

## Information Governance Subject Access Policy

### Introduction

In-Form Solutions Ltd recognises the individual's right of access to their recorded information and in some cases to information relating to other people. In-Form Solutions Ltd will ensure that adequate provision is given to service users and staff to exercise this right.

This Policy describes how In-Form Solutions Ltd will achieve compliance with the key legislation that provides access to personal information.

The Data Protection Act 1998 (and the General Data Protection Regulation), its replacement regulates the processing, including disclosure of information relating to living individuals. The Act gives the individual (data subjects) or their authorised representatives the right to apply to view or have copies of personal data held about them, including health records, (subject access rights) and personnel records.

The new General Data Protection Regulations (GDPR) came into force on 25 May 2018 and has a direct effect on In-Form Solutions Ltd and this IG document which refers to related policies and procedures.

The basis of this framework includes the following requirements of the new GDPR regulations: -

- An all-inclusive information asset register must be maintained
- The legal basis for the processing of information are required
- Consent with suitable 'opt in' and 'opt out' conditions must be included
- The Information Commissioners' Office (ICO) must be notified of data breaches within 72 hours
- Increased fines for failure to comply with the regulations will be imposed
- Fair processing notices will require updating to inform users of GDPR implications
- The introduction of a Data Protection Officer (DPO) role to the organisation will be considered
- There will be changes to individual's rights over the way data is stored
- Timescales for Subject Access Request responses etc. will be decreased
- Evidence of GDPR compliance must be made transparent and available

GDPR applies to 'data controllers' and 'data processors'. The definitions are similar to the definitions included within the Data Protection Act 1998 – the controller says how and why personal data is processed and the processor acts on behalf of the controller.

In-Form Solutions as a Data controller will not be relieved of its obligations where a processor is involved and the GDPR will place further obligations on the organisation to ensure all contracts with data processors comply with GDPR.

In-Form Solutions recognises that where there is legitimate interest, information relating to the deceased is accessible through the access to Health Records Act 1990.

## Aim

The purpose of this policy is to establish the In-Form Solution's responsibilities as the designated data controller under the Data Protection Act 2018 and the UK version of GDPR , to comply with and process subject access requests.

This document provides policy statements to the staff processing such requests and the data subjects themselves and:

- describes how the In-Form Solutions Ltd will comply with the law
- provides assurance on lawful practice
- establishes the roles and responsibilities of staff in the processing of requests
- establishes that processes will be in place to support this policy

## Definitions

The key definitions applicable to this policy are as follows:

The Data Subject	An individual who is the subject of the information (service user/member of staff)
The Data Controller	A person (within In-Form Solutions) who determines the purposes for which and the manner in which personal data, is processed
The Data Processor	in relation to personal data, means any person (other than an employee of the data controller) who processes the data on behalf of the data controller.
Subject Access Rights	Individuals can make an application in writing to gain access to information held or processed about them
3rd Party	A person identified in the health/medical record other than the data subject or a health professional
Service users Personal Representative	Defined as the executor or administrator of the deceased estate.
Caldicott Guardian	Designated by the Caldicott Committee as responsible for overseeing the arrangements for the use and sharing of clinical information.
Data Protection Officer	The data protection officer shall have at least the following tasks: (a) to inform and advise the controller or the processor and the employees who carry out processing of their data (b) to monitor compliance with this Regulation, data protection provisions and with the policies of the controller or processor including the assignment of responsibilities, awareness-raising and training of staff involved in processing operations, and the related audits
Senior Information Risk Owner	The role of the Senior Information Risk Owner (SIRO) was created to provide board-level

	accountability and greater assurance that information risks are addressed. The SIRO ensures that information risks are treated as a priority for business outcomes. The SIRO also plays a vital role in getting In-Form Solutions Ltd to recognise the value of its information enabling them to use it effectively.
Statutory Gateway	Permits disclosure of information
Data Protection Act 2018	An Act that regulates the processing of information relating to living individuals including the holding use or disclosure of such information
General Data Protection Regulation	The primary objectives of the GDPR are to give control back to citizens and residents over their personal data and to simplify the regulatory environment for international business by unifying the regulation within the EU.[1] When the GDPR takes effect, it will replace the data protection directive (officially Directive 95/46/EC)[2] from 1995 and the Data protection Act 2018. The regulation was adopted on 27 April 2016. It became enforceable on 25 May 2018 after a two-year transition period and, unlike a directive, it does not require any enabling legislation to be passed by national governments and is thus directly binding and applicable.
Freedom of Information Act 2000	An Act to make provision for the disclosure of information held by Public Authorities

## **Responsibilities**

### **The Board**

The Board has ultimate responsibility for the implementation of the provisions of this policy. As the 'Accountable Officer' they are responsible for the management of the In-Form Solutions Ltd and for ensuring that the appropriate mechanisms are in place to support service delivery and continuity.

In-Form Solutions Ltd has a particular responsibility for ensuring that it corporately meets its legal responsibilities, and for the adoption of and compliance with internal and external governance requirements

### **Caldicott Guardian**

The Organisation Caldicott Guardian is Jill Griffiths and is responsible for the confidentiality of person identifiable information as designated in the Caldicott Report and for the information governance agenda, which incorporates data protection.

### **The SIRO and Information Governance (IG) Lead**

John Griffiths is the Organisation's IG Lead and the Senior Information Risk Owner (SIRO), and is responsible for overseeing the application of this Policy and its principle within the organisation. The IG Lead will ensure that there are robust processes in place to respond to subject access requests from staff and service users.

## Data Protection Officer

A DPO is **mandatory** in the following three cases (GDPR Article 37(1)):

1. The controller or processor is a Public Authority or Body, or acting as one
2. The **core** activities of the controller or the processor consist of processing operations, which require regular and systematic monitoring of data subjects on a **large** scale
3. The **core** activities of the controller or the processor consist of processing on a large scale of **special categories** of data (i.e. highly sensitive, such as political affiliation or sexual preference) or personal data relating to criminal convictions and offences

According to Working Party 29, “**Core Activities**” can be considered as “the key operations necessary to achieve the controller’s or processor’s goals.” i.e. The data processing is at the heart of the organisation’s ability to operate, e.g. a hospital, or private security firm.

“**Large Scale**” is a fuzzy term and up to the data controller/processor to determine whether it applies to them, based on factors such as quantity of subjects, records, geography and duration of activity. Examples of large scale monitoring are hospitals, search engines, insurance company customer data. Examples that do not constitute large scale monitoring are the processing of data by an individual doctor or accountant, or the processing of personal data relating to criminal convictions and offences by an individual lawyer.

## Records Management and Data Quality Lead

The Records Management Lead will be responsible for records management elements of compliance with this Policy on behalf of the Board and will receive reports on compliance with the subject access provisions through the SIRO. The Data Quality Lead will be responsible for ensuring that data quality errors are maintained at an acceptable level. In addition, they will be responsible for the development of data quality reports.

## Staff

It is the responsibility of all staff to comply with data protection legislation, this Policy and the processes that support it. Several Organisation Staff have been trained in SARS techniques

## Subject Access Requests

In-Form Solutions Ltd will accept written requests, including e-mail, from a data subject in the provision of subject access. In-Form Solutions Ltd will make a standard access form available to the staff, where required, to assist the application - see Appendix B.

Telephone applications from an individual who is unable to make a written request may be accepted subject to strict conditions following the Department of Health Guidance for Access to Health Records 2010.

In-Form Solutions Ltd requires applicants to provide 2 forms of proof of identity one of which should be photo identification.

Where an application is made on behalf of a member of staff, In-Form Solutions Ltd will confirm that the consent of the individual had been obtained prior to any release.

Where an individual has not specified the information that they require the In-Form Solutions Ltd will ask the applicant to refine the request.

Where an access request has previously been met and a subsequent identical or similar request is received In-Form Solutions Ltd will assess if a reasonable time interval has elapsed before providing the information.

### **Provision of Copies or Viewing Records**

In-Form Solutions Ltd will ensure that a relevant professional is consulted prior to any release of information of a health-related nature. In-Form solutions Ltd will require the professional to consider the following prior to the release of copies or the viewing of records:

- any serious harm to the physical or mental health or condition of the service user or, member of staff requesting access, or any other person
- the consent of any third party where the content relates to that third party who is not a health professional
- if it is reasonable to disclose without the consent of a third party

### **Access to Records of the Deceased**

Application to view or have copies of health-related records or occupational health records of the deceased will be considered under the Access to Health Records Act 1990.

In-Form Solutions Ltd recognises that it owes a duty of confidentiality to the deceased.

The Caldicott Guardian will be consulted on any proposed disclosure of information relating to the deceased and legal advice will be sought where necessary.

### **Access by Relatives of the Deceased**

In-Form Solutions Ltd will consider access by a relative of the deceased to their health related or occupational health records. Where a request is made by a person who may have a claim arising out of the service user's death In-Form Solutions Ltd will require proof of such a claim before any disclosure is made.

In-Form Solutions Ltd will consider if a disclosure relating to the deceased death would help a relative through the grieving process, subject to any refusal from the deceased prior to death.

Consideration will be given to requests from a living relative for information relating to a genetic or hereditary condition, subject to any refusal from the deceased prior to death.

### **The Personal Representative**

The Personal Representative of the deceased has an unqualified right of access to the health-related record. In-Form Solutions Ltd will require proof of administrator/executor status before any disclosure is made.

## **Information Shared with Other Organisations**

Where In-Form Solutions Ltd has legitimately shared identifiable information with other organisations and that organisation maintains its own records the In-Form Solutions Ltd considers that subject access requests should be made directly to that organisation.

Where In-Form Solutions Ltd legitimately accesses another organisations system, subject access requests relating to information in that system will be referred to that organisation.

## **Application by Solicitors**

In-Form Solutions Ltd will pay due regard to subject access requests made through a solicitor where the consent of the data subject has been provided. Consideration will be made to the information requested under the subject access provisions of the Data Protection Act 2018.

## **Statutory Disclosures**

In-Form Solutions Ltd will consider application for access to health related and occupational health records and personnel records where there is a lawful requirement to comply.

## **Disclosures in Absence of a Statutory Requirement**

Where there is no statutory requirement to comply with a request for access In-Form Solutions Ltd will consider applications on a case by case basis.

In-Form Solutions Ltd recognises that in all cases the public interest in disclosure must outweigh the duty of confidentiality owed to the deceased before any disclosure is approved.

## **Timeframe for Compliance**

The Department of Health has issued guidance recommending that subject access requests are responded to within 21 days. In-Form Solutions Ltd will endeavor to comply with the Department of Health recommendations. Where In-Form Solutions Ltd cannot meet this compliance guideline the applicant will be informed and a response will be provided as soon as possible after the 21-day period and prior to the statutory one month under the Data Protection Act 2018.

In-Form Solutions Ltd will inform applicants of any refusal to comply with requests as soon as possible within the given timeframe.

## **Request Log**

Subject access requests including access to health related, personnel and occupational health records will be recorded in a log that will be used to demonstrate compliance with statutory timeframes and will provide assurance reports.

## **Amendments to Records**

In-Form Solutions Ltd recognises that an opinion or judgment recorded by a health professional, whether accurate or not should not be deleted from a health-related record.

Where a data subject requests amendment to information in a health-related record or occupational health records the health professional concerned will be consulted.

Amendments will be made where both parties agree and the original information will be left clearly visible. An explanation and amendment date signed by the health professional will be added to the record.

Where a health professional considers disputed information to be accurate In-Form Solutions Ltd will ensure that a note recording the service user's disagreement will be added and that the date and signature of the health professional will be included.

Inaccuracies in personnel records will be considered with a Senior Manager in the HR department and will be amended if appropriate and signed and dated by the Senior Manager

### **Service Users/Former Members of Staff Living Abroad**

Service users or former members of staff, who are now living outside of the UK, will be given the same rights of access under the Data Protection Act 2018, where the records of treatment occupational health or personnel records are still held by the In-Form Solutions Ltd.

Original medical or occupational health or personnel records will not be transferred abroad. A copy or summary of record will be provided, subject to the fees stipulated in Appendix A.

### **Freedom of Information Act 2000 (if applicable)**

In-Form Solutions Ltd will consider any requests for information which constitutes personal information to be exempt from disclosure under the Freedom of Information Act 2000 if:

- disclosure would contravene any of the Data Protection principles
- Where information has been provided in confidence.
- Where a duty of confidentiality is owed to the deceased.

### **Section 29 Access Requests**

Section 29 of the Data Protection Act provides an exemption in Law to access person identifiable information without seeking the consent of that individual for the purpose of investigating serious crime, fraud and taxation purposes.

In-Form Solutions Ltd will consider Section 29 applications on a case by case basis.

Where In-Form Solutions Ltd deems it acceptable to disclose under a section 29 request it will release sufficient information for the purpose but not excessive to the purpose.

In-Form Solutions Ltd recognises that subsequent to the refusal of a Section 29 request the Police may seek a Court Order which requires the disclosure.

Under GDPR the relevant Articles associated with subject access of records include:-

Article 12: Transparent information, communication and modalities for the exercise of the rights of the data subject

Article 13: Information to be provided where personal data are collected from the data subject

Article 14: Information to be provided where personal data have not been obtained from the data subject

Article 15: Right of access by the data subject

Article 16: Right to rectification

Article 17: Right to erasure ('right to be forgotten')

Article 18: Right to restriction of processing

Article 19: Notification obligation regarding rectification or erasure of personal data or restriction of processing

Article 20: Right to data portability

Article 21: Right to object

Article 22: Automated individual decision-making, including profiling

Article 23: Restrictions

## **Complaints**

Information will be available to service users and staff detailing how to apply for access to health related, occupational health, and personnel records and will detail the complaints process.

In-Form Solutions Ltd will initially try to resolve any complaints regarding subject access requests through informal discussion. If unresolved a formal complaints process will be initiated.

Where complaints are unresolved details of the Complaints Procedure will be provided by In-Form Solutions Ltd to the applicant.

Complainants will be informed of their right to contact the Information Commissioner for a review of the subject access provision.

## **Fees**

In-Form Solutions Ltd will follow the fees guidance as stipulated in the Data Protection Subject Access Fees and Miscellaneous Provisions Regulations 2000 and make due regard to the guidance in the Department of Health: Guidance to Access to Health Records Requests 2010. See Appendix A Under GDPR the following is noted with regard to fees

Subject Access Requests shall be free of charge for the data subject and, where applicable, for the Data Protection Officer.

Where requests are manifestly unfounded or excessive, in particular because of their repetitive character, In-Form Solutions Ltd may charge a reasonable fee based on administrative costs, or refuse to act on the request. In-Form Solutions Ltd shall bear the burden of demonstrating the manifestly unfounded or excessive character of the request.

## **Dissemination and Implementation**

This Policy may be made available to the Public through In-form Solutions Ltd Internet site, in assurance and upon application.

This Policy will be made available to staff through In-Form Solutions Ltd shared folder system and will be included in training sessions

New employees will be made aware of this policy through the Induction process

In-Form Solutions Ltd will ensure that processes are in place to implement this policy.

### **Monitoring Compliance with Effectiveness**

Compliance with this Policy will be monitored through the provision of quarterly reports to the Board, and will be escalated to the commissioners of the respective contract.

A log of all subject access requests will be maintained. The effectiveness of the log will be regularly reviewed.

This Policy has been approved and authorised by:

**Name:**

**Position:**

**Date:** 03/01/2019

**Reviewed by:**

**Signature:** 03/01/2019

## **1. Appendix A: Fees**

Subject Access Requests shall be free of charge for the data subject and, where applicable, for the Data Protection Officer.

Where requests are manifestly unfounded or excessive, in particular because of their repetitive character, In-Form Solutions Ltd may charge a reasonable fee based on administrative costs, or refuse to act on the request. In-Form Solutions Ltd shall bear the burden of demonstrating the manifestly unfounded or excessive character of the request.

## 2. Appendix B: Template application form: Access to records.

Please refer to 'Subject Access Requests' paragraph above as it will explain who should complete this form, the charges that you may be asked to pay and inform you of the proof that we will need to verify your identity.

### Section 1: Details of the person whose information is required

Surname		Forename(s)	
Previous Surname			
Date of Birth		Male/female	
Current Address		Previous Address(s) (with dates)	
Postcode		Postcode(s)	
Contact number			

### Section 2: Please provide us with as much information in this section as you can to help us find what you need

Service users' medical records	
Staff members requesting access to Personnel records	
Staff member requesting access to Occupational Health records	
NHS number (if known)	

I wish to: -	Tick box
View my record	<input type="checkbox"/>
Have copies of my record	<input type="checkbox"/>
Signature	Date

**Section 3: If you require someone else to act on your behalf please complete this section:**

<b>Nomination of a representative</b>	
I Mr./Mrs./Ms.....hereby authorise XXX In-Form Solutions Ltd to release the information I am requesting to my personal representative who is Mr./Mrs./Ms.....(print name)	
Details of relationship.....	
Signed.....	Date.....

**Section 4: If you are not the person whose details appear in section 1 but have a legitimate right to access the information requested please complete this section:**

<b>What is your relationship with the person in section 1: Tick one of the boxes (evidence will be required in all cases)</b>		
I am the parent/have parental responsibility of the child whose details appear in section 1 who is under 16 years of age		<input type="checkbox"/>
I am the service user's representative as detailed in section 3		<input type="checkbox"/>
The service user is deceased and I am the next of kin/designated personal representative		<input type="checkbox"/>
The service user is deceased and I have a claim arising out of the death and I wish to see information relating to my claim		<input type="checkbox"/>
<b>Please complete and sign the following declaration</b>		
Surname		Forename(s)
Address		Contact number
Postcode		
Signature		Date

**Please return this form to:** Jill Griffiths , In-Form Solutions Ltd Caldicott Guardian  
At In-Form Solutions Ltd