

Dear

## **FREEDOM OF INFORMATION – MEDICAL RECORDS ACCESSED**

I write in response to your request for information in relation to medical records access in NHS Lothian.

### **Question:**

- Are you able to let me know who has accessed my records?

### **Answer:**

I must advise you that the information you have requested comes under Section 38 of the Freedom of Information Act (Scotland) 2002 – Personal Information. The Act says:

- Where the person making the request has asked for information about themselves – or someone they are the legal guardian/Power of Attorney for (Section 38(1)(a)). There is an absolute exemption where the information constitutes personal data of which the person is subject. This is known as a subject access request and falls under the remit of the Data Protection Act (2018). The rules under the DPA will determine whether the person has a right to the information. The application cannot be considered under the FOI(S)A 2002. The effect of the exemption is not to deny individuals a right to access information about themselves but to ensure the right is exercised under the DPA.

I have forwarded your request to our Data Protection Manager as they will be able to assist you further in terms of the Data Protection Act (2018) - [loth.sarteam@nhs.scot](mailto:loth.sarteam@nhs.scot).

- Where the person making a request has asked for information about a third party – Absolute Exemption. There is an absolute exemption if the disclosure would breach any of the Data Protection Principles (Section 38(1)(b)). There is also an absolute exemption for personal census information and a deceased person's health records, although these parts of the exemption are no longer applicable after 100 years.

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 <https://www.foi.scot/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 reviewer at the address at the top 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>

Yours sincerely

**ALISON MACDONALD**  
**Executive Director of Nursing Midwifery and AHPs**  
Cc: Chief Executive