

Date 04/06/2025  
Your Ref  
Our Ref 10057

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Dear

## FREEDOM OF INFORMATION - PROTECTED GROUPS

I write in response to your request for information in relation to protected groups.

### Question:

#### 1. Information Provided to Patients:

- Please provide recorded information on how patients are informed of their rights to access their NHS records under the Patient Rights (Scotland) Act 2011.
- Please provide the policy or guidance that explicitly states that patients can access their NHS records without submitting a Subject Access Request (SAR).

### Answer:

Information is available on the [NHS Inform website](#) about health records and how to access them.

This information is also available via our Data Protection Notice - [Data Protection Notice – Your Rights & Privacy](#), a paper copy of which has been attached.

The Data Protection Act 2018 gives all individuals the right to request access to copies of personal information held about them by NHS Lothian, this can be made via a Subject Access Request (SAR). A patient can make an informal request to see their healthcare record during a consultation but this would be at the discretion of their clinician.

Our Subject Access Request policy is currently being updated but details how requests can be made ([Subject Access Policy](#)). An updated version can be shared when available.

This information is exempt under Section 25 of the Freedom of Information (Scotland) Act 2002 - Information otherwise accessible

(1) Information which the applicant can reasonably obtain other than by requesting it under section 1(1) is exempt information.

Question:

2. Policies for Protected Groups:

- Please provide a copy of your Equality and Diversity Policy, explicitly addressing the rights of protected groups (e.g. disability and age) under the Equality Act 2010.
- Please provide recorded information on the Health Board's reasonable adjustments policy for disabled patients, including the procedure followed to ensure compliance with the Equality Act 2010, particularly concerning the Public Sector Equality Duty.
- Please provide recorded guidance or policies that outline the procedures for handling complaints from individuals asserting their Equality Act rights (e.g. discrimination, harassment, victimisation).

Answer:

NHS Lothian does not have an Equality and Diversity Policy covering both services and employment. There is an NHS Lothian five year Equality and Human Rights Strategy, which is available [here](#). Information about the work being taken to reduce inequalities and uphold rights of protected groups is available on [NHS Lothian's Equality and Human Rights webpages](#).

NHS Lothian does not have a reasonable adjustment policy for disabled patients. Please see information on the Equality and Human Rights webpages (using the link provided above) about the work being done to ensure compliance with the Equality Act 2010 and the reasonable adjustment duty. For information about how NHS Lothian complies with the Public Sector Equality Duty please see the [Public Sector Equality Duty reports](#) and [Equality and Children's Rights Impact Assessments](#) webpages.

The Complaints Handling Procedure is available on the NHS Lothian webpages [How to Give Feedback – Your Rights & Privacy](#). There is also information on the [Patient Advice & Support Service](#) and a link to [find advocacy agencies](#).

This information is exempt under Section 25 of the Freedom of Information (Scotland) Act 2002 - Information otherwise accessible

(1) Information which the applicant can reasonably obtain other than by requesting it under section 1(1) is exempt information.

Question:

3. Procedures for Discrimination Complaints and Protected Acts:

- Please provide recorded information on the procedure the Health Board follows when a patient complains about discrimination related to a protected characteristic, including how Protected Acts are identified, investigated, and resolved. Additionally, confirm whether a specific Protected Act handling procedure is recorded for the benefit of protected groups.
- Please provide details of an accessible contact point and pathway for individuals raising Equality Act-related complaints.

Answer:

All complaints including those that relate to discrimination are managed under the Complaints Handling Procedure (see information provided in section 2) and advice is sought from the Equality & Human Rights Team where necessary.

The Complaints Handling Procedure explains that complaints can be made via letter, email, telephone or online form. Additional support can be provided by the Patient Advice & Support Service or one of the other advocacy agencies available. Information about giving feedback, whether a compliment, concern or complaint is available on [NHS Lothian website](#).

Question:

4. Information for Vulnerable Disabled Individuals:

- Please provide the recorded information the Health Board has (such as leaflets or website content) that informs disabled individuals of their rights under the Equality Act, including the right to reasonable adjustments and protection from discrimination.
- Please provide recorded information on how this information is made accessible and distributed to vulnerable, disabled patients by the Health Board.
- Please provide recorded information on how NHS care workers are trained to inform disabled patients of their Equality Act rights proactively.
- Please provide recorded information on how NHS care workers are trained to proactively inform vulnerable disabled patients that they can access their NHS records without submitting a SAR

Answer:

NHS Lothian does not provide recorded information about the Equality Act 2010. This information is available from organisations that provide advice and support, such as the Patient Advice and Support Service, Citizen's Advice and independent advocacy services. There is a page on the [NHS Lothian Your Rights and privacy webpages](#) with information about how to access these support services.

All NHS Lothian employees have to complete mandatory equality and human rights training every three years. This include information about the Equality Act 2010 and the Human Rights Act 1998. Self-directed education and training resources about equality and human rights are also available on the [NHS Lothian staff webpages](#). A programme of in person equality training is provided annually that all staff can sign up for.

All requests for personal information must be made via a Subject Access Request. All NHS Lothian employees must carry out mandatory information governance with information and guidance also available on the Information Governance intranet pages.

Question:

5. Public Sector Equality Duty Compliance:

- Please provide the recorded information demonstrating how the Health Board ensures compliance with the Public Sector Equality Duty under Section 149 of the Equality Act 2010, particularly concerning protected acts.

Answer:

Information is available on the NHS Lothian Equality and Children's Rights Impact Assessment and Public Sector Equality Duty reports webpages using the links provided in response to section 2.

Question:

6. Health Board Contractor NHS Record Access:

- Please provide recorded information on instances where patients are required to submit SAR to access their NHS records, along with any supporting documents demonstrating alignment with their rights under the Patient Rights (Scotland) Act 2011, including accessibility requirements.
- Please provide recorded information on how the Health Board ensures contractors (e.g. homecare providers, GP practices) comply with patient rights under the Patient Rights (Scotland) Act 2011.
- Please provide recorded information on whether the Health Board contractors (e.g., homecare providers, GP practices) or other Health Boards working on their behalf require formal requests, such as SARs from patients, when they need to access their NHS records, and the justification for this requirement.
- Please provide the guidance from the Health Board, issued to contractors regarding patient access to their own NHS records, including whether formal requests such as SARs are required.

Answer:

NHS Lothian Subject Access Request policy is currently being updated but details how requests can be made ([Subject Access Policy](#)). An updated version can be shared when available.

The relevant clauses from our Data Sharing Agreements and Data Processing Agreements set up with Contractors are shared below.

**Art. 15 GDPR Right of access by the data subject**

1. The data subject shall have the right to obtain from the controller confirmation as to whether or not personal data concerning him or her are being processed, and, where that is the case, access to the personal data and the following information:
  - the purposes of the processing;
  - the categories of personal data concerned;
  - the recipients or categories of recipient to whom the personal data have been or will be disclosed, in particular recipients in third countries or international organisations;
  - where possible, the envisaged period for which the personal data will be stored, or, if not possible, the criteria used to determine that period;
  - the existence of the right to request from the controller rectification or erasure of personal data or restriction of processing of personal data concerning the data subject or to object to such processing;
  - the right to lodge a complaint with a supervisory authority;
  - where the personal data are not collected from the data subject, any available information as to their source;
  - the existence of automated decision-making, including profiling, referred to in Article 22(1) and (4) and, at least in those cases, meaningful information about the logic involved, as well as the significance and the envisaged consequences of such processing for the data subject.
2. Where personal data are transferred to a third country or to an international organisation, the data subject shall have the right to be informed of the appropriate safeguards pursuant to Article 46 relating to the transfer.
3. The controller shall provide a copy of the personal data undergoing processing. For any further copies requested by the data subject, the controller may charge a reasonable fee based on administrative costs. Where the data subject makes the request by electronic means, and unless otherwise requested by the data subject, the information shall be provided in a commonly used electronic form.
4. The right to obtain a copy referred to in paragraph 3 shall not adversely affect the rights and freedoms of others.

Agreement, including but not limited to the performance of the Services;

5.1.5.3 an assessment of the risks to the rights and freedoms of Data Subjects; and

5.1.5.4 the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

- 5.2 At any time throughout the Term, or following the date of termination, at the request of the Board, the Contractor shall provide to the Board a copy of all Personal Data held by the Contractor in the format and on the media reasonably specified by the Board. If the Contractor fails to provide the Board with a copy of such requested Personal Data the Board may, without limiting its other rights or remedies, enter the Contractor's premises and take a copy of such Personal Data.



**9 NOTIFICATIONS REQUIRED TO BE GIVEN BY THE CONTRACTOR TO THE BOARD**

- 9.1 The Contractor shall, at its own cost and expense, notify the Board immediately (and within three (3) Business Days of receipt of the relevant communication at the latest) if it:
- 9.1.1 receives a Data Subject Access Request (or purported Data Subject Access Request);
  - 9.1.2 receives a request to rectify, block or erase any Personal Data;
  - 9.1.3 receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
  - 9.1.4 receives any communication from any Supervisory Authority, including from the Information Commissioner's Office, or any other regulatory authority in connection with Personal Data processed under or in connection with this Agreement; or
  - 9.1.5 receives a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law, and the Contractor will provide the Board with a copy of the relevant Data Subject Access Request, request, complaint or communication, as the case may be and such further information regarding the same as the Board may request from time to time.
- 9.2 Taking into account the nature of the Processing, the Contractor shall provide the Board with all reasonable assistance in relation to any complaint, communication or request notified to the Board pursuant to Clause 9.1 (and insofar as possible within the timescales reasonably required by the Board).
- 9.3 The Contractor shall, at its own cost and expense:

**Question:**

**7. Risk Assessments for Homecare Services:**

- Please provide recorded information on whether the Health Board has conducted risk assessments to evaluate the necessity of a Patient Support Programme (PSP) related to homecare services. If available, please provide copies of these assessments or a summary of findings, including the criteria used to determine whether a PSP is necessary.

**8. Workforce Planning for Homecare Services:**

- Please provide recorded information on whether the Health Board has conducted a review of workforce planning for homecare services between 2020 and 2025 to ensure appropriate staffing levels. Additionally, please provide findings that evaluate staffing safety and the processes in place for oversight and escalation, in alignment with the Health and Care (Staffing) (Scotland) Act 2019.

Answer:

Homecare services are managed and delivered by local authorities or integrated authorities (such as Health and Social Care Partnerships) as part of their social care responsibilities. Therefore, NHS Lothian is not responsible for the planning, delivery or oversight of these services and does not hold the information requested under sections 7 and 8. As those responsibilities sit with the Local Authority, we recommend contacting them as they will be best placed to provide the detail you are looking for.

Question:

9. Withholding & Withdrawal of NHS Care for Disabled Patients:

- Please provide recorded guidance or policies outlining the procedures for withholding or withdrawing NHS care, prescriptions, and proven safe, beneficial, life-prolonging treatment from disabled patients due to their complaints.

Answer:

NHS Lothian is not aware of any policy where care would be withdrawn or restricted due to complaints. Any decisions to restrict clinical care would be a clinical decision.

I hope the information provided helps with your request.

If you are unhappy with our response to your request, you do have the right to request us to review it. Your request should be made within 40 working days of receipt of this letter, and we will reply within 20 working days of receipt. If our decision is unchanged following a review and you remain dissatisfied with this, you then have the right to make a formal complaint to the Scottish Information Commissioner within 6 months of receipt of our review response. You can do this by using the Scottish Information Commissioner's Office online appeals service at [www.itspublicknowledge.info/Appeal](http://www.itspublicknowledge.info/Appeal). If you remain dissatisfied with the Commissioner's response you then have the option to appeal to the Court of Session on a point of law.

If you require a review of our decision to be carried out, please write to the FOI Reviewer at the email address at the head of this letter. The review will be undertaken by a Reviewer who was not involved in the original decision-making process.

FOI responses (subject to redaction of personal information) may appear on NHS Lothian's Freedom of Information website at: <https://org.nhsllothian.scot/FOI/Pages/default.aspx>

Yours sincerely

**ALISON MACDONALD**  
**Executive Director, Nursing**  
Cc: Chief Executive