
Data Subjects Rights: The right of objection to the processing of their data O-SOP

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Purpose of Agreement	This Standard Operational Procedure is to outline the Trust's approach to responding to individual's rights to the objection of the processing of their data; a legal requirement of Data Protection Legislation.
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Data Subjects Rights: The right of objection to the processing of their data

1. INTRODUCTION & PURPOSE

- 1.1 This procedure sets out the approach taken within Solent NHS Trust for the management of data subjects rights: the right of objection to the processing of their data. This also applies to individual's rights in relation to automated decision making and profiling, the right of data erasure and the right of data modification.
- 1.2 The procedure ensures that all managers and staff are aware of and comply with the Trust's statutory obligations and responsibilities regarding data subjects rights, with regards to the processing of their data, including those under the Data Protection Act (DPA), and the UK General Data Protection Regulations (UK GDPR).
- 1.3 This procedure is applicable throughout all services and departments and functions in Solent NHS Trust, that collect, transmit, or retain information (relating to an individual) in any form and adherence should further be included in all contracts for outsourced or shared services, in respect to Data Controllers, Data Controllers in Common, Data Processors and Data subjects. There are no exclusions
- 1.4 **Data Subject¹:** A data subject is **someone who can be identified from personal data**. The data could be their name, address, telephone number or something else – but if it's about a person, then they're the data subject. They're the 'subject' of the data. However, the term only relates to people who are alive.

2. PROCESS

2.1. Legalities

2.1.1. *The Right to Object*

- a) Article 21 of the UK GDPR gives individuals the right to object to the processing of their personal data at any time. This effectively allows individuals to stop or prevent you from processing their personal data.
- b) An objection may be in relation to all of the personal data you hold about an individual or only to certain information. It may also only relate to a particular purpose you are processing the data for.
- c) The individual must have an objection on “grounds relating to their particular situation”, and the Trust must cease the processing unless we can demonstrate compelling legitimate grounds for the processing (which override the interests, rights and freedoms of the individual) or the processing is for the establishment, exercise or defence of legal claims.
- d) The right to object only applies in certain circumstances. Whether it applies depends on your purposes for processing and your lawful basis for processing.
- e) Individuals have the absolute right to object to the processing of their personal data if it is for direct marketing purposes.

¹ <https://ico.org.uk/for-organisations/sme-web-hub/key-data-protection-terms-you-need-to-know/#:~:text=A%20data%20subject%20is%20someone,to%20people%20who%20are%20alive.>

- f) Individuals can also object if the processing is for:
 - a task carried out in the public interest;
 - the exercise of official authority vested in you; or
 - your legitimate interests (or those of a third party).
- g) In these circumstances the right to object is not absolute. If processing data for scientific or historical research, or statistical purposes, the right to object is more limited.
- h) The right to object is explained within the Trust's privacy notices
<https://www.solent.nhs.uk/about-us/trust-information/your-information-your-rights/>.
- i) All objection requests must be dealt with/actioned by the Trust within one month (28 calendar days) of receiving the request, which can be made verbally or in writing. Further guidance should be sought from the Information Governance Department as required.
- j) Under the National Data Opt-Out Programme, patients also have the option to object to their confidential information being used for research and planning purposes, although some exemptions will apply. This programme is being coordinated by NHS Digital and all queries should be directed to the Trust's Information Governance Team.
- k) Additional guidance on this right is also available from the ICO website:
<https://ico.org.uk/for-organisations/guide-to-data-protection/guide-to-the-general-data-protection-regulation-gdpr/individual-rights/right-to-object/>

2.1.2. The right to rectification (data modification)

Personal data can be rectified if it is inaccurate or incomplete. This right means that if a data subject believes the information held about them is inaccurate or incomplete, this can be rectified or modified. However, where a data subject does not agree with medical opinions, this will not always be rectified, but their objections will be noted; this is because medical opinion is classified as medical fact.

2.1.3. The right to erasure (data erasure / "right to be forgotten")

This is often referred to as the "right to be forgotten". This right only applies to data, where consent is required before data is collected, used or stored. It also only applies when;

- Consent has been withdrawn and there is no other legal ground for processing
- the data is no longer necessary for the purposes for which it was collected. Please note with regards to;
- patient data, collected for direct medical care
- staff data, collected for direct employment consent is not used as the legal basis for collecting, using or storing data and therefore this right does not apply.

2.1.4. The right to restrict processing

Individuals have the right to require organisation to restrict processing where:

- accuracy is contested by the individual
- processing is unlawful and the subject opposes erasure
- the organisation no longer needs the data, but the subject requires it to be kept for legal claims
- the individual has objected, pending verification of legitimate grounds.

This right only applies in certain circumstances;

- the basis for lawful processing is consent and the this has been withdrawn and there is no other legal ground for processing
- the individuals whose data is being processed objects and there are no overriding legitimate grounds
- the personal data has been collected in relation to information society services
- the personal data is no longer necessary for the purpose for which it was collected for

2.1.5. Rights in relation to automated decision making and profiling

Profiling analyses aspects of an individual's personality, behaviour, interests and habits to make predictions or decisions about them.

Automated decision-making is the process of making a decision by automated means without any human involvement. These decisions can be based on factual data, as well as on digitally created profiles or inferred data.

Automated decision-making often involves profiling, but it does not have to.

2.2. Request of objections

2.2.1. How do we recognise an objection?

The UK GDPR does not specify how to make a valid objection. Therefore, an objection to processing can be made verbally or in writing. It can also be made to any part of the Trust and does not have to be to a specific person or contact point.

A request does not have to include the phrase 'objection to processing' or Article 21 of the UK GDPR. Therefore, any request relating to the process of an individual's data, the accuracy of their data or request to delete / modify data, should be considered under this policy.

2.2.2. How long do we have to comply?

The Trust must comply with an objection without undue delay and at the latest within one month of receipt of the request or (if later) within one month of receipt of any information requested to confirm the requester's identity; or

The time limit starts from the day the request is received by the Trust (whether it is a working day or not) until the corresponding calendar date in the next month.

If this is not possible because the following month is shorter (and there is no corresponding calendar date), the date for response is the last day of the following month.

If the corresponding date falls on a weekend or a public holiday, you have until the next working day to respond.

This means that the exact number of days you have to comply with a request varies, depending on the month in which the request was made.

2.2.3. Can we extend the time for a response?

You can extend the time to respond by a further two months if the request is complex or you have received a number of requests from the individual. You must let the individual know within one month of receiving their request and explain why the extension is necessary.

2.2.4. Can we ask an individual for ID?

If you have doubts about the identity of the person making the objection you can ask for more information. However, it is important that you only request information that is necessary to confirm who they are. The key to this is proportionality. You should consider what data you hold, the nature of the data, and what you are using it for.

You need to let the individual know as soon as possible that you need more information from them to confirm their identity before responding to their objection. The period for responding to the objection begins when you receive the additional information.

2.3. Internal Solent NHS Trust Process

The below process outlines the steps to be taken to satisfy a data subject's right to object to the processing of personal data and any other data subjects rights relating to the processing of their data.

- 1) When an employee receives an objection (in any form – written, verbally), they should forward this request to the Information Governance Team (InformationGovernanceTeam@solent.nhs.uk) marked for the attention of the Trust's Data Protection Officer (DPO).
- 2) The Trust's Information Assurance & Compliance Operational Manager will support the DPO in
 - Seeking proof of requestors identity
 - Establishing / confirm the data subjects' objection
 - Where applicable, confirming the services records, which the objection applies to
 - reviewing the request and investigating both the circumstances of the processing of the data and the legalities surrounding the request.
- 3) If the request relates to direct marketing or use of images, the DPO will ensure that the necessary changes are made to prevent the data subject from receiving any further direct marketing. This may or may not include deleting the data subject's data.
- 4) If the objection relates to processing based on legitimate interests, the Information Assurance & Compliance Operational and/or DPO will work with the service who processes the data to determine whether the objection should be upheld or refused.
- 5) If the objection is upheld, the Information Assurance & Compliance Operational and/or DPO will ensure that the necessary changes are made to comply with the objection.
- 6) If the objection is refused, the DPO will formally inform the data subject of the outcome of their request and their right to lodge a complaint with the Trust's Senior Information Risk Owner (SIRO).
- 7) The Information Assurance & Compliance Operational and/or DPO will ensure a record of the objection, enquires and outcomes kept for a period of 8 years.

3. EQUALITY IMPACT ASSESSMENT

A thorough and systematic assessment of this procedure has been undertaken in accordance with the Trust's Policy on Equality and Human Rights, as part of the Trust's Data Protection Compliance Policy.

The assessment found that the implementation of and compliance with this procedure has no impact on any Trust employee on the grounds of age, disability, gender, race, faith, or sexual orientation.

4. REVIEW

This document may be reviewed at any time at the request of either staff side or management but will automatically be reviewed 3 years from initial approval and thereafter on a triennial basis unless organisational changes, legislation, guidance or non-compliance, prompt an earlier review.

5. REFERENCES AND LINKS TO OTHER DOCUMENTS

- Data Protection Compliance Policy
- References: [Right to object | ICO](#)
<https://ico.org.uk/for-organisations/guide-to-data-protection/guide-to-the-general-data-protection-regulation-gdpr/individual-rights/right-to-object/>

6. GLOSSARY

Abbreviation	Full Name
DPA	Data Protection Act
DPO	Data Protection Officer
UK GDPR	(UK) General Data Protection Regulations
SIRO	Senior Information Risk Owner

Appendix 1: Equality Impact Assessment

Equality Analysis and Equality Impact Assessment

Equality Analysis is a way of considering the potential impact on different groups protected from discrimination by the Equality Act 2010. It is a legal requirement that places a duty on public sector organisations (The Public Sector Equality Duty) to integrate consideration of Equality, Diversity and Inclusion into their day-to-day business. The Equality Duty has 3 aims, it requires public bodies to have due regard to the need to:

- **eliminate unlawful discrimination**, harassment, victimisation and other conduct prohibited by the Equality Act of 2010.
- **advance equality of opportunity** between people who share a protected characteristic and people who do not;
- **foster good relations** between people who share a protected characteristic and people who do not.

Equality Impact Assessment (EIA) is a tool for examining the main functions and policies of an organisation to see whether they have the potential to affect people differently. Their purpose is to identify and address existing or potential inequalities, resulting from policy and practice development. Ideally, EIAs should cover all the strands of diversity and Inclusion. It will help us better understand its functions and the way decisions are made by:

- **considering the current situation**
- **deciding the aims and intended outcomes of a function or policy**
- **considering what evidence there is to support the decision and identifying any gaps**
- **ensuring it is an informed decision**

You can find further information via the e-learning module [here](#)

Equality Impact Assessment (EIA)

Step 1: Scoping and Identifying the Aims

Service Line / Department	Information Governance	
Title of Change:	Data Subjects Right to Objection Procedure	
What are you completing this EIA for? (Please select):	Other	<i>(If other please specify here)</i>
What are the main aims / objectives of the changes	To provide staff and patients with a clear and robust procedure that will be followed, to process requests from individuals objecting to how their data is being processed, in order to support them meeting the legal requirements of the Data Protection Act	

Step 2: Assessing the Impact

Please use the drop-down feature to detail any positive or negative impacts of this document /policy on patients in the drop-down box below. If there is no impact, please select "not applicable":

Protected Characteristic	Positive Impact(s)	Negative Impact(s)	Not applicable	Action to address negative impact: (e.g. adjustment to the policy)
Sex			X	
Gender reassignment			X	
Disability			X	
Age			X	
Sexual Orientation			X	
Pregnancy and maternity			X	
Marriage and civil partnership			X	
Religion or belief			X	
Race			X	

If you answer yes to any of the following, you MUST complete the evidence column explaining what information you have considered which has led you to reach this decision.

Assessment Questions	Yes / No	Please document evidence / any mitigations
In consideration of your document development, did you consult with others, for example, external organisations, service users, carers or other voluntary sector groups?	No	This is a Data Protection Procedure, written in accordance with legal requirements
Have you taken into consideration any regulations, professional standards?	Yes	Data Protection Legislation

Step 3: Review, Risk and Action Plans

How would you rate the overall level of impact / risk to the organisation if no action taken?	Low	Medium	High
	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
What action needs to be taken to reduce or eliminate the negative impact?	N/A		
Who will be responsible for monitoring and regular review of the document / policy?	Data Protection Officer		

Step 4: Authorisation and sign off

I am satisfied that all available evidence has been accurately assessed for any potential impact on patients and groups with protected characteristics in the scope of this project / change / policy / procedure / practice / activity. Mitigation, where appropriate has been identified and dealt with accordingly.

Equality Assessor:	Sadie Bell	Date:	29/06/2022
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