



# Subject Access Request and Access to Health Records Procedure

|   |   |
|---|---|
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**Equality Statement**

This policy applies to all employees, Governing Body members and members of Leeds Clinical Commissioning Groups Partnership irrespective of age, race, colour, religion, disability, nationality, ethnic origin, gender, sexual orientation or marital status, domestic circumstances, social and employment status, HIV status, gender reassignment, political affiliation or trade union membership.

A full Equality Impact Assessment is not considered to be necessary as this procedure will not have a detrimental impact on a particular group.

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## **1. Rights of Access to Personal Data**

Individuals have the right, under the General Data Protection Regulation (EU) 2016/679 (Articles 12 and 15) and Data Protection Act request access to, or a copy of, information an organisation holds about them. This information may be held on computer, in a manual paper system, video, digital image, photograph, x-rays, email, text message or by any other new or existing medium or media. This is called a Subject Access Request (SAR).

Anyone making such a requested is entitled to be given a description of:

- Which data (categories) are being processed
- Details of the data controller, including contact details
- Contact details of the Data Protection Officer
- Purposes of the data processing, applicable legal basis and whether there is a statutory or contractual requirement to process data
- Other organizations that data may be shared with
- Whether there is any data processing taking place outside of the EEA
- The retention period for the data categories
- Individual rights to rectification, erasure, withdraw consent/object/opt out, data portability, ability to take complaints to the ICO

The General Data Protection Regulation (EU) 2016/679 and Data Protection Act applies only to living persons but there are limited rights of access to personal data of deceased persons under the Access to Health Records Act 1990.

## **2. Personal Data held by a Clinical Commissioning Group**

Personal data is information that relates to an individual who can be identified either directly or indirectly and includes any expression of opinion about the individual and any indication of the intentions of the information holder or any other person in respect of the individual.

A Clinical Commissioning Group is a commissioning organisation and does not hold individual medical records except with consent as part of processes such as Safeguarding, Continuing Care, Individual Funding Requests and Complaints or where there is a specific legal basis for doing so (e.g. s251). The organisation will also hold personal data relating to employees and contractors.

## **3. Subject Access Requests**

The responsibility for oversight of a SAR rests with the Corporate Governance Team with assistance from relevant members of staff.

This procedure is for CCGs only. GPs have their own statutory responsibilities (as contracted Providers to the NHS) to process Subject Access Requests. Requests for Subject Access should always be directed to the relevant data controller of the information.

3.1 All requests for access to personal data must be written or electronic

- 3.2 The CCG has provided a form for applicants (Appendix A) to use which ensures all the relevant information is collected and recorded to assist the applicant and the CCG but there is no requirement in law to use a specific form
- 3.3 There is no obligation for a subject to explain why they wish to access their own personal data
- 3.4 Proof of identity will be required for Subject Access Requests (Appendix B)
- 3.5 Requests should generally be processed free of charge. For “manifestly unfounded or excessive” requests only, an administrative fee may be advised based on actual costs

The subject access requirements are for the subject to receive personal data or have remote access to those systems holding their data. Where direct/remote access is not available, providing copies of the record/documents are usually preferred over this being summarised in another format.

#### **4. Timescales**

The NHS undertakes to respond to any Subject Access or Access to Health Records request within 21 days<sup>1</sup>. If it is anticipated that this will take longer than the 21 day period, the applicant will be informed and given an explanation for the delay.

The timeline commences when the CCG has received ALL of the following:

- Valid request
- Valid Identification
- Payment of a fee if request deemed “manifestly unfounded or excessive”

Provision exists to extend the 21 day deadline where requests are complex or numerous.

#### **5. Requests under Access to Health Records Act 1990**

- 5.1 The Common Law Duty of Confidentiality extends beyond death
- 5.2 Certain individuals have limited rights of access to deceased records under the Access to Health Records Act:
  - Individuals who may make an Access to Health Records request;
  - Those named executor of a will or specified in letters of administration (documentation confirming this is required).
  - Any person who may have a claim arising out of the patient’s death
- 5.3 A Next of Kin has no automatic right of access but professional codes of practice allow for a clinician to share information where concerns have been raised.
- 5.4 Guidance should be sought from the Caldicott Guardian in relation to requests for deceased records

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<sup>1</sup> As outlined within page 6 of NHS Information Governance - <https://digital.nhs.uk/media/1160/NHS-Information-Governance-Guidance-on-Legal-and-Professional-Obligations/pdf/NHS-information-governance-legal-professional-obligations>

## **6. Charging Fees for Access**

- 6.1 The requester will be advised of any fees as soon as possible after the request is received and this will be payable before the request is further processed.
- 6.2 The General Data Protection Regulation (EU) 2016/679 removes the ability to charge fees for fulfilling Subject Access Requests (unless manifestly unfounded or excessive) and tightens the statutory timeframe for completing a request to one calendar month (although the 21 day target still applies to requests within the NHS).

Where requests are manifestly unfounded or excessive, in particular because of their repetitive character, the CCGs may either charge a reasonable fee (taking into account the administrative costs of providing the information or communication or taking the action requested) or may refuse to act on the request.

## **7. Access Requests for Minors**

- 7.1 A child may make a Subject Access Request in relation to their own personal data as from the age of 13 they are normally considered competent enough to do so.
- 7.2 Those with parental responsibility for a child under 13 years may make an access request on their behalf but the information holder must consider whether it is in the best interests of the child to disclose information held.

## **8. Access Requests for those who lack capacity to consent**

In certain circumstances a person acting as an advocate can seek access to personal information in so far as it is necessary or relevant to their role. This includes:

- Persons appointed by the Court of Protection
- Persons holding a registered Power of Attorney for specified purposes
- Persons appointed as Independent Mental Health Advocates under the Mental Capacity Act 2005

## **9. Third Party Requests for Access to Personal Data**

There are a number of organisations concerned with law enforcement, crime prevention, fraud and taxation who have a right to request information from NHS organisations under the provisions of General Data Protection Regulation (EU) 2016/679 and Data Protection Act 1998 . These requests should be dealt with on an individual basis which balances the public interest against the confidentiality rights of the subject. Any request should be authorised by an appropriately senior enforcement officer (an Inspector of Police or equivalent rank in other services) and should be accompanied by sufficient information to enable an informed decision to be made within the by the Caldicott Guardian (patient data) or SIRO. To state a “serious crime” is not sufficient and more detail must be given. The Coroner may request access to medical or staff records and is deemed to be acting in the public interest. Guidance and further information is available from [the Information Governance Alliance](#).

- 9.1 The Clinical Commissioning Groups (CCGs) should take a pro-active approach to the sharing of information relevant to the safeguarding of children and vulnerable adults.
- 9.2 A number of other organisations including the Health and Safety Executive, Health Service Ombudsman and the Care Quality Commission may have rights of access in relation to enquiries being conducted. Advice should be sought from the Caldicott Guardian, SIRO or the eMBED Information Governance team.
- 9.3 Follow any locally agreed information sharing protocols and national guidance
- 9.4 Information may be shared with Local and National Counter Fraud Specialists in relation to actual or suspected fraud in the NHS.
- 9.5 Information held by the CCGs originating from other organisations should be included unless such data is exempt or contains data regarding other individuals than the data subject.

## **10. Access to Corporate Information**

The CCGs are public authorities and are subject to the provisions of the Freedom of Information Act 2000 and the Environmental Information Regulations 2004. Personal Data is usually exempted from public disclosure but in certain circumstances some personal data may be disclosed in the public interest but still subject to the individual's rights under the General Data Protection Regulation (EU) 2016/679 and Data Protection Act

## **11. Procedure**

**This section to be read in conjunction with the Checklist in Appendix A.**

### **10.1 Receipt of an Access Request**

- Check that the request relates to personal data of a type likely to be held by the Clinical Commissioning Groups
- Consider whether the requester has supplied sufficient information to identify the data required, if not seek clarification before processing further
- Consider whether you have sufficient evidence of identity of either the subject themselves or a third party authorised to act on their behalf
- In the case of a third party, consider whether they meet the legal criteria to make a request and whether they have supplied evidence to that effect
- Consider whether the request is likely to be subject to a fee (See section 6)
- Record the request on a checklist (see **Appendix A**) to include date of receipt and due date for a reply
- Arrangements should be in place for the safe and secure storage of access requests and responses with appropriate limited access provision. The Head of Governance and Corporate Services will maintain central file of SAR requests and responses

### **10.2 Acknowledgement of request**

- If the request meets the criteria above send an acknowledgement letter advising the requester of the expected timescale

- If further clarification, information, documentation or fees are required then request these as soon as possible
- Make a record of your actions on the checklist
- If the CCGs do not hold the information notify the requester in writing as soon as possible (no later than one month) and give advice and assistance where possible as to the possible location of the record
- A template acknowledgement letter is provided at **Appendix C**

### 10.3 Establishing Identity

To help establish identity the application must be accompanied by photocopies of **two** official documents which between them clearly show the data subjects **name, current postal address, date of birth and signature**, for example: birth certificate, Local Authority provided bus pass, driving licence, passport, medical card, bank statement, utility bill, rent agreement. Ideally, one of the proofs should be a photographic identity document such as passport or driving licence.

Additional documents may be required from third parties to establish their legal right to make an Access Request. See Appendix B, section 5: Evidence.

### 10.4 Collating the data

- Consider where the information may be held and ask the relevant staff to conduct a search within the parameters of the request details
- Ensure both electronic and manual filing systems are considered along with email, digital records, CCTV images, telephone recordings and other media options
- There is no exemption for potentially embarrassing information to be redacted or for the removal of personal comments from records. It is a criminal offence to alter, block or destroy information after receipt of a Subject Access Request.
- Information must be in an intelligible form and explanations should be provided for pseudonyms, abbreviations etc.

### 10.5 Potential Redactions or Refusals

- **All clinical data should be reviewed by a clinician** and consideration should be given to redacting any information likely to cause serious harm to the mental or physical health of any individual
- Information supplied by third parties e.g. family members should usually be redacted
- Data and information held from other agencies may be disclosable but should be discussed with the originating body first
- Any information subject to Legal Professional Privilege should not be disclosed
- Information should not be disclosed where there is a statutory or court restriction on disclosure e.g. adoption records
- References written for current or former employees are exempt (but not those received from third parties)

- In the case of deceased records, information should not be disclosed where the entry in the records makes it clear that the deceased expected the information to remain confidential
- A personal record may also contain reference to third parties and redaction should be considered by balancing the data protection rights of all parties

## 12. Records Management procedure (retention period)

### 11.1 Responding to the Request

- Check any fees have been received or additional supporting documentation requested at the time of acknowledgement
- Send a holding letter with an explanation if it seems likely that the target date will be breached.
- Send the response to the requester explaining the information supplied. **Response letters must be approved by the Caldicott Guardian or SIRO.**
- Make a record of the response, including any redactions or exempted information and ensure that you have a clear record of documents disclosed including copies of any redacted documents.
- Ensure that the requester is advised of his right to complain about the response given to his request and the way in which he can do this.
- Be prepared to facilitate a meeting to explain the records if necessary.

### 11.2 Summary of procedure

- Determine if it is a subject access request
- Confirm the requester's identity
- Ensure that sufficient information had been provided to identify the desired records
- Record the request
- Inform if the request has been deemed manifestly unfounded or excessive and any fee that would be charged for administration
- Is information held on this person?
- Will the information change from receiving to responding to the request?
- Remove any third party information
- Is the information exempt?
- Explain any codes, complex terms, and or abbreviations
- Have health professional check the record before disclosure and obtain approval to the response from the Caldicott Guardian.
- Keep a record of exact information disclosed
- Monitor to ensure timescales for responding are met

## 13. References

This procedure is in place to ensure the organisation's compliance with legislation and guidance including, but not limited to, the following:

- Abortion Regulations 1991
- Access to Health Records Act 1990 (where not amended by the Data Protection Act 1998)
- Access to Medical Records Act 1988

- Anti-Fraud and Bribery Policy
- Audit & Internal Control Act 1987
- Bribery Act 2010
- Caldicott 2 Principles –To Share or Not to Share? The Information Governance Review April 2013
- Common Law Duty of Confidentiality
- Communications Act 2003
- Copyright, Designs and Patents Act 1988 (as amended by the Copyright (Computer Programs) Regulations 1992
- Coroners and Justice Act 2009
- Crime and Disorder Act 1998
- Data Retention and Investigatory Powers Act 2014
- Digital Economy Act 2017
- Disciplinary Policy and Procedure
- Environmental Information Regulations 2004
- Equality Act 2010
- Fraud Act 2006
- Freedom of Information Act 2000
- General Data Protection Regulation (EU) 2016/679
- Health and Social Care Act 2012
- Human Fertilisation and Embryology Act 1990
- Human Rights Act 1998
- Medical Act 1983
- Mental Capacity Act 2005
- NHS Act 2006
- NHS Care Records Guarantee for England
- NHS Records Management Code of Practice
- NHS Sexually transmitted disease regulations 2000
- Prevention of Terrorism (Temporary Provisions) Act 1989 & Terrorism Act 2000
- Privacy and Electronic Communications Regulations 2003
- Protection of Freedoms Act 2012
- Public Interest Disclosure Act 1998
- Public Records Act 1958
- Regulation of Investigatory Powers Act 2000 (and Lawful Business Practice Regulations 2000)
- Regulations under Health and Safety at Work Act 1974
- Road Traffic Act 1988
- Safeguarding Vulnerable Groups Act 2006
- The Children Act 1989 and 2004
- The Data Protection Act 1998
- The Health and Social Care Act 2012
- The Human Rights Act 1998

The procedure should be read in conjunction the organisation's other information governance policies and procedures including:

- Information Governance Policy and Management Framework
- Information Governance Strategy

- Records Management Policy
- Confidentiality and Data Protection Policy
- Information Sharing Protocols
- Information Security Policy
- Disciplinary Policy and Procedure
- Anti-Fraud and Bribery Policy
- Whistleblowing Policy

## Appendix A: Subject Access and Access to Health Records Procedure Request Checklist

| <b><i>This checklist should be completed for each new request and should be read in conjunction with Subject Access Request procedure.</i></b> |   |                          |             |                 |
|--|---|--------------------------|-------------|-----------------|
| <b>1</b>   | <b>Receipt of Request</b>   | <b>Check</b>             | <b>Date</b> | <b>Comments</b> |
| 1.1  | Is this a request under GDPR/DPA (or Access to Health Records Act 1990)?  | <input type="checkbox"/> |             |                 |
| 1.2  | Allocate a Subject Access request number  | <input type="checkbox"/> |             |                 |
|  | Set up a secure file for all documents  | <input type="checkbox"/> |             |                 |
|  | Date stamp all documents and correspondence.  | <input type="checkbox"/> |             |                 |
| <b>2</b>   | <b>Identify Data Subject and Obtain Authorisation</b>   |                          |             |                 |
| 2.1  | Is the request valid?   | <input type="checkbox"/> |             |                 |
|  | • Sufficient information to identify the data subject   | <input type="checkbox"/> |             |                 |
|  | • Sufficient information to locate required data  | <input type="checkbox"/> |             |                 |
|  | • Approval of Caldicott Guardian (patient data) or SIRO where third party request has been received                                   | <input type="checkbox"/> |             |                 |
| 2.2  | Send acknowledgement with appropriate form  | <input type="checkbox"/> |             |                 |
|  | • To establish authorisation of data subject  | <input type="checkbox"/> |             |                 |
|  | • To inform of fees, only if manifestly unfounded/excessive (evidenced admin cost)  | <input type="checkbox"/> |             |                 |
|  | • Is the request made by the data subject   | <input type="checkbox"/> |             |                 |
|  | • Or representative   | <input type="checkbox"/> |             |                 |
| 2.3  | If the data subject is a child are they capable of making a request on their own behalf?  | <input type="checkbox"/> |             |                 |
|  | <i>If not</i> , are the parents / guardians acting it in the best interest of the child? (check with health/social care professional) | <input type="checkbox"/> |             |                 |
| 2.4  | Has the request been deemed manifestly unfounded or excessive? If so, please specify the admin cost being charged.                    | <input type="checkbox"/> |             |                 |
| <b>3</b>   | <b>Receipt of Valid Request</b>   |                          |             |                 |
| 3.1  | When request is valid:  | <input type="checkbox"/> |             |                 |
|  | • Raise invoice (manifestly unfounded/excessive requests only)  | <input type="checkbox"/> |             |                 |
|  | • Check fee has been paid (if applicable)   | <input type="checkbox"/> |             |                 |
|  | • Record date and start to monitor the <b>21</b> calendar days to max <b>one month</b>  | <input type="checkbox"/> |             |                 |
|  | • Send an acknowledgement to the data subject that the request is being processed   | <input type="checkbox"/> |             |                 |
| <b>4</b>   | <b>Review of Information</b>  |                          |             |                 |
| 4.1  | Check if an exemption is applicable   | <input type="checkbox"/> |             |                 |
| 4.2  | Check third party identification and remove where necessary (consent not given)   | <input type="checkbox"/> |             |                 |
| 4.3  | Check information is accessible:  | <input type="checkbox"/> |             |                 |
|  | • Check for intelligibility   | <input type="checkbox"/> |             |                 |
|  | • All codes must be decoded   | <input type="checkbox"/> |             |                 |
| <b>5</b>   | <b>Issue to Data Subject</b>  |                          |             |                 |
| 5.1  | If no problem with release of Data:   | <input type="checkbox"/> |             |                 |
|  | • Request that the data subject or their representative collects the information  | <input type="checkbox"/> |             |                 |
|  | • Information is sent Special Delivery/Guaranteed delivery to the data  | <input type="checkbox"/> |             |                 |

|  |   |                          |  |  |
|--|---|--------------------------|--|--|
|  | subject or their representative   |                          |  |  |
|  | <ul style="list-style-type: none"> <li>Ensure written response is approved by Caldicott Guardian (patient data) or SIRO</li> </ul>  | <input type="checkbox"/> |  |  |
| <b>5.2</b>   | If information has been withheld under exemptions send out what is allowed to be disclosed and/ or arrange an interview (if necessary) between health or social care professional and data subject to discuss the issues. | <input type="checkbox"/> |  |  |
|  | If there is a delay send a holding letter   | <input type="checkbox"/> |  |  |
| <b>6</b>   | <b>Completion</b>   |                          |  |  |
| <b>6.1</b>   | Keep copies of all requests securely  | <input type="checkbox"/> |  |  |
| <p><b>Comments: Log of any calls, emails, post, personal visits had in relation to this request. Please record time, date and initial any comments. Any delays should also be explained below.</b></p> |   |                          |  |  |

This request has been actioned by:

Name

Designation

Location

Date

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## Appendix B: Request to Access Personal Records

### *PRIVATE AND CONFIDENTIAL*

**SAR1**

### **Subject Access Request General Data Protection Regulation (EU) 2016/679 and Data Protection Act**

The form should be filled out in block capitals or in type.

**Please note for health records requests:** The Leeds CCGs are commissioning organisations and not healthcare providers. Health records will be held by the healthcare providers who you would need to contact directly to request records (contact details are shown in section 6 of this application form for Leeds providers).

#### **Section 1: Details of person whose records are being requested**

|   |                       |
|---|-----------------------|
| <b>Surname:</b>                             |                       |
| <b>Former Surname:</b>                      |                       |
| <b>First names:</b>                         |                       |
| <b>Title:</b>                               | <b>Mr/Mrs/Ms/Miss</b> |
| <b>Date of Birth:</b>                       |                       |
| <b>NHS Number:</b>                          |                       |
| <b>Current Address:</b>                     |                       |
|   |                       |
|   |                       |
| <b>Former Address :<br/>(if applicable)</b> |                       |
|   |                       |

#### **Section 2: Applicant details (if making a request on behalf of the person above)**

|   |  |
|---|--|
| <b>Name:</b>  |  |
| <b>Address:</b>                                     |  |
| <b>Relationship to<br/>person in section<br/>1:</b> |  |



|            |                               |
|------------|-------------------------------|
| Name:      | PLEASE WRITE NAME IN CAPITALS |
| Signature: |                               |
| Date:      |                               |

### **Section 5: Evidence**

Evidence of the patients and/or the patient's representative identity will be required; this will require **two** items of documentation (one of which should contain a photograph), examples of which are given below:

| <b>Type of applicant</b>   | <b>Type of documentation required</b>   |
|--|---|
| An individual applying for their own records.                          | Two copies of identity required e.g. copy of birth certificate, passport, driving licence, medical card etc. Together, these must clearly show your name, current postal address, date of birth and signature |
| Someone applying on behalf of an individual.                           | One item of proof of the patient's identity and one items of proof of the patient's representative identity (examples above).   |
| Person with parental responsibility applying on behalf of their child. | Copy of birth certificate, correspondence addressed to the person with parental responsibility relating to the patient.   |
| Power of attorney/agent applying on behalf of an individual.           | Copy of court order authorising power of attorney/agent plus proof of the patient's identity (examples above).  |

### **Please return the form to the:**

Head of Governance and Corporate Services  
NHS Leeds CCGs Partnership  
Suites B5 – B9, Wira House, West Park Ring Road, LEEDS, LS16 6EB  
Telephone: 0113 843 5484  
Email: [laura.parsons2@nhs.net](mailto:laura.parsons2@nhs.net)

Please note:

- A completed form will contain confidential information, therefore where sending by letter - to provide more security during the transit of a letter it is advisable that the form is sent in an envelope marked "PRIVATE AND CONFIDENTIAL".

- If you are intending to send the form via email, the transit of the email (if sending from a home email address or company email) will be in most cases be not be secure and therefore the security of the information cannot be assured.

## **Section 6: Contact details for Health Records (Health providers)**

Please note: this application form is for the Leeds CCGs only. The NHS organisations below all have their own application process.

### **Community healthcare services (Leeds Community Healthcare NHS Trust)**

The records that Leeds Community Healthcare NHS Trust holds are community based records such as Health Visiting and District nursing records. They also hold records for specialist community clinics such as speech and language, audiology, Podiatry etc. which can be run from locations such as health centres. Their contact details are:

Information Governance Manager  
Leeds Community Healthcare NHS Trust  
First Floor, Stockdale House  
Headingley Office Park  
Victoria Road  
LEEDS  
LS6 1PF

Website: <http://www.leedscommunityhealthcare.nhs.uk/how-do-i/>

### **Acute/secondary/hospital care (Leeds Teaching Hospitals NHS Trust)**

Records held by Acute Trusts (secondary care provider) include outpatient attendances; inpatient stays, day care, Accident and Emergency attendance all which usually take place at the hospital. Requests for these types of records should be made to the acute Trust itself. The Leeds Teaching Hospitals NHS Trust includes Leeds General Infirmary, St James's University Hospital, Seacroft, Wharfedale and Chapel Allerton Hospital sites. The contact details are:

Access to Health Records  
2<sup>nd</sup> Floor  
Ashley Wing  
St James's University Hospital  
Beckett Street  
LEEDS  
LS9 7TF

Website: <http://www.leedsth.nhs.uk/about-us/freedom-of-information/fair-processing-notice/>

### **Primary care (GP records)**

Records from visits to the GP or practice nurse will be held by the practice itself. Requests for these types of records should be made direct to the practice.

[NHS Choices website](#)

### **Mental Health (Leeds and York Partnership NHS Foundation Trust)**

The mental health trust provides specialist mental health and learning disability services, their contact details are:

Leeds and York Partnership NHS Partnership NHS Trust  
2150 Century Way  
Thorpe Park  
LEEDS  
LS15 8ZB

Website: <http://www.leedspft.nhs.uk/contacts>

## **Appendix C: Draft Acknowledgement Letter**

PRIVATE AND CONFIDENTIAL

SAR Ref: <Unique ID>

DATE

Name

Address

Dear Mrs/Ms/Miss/Mr XXXXXX

### **Access Request under the General Data Protection Regulation (EU) 2016/679, Data Protection Act or Access to Health Records Act 1990**

Thank you for your request for information under the XXXXXX received on XXXXXX  
This letter is to acknowledge receipt of the request addressed to the Leeds CCGs on  
XXXXXX. *In order to process your request I would be grateful if you could complete and  
return the attached form.*

*On receipt of the completed form* we would expect to forward a response to you within 21  
days dependent upon whether any clarification is needed and/or whether fees are to be  
charged. In such circumstances, the CCG will notify you as soon as possible of any fees  
which may be due.

Under the legislation there may be restrictions which the CCG is obliged to apply but these  
will be explained to you in our response.

Yours sincerely

XXXXXX

Head of Corporate Governance and Risk

**SECTIONS IN ITALICS TO BE DELETED IF REQUEST IS ALREADY ON FORM OR IF  
IT IS COMPLETE IN ANOTHER FORMAT**