



Document Number: IG11

## Subject Access Request Policy



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## Table of Contents

<b>1. INTRODUCTION.....</b>	<b>4</b>
<b>2. DEFINITIONS .....</b>	<b>4</b>
<b>3. RESPONSIBILITIES.....</b>	<b>4</b>
<b>4. THE DISCLOSING OF HEALTH RECORDS AND OTHER PERSONAL DATA UNDER THE DATA PROTECTION ACT 1998.....</b>	<b>5</b>
<b>5. THE DISCLOSING OF HEALTH RECORDS UNDER THE ACCESS TO HEALTH RECORDS ACT 1990 .....</b>	<b>6</b>
<b>6. ACCESS TO MEDICAL REPORTS ACT 1988.....</b>	<b>7</b>
<b>7. APPLICATION FOR ACCESS TO MEDICAL AND NON MEDICAL RECORDS REQUESTS .....</b>	<b>8</b>
<b>8. DUTY TO CONSULT ON A VALID APPLICATION FOR ACCESS TO RECORDS .....</b>	<b>9</b>
<b>9. FEES TO ACCESS AND COPY MEDICAL AND NON MEDICAL RECORDS.....</b>	<b>9</b>
<b>10. TIMES OF DISCLOSURE .....</b>	<b>9</b>
<b>11. DENIAL OF ACCESS .....</b>	<b>9</b>
<b>APPENDIX 1 .....</b>	<b>ERROR! BOOKMARK NOT DEFINED.1</b>
<b>PROCEDURE GUIDANCE FOR SUBJECT ACCESS REQUEST.....</b>	<b>ERROR! BOOKMARK NOT DEFINED.1</b>
<b>APPENDIX 2 .....</b>	<b>122</b>
<b>AUTHORISATION TO RELEASE RECORDS FORM .....</b>	<b>122</b>
<b>APPENDIX 3 .....</b>	<b>133</b>
<b>APPLICATION FOR ACCESS TO PERSONAL INFORMATION FORM.....</b>	<b>13</b>

## **1. Introduction**

- 1.1. Individuals have a right to apply for access to health information and other personal data held about them and in some cases held about other people. With this policy One Health Lewisham Ltd (OHL) ensures that an adequate procedure is in place to enable the public to exercise their rights.
- 1.2. The main legislative measures that give rights of access to health records and other data held about an individual by OHL include:
  - The Data Protection Act 2018- 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 Access to Health Records Act 1990 – rights of access to deceased patient health records by specified persons.
  - The Medical Reports Act 1988- right for individuals to have access to reports, relating to themselves, provided by medical practitioners for employment or insurance purposes.

## **2. Definitions**

- 2.1. Within the Data Protection Act 2018, a health record is defined as 'a record consisting of information about the physical or mental health, or condition, of an identifiable individual, made by, or on behalf of, a health professional, in connection with the care of the individual.'
- 2.2. A health record can be in computerised and/or manual form. It may include such documentation as hand written clinical notes, letters to and from other health professionals, laboratory reports, radiographs and other imaging records, printouts, photographs, videos and tape recordings.
- 2.3. Personal data under the Data Protection Act (see Confidentiality & Data Protection Policy) is information relating to an identifiable living individual. It includes factual information, expressions of opinion, and the intentions of the health profession in relation to the individual concerned. A reference to a name, on its own, without any other information may not be sufficient to constitute personal data under the Data Protection Act. However, it is likely that the context in which the name is held will enable some information to be inferred about an individual in such a way that it would be personal data for these purposes e.g exceptional treatment panel meeting about an individual patient.
- 2.4. Data Protection legislation is not confined to health records held for National Health Service purposes. It applies equally to all relevant records relating to living individuals; this includes the private health sector and health professionals private practice records.

## **3. Responsibilities**

- 3.1. The OHL Board has a duty to ensure that the requirements of the Data Protection Act 2018, the Access to Health Records Act 1990 and the Medical Reports Act 1988 are upheld.
- 3.2. The Chief Executive is responsible for the implementation of this policy.
- 3.3. The Caldicott Guardian of OHL is responsible for ensuring that OHL is compliant with the confidentiality requirements of the relevant legislation.

3.4. The IG Lead (or members of the IGSG) is responsible for administering requests for access to health records.

3.5. Heads of Service and Managers are responsible for ensuring that information is disclosable under the requirements of the different acts, and for ensuring that records are provided in a timely fashion.

#### **4. The disclosing of health records and other personal data under the Data Protection Act 1998**

4.1. Under the Data Protection Act 2018, any living person who is the subject of personal information held and processed by OHL, has a right of access to that information.

4.2. An individual does not have the right to access information recorded about someone else, unless they are an authorised representative, have parental responsibility, or are acting on behalf of the deceased (see section Access to Health records Act).

4.3. OHL is not required to respond to requests for accessing health records, unless it is provided with sufficient details to enable the location of information, and to satisfy itself as to the identity of the individual making the request.

##### **4.4. Requests to access to records made by a Patient Representative**

4.4.1. A patient can authorise a representative to access their health records on their behalf. This must be done in writing, with confirmation of the representative's identity and relationship to the patient.

4.4.2. Representatives are able to provide evidence that they are acting under power of attorney will be granted access to the health records of the patient.

4.4.3. Where a patient who is physically or mentally disabled and unable to provide written consent for a representative to seek access on their behalf, OHL will give the patient as much assistance as possible, in order to ascertain whether consent has been granted by other means.

##### **4.5. Parental Responsibility**

4.5.1. Parents, or those with parental responsibility, will generally have the right to apply for access to a child's health record.

4.5.2. Parental responsibility is defined in the Children's Act 1989 as 'all the rights, duties, powers, responsibilities and authority which by law a parent of a child has in relation to the child and his property'. If you are in any doubt about the level of parental responsibility (for example the parents are divorced) please contact the Information Governance Lead for legal advice.

4.5.3. In practice, parental responsibilities would include:

- Safeguarding a child's health, development and welfare
- Financially supporting the child
- Maintaining direct and regular contact with the child

4.5.4. Where a child is considered capable of making decisions about his/her medical treatment, the consent of the child must be sought before a person with parental responsibility can be given access to the child's health records.

4.5.5. Where in the view of the health professional, the child is not capable of understanding the application for access to records, OHL is entitled to deny access as being against the best interests of the patient.

4.5.6. Legally, young people aged 16 and 17 are regarded to be adults for the purposes of consent to treatment and the right to confidentiality. As such, if a patient of this age wishes a health professional to keep any aspect of treatment confidential, this wish should be respected.

4.5.7. 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 disclosed. Case law has established that such a child identified in Fraser Guidelines (previously known as 'Gillick Competent'), i.e. where a child is under 16 but has sufficient understanding in relation to the proposed treatment to give, or without consent, consent or refusal should be respected. However good practice dictates that the child should be encouraged to involve parents or those with parental responsibility in their treatment.

#### **4.6. Third Party disclosure**

4.6.1. Where records contain information that relates to an identifiable third party, that information may not be released unless:

- the third party is a health professional who has compiled or contributed to the health 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 dispense with the third party's consent ( taking into account the duty of confidentiality owed to the other individual, any steps taken to seek his/her consent, whether he/she is capable of giving consent and whether consent has been expressly refused)

#### **4.7. Patients Living Abroad**

4.7.1. Under the Data Protection Act 2018, former patients now living outside of the United Kingdom have the same rights to apply for access to their UK health records.

4.7.2. A request for access to health records will be treated in the same way as a request made from within the UK.

### **5. The disclosing of health records under the Access to Health Records Act 1990**

5.1. The Access to Health Records Act 1990 (AHRA) provides a small cohort of people with a statutory right of to apply for access to information contained within a deceased person's health record.

5.2. The Access to Health Records Act (AHRA) 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.

5.3. The personal representative is the only person who has an unqualified right of access to a deceased patient's record and need give no reason for applying for access to a record. Individuals other than the personal representative have a legal

right of access under the Act only where they can establish a claim arising from a patient's death.

- 5.4. There is less clarity regarding which individuals may have a claim arising out of the patient's death. Whilst this is accepted to encompass those with a financial claim, determining who these individuals are and whether there are any other types of claim is not straightforward. The decision as to whether a claim actually exists lies with OHL. In cases where it is not clear whether a claim arises the IG Lead should be consulted.
- 5.5. Record holders must satisfy themselves as to the identity of applicants who should provide as much information to identify themselves as possible. Where an application is being made on the basis of a claim arising from the deceased's death, applicants must provide evidence to support their claim. Personal representatives will also need to provide evidence of identity.
- 5.6. This Policy is not intended to support or facilitate open access to the health records of the deceased. Individual(s) requesting access to deceased patient health information should be able to demonstrate a legitimate purpose, generally a strong public interest justification and in many cases a legitimate relationship with the deceased patient. On making a request for information, the requestor should be asked to provide authenticating details to prove their identity and their relationship with the deceased individual. They should also provide a reason for the request and where possible, specify the parts of the deceased health record they require.
- 5.7. Relatives, friends and carers may have a range of important reasons for requesting information about deceased patients. For example, helping a relative understand the cause of death and actions taken to ease suffering of the patient at the time may help aid the bereavement process, or providing living relatives with genetic information about a hereditary condition may improve health outcomes for the surviving relatives of the deceased. In some cases the decision about disclosure may not be simple or straightforward and The OHL's Caldicott Guardian or IG Lead should be consulted.

## **6. Access to Medical Reports Act 1988**

- 6.1. 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, for insurance or employment purposes. Reports prepared by other medical practitioners, such as those contracted by the employer or insurance company, are not covered by the Act. Reports prepared by such medical practitioners are covered by the Data Protection Act 2018.
- 6.2. A person cannot ask a patient's medical practitioner for a medical report on him/her for insurance or employment reasons without the patient's knowledge and consent. Patients have the option of declining to give consent for a report about them to be written.
- 6.3. The patient can apply for access to the report at any time before it is supplied to the employer/insurer, subject to certain exemptions (in paragraph 66 below). The medical practitioner should not supply the report until this access has been given, unless 21 days have passed since the patient has communicated with the doctor about making arrangements to see the report. Access incorporates enabling the patient to attend to view the report or providing the patient with a copy of the report.



- 6.4. Once the patient has had access to the report, it should not be supplied to the employer/insurer until the patient has given their consent. 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. Patients should request amendments in writing. If no agreement can be reached, patients also have the right to refuse supply of the report.
- 6.5. Medical practitioners must retain a copy of the report for at least 6 months following its supply to the employer/insurer. During this period patients continue to have a right of access.
- 6.6. 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;
  - indicate the intentions of the medical practitioner towards the individual, or;
  - identify a third person, who has not consented to the release of that information or who is not a health professional involved in the individual's care.

## **7. Application for access to medical and non medical records requests**

- 7.1. Any application for access to medical and non medical request must be made in writing.
- 7.2. Applications must be signed and dated by the applicant.
- 7.3. Where an application is made on behalf of an individual, a signed form of consent must accompany the written application.
- 7.4. the application must clearly identify the patient in question, and the records required, including the following details:
  - Full name – including previous names
  - Address – including previous address(es)
  - NHS number (if available)
  - Dates of records required
- 7.5. The procedure for processing Subject Access Request is outlined at Appendix 1.
- 7.6. OHL has the right to check with the applicant if they require access to their entire health record / records and confirm what material the applicant requires prior to processing the request. However, disclosure is optional, as the applicant does not have to provide a reason for applying for access to health records / records.
- 7.7. To avoid multiple request for information, the Head of Service/Manager holding the requested record, will ensure that all sources of information are searched for data relating to the request, including manual and computerised records.



7.8. Where a request for access to records has previously been complied with, OHL is not obliged to respond to a subsequent identical or similar request unless a reasonable interval has elapsed since the previous request.

## 8. Duty to consult on a Valid Application for Access to Records

8.1. On receipt of a valid application for access to records, OHL has a duty to consult the relevant Head of Service/Manager on issues relating to disclosure of information:

- To confirm that the applicant is of an age and capacity to understand the nature of the application
- To take a decision regarding the withholding of access to all or part of a health record
- To provide assistance where records may need to be explained to the applicant

8.2. The Head of Service/Manager is responsible for providing confirmation that records are disclosable, or that access should be denied, to the IG Lead, by using the *Authorisation to Release Records* form, provided at Appendix 2.

8.3. Where a number of health professionals have equal rights in maintaining health records or the applicant, OHL Caldicott Guardian or Chief Executive has responsibility for designating the responsible health professional for any one request.

8.4. **Please refer to guidance provided in the Safeguarding Children Policy regarding court or legal requests for information.**

## 9. Fees to Access and Copy Medical and non Medical Records

9.1. In most cases a fee cannot be charged for responding to a subject access request. But if the request is manifestly unfounded or excessive, or if an individual requests further copies of their data following a previous request, then a reasonable charge can be applied for administrative costs and the IG Lead should be consulted.

## 10. Times of Disclosure

10.1. OHL will respond to request for access to records within the timescales outlined in the Data Protection Act 2018, the Access to Health Records Act 1990 and the Medical Reports Act 1988.

10.2. Applications made under the General Data Protection Act 2018 must be responded to **within one month (28 calendar days)** unless exceptional circumstances apply in which case the applicant should be informed. Any requests to access personal information received should be directed to the Heads of service and IG lead immediately

10.3. If OHL has decided to charge a fee for access to records, it will inform the applicant that a fee is payable and the amount requested. OHL is not required to provide the information requested until such time as the fee has been paid. Responses to requests for access must be made within 28 days of the date of receipt of the request and/or the fee payable.

## 11. Denial of Access

11.1. Access to all or part of a health record will be denied if:

- In the opinion of the relevant health professional, the information to be disclosed would be likely to cause serious harm to the physical or mental health of the applicant or any other person.
- Where the record relates to, or has been provided by, an identifiable third party, unless the third party has consented to disclosure.

11.2. In addition, the Data Protection (Subject Access Modification) (Health) Order states that access may be denied in circumstances where:

- The granting of access to a patient representative would disclose information provided by the patient, in the expectation that it would not be disclosed to the person making the request
- The granting of access would disclose information obtained as a result of any examination or investigation to which the patient consented, in the expectation that the information would not be so disclosed to another individual.
- The patient has expressly indicated that such information should not be disclosed to another individual.

11.3. Notification of refusal to grant access will be given as soon as possible, in writing. OHL will record the reason for this decision, and will also fully explain the reason to the applicant.

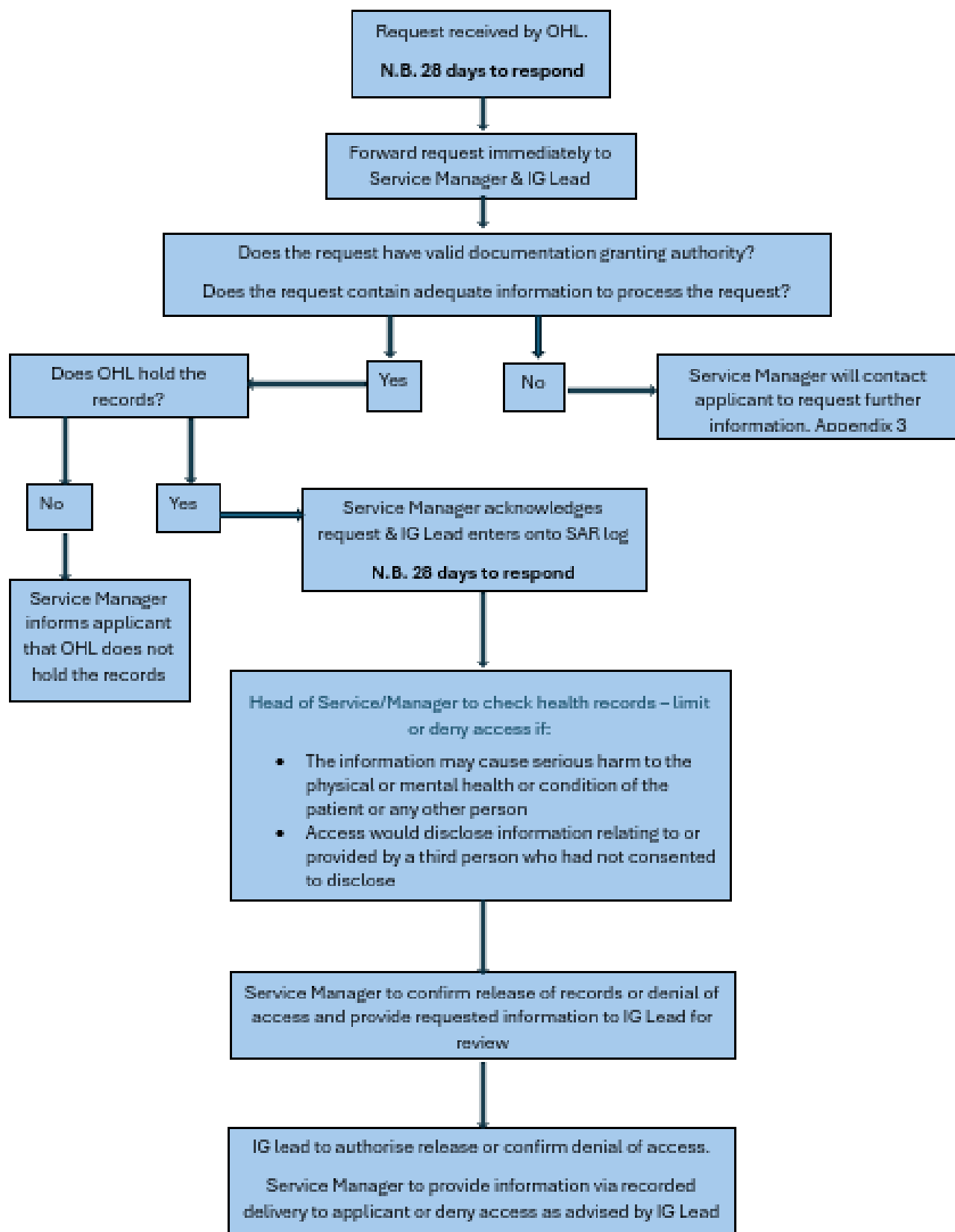
## **12. Other documents and policies to be referenced:**

Confidentiality & Data Protection Policy

Information Governance Policy

## Appendix 1

### Procedure Guidance for Subject Access Request



## Appendix 2

### Authorisation to Release Records Form

Dear

<b>Re:</b>	
Patient Representative	

Under the Data Protection Act 2018, the clinical records relating to this patient are disclosable, unless you indicate grounds for denying access. Please consider the grounds for refusal under the Data Protection Act 2018, and mark any that you feel are appropriate in this case.

Is the patient capable of understanding the nature of the application – if not, has someone else provided valid consent on his or her behalf?	
If a third party has requested access to records, did the patient at any time indicate a wish not to give access?	
Is any part of the clinical record, if disclosed, likely to cause serious harm to the physical or mental harm of the patient or any other person?	
Does any part of the clinical record disclose information relating to another individual, or information provided by a third party, who could be identified from the entry (unless that person has consented to disclosure, or is a health professional involved in the care of the patient).	

**Please confirm your authorisation/denial of access to health records requested:**

Yes, I agree to the release of the above patient's clinical records ☐

No, I do not agree to release the above patient's clinical records, for the reasons shown above ☐

<b>Name</b>	
<b>Post</b>	
<b>Signed</b>	
<b>Dated</b>	

## Appendix 3

### Application for Access to Personal Information

#### REQUEST FOR HEALTH RECORDS

Once completed, please send this form to:	One Health Lewisham Marvels Lane Clinic 37 Marvels Lane London SE12 9PN  Or via email to: ohl.ig@nhs.net
<b>Section 1 – Individual's Details Requested</b>	
Individual's full name	
Previous name(s)	
Date of birth	
NHS Number (if known)	
Applicant's current address	
Applicant's previous address (if applicable)	
Contact information – Telephone number, email address	
<b>Section 2 – Description of the information you require</b>	
Please provide as much information as possible giving full details of the periods you are interested in	
Types of information required	Date
<b>Section 3 – Declaration</b>	
I declare that the information given by me is correct to the best of my knowledge and that I am entitled to apply for access to the personal information referred to above under the terms of the General Data Protection Regulation/Data Protection Act 2018/Access to Health Records Act 1990	
Applicants Name	
Address to which reply should be sent (if different from above) including postcode	
Signature of applicant	
(If you are not the person named in Section 1, please tick one of the following boxes)	
I am the parent/guardian of an individual under 16 years old who has completed the Authorisation section (Section 4)	
I am the parent/guardian of an individual under 16 years old who (is unable to understand the request/has consented to my making this request)	

I am the deceased patient's personal representative and attach confirmation of my appointment by a court to manage the patient's affairs	
I am the legal representative of the individual and they have given signed authorisation (Section 4)	
Other (please specify)	
<b>Section 4 – Authorisation</b> I hereby authorise One Health Lewisham to release the requested personal data that they may hold relating to me to ..... (Enter the name of the person acting on your behalf), to whom I have given consent to act on my behalf	
Signature of applicant	
Date	
<i>Notes for office use:</i> <i>Please ensure form is completed and send copy with request when forwarding on for action.</i> <i>Please keep a copy of the form on patient's file.</i>	