

Date 3 August 2026
Your Ref
Our Ref 11713

Enquiries to Richard Mutch
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Dear

FREEDOM OF INFORMATION REVIEW – DATA POLICIES

I write in response to your request for review of NHS Lothian's response to your Freedom of Information request about data policies. I must apologise for the delay in responding to your original request. I can respond as follows:

Original Request and Response:
Question:

- I am submitting a request for information under the Freedom of Information (Scotland) Act 2002. This request is made to obtain information relevant to an ongoing Subject Access Request (SAR) dispute, which is currently awaiting assignment to an ICO case officer.

Answer:
Response delayed and Review requested.

Review Request:

- To avoid any ambiguity, I confirm that my request for an internal review stands. The statutory deadline for FOI 11592 was 13 July 2026, and the authority did not issue a response by that date. As such, a review under section 20 of the Freedom of Information (Scotland) Act 2002 is required.

For clarity:

- The review request was submitted on 14 July 2026.
- The statutory deadline for the review outcome is therefore 20 working days from that date.
- The review is not discretionary once requested.

I note your comment that the response is "in draft and awaiting final approval." While this is helpful context, it does not alter the requirement to conduct a formal review of the late response.

Review Response:

We have provided the completed response to your original request in response to your Review.

Question:

1. Email Search, Retrieval, and Access Protocols

- All internal policies, procedures, or guidance governing the searching of staff email accounts for the purposes of:
 - Subject Access Requests (SARs)
 - Data Protection requests
 - Information Governance investigations
 - Complaints handling
 - Legal discovery or litigation
- Any documents describing:
 - When NHS Lothian will search staff mailboxes
 - When NHS Lothian will not search staff mailboxes
 - Who authorises mailbox searches
 - What technical systems or tools are used to perform searches
 - Any restrictions on searching @nhs.scot, NHSmail accounts

Answer:

- Subject Access Requests (SARs) – **See Document 6 attached**
- Data Protection requests - **See Document 6 attached**
- Information Governance investigations - **See Document 6 attached**
- Complaints handling - **See Document 6 attached**
- Legal discovery or litigation - **See Document 6 attached**
- When NHS Lothian will search staff mailboxes – **This is referenced in “NHS Lothian Staff Guide to Digital Security Policies and Guidance” at Section 1(h), which states “Where there are reasonable grounds for suspicion that an individual may, through the use of email, have breached NHS Lothian policies including Confidentiality or Dignity at Work, then the Director of Human Resources may authorise monitoring of that individuals email or search through servers for archive files. This is in addition to the regular monitoring for potential inappropriate use.” This document is not being released as it contains organisationally sensitive information about NHS Lothians security protocols.**
- When NHS Lothian will not search staff mailboxes – **This is not explicitly noted.**
- Who authorises mailbox searches – **As above, this is detailed in NHS Lothian Staff Guide to Digital Security Policies and Guidance” at Section 1(h).**
- What technical systems or tools are used to perform searches – **This is not explicitly noted.**
- Any restrictions on searching @nhs.scot, NHSmail accounts - **This is not explicitly noted.**

Question:

2. NHSmail / Microsoft 365 Access Controls and Procedures

- Any NHS Lothian-specific policy or guidance relating to the use of NHSmail or Microsoft 365 for:
 - Mailbox access

- eDiscovery
- Audit logs
- Retrieval of deleted items
- Access to Data requests
- Any internal documents that reference or incorporate the NHSmail:
 - Access to Data Procedure
 - Forensic Discovery Request process
- Any correspondence or internal guidance explaining how NHS Lothian applies these NHSmail procedures within Scotland.

Answer:

- Mailbox access – **No NHS Lothian specific guidance, only NSS / Vendor supplied.**
- eDiscovery – **No NHS Lothian specific guidance, only NSS / Vendor supplied.**
- Audit logs – **No NHS Lothian specific guidance, only NSS / Vendor supplied.**
- Retrieval of deleted items – **No NHS Lothian specific guidance, only NSS / Vendor supplied.**
- Access to Data requests – **No NHS Lothian specific guidance, only NSS / Vendor supplied.**
- Access to Data Procedure – **No NHS Lothian specific guidance, only NSS / Vendor supplied.**
- Forensic Discovery Request process – **No NHS Lothian specific guidance, only NSS / Vendor supplied.**
- Any correspondence or internal guidance explaining how NHS Lothian applies these NHSmail procedures within Scotland – **No NHS Lothian specific guidance, only NSS / Vendor supplied.**

Question:

3. Subject Access Request (SAR) Handling Procedures

- NHS Lothian's full internal SAR handling procedure.
- Any SAR-specific guidance relating to:
 - Email searches
 - Staff mailbox access
 - Retrieval of electronic communications
 - Use of NHSmail for SAR fulfilment
- Any training materials, staff guidance, presentations, e-learning modules, or IG instructions provided to staff regarding SAR processing, including any materials used to train staff on:
 - Identifying personal data in email systems
 - Conducting mailbox searches
 - Using NHSmail or Microsoft 365 tools for SAR fulfilment

Answer:

- Email searches - **See Document 6 attached**
- Staff mailbox access - **See Document 6 attached**

- Retrieval of electronic communications - **See Document 6 attached**
- Use of NHSmail for SAR fulfilment - **This is referenced in the “Safe Email Transmission Grid” SOP, which states “Email communications with patients containing Confidential or Sensitive data is prohibited as email does not provide adequate security for confidential correspondence.” It is also referenced in “Email: Security Advice” where it confirms “standard email communication isn’t allowed because it is not secure.” These documents are not being released as they contain organisationally sensitive information about NHS Lothians security protocols.**
- Identifying personal data in email systems - **See Document 6 attached**
- Conducting mailbox searches - **See Document 6 attached**
- Using NHSmail or Microsoft 365 tools for SAR fulfilment - **See Document 6 attached**

Question:

4. Policies on Personal Data Held in Email Systems

- Any policy defining whether email content is considered personal data.
- Any policy defining whether email content must be included in SAR responses.
- Any internal interpretation, guidance, or legal advice relating to UK GDPR Articles 12–15 as they apply to email searches.

Answer:

- Any policy defining whether email content is considered personal data – **Not explicitly identified in a policy.**
- Any policy defining whether email content must be included in SAR responses. – **Not explicitly identified in a policy.**
- Any internal interpretation, guidance, or legal advice relating to UK GDPR Articles 12–15 as they apply to email searches - **Not held.**

Question:

5. Records of Decision-Making or Governance

- Minutes, memos, emails, or internal communications where NHS Lothian discussed:
 - Whether to search staff mailboxes for SARs
 - The use or non-use of the NHSmail Access to Data Procedure
 - Any limitations on NHS Lothian’s ability to search mailboxes
 - Any decisions, risk assessments, or governance discussions relating to mailbox searches for SAR purposes

Answer:

- Whether to search staff mailboxes for SARs- **Not held.**
- The use or non-use of the NHSmail Access to Data Procedure- **Not held.**
- Any limitations on NHS Lothian’s ability to search mailboxes - **Not held.**
- Any decisions, risk assessments, or governance discussions relating to mailbox searches for SAR purposes - **Not held.**

Not Held - As per Section 17 of the Freedom of Information (Scotland) Act 2002 formally I must advise we do not hold this information.

If you are not satisfied with this response you still have the right to make a formal complaint to the Scottish Information Commissioner who you can contact at the address below or 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.

Scottish Information Commissioner
Kinburn Castle
Doubledykes Road
St Andrews, Fife
KY16 9DS
Telephone: 01334 464610
Fax: 01334 464611
e-mail: enquiries@foi.scot

Yours sincerely

**Freedom of Information Reviewer/
NHS Lothian**
Enc.

Subject Access Policy



Title:

Subject Access Policy

Date effective from:	October 2025	Review date:	October 2028
Approved by:	Policy Approval Group		
Approval date:	30 September 2025		
Author/s:	NHS Lothian Data Protection Manager		
Policy Owner:	NHS Lothian Information Governance and Security Manager		
Executive Lead:	NHS Lothian Executive Medical Director		
Target Audience:	All NHS Lothian staff		
Supersedes:	Subject Access Policy v3.0 (2022)		
Keywords (min. 5):	access, third-party, request, record, disclosure, parental, deceased, consent		

Subject Access Policy



Version Control

Date	Author	Version	Reason for change
Aug 2020	NHS Lothian Data Protection Manager	v2.2	Approved by the Information Governance Sub Committee
June 2022	NHS Lothian Data Protection Manager	v3.0	Approved by the Policy Approval Group
April 2025	Information Governance Project Manager	v3.1-2	Under review
Sept 2025	Information Governance Project Manager	v4.0	Approved by the Policy Approval Group

Executive Summary

NHS Lothian is committed to Data Protection compliance and as such ensures individuals rights are taken into consideration at all times.

The Right of Access allows individuals to access all personal information held on them by an organisation. NHS Lothian outlines in this policy how a Subject Access Request will be processed and managed in a professional and timely manner to ensure compliance with Data Protection legislation.

To ensure organisational compliance the following documents support this policy:

- Access to Health Records Guidance
- Subject Access Requests
- Staff Files Processing Access Requests guidance

Subject Access Policy

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1.0 Purpose

The purpose of this policy is to ensure NHS Lothian process Subject Access Requests in line with the rights of the data subject as outlined in Data Protection legislation.

2.0 Policy statement

The UK General Data Protection Regulation (GDPR) and Data Protection Act 2018 (DPA) gives every living person (or an authorised representative) the right of subject access to personal data held by NHS Lothian. This legislation supersedes the Data Protection Act 1998 which has been fully repealed. The Access to Health Records Act 1990 (AHRA) no longer legislates for access to health records relating to living individuals but remains in effect for access rights to deceased patient health records.

3.0 Scope

This policy applies to all staff working for and associated with NHS Lothian.

4.0 Definitions

4.1 Health Record

The Scottish Government Records Management Code of Practice for Health and Social Care v4.0 defines a health record as:

‘Health records consist of information and data relating to the physical or mental health or condition of an individual which have been made by or on behalf of a health professional in connection with the care of that individual.’

4.2 ‘Third Party Information’

The definition of ‘Third Party Information’ is information relating to: ‘An organisation, other than the data controller (NHSL) or data processor (NHSL or authorised organisation that processes data on behalf of NHSL), that has provided information (about the data subject).’

This must not be confused with information that has been **provided by a third party**. Further information on ‘Third Party Information’ is contained within the [NHS Lothian Access to Health Records Guidance](#) document.

4.3 Complaints Record

A complaints record is a concise, factual log of a complaint received by NHS Scotland. Staff must ensure it includes:

- A summary of the complaint and who raised it
- Key dates and actions taken during handling
- The final outcome and response

- Any improvements made as a result

Records must be accurate, confidential, and comply with the [NHS Scotland Model Complaints Handling Procedure](#) and relevant legislation.

4.4 Staff Record

A staff record refers to any documentation held by NHS Scotland that relates to an individual's employment. This includes:

- Personal and contractual details
- Recruitment, training, and performance information
- Health and safety, disciplinary, and occupational health records (where applicable)
- Staff records must be managed in accordance with [NHS Scotland's Records Management Code of Practice](#), relevant data protection legislation, and applicable retention schedules.

5.0 Implementation roles and responsibilities

5.1 NHS Lothian staff responsibilities

5.1.1 NHS Lothian Executive Medical Director

The NHS Lothian Executive Medical Director, in their role as Caldicott Guardian for the organisation, has executive responsibility for the implementation of this policy.

5.1.2 NHS Lothian Service Managers and Head of Health Records

Day-to-day responsibility for the management of Subject Access Requests (SAR) made in line with this policy lies with the NHS Lothian Head of Health Records, who manages the Subject Access Request Teams throughout the organisation, and the Service Manager for areas that process their own Subject Access Requests.

5.1.3 NHS Lothian Data Protection Officer

The NHS Lothian Data Protection Officer is responsible for provision of expert advice to clinicians and Subject Access Request Team in relation to non-standard requests and enquiries.

5.1.4 Heads of Service/Departments

Heads of Service/Departments are responsible for ensuring that personal data requested under the auspices of DPA is provided to the Subject Access Request Team, or the relevant staff if the request is processed locally, in a timely fashion.

5.1.5 The NHS Lothian Digital & IT Executive Team

The NHS Lothian Digital & IT Executive Team will oversee and review the policy in line with NHS Lothian Policy Management Standards

5.2 General Principles Relating to Rights of Access

Under DPA, any living person who is the subject of personal data held and processed by NHS Lothian has a right of access to that personal data, regardless of where they live.

An individual does not have the right to access information recorded about someone else unless they are an authorised representative, have parent responsibility or, in the case of deceased patient records, are the Executor or have a claim arising from the patient's death.

NHS Lothian is not required to respond to Subject Access Requests unless provided with sufficient details to enable the location of personal data, and to satisfy itself as to the identity of the individual making the request.

5.3 Requests for Access to Health Records

Any application for access to health records must be recorded and stored by NHS Lothian and must include verification as to the identity of the applicant/patient. Applications can be made in writing by letter or using the NHS Lothian SAR Form, via the online SAR Portal on our website, or verbally.

5.3.1 Staff Access to Personal Information

Staff wishing to access personal information held on them should make the request in writing to the Information Governance Department. Contact details are available on NHS Lothian intranet and internet pages.

5.3.2 Informal Requests for Access to Records

A patient can make an informal request to see their healthcare record during a consultation or by arranging a time to view their records with the health professional concerned. This does not constitute a formal request under the auspices of DPA.

5.3.3 Requests made by a patient representative

A patient can authorise a representative to make a Subject Access Request on their behalf. This must be done in writing, confirming the representative's identity and evidence to support the patient's authorisation.

Representatives able to provide evidence that they are acting under welfare power of attorney will be granted access to the health records of the patient. This should be restricted to the information necessary for the appointee to carry out his or her functions.

Where a patient is unable to provide consent for a representative to make a Subject Access Request on their behalf for reasons of incapacity, NHS Lothian will give the patient assistance to ascertain whether it is possible to obtain consent by other means.

5.3.4 Fees to Access and Copy Health Records

Under the UK General Data Protection Regulation there is no fee required for a Subject Access Request.

5.4 Parental Responsibility

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

The requirements of parental responsibility are defined in the Children (Scotland) Act 1995 and The Family Law (Scotland) Act 2006. Further guidance is contained within the NHS Lothian Access to Health Records guidance document.

5.5 Health Records Relating to the Deceased

Applications for access to health records of the deceased are made under the Access to Health Records Act 1990. Records made after 1 November 1991 can be made available to a patient's representative, executor, or administrator upon production of documentary evidence of appointment.

Any person with a claim arising from the death of a patient has a right of access to information specifically relating to the claim.

5.6 Joint Records

Where joint records are held, for example in the case of a community mental health team, the relevant organisations (NHS Lothian and the relevant Local Authority) must be informed of the access request and agree who will lead the disclosure process. However, requests for joint records should not have to be made to both organisations.

Either organisation can provide access to the record provided the applicant is informed that the information is jointly held.

The term 'joint records' does not include records, held separately by authorities and other organisations, which contain information provided by either organisation to the other.

While the information held on each organisation's separate records might be similar, they cannot be considered as joint records. In such cases a separate application must be made to each authority/organisation.

5.7 Duty to consult on a valid application for Access to Records

On receipt of a valid application for access to records, NHS Lothian has a duty to consult the relevant clinician 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

The clinician is responsible for providing confirmation to the staff member or team who are processing the request that records are suitable for disclosure, or that access should be denied.

Where a number of health professionals have equal rights in maintaining health records

for the applicant, the NHS Lothian Caldicott Guardian has the responsibility for designating the responsible health professional for any one request.

5.8 Timescales of Disclosure

NHS Lothian will respond to requests for access to records within the timescales outlined in the Data Protection Act 2018 and the Access to Health Records Act 1990.

Responses to requests for access under the Data Protection Legislation must be made within 30 days of the date of receipt of the request. In the case of access to the records of deceased patients there is a timescale of 30 days where records have been amended or added to in the 30-day period immediately preceding the date of application and 30 days in cases where no entries have been made during the 30 days prior to application.

If the application does not include sufficient information to identify the person making the request or to locate the information, this should be sought promptly, and the 30-day period begins when it is supplied.

Requests can be considered complete/closed 3 months after no further correspondence has been received from applicant in relation to queries and/or clarification of initial request.

5.9 Denial of Access

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. In some circumstances the health professional may indicate the removal of medical information before release.
- Where the record relates to, or has been provided by, an identifiable third party, unless the third party has consented to disclosure
- Where there is a genuine concern that a request by a representative is excessive to the stated purpose of the access. Staff should either challenge the representative or gain consent from the data subject.

5.10 Legal Privilege

Legal Professional Privilege protects all communication between a professional legal adviser and his or her clients from being disclosed without the permission of the client. The privilege is that of the client and not that of the professional legal advisor. This type of data is exempt from the right of Subject Access Requests.

The NHS Lothian Data Protection Officer should be contacted for further information.

5.11 Collating Responses/Redaction

The team or staff member processing the request will collate the information received and prepare the disclosure response to the Data Subject, as necessary.

The purpose of redaction is to irreversibly remove the exempt information from the final copy. Information must be redacted using a safe and secure process. Further

information regarding redaction is contained within the [NHS Lothian Access to Health Records Guidance](#) document.

5.12 Amendments to Health Records

If the patient feels that information recorded on their health records is incorrect, they should in the first instance approach the health care professional concerned to discuss the situation in an attempt to have the record amended. If this avenue is unsuccessful then they may pursue a complaint under the NHS Lothian Complaints Procedure in an attempt to have the record corrected or erased. The Caldicott Guardian must approve any amendments made to health records.

They could further complain to the Information Commissioner, who may rule that any erroneous information is rectified, blocked, erased, or destroyed.

If the patient is not satisfied with the record, it is good practice to allow patients to include a statement within their record that they disagree with the content.

5.13 Dealing with access complaints

If a patient or their representative is unhappy with the outcome of their access to health records request (e.g., information they feel has been withheld or recorded incorrectly or they may feel that they have not been allowed sufficient time to view the record), sufficient information should be given for them to make an informed decision regarding any action they may wish to take to rectify their complaint. Clinical staff are encouraged to liaise with the Caldicott Guardian in these circumstances.

The individual should be encouraged to:

- Attend an informal meeting with a view to addressing and resolving the complaint locally
- Use the [NHS Lothian Complaints Procedure](#) or go straight to the Information Commissioner
- Alternatively, an individual may wish to seek legal independent advice to pursue their complaint. In all cases, wherever possible, local resolution should be sought. However, the individual has the right to pursue any of these channels at any time and may wish to pursue several actions simultaneously.

6.0 Associated materials

[NHS Lothian Data Protection Policy](#), approved by the Policy Approval Group, September 2025

[NHS Lothian Access to Health Records Guidance](#)

[NHS Lothian Request for Personal Information Form](#) (available on the NHS Lothian intranet)

[Subject Access Requests – Staff Files Process](#)

[Processing Access Request Procedure](#)

[NHS Lothian Complaints Procedure](#), (available on the NHS Lothian intranet)

[NHS Lothian Feedback and Complaints leaflet](#), (available on the NHS Lothian intranet), 2019

7.0 Evidence base

[Guide to the UK General Data Protection Regulation \(UK GDPR\), Information Commissioner's Office, 2018](#)

[Data Protection Act 2018 \(DPA\)](#)

[Access to Health Records Act 1990](#)

[Records Management Code of Practice for Health and Social Care v4.0 Children \(Scotland\) Act 1995 Family Law \(Scotland\) Act 2006](#)

[What should we do if the request involves information about other individuals?](#), ICO Guidance

8.0 Stakeholder consultation

NHS Lothian colleagues from the Information Governance Working Group and Digital & IT Executive Team were consulted in the review of this policy.

A draft version of this policy was placed on the NHS Lothian Consultation Zone for a period of 4 weeks to give all NHS Lothian staff an opportunity to provide comment/feedback.

9.0 Monitoring and review

The strategic direction for Information Management and Information Governance will be set out in the Information Governance Working Group and Digital & IT Executive Team. The Digital Portfolio Group, accountable to NHS Lothian Board will have overarching responsibility for monitoring the strategy and for ensuring that NHS Lothian has effective policies and management arrangements in place, which cover all aspects of Information Governance.

Assessments of compliance with relevant information governance standards will be undertaken each year, and an appropriate information governance improvement plan will be produced as a result. Delegated responsibility for overseeing the Information Governance Strategy, Policy and Implementation plan sits with the NHS Lothian Digital Portfolio Group chaired by the Director of Digital. This group will secure the necessary resources to implement the Information governance action plan and will monitor activities and annually report progress to The Healthcare Governance Committee. Full terms of reference will be available on NHS Lothian Intranet.

The Executive Medical Director and Caldicott Guardian, is the named executive director on the Board with responsibility for Information Governance. The Director of Public Health & Health Policy is the designated interim Senior Information Risk Owner (SIRO) delegated responsibility for implementation and monitoring of the Information Governance Action plan which sits with the Information Governance and Security Manager.

Regular monitoring of compliance with this policy will be performed via National and local audits both internally and also by external contractors.

The effectiveness of this policy may also be monitored and evaluated using outputs from the following:

- IT Security investigations
- SAE reviews
- DATIX investigations
- Complaint investigations
- Regularly scheduled internal and external audits
- Staff feedback via conversations, queries, compliments & complaints
- Information Governance Working Group and the Digital & IT Executive Team.
- Post training feedback from staff

This policy, and its associated materials, will be reviewed every 3 years, as a minimum, or as a result of any changes in legislation, guidance, as the result of inspection or audit, or any other factors which may render the policy in need of earlier review.

Processing Access Requests Procedure

1. Receive access request and update the Subject Access Request Log held on Subject Access Request Team shared drive. Enter date received, patient name and details of information requested.
2. All requests **must** be made in writing or completed on subject access form.
3. Check completion of the form to ensure there is enough information to identify the patient and exactly what information they are requesting. If there is not enough information supplied on the initial request, send a copy of the form for completion to applicant.
4. Send patient template acknowledgement letter.
5. Check TRAK to identify patient and locate casenotes.
6. Retrieve casenotes from library, consultant, or clinic.
7. Photocopy requested information.
8. Review the copied notes to make sure no third-party material is held i.e., information regarding a member of staff of another patient.
9. Using template letter (access ok doc), write to consultant to ascertain whether the consultant has any objections to the information being sent to the applicant.
10. Consultants are available to meet patients if there are any concerns
11. If there is no objection (this can be assumed if there is no response within 14 days) send photocopies of the requested information to the applicant
12. Complete request on SAR Log by adding CRN, disposal, note of any redactions and completion date to the initial entry.

Access – Court Order

1. Receive access request and update the Subject Access Request Log held on Subject Access Request Team shared drive. Enter date received, patient name and details of information requested.
2. Check all information has been received i.e. name of plaintiff and the name and address of their solicitor, name of defendant and the name and address of their solicitor, the certificate for completion.
3. Check TRAK to identify patient and locate casenotes.
4. Retrieve casenotes from library, consultant or clinic
5. Photocopy requested information.

6. Request x-rays if required.
7. Complete certificate as required.
8. Print inventory from word.
9. Send x-ray disk and photocopied casenotes (unless original notes are requested).

Requests from procurator Fiscal's Office and Central Legal Office

1. No need for Data Protection Act form.
2. No consultant consent needed/sought.
3. Originals can be requested and should be sent.
4. Follow steps 1 – 4 of the Subject Access Request Team general guidance: [Procurator Fiscal Guidance](#) (available on the NHS Lothian intranet)

Police requests for case notes

Police Scotland have **no** automatic rights to gain access to health records apart from incidents relating to child protection; requests relating to child protection are dealt with exclusively by the Child Protection team at Royal Hospital for Sick Children. If the Police want case-notes they must produce one of the three following things:

A Request Letter from the Procurator Fiscal's Office

There an officer from Police Scotland presents NHS Lothian with a letter of authority from the Procurator Fiscal's Office, this entitles them receive either the original records or a photocopy. The Police must give reasonable notice so that the notes can be copied.

A Sheriff Warrant

An Order signed by a Sheriff agreeing that Police Scotland may obtain the original record or a photocopy.

Again, Police Scotland must give reasonable notice so that the notes can be photocopied.

If a Police Officer from Police Scotland comes to the Hospital with either a Fiscal Letter or Sheriff Warrant and it is not possible to photocopy the casenote, the officer must leave their full contact details (i.e., Station, Badge Number, contact phone number etc) so that we can contact them to request that the notes be returned for copying.

A **DPA 2018 Schedule 2 part 1(2)** request from must be completed by Police Scotland. This allows the officer bearing the request to get a copy of the records. Standard Data Protection procedures apply, and the officer may not uplift the records the same day.

They must submit the request and we will either deliver the records to them or arrange for them to come and collect them when they are ready.

Access to Health Records Guidance



This guidance is supplementary to, and must be read in conjunction with the:

[Subject Access Policy](#)

[Processing Access Requests Procedure](#)

- [Subject Access Requests – Staff Files Process](#)

1. Access to Health Records

All requests for access to Health Records must be made to:

Loth.Legalservices@nhslothian.scot.nhs.uk

1. Any application for access to health records must be made in writing.
2. Applications must be signed and dated by the applicant.
3. Where an application is made on behalf of an individual, a signed form of consent must accompany the written application.
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)
 - CHI or hospital number (if available)
 - Dates of health records required.
5. If the request is to view records, suitable accommodation should be made available to the applicant for this to take place. An appropriate member of staff should remain throughout the period of access and should ensure that the record remains entire, and an appropriate health professional should be on hand to interpret abbreviations or clinical terminology used or to explain any information that is not readily intelligible.
6. The procedure for processing requests for access to records is outlined in [Processing Access Requests Procedure](#)
7. NHS Lothian has a 'Request for Personal Information' form available on our intranet and internet pages.
8. NHS Lothian has a right to check with the applicant if they require access to their entire health record and confirm what material the applicant requires prior to processing the request. However, it should be noted that the applicant does not have to provide a reason for applying for access to health records.

9. To avoid multiple requests 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.

2. Duty to Consult on a Valid Application for Access to Records

1. On receipt of a valid application for access to records, NHS Lothian has a duty to consult the relevant clinician on issues relating to disclosure of information:
2. To confirm that the applicant is of an age and capacity to understand the nature of the application
3. To take a decision regarding the withholding of access to all or part of a health record
4. To provide assistance where records may need to be explained to the applicant
5. The clinician is responsible for providing confirmation to the Health Records Medical Legal team (or relevant team) that records are suitable for disclosure, or that access should be denied.
6. Where a number of health professionals have equal rights in maintaining health records for the applicant, the NHS Lothian Caldicott Guardian has the responsibility for designating the responsible health professional for any one request.

3. Parental Responsibility

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

The requirements of parental responsibility are defined in the Children (Scotland) Act 1995 and The Family Law (Scotland) Act 2006 as:

- to safeguard and promote the child's health, development and welfare,
- to provide direction and guidance,
- to maintain personal relations and direct contact with the child on a regular basis, and
- to act as the child's legal representative

Until 4 May 2006, the unmarried natural mother of a child automatically acquired parental responsibility on the child's birth, whereas an unmarried natural father could only acquire parental responsibility in one of the following ways:

- by marrying the natural mother
- by entering into a formal written agreement with the child's natural mother; or
- obtaining an Order from the Court for parental responsibility

As of 4 May 2006, an unmarried father may obtain parental responsibility for his child if he and the natural mother register the birth of the child together. This applies only to births registered from 4 May 2006. For all births registered prior to this date the conditions described in 5.2.3 must be satisfied to establish parental responsibility for an unmarried natural father.

Parental responsibility can also be acquired:

- Through appointment as the child's guardian
- By way of a residence order from the Court
- By anyone having an Adoption Order made in their favour

A Local Authority can acquire parental responsibility by:

- Emergency protection order (local authority)
- Care orders (local authority). In this case the parents do not lose parental responsibility, but the local authority can limit the extent to which a person exercises their parental responsibility.

Where a child is considered capable of making decisions about his/her clinical 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.

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

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.

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 is 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 withhold 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. In Scotland, this position is further reinforced by the Age of Legal Capacity (Scotland) Act 1991, which states that:

"A person under the age of 16 years shall have legal capacity to consent on his own behalf to any surgical, medical or dental procedure or treatment where, in the opinion of a qualified medical practitioner attending him, he is capable of understanding the nature and possible consequences of the procedure or treatment".

In the Gillick case referred to above, two major principles were established which are known as the Fraser Guidelines:

- A parent's right to consent to treatment on behalf of a child ends when the child has sufficient intelligence and understanding to consent to the treatment themselves (when the child becomes 'Gillick competent')
- It is for the healthcare professional to decide whether a child has reached this level.

The guidelines apply to all aspects of the care of under-16s.

It should be established with whom parental responsibility lies in relation to any requests for access to health records before any request is actioned. If you are in any doubt about the level of parental responsibility (for example if the parents are divorced) please contact the Data Protection Officer for advice.

4. Definition of 'Third Party Information'

The definition of 'Third Party Information' is information relating to:

"An organisation, other than the data controller (NHS) or data processor (NHS or authorised organisation that processes data on behalf of NHS) that has provided information (about the data subject)".

This must not be confused with information that has been **provided by a third party**. When reviewing information as part of a subject access request, consider:

- Does the request require the disclosure of information that identifies a third party?
- Consider whether it is possible to comply with the request without revealing information that relates to and identifies a third-party individual.
- Has the third-party individual consented? Good practice to contact third parties and request consent.
- Would it be reasonable in all the circumstances to disclose without consent? Has the data subject already had a copy of the information? Consider if a genuine duty of confidence is owed to the third party, for example, the information is not available to the public and has been shared with the expectation it will remain confidential.

The above instruction is taken from the ICO 'Subject Access Code of Practice' three- step approach to dealing with information about third parties. Please consult this document for further guidance to assist with deciding whether to disclose information relating to a third party.

You must apply a case-by-case approach when reviewing third party information.

5. Collating responses and redaction

The Subject Access Request Team (or relevant) staff member will collate the information received and prepare the disclosure response to the Data Subject as necessary.

On occasion it may be necessary to redact information from the disclosure.

The purpose of redaction is to irreversibly remove the exempt information from the final copy. Please remember to redact information using a safe and secure process, for example, black marker, Banner Correction Roller (correction tape), Tippex or Microsoft Office functionality.

(Under no circumstances block, or erase the original medical data – photocopy the original and redact as described above)

- The Subject Access Request Team (or relevant) staff member will collate the information received and prepare the disclosure response to the Data Subject as necessary.
- A note must be made in the record stating the reason for withholding the information.
- 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
- Notification of refusal to grant access will be given as soon as possible in writing. NHS Lothian will record the reason for this decision and will also fully explain the reason to the applicant.
- Access to personal information will be denied to applicants where repeated applications are considered excessive, where an applicant has requested access more than twice in a two-year period.

NB: Remember to keep a record of what information has been removed and why.



**Digital Operations
Technical Services**

Guidance Document

Subject Access Requests – Searching Outlook for Emails

Author(s): Information Governance

Owner: Tracey McKinley

Version No: 1.00

Status : FINAL

Release Date: 11/03/2025

1. Document History

1.1.Document Location

This document is only valid on the day it was printed.

The source document can be found at the following location: Data Protection shared drive

1.2.Revision History

Date of this revision:11/03/2025

Date of next revision: 11/03/2028

Revision Date	Version	Summary of Changes	Revised By
25/03/2025	1	Creation	Cara Warnock

1.3. Approvals

This document requires the following approvals:

Name	Job Title	Date of Approval	Version No:
	Information Governance	25/03/2025	1

1.4.Distribution

This document has been distributed to:

Name	Job Title	Date of Issue	Version No:
	Information Governance	25/03/2025	1

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2. Introduction

This document details the general guidelines for searching outlook email inboxes when requested as part of a Subject Access Request.

3. Review

This guidance document will be reviewed annually.

4. Subject Access Requests overview

Data Protection legislation allows all individuals the right to request access to personal information an organisation, such as the NHS, hold about them. They can do this by making a Subject Access Request or a SAR.

SARs can be submitted in a variety of ways for example: verbal, email, complaint letter or a SAR form. All of these need to be actioned within the 30 day timeframe.

A typical SAR is a patient requesting access to their medical file or a staff member requesting access to their staff file. However, individuals can also make requests to access personal information held about them in other formats, such as emails or MS Teams messages.

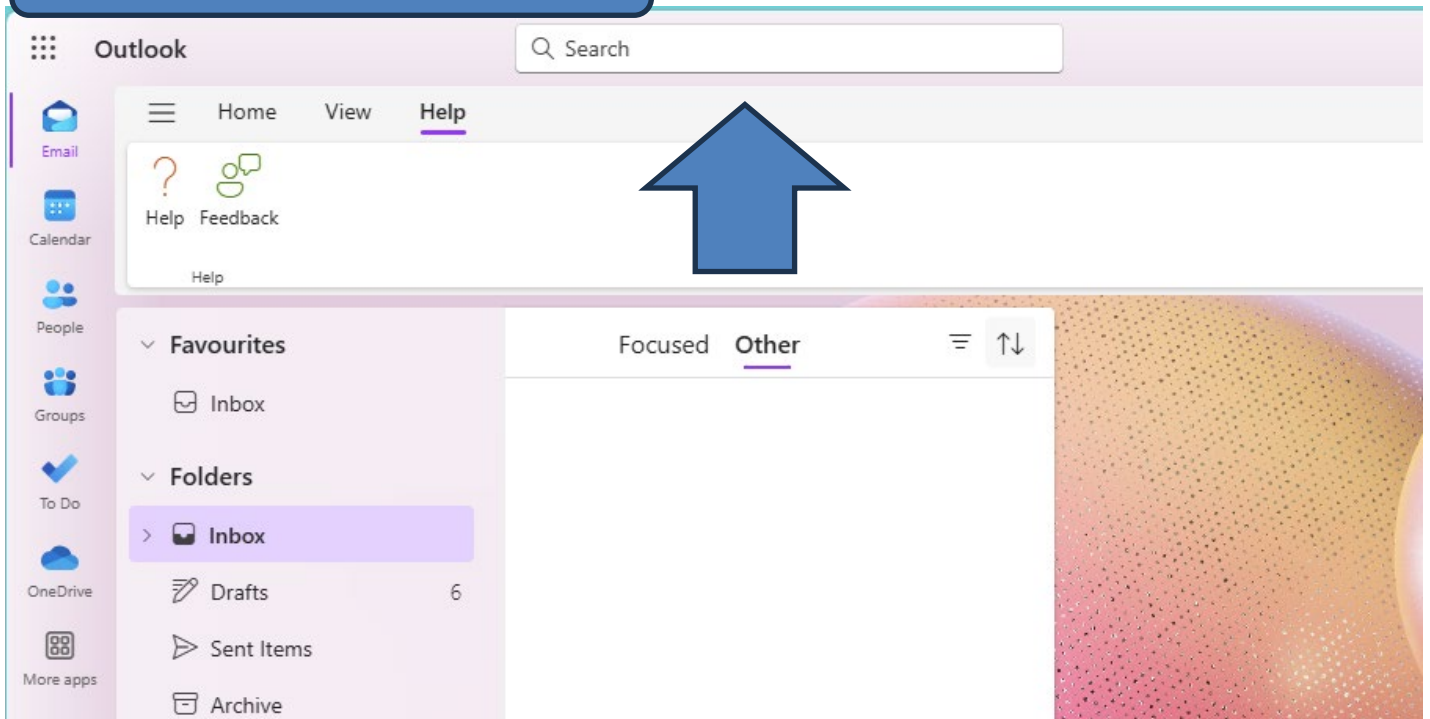
Patient requests for information would typically be handled by the Subject Access Request team (SAR Team) based out of the Royal Infirmary. Although some other areas do handle their own requests (for example, Dental and Health Visiting) – if you're not sure, contact SAR Team / IG for advice.

Staff requests for information are processed by the Information Governance department.

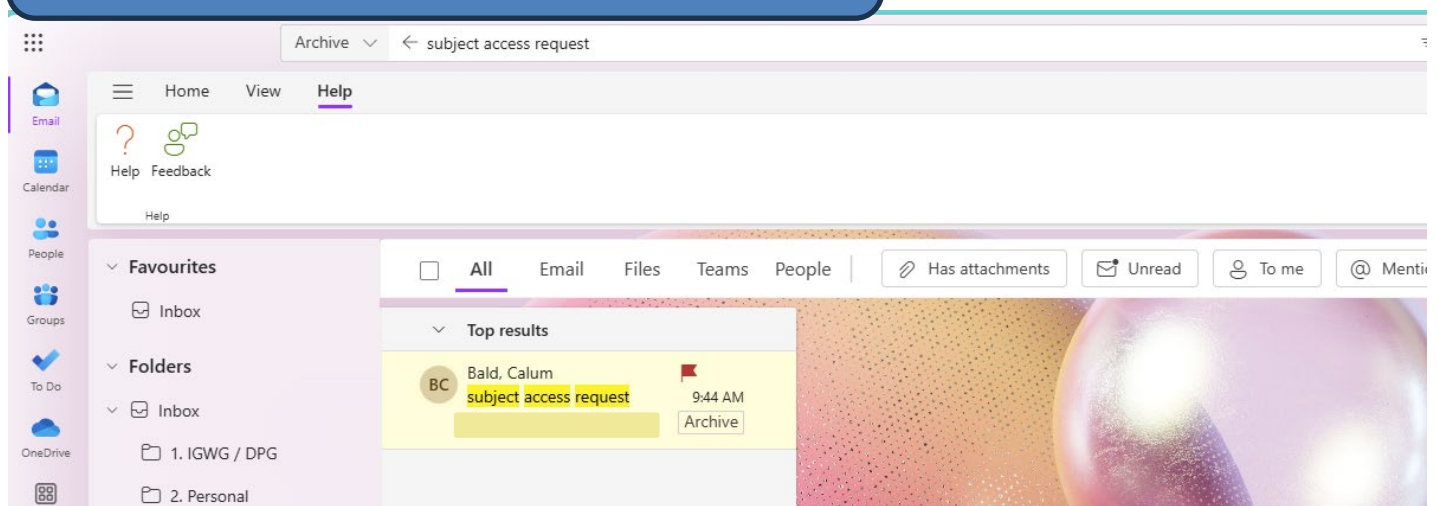
The guidance below has been created to help users search for any relevant emails when requested as part of a Subject Access Request.

5. Searching for emails – Outlook (webmail)

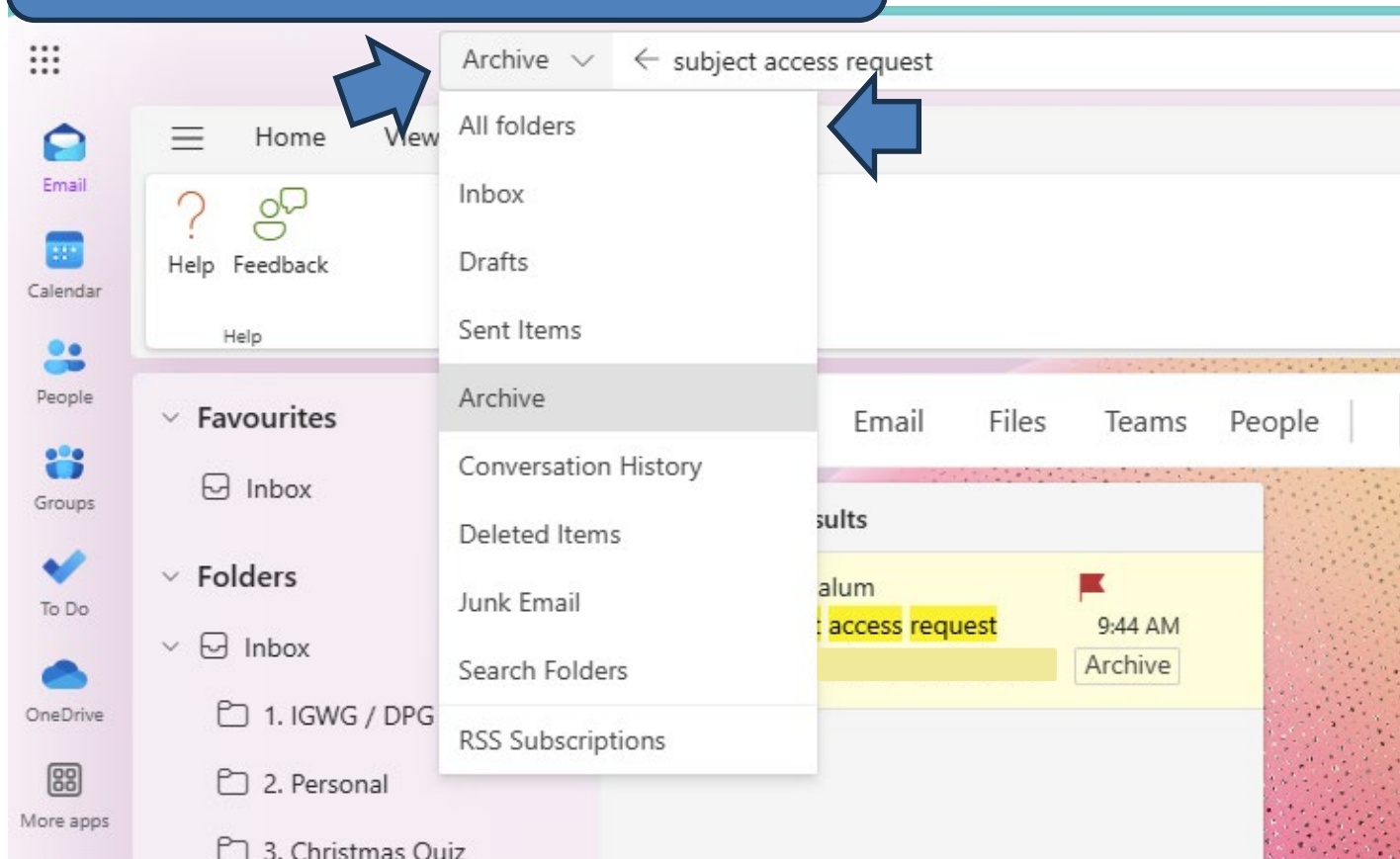
In outlook (webmail), select the search bar.



Enter the search criteria that you should have been provided (e.g. name / initials / email title), hit the enter key and this should bring up any relevant emails that meet your criteria



You should ensure that 'All Folders' is selected when searching. You can check this by clicking the drop down list next to the search bar and selecting the appropriate folder.

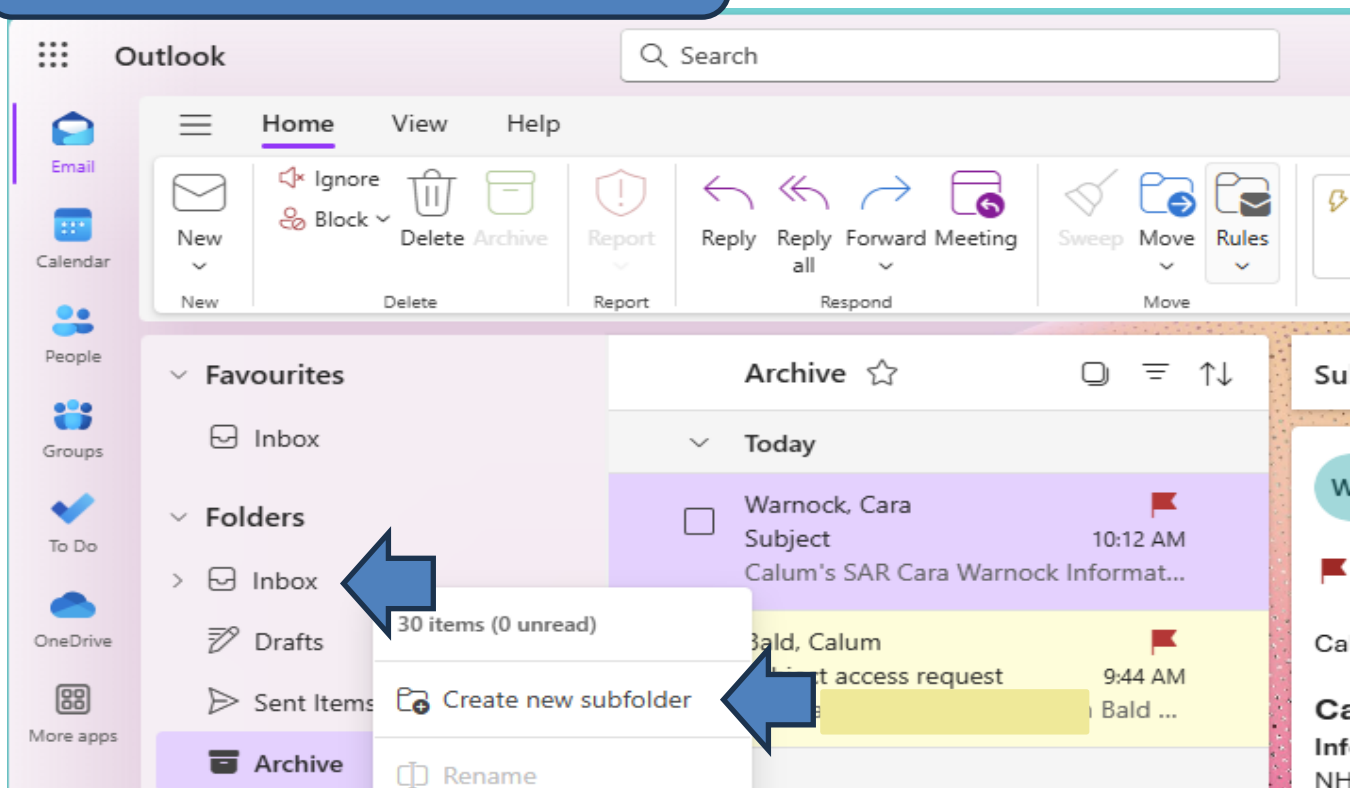


You should now be able to see all emails that appear according to the search criteria that you have entered.

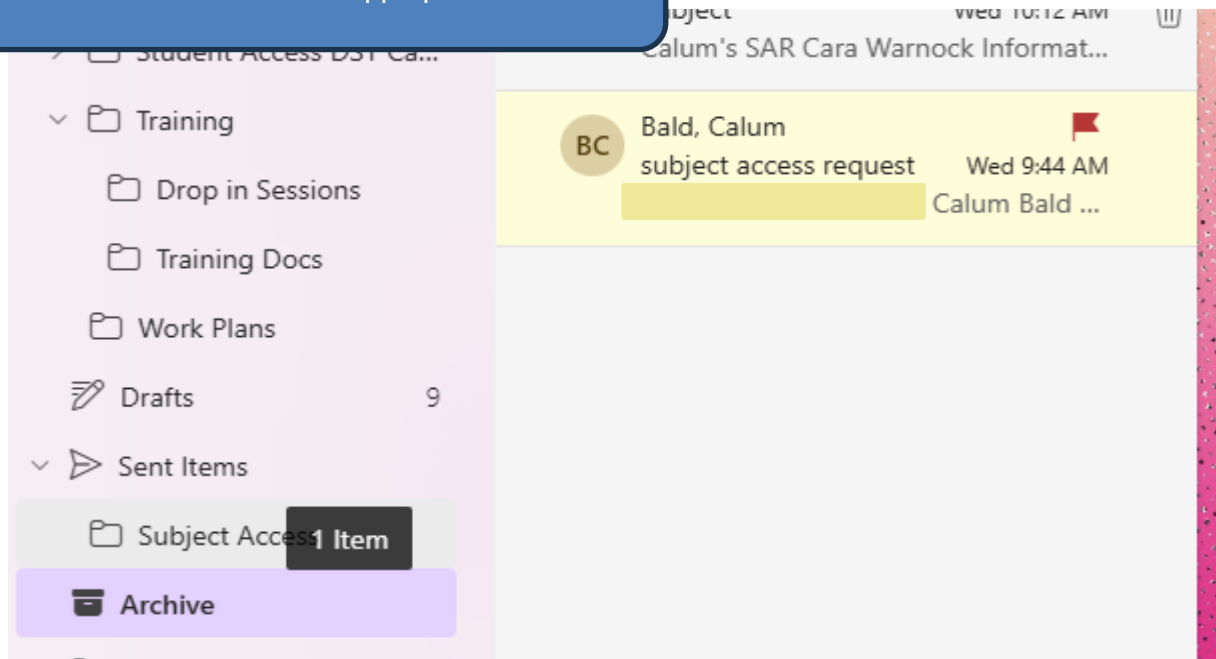
Applicants are only entitled to information that is personal to them. So any emails that do not contain personal information about them should be disregarded from the emails that are collated. Everyone / All staff emails and any service update emails should also be disregarded.

If you've been provided more than one search criteria, a helpful tip is to create a separate sub-folder in your inbox where you can add relevant emails.

To create a new subfolder in your inbox, you should right click on the inbox and then select 'create new subfolder' and name as appropriate.

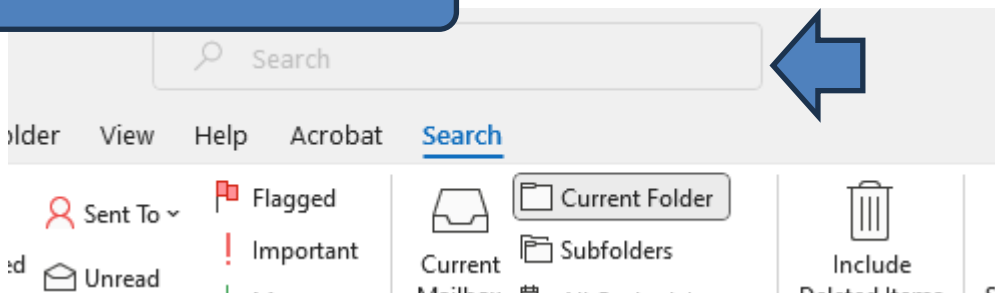


You can then click on the emails and drag them over to the new folder as appropriate.

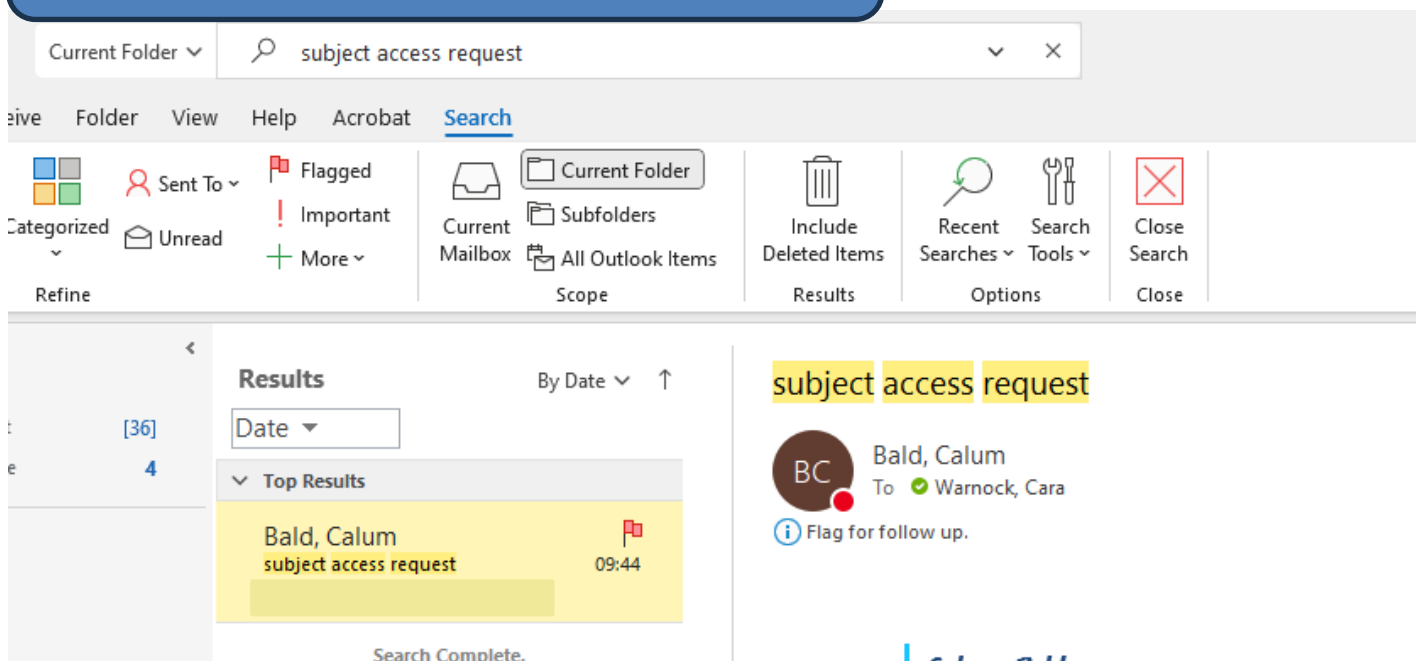


6. Searching for emails – Outlook (Desktop Application)

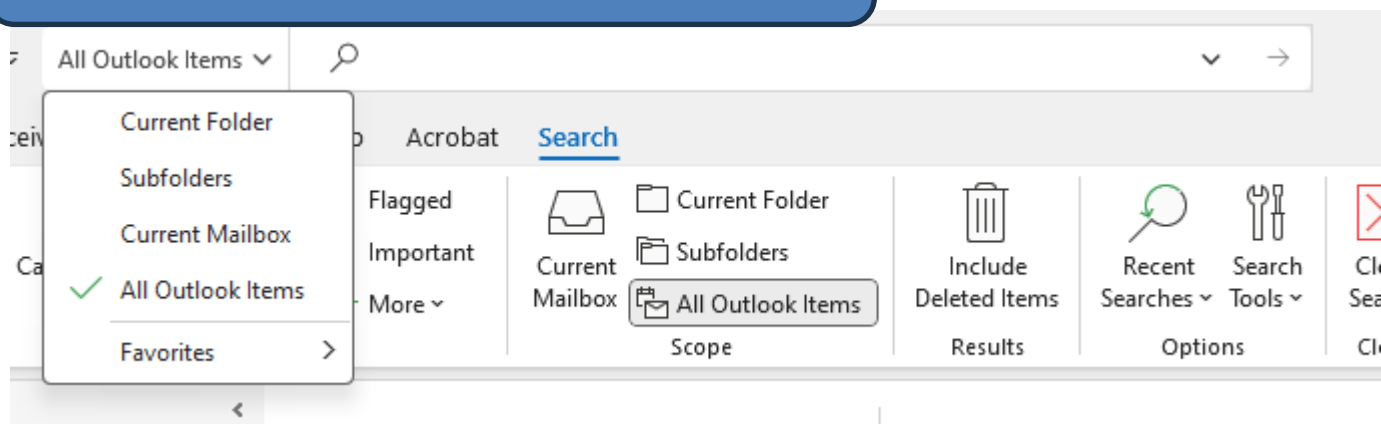
In outlook (desktop), select the search bar.



Enter the search criteria that you should have been provided (e.g. name / initials / email title), hit the enter key and this should bring up any relevant emails that meet your criteria



You should ensure that 'All Outlook Items' is selected when searching. You can check this by clicking the drop down list next to the search bar and selecting the appropriate folder.

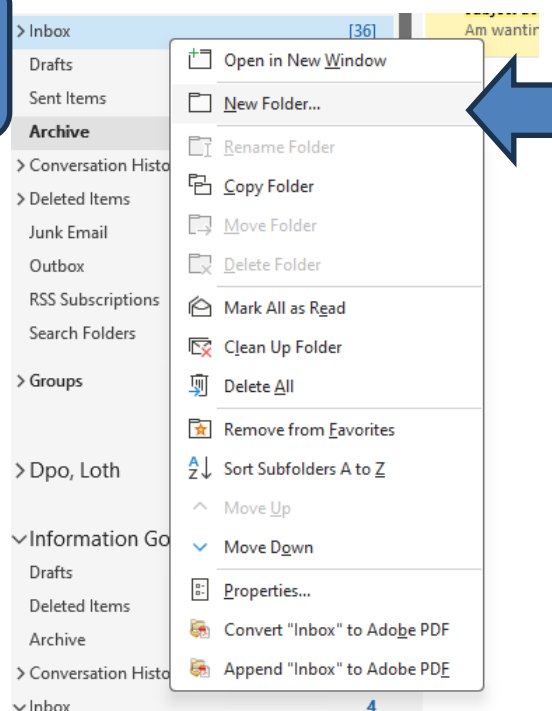


You should now be able to see all emails that appear according to the search criteria that you have entered.

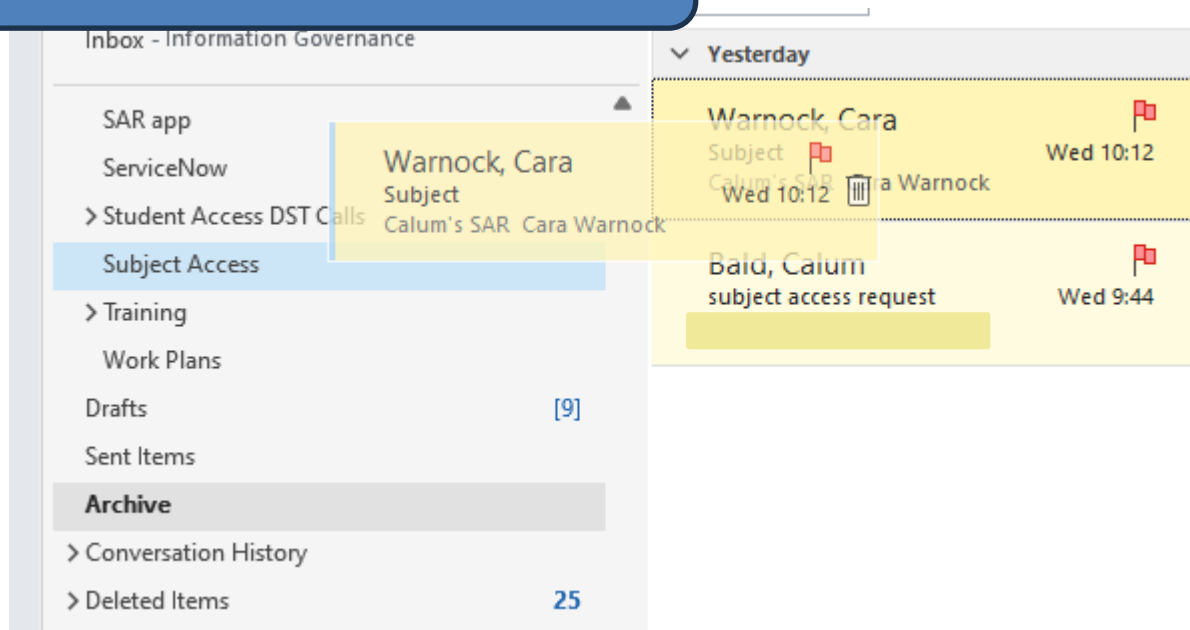
Applicants are only entitled to information that is personal to them. So any emails that do not contain personal information about them should be disregarded from the emails that are collated. Everyone / All staff emails and any service update emails should also be disregarded.

If you've been provided more than one search criteria, a helpful tip is to create a separate sub-folder in your inbox where you can add relevant emails.

To create a new subfolder in your inbox, you should right click on the inbox and then select 'new folder' and name as appropriate.



You can then click on the emails and drag them over to the new folder as appropriate.



7. Sharing emails with SAR Team / Information Governance

Relevant emails should be passed over to the relevant department (SAR Team / Information Governance) who can then review / redact as necessary before disclosing to the requestor.

There are a few suitable methods for this:

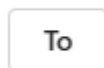
You can use the forward button and forward them on to the SAR Team / Information Governance contact.

Webmail:

1. Select the email
2. Select the forward button

A screenshot of a webmail interface showing a row of action buttons. The buttons are 'all', a blue curved arrow icon, and 'Forward'. The 'Forward' button is highlighted with a light blue border.

3. Enter the email address of the SAR Team / Information Governance officer who has requested the information and send it on.

A screenshot of a webmail 'To' field. It consists of a small box with the text 'To' and a long horizontal input field to its right.

4. Repeat as appropriate for all relevant emails.

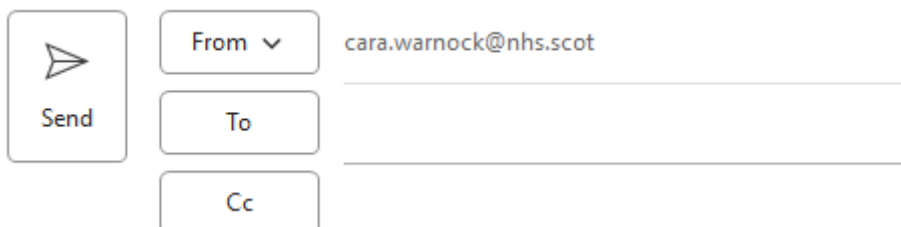
Desktop Application:

1. Select the email
2. Select the forward button

A screenshot of a desktop email application showing a row of action buttons. The buttons are: a smiley face icon, a blue curved arrow icon with the text 'Reply', a blue double curved arrow icon with the text 'Reply All', and a blue straight arrow icon with the text 'Forward'. The 'Forward' button is highlighted with a light blue border.

Wed 12

3. Enter the email address of the SAR Team / Information Governance office who has requested the information and send it on.

A screenshot of a desktop email application showing a 'Send' dialog box. On the left is a button with a right-pointing arrow and the text 'Send'. To the right are three input fields: 'From' (with a dropdown arrow) containing 'cara.warnock@nhs.scot', 'To', and 'Cc'.

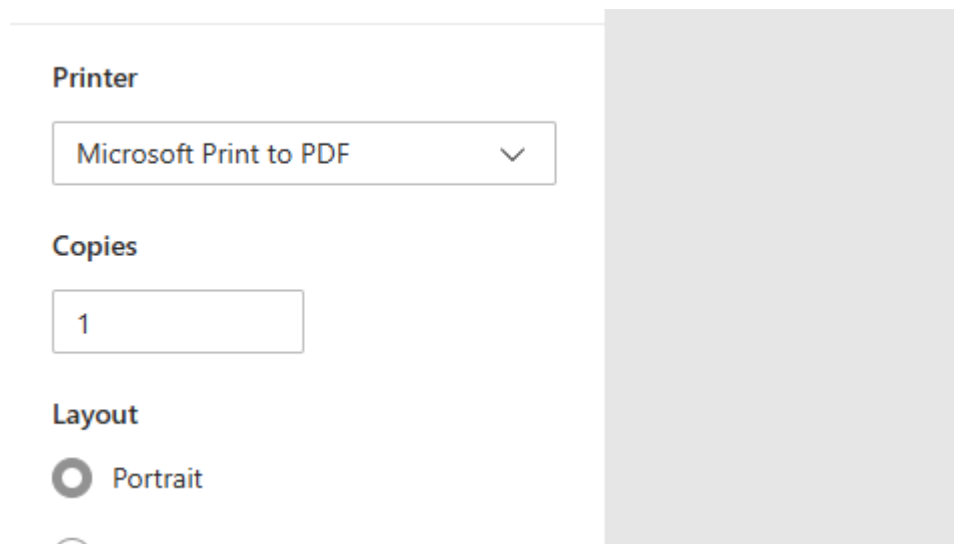
Print to PDF and attach to an email

Webmail:

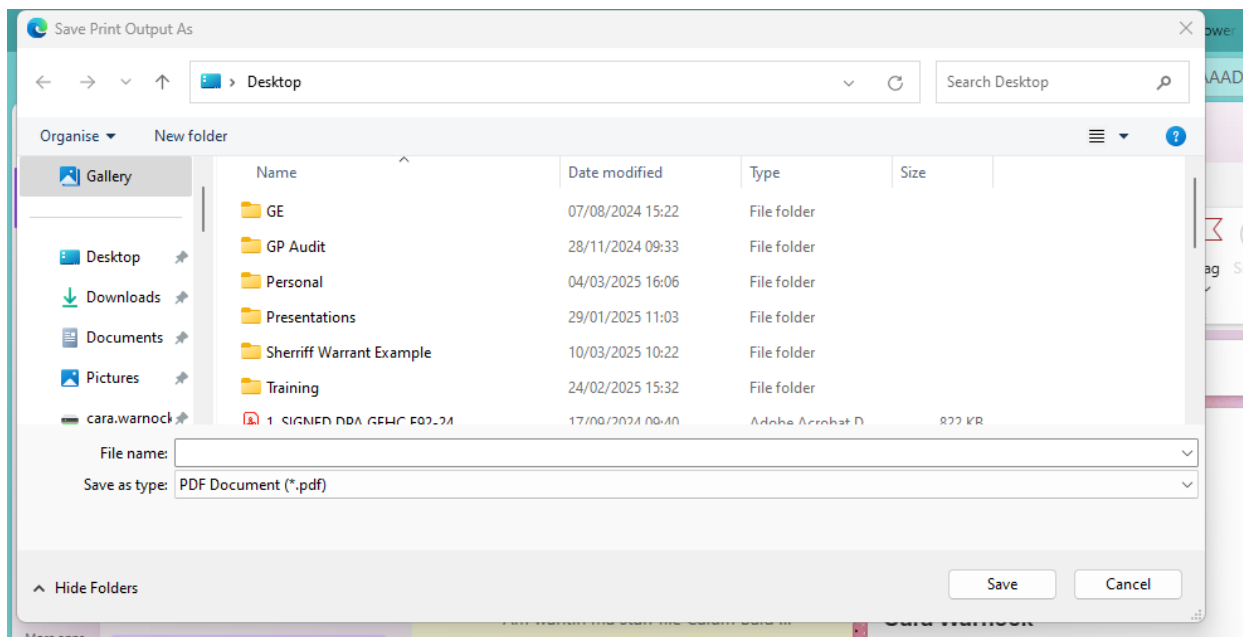
1. Select the email
2. Select the print button



3. Once you have selected this, it will bring up the print preview section. You will need to change the printer to Microsoft Print to PDF. You can do this by clicking the drop down section below printer which will bring up options and then select 'Microsoft Print to PDF'.

A screenshot of a print preview section. On the left, there are three sections: 'Printer' with a dropdown menu showing 'Microsoft Print to PDF', 'Copies' with a text input field containing '1', and 'Layout' with a radio button selected for 'Portrait'. To the right of these settings is a large, light gray rectangular area representing the print preview.

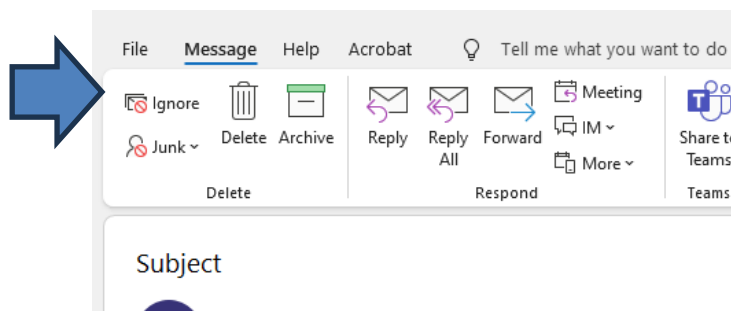
4. Once you have selected Print to PDF, then hit print. This will bring up a pop up box that allows you to select where you would like to save the PDF.



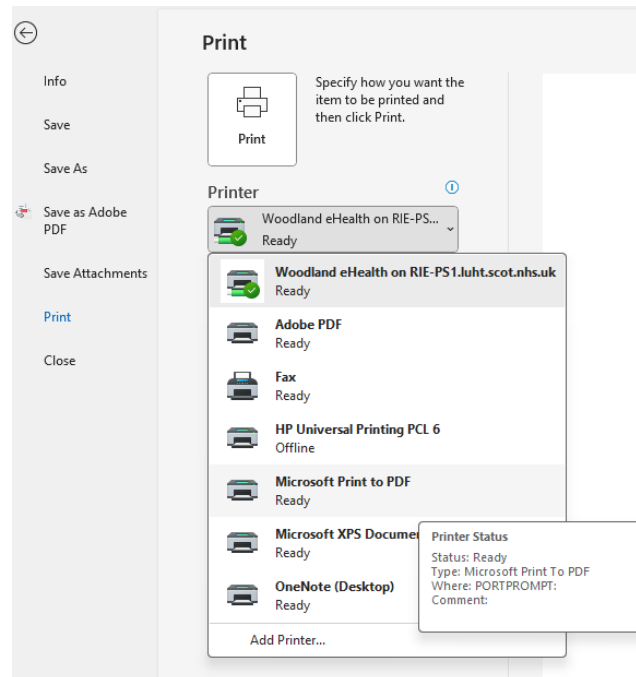
5. Repeat as appropriate for all emails.
6. Once all emails have been saved as PDFs you can attach them to an email and send on to Information Governance / SAR Team.
7. If there are a large quantity of emails, it might be too large to send as one email. You can look to add them to multiple different emails or create a ZIP file that may allow for it to be sent.

Desktop Application:

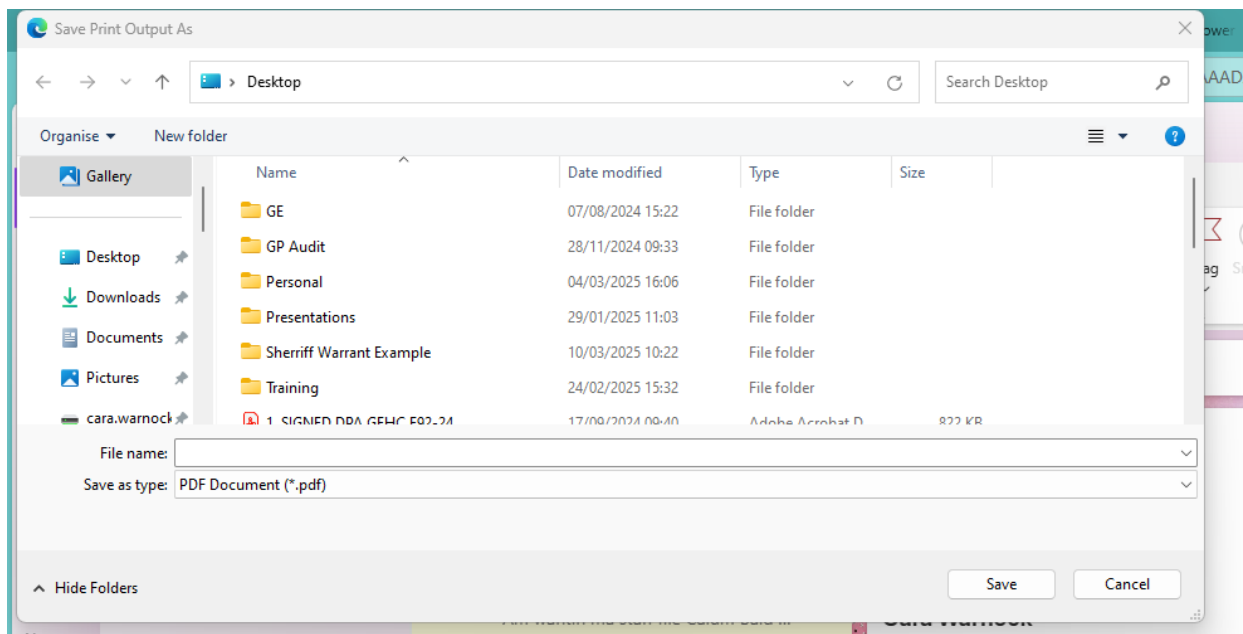
1. Select the email
2. Double click the email to 'pop it out' / open it separately.
3. At the top of the email select 'File'



- This will bring up a new menu, where you should select 'Print'. This will bring up the print preview section where you should change the device to 'Microsoft Print to PDF' by selecting the drop down list below 'Printer'.



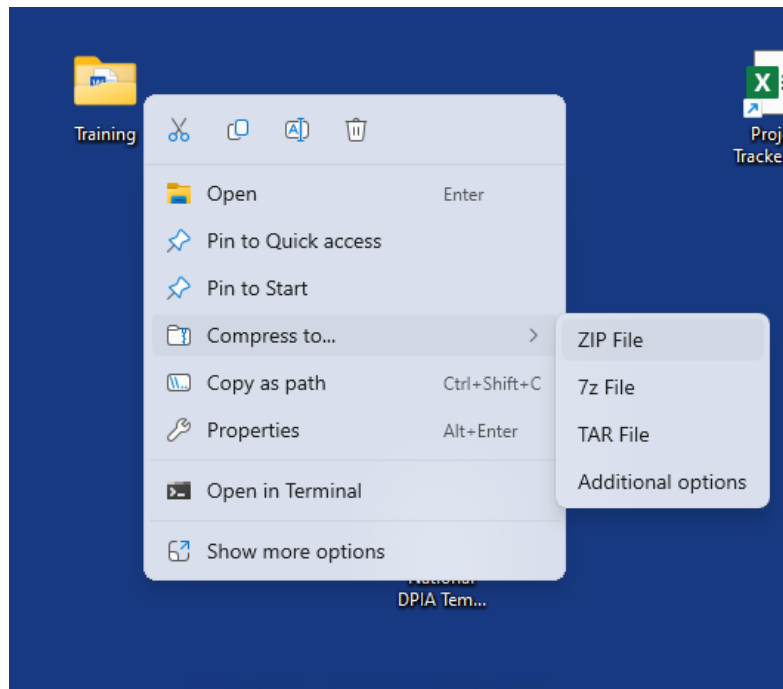
- Once you have selected Print to PDF, then hit print. This will bring up a pop up box that allows you to select where you would like to save the PDF.



- Repeat as appropriate for all emails.
- Once all emails have been saved as PDFs you can attach them to an email and send on to Information Governance / SAR Team.
- If there are a large quantity of emails, it might be too large to send as one email. You can look to add them to multiple different emails or create a ZIP file that may allow for it to be sent.

Creating a ZIP file

1. To create a ZIP file, you need to have all information collated into one folder.
2. Right click the folder and then go to 'Compress to...' and hit 'ZIP File'



3. This will bring up a zipped file which is smaller in size so could be included as an attachment.



9. Additional Information

For additional information, please contact:

SAR Team: Loth.SARTeam@nhs.scot

Information Governance: Loth.InformationGovernance@nhs.scot