commitments that staff must follow to ensure that legislation is not breached, and the confidentiality of patients / clients / families / carers and employees is maintained.

2. Aims and objectives

- 2.1. This policy ensures that appropriate considerations are made prior to information sharing under public interest grounds.

3. Public Interest

- 3.1. In the absence of patient consent, a legal obligation or anonymisation, any decision as to whether identifiable information is to be shared with third parties must be made on a case-by-case basis and must be justifiable in the public interest.
- 3.2. Disclosures in the public interest based on the common law are made where disclosure is essential to prevent a serious and imminent threats to public health, national security, the life of the individual or a third party or to prevent or detect serious crime. Ultimately, the public interest can only be determined by the courts.
- 3.3. When considering disclosing information to protect the public interest health professionals must:
 - consider how the benefits of making the disclosure balance against the harms associated with breaching the patient's confidentiality both to the individual clinical relationship and to maintaining public trust in a confidential service
 - assess the urgency of the need for disclosure
 - discuss with and encourage the patient to disclose voluntarily
 - inform the patient before making the disclosure and seek their consent, unless to do so would increase the risk of harm or inhibit effective investigation
 - disclose the information promptly to the appropriate body
 - reveal only the minimum information necessary to achieve objective
 - seek assurance that the information will be used only for the purpose for which it is disclosed
 - document the steps taken to seek or obtain consent, and the reasons for disclosing the information without consent
 - be able to justify the decision
 - document both the extent of and grounds for the disclosure
- 3.4. Health professionals should be aware that they risk criticism and even legal liability if they fail to act to avoid serious harm. There is no specific legislation which tells health professionals whether to disclose information but general guidance about the categories of cases in which decisions to disclose may be justifiable are below.
- 3.5. Guidance should be sought from the Caldicott Guardian, Data Protection Officer, Trust Solicitor, professional body or defence body where there is any doubt as to whether disclosure should take place in the public interest.

4. Serious crime and national security

4.1. There is no legal definition as to what constitutes a serious crime. In the Police and Criminal Evidence Act 1984 a 'serious arrestable offence' is an offence that has caused or may cause:

- serious harm to the security of the state or to public order
- serious interference with the administration of justice or with the investigation of an offence
- death
- serious injury
- substantial financial gain or serious loss.

4.2. This includes crimes such as murder, manslaughter, rape, treason, kidnapping and abuse of children or other vulnerable people. Serious harm to the security of the state or to public order and serious fraud will also fall into this category. In contrast, theft, minor fraud or damage to property where loss or damage is less substantial would generally not warrant breach of confidence.

4.3. If there is any doubt, advice should be sought from the Caldicott Guardian, Data Protection Officer, or Trust Solicitor.

5. Public safety

5.1. Public safety occurs in connection with the assessment of patients with diabetes, epilepsy, defective eyesight, hypoglycemia or serious cardiac conditions who have been advised by health professionals to discontinue driving, but who nevertheless continue. The DVLA should be informed if anybody is thought to be at risk.

5.2. Issues of public safety may arise in circumstances where an individual who legitimately possesses firearms is thought by health professionals to be a risk because of drug or alcohol addiction or a medical condition such as depression. The police should be informed if anybody is thought to be at risk

6. Information Sharing that Requires Explicit Consent

6.1. National guidance has identified certain areas of information sharing that must only be carried out on an express/explicit consent basis.

6.2. Consent is required for information sharing that does not directly contribute to direct continuing healthcare unless

- there is a robust public interest in releasing information without the patient/employee's consent or
- you have the express/explicit consent in writing, from the patient/employee or recorded in the patient/employees record (health or employee personal file).

6.3. For most information sharing issues that are not for the direct continuing care of a patient you should consult the Caldicott Guardian. The following table gives further details.

Carers and relatives	Where a patient/employee has the capacity to consent, express/explicit consent is required before sharing health information
Complaint investigations	Complaint investigations will invariably need patient information. However, express consent of the complainant and any other individual whose record may need to be reviewed, is required prior to disclosure.

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Management purposes	Commissioners, prescribing advisors, financial audit, and resource allocation etc., no restrictions are imposed if the data is anonymised.
Occupational Health	Information on staff referred to occupational health departments. However, if clinicians are the patients, the powers of professional regulatory bodies for disclosure may apply
Researchers	<p>The use of patient information for research goes beyond health care provision in the NHS and explicit patient consent is therefore required.</p> <p>For example, whilst most people would be happy to be included in research there may be some that might object on the grounds of religion.</p> <p>However, if the research project is to use anonymised data, (which is preferable) no restrictions are imposed, (refer to Anonymisation and Pseudonymisation). Alternatively, an application can be made to the Ethics and Confidentiality Committee of the National Information Governance Board under section 251 of the NHS Act 2006.</p> <p>Before any research project can be undertaken an application must be made to the Local Research Ethics Committee for approval prior to any application to the Ethics and Confidentiality Committee of the National Information Governance Board under Section 251 of the NHS Act 2006.</p> <p>The National Data Opt Out should be reviewed to assess whether it applies to the dataset.</p>
Teaching	According to the Confidentiality: NHS Code of Practice teaching is not to be regarded as direct healthcare purposes and will require explicit consent.
Police	Information required by the Police either needs explicit consent of the patient or other individual, a Court Order or, where criminal activities are concerned may be disclosed in the public interest.
Solicitors	<p>Solicitors requesting information must produce an up to date written signed consent from the patient / employee before information is released.</p> <p>For medical legal purposes the request should be forwarded to the Data Access and Disclosure Team.</p> <p>For clinical negligence claims the request should be forwarded to the Litigation Office.</p>
The media	You need explicit consent to release information to the media about care and treatment (including a patient's presence in a hospital) unless there is an exceptional robust public interest in releasing information.

7. Enabling Information Sharing in the Public Interest

7.1. The following legislation permits information to be shared without seeking consent e.g. if you believe someone has committed serious harm or a serious crime. However, the

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legislation does not require you to do so.

7.2. Decisions to share should be made on a case-by-case basis and in the public interest.

- Child Protection (Children's Act 1989 and the Protection of Children Act 1999), allows information to be shared if a child is considered at risk of significant harm
- Prevention and Detection of Crime (Section 115 of the Crime and Disorder Act 1998) e.g. request from the Police where someone is suspected of committing a serious crime.
- Data Protection legislation provides that the non-disclosure rules will not apply if information sharing is required for:
 - the prevention or detection of crime
 - the apprehension or prosecution of offenders
 - the collection or assessment of any tax or duty.
 - The Data Protection Act 2018 Chapter 2 article 6 and 9 gives conditions for sharing personal information.
- The police may request information under current the Data Protection Law which allows data processing for the purpose of "prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, including the safeguarding against and the prevention of threats to public security." In such events the Data Protection Officer or Caldicott Guardian should be contacted for further guidance.
- Information may be shared with the Children & Young People's Service (CYPS) for the purposes of protecting the health and welfare of a child or young person if it is believed to be in the public interest to do so. Note: information shared will automatically be shared with the Police.

7.3. The Trust has signed Information Sharing Protocols between the Trust and Devon & Cornwall Constabulary for sharing information in relation to specific purposes e.g. incidents of domestic violence, incidents of domestic abuse. Please contact the Data Access and Disclosure Office (tsdft.dataprotection@nhs.net) for further information.

8. Required information sharing

8.1. Information can be shared without consent if requested to do so by the following public bodies/officials, but patients should be informed that disclosure has been required:

- 8.1.1. Courts, including a coroner's court, tribunals and enquiries – Only give the information requested in the order and no more. Many different Acts give courts the powers to issue court orders.
- 8.1.2. General Medical Council (GMC) – Entitled to access confidential patient health records as part of an investigation under the Medical Act 1983. The GMC have indicated that they would always try to obtain consent first.
- 8.1.3. Nursing and Midwifery Council – Entitled to access confidential patient records as part of an investigation under the Article 25(1) of the Nursing and Midwifery Order 2001.
- 8.1.4. Health and Care Professionals Council - Entitled to access confidential patient records as part of an investigation under the Article 25(1) of the Health Professions Order 2001.

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- 8.1.5. General Pharmaceutical Council - Entitled to access confidential patient records as part of an investigation under the Pharmacy Order 2010.
- 8.1.6. National Audit Office – Entitled to access confidential patient health records as part of an investigation under section 6 of the Audit Commission Act 1998.
- 8.1.7. Health Service Ombudsman – Has the same powers as the courts to disclose person identifiable information. Any request made should be complied with, without obtaining a court order.
- 8.1.8. Local Government & Social Care Ombudsman - Has the same powers as the courts to disclose person identifiable information. Any request made should be complied with, without obtaining a court order.
- 8.1.9. Care Quality Commission - Entitled to access confidential patient health records as part of an investigation.
- 8.1.10. UK Health Security Agency – Public Health (Control of Diseases) Act 1984 & Public Health (Infectious Diseases) Regulations 1988
- 8.1.11. Immunisations and vaccinations – Under the Education Act 1944 information must be passed to NHS Trusts from schools regarding immunisation and vaccinations.
- 8.1.12. Births and Deaths – The Births and Deaths Act 1984 provides for the registration of births, stillbirths and deaths
- 8.1.13. Information Sharing Index (England) Regulations 2007 (Contactpoint) - health professionals must provide basis identifying information to the local authority for every child up to the age of 18.
- 8.1.14. Abortion Regulations 1991 – a doctor carrying out a termination of pregnancy must notify the Chief Medical Officer, giving a reference number and the date of birth and postcode of the woman concerned
- 8.1.15. Section 251 of the NHS Act 2006 – gives the Secretary of State for Health power to make regulations permitting the disclosure of identifiable information without consent in certain circumstances. Health professionals can apply to the Ethics and Confidentiality Committee of the National Information Governance Board, an independent public body which advises the Secretary of State for Health in England and Wales about the lawful disclosure of patient identifiable information.
- 8.1.16. Members of Parliament – Non-statutory investigations (e.g. Members of Parliament). If MP states in writing that he/she has a patient's consent for disclosure this may be accepted without further contact with the patient but – carefully consider the request and contact the patient if in any doubt.

9. Training

- 9.1. All staff will attend, as part of their induction, training sessions on Information Governance and additional annual training will be provided to all staff through a mandatory training online or face-to-face programme.

10. Distribution

- 10.1. This policy document will be made available to staff via ICON, the Trust Website

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and signposted in the Staff Bulletin.

- 10.2. Awareness will be raised through Equality Impact Assessment training, all ratifying committees/groups, policies and procedures training and ICON.

11. Key Contacts

Contact	Email	Phone
Data Protection Officer	Tsdft.dpo@nhs.net	07393 799539
Information Governance Team	tsdft.igteam@nhs.net	01803 654868
Data Access & Disclosure Office	tsdft.dataprotection@nhs.net	01803 654868
Senior Information Risk Officer	tsdft.siro@nhs.net	
Caldicott Guardian	tsdft.caldicottguardian@nhs.net	
Freedom of Information Team	tsdft.foirequests@nhs.net	

12. Appendices

Appendix 1: Rapid Equality Impact Assessment

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Appendix 1: Rapid Equality Impact Assessment

Appendix 1

Rapid Equality Impact Assessment (for use when writing policies and procedures)

Policy Title (and number)		Public Interest Information Sharing Policy		Version and Date		5	
Policy Author		Information Governance Officer					
An equality impact assessment (EIA) is a process designed to ensure that a policy, project or scheme does not discriminate or disadvantage people. EIAs also improve and promote equality. Consider the nature and extent of the impact, not the number of people affected.							
EQUALITY ANALYSIS: How well do people from protected groups fare in relation to the general population? <i>PLEASE NOTE: Any 'Yes' answers may trigger a full EIA and must be referred to the equality leads below</i>							
Is it likely that the policy/procedure could treat people from protected groups less favorably than the general population? (see below)							
Age	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	Disability	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	Sexual Orientation	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>		
Race	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	Gender	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	Religion/Belief (non)	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>		
Gender Reassignment	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	Pregnancy/ Maternity	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	Marriage/ Civil Partnership	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>		
Is it likely that the policy/procedure could affect particular 'Inclusion Health' groups less favorably than the general population? (substance misuse; teenage mums; carers ¹ ; travellers ² ; homeless ³ ; convictions; social isolation ⁴ ; refugees)						Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	
Please provide details for each protected group where you have indicated 'Yes'.							
VISION AND VALUES: Policies must aim to remove unintentional barriers and promote inclusion							
Is inclusive language ⁵ used throughout?						Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	
Are the services outlined in the policy/procedure fully accessible ⁶ ?						Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	
Does the policy/procedure encourage individualised and person-centered care?						Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	
Could there be an adverse impact on an individual's independence or autonomy ⁷ ?						Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	
If 'Yes', how will you mitigate this risk to ensure fair and equal access?							
EXTERNAL FACTORS							
Is the policy/procedure a result of national legislation which cannot be modified in any way?						Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	
What is the reason for writing this policy? (Is it a result in a change of legislation/ national research?)							
To facilitate a standardized approach to policy documents across the Trust							
Who was consulted when drafting this policy/procedure? What were the recommendations/suggestions?							
ACTION PLAN: Please list all actions identified to address any impacts							
Action				Person responsible		Completion date	
AUTHORISATION:							
By signing below, I confirm that the named person responsible above is aware of the actions assigned to them							
Name of person completing the form		Information Governance Officer		Signature			
Validated by (line manager)		Data Protection Officer		Signature			

Any issues Please contact Diversity & Inclusion Lead

For Torbay and South Devon NHS Trusts, please email tsdft.diversityandinclusion@nhs.net

- ¹ Consider any additional needs of carers/ parents/ advocates etc, in addition to the service user
- ² Travellers may not be registered with a GP - consider how they may access/ be aware of services available to them
- ³ Consider any provisions for those with no fixed abode, particularly relating to impact on discharge
- ⁴ Consider how someone will be aware of (or access) a service if socially or geographically isolated
- ⁵ Language must be relevant and appropriate, for example referring to partners, not husbands or wives
- ⁶ Consider both physical access to services and how information/ communication is available in an accessible format
- ⁷ Example: a telephone-based service may discriminate against people who are d/Deaf. Whilst someone may be able to act on their behalf, this does not promote independence or autonomy