

The
AYRSHIRE & ARRAN PROTOCOL
for
SHARING INFORMATION
between
EAST AYRSHIRE COUNCIL
NORTH AYRSHIRE COUNCIL
SOUTH AYRSHIRE COUNCIL
NHS AYRSHIRE & ARRAN
STRATHCLYDE POLICE
and
STRATHCLYDE FIRE BOARD



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<<Link to NHS A&A website>>

Ayrshire and Arran Protocol for Sharing Information

VERSION CONTROL

The Ayrshire Information Sharing Protocol will be reviewed every two years.

Details of distribution, additions or changes to the ISP are as follows:

Revision Date	Version	Responsible Officer	Summary of Changes
June 2004	V3		Version 3 released following local review and update for IAF.
Sept 2005	V4 Draft		Updated following Scottish Executive review and feedback against eCare Gold Standard ISP
Sept 2008	V5 Draft	NHS A&A Information Governance Manager	Section on Subject Access Requests added comments from 3 Local Authorities and NHS A&A incorporated
			EAC comments - technical
Oct 2008	V6 draft		IG Update
Dec 2008	V7 draft		IG Update
Mar 2009	V7.0 Final		Ratified by Data Sharing Partnership Steering Group
June 2011	V 8.0 Final	NHS A&A Information Governance Manager	Complete review of ISP, document in new format and final version agreed by all parties, following extensive consultation.
October 2012	V8.1 Final	NHS Ayrshire & Arran Information Governance Manager	Updated to incorporate Strathclyde Fire & Rescue Services.

AGENCY ISP GATEKEEPERS

NHS Ayrshire & Arran will take responsibility for the overall control, update and distribution of the Ayrshire Information Sharing Protocol via the gatekeepers named below.

The following organisations are responsible within their own organisation for the distribution of the Ayrshire Information Sharing Protocol and ensuring that the latest version of the ISP and associated guidance are in use:

East Ayrshire Council
North Ayrshire Council
South Ayrshire Council

NHS Ayrshire and Arran
Strathclyde Police
Strathclyde Fire Board

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1. Executive Summary

1.1 Introduction

- 1.1.1 This document is a binding agreement between the Councils party to the protocol (Local Authorities established in terms of the Local Government etc (Scotland) Act 1994 and having their headquarters as noted at the end of this document Appendix 3) and NHS Ayrshire & Arran (an NHS Board established in terms of National Health Service (Scotland) Act 1978 (as amended) and having its Head Office at Eglinton House, Ailsa Hospital, Dalmellington Road, Ayr, KA6 6AB) and Strathclyde Police (established in terms of the Police (Scotland) Act 1967 and having their headquarters at 173 Pitt Street, Glasgow, G2 4JS) and Strathclyde Fire Board (established in terms of the Mid and South Western Combined Fire Services Area Administration Scheme Order 1995) having its principal offices at Council Offices, Almada Street, Hamilton ML3 0AA which maintains and administers Strathclyde Fire & Rescue Service. This document will refer to them as “Local Authorities”, “the Board”, “the Police” and “SFB” throughout or, when referring to them all, to “the Parties”.
- 1.1.2 The Parties positively encourage their staff to share information appropriately about their service users when it benefits their care and when it is necessary to protect adults or children at risk of harm. This protocol describes how the Parties will exchange information with each other - particularly information relating to identifiable living people, known legally as “personal data”. The purpose of this protocol is to explain why the parties want to exchange information with each other and to put in place a framework which will allow this information to be exchanged in ways which respect the rights of the people the information is about, while recognising the circumstances in which staff must share personal data to protect others, without the consent of the individual. This protocol complies with the laws regulating this, particularly the Data Protection Act 1998. This Protocol explains how and when it is permissible to share personal data, either with or without the consent of the individual. This document is intended to provide a high level statement of principles on data sharing and associated issues, and to provide general guidance to staff on sharing information or disclosing it to another Party. The intention is to enable the appropriate flow of information to enable services to be delivered and to give clear guidance to staff on their responsibility to share information where they have concerns about a third party. Staff must therefore familiarise themselves with the relevant summarised guidance and any local procedures before releasing information to the other Parties. This document is also intended to be made available to service users and others whose information may be exchanged, in order to be as open and transparent with those individuals as possible regarding what may happen with their personal information. A template for local guidance, where this is required, is included as Appendix 1.
- 1.1.3 This protocol follows the structure of the Data Sharing Code of Practice issued by the Information Commissioner (“ICO”, the independent official who oversees data protection issues in the UK) in October 2010. This protocol addresses the key areas set out within the ICO’s data sharing code of practice. Whilst this protocol provides a sound basis for ensuring compliance with the data protection principles as set out in the framework code, it is vital that information sharing is carried out in line with this code in practice. Non-compliance with the Data Protection Act 1998 can result in ICO taking action to change practices. ICO has the power to serve an enforcement notice, to conduct audits and to serve a monetary penalty notice. This summary describes, in general terms, the main ways in which information will be exchanged and addresses

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all the areas mentioned in ICO's code of practice. Each area is described in more detail in the corresponding section of the protocol which follows.

1.2 Deciding to Share Personal Information

1.2.1 The Board and the Local Authorities encourage their staff to share information about their service users for the purposes of better and more effective care and where information sharing is necessary to protect adults or children at risk of harm, who may not be service users. Information has been shared between the Parties for a number of years for the benefit of clients. Sharing relevant information leads to benefits for service users through improved and more joined-up services. However, it is important to recognise that legal safeguards are in place to ensure that only relevant information is exchanged in the appropriate way and that it can only be seen by the staff that require to see it to carry out their duties effectively. All staff of the Parties, who have access to personal information, are contractually obliged to treat it as strictly confidential, and all information exchanged is kept secure by all parties concerned. There will be occasions when information will be shared without consent and these are described later in this protocol. More detail on this can be found in section 2.

1.2.2 This protocol is concerned with the exchange of information between the Parties. However, both staff and service users should be alerted to the fact that all Parties may exchange information with, or disclose information to, other organisations and agencies who are not a party to this protocol who have a legitimate need to the information. This will be governed by the appropriate legislation; the data protection policies of each Party and notifications to the ICO by each Party which should all be referred to for more information on such exchanges and disclosures.

1.3 Fairness and Transparency

1.3.1 The Parties to this agreement explain the general nature of their data sharing arrangements in a number of ways – leaflets, posters, forms, and through their respective websites – and will continue to do so (and indeed, will continually develop and improve their approach to publicising these arrangements). The minimum content of such explanations is described later in this Protocol. The websites of the respective Parties also include more detailed information for those who wish to find out more. The Parties also have systems in place for dealing with inquiries, including inquiries about these arrangements, and are committed to being as open and transparent as possible about what information is exchanged and why. More detail on this can be found in section 3.

1.4 Information Standards

1.4.1 Information sharing can best achieve improvements in service delivery if the information is accurate, up-to-date, and correctly applied to the right person. The Parties have their own systems to monitor and check the quality of the information they hold, including information exchanged with the other Parties. Sharing only takes place where there is no doubt that the information relates to the right person. Where inaccuracies or changes in data become apparent all parties are obligated to provide accurate updated data to relevant parties. More detail on this can be found in section 4.

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1.5 Retention of Shared Information

1.5.1 By law, neither, the Board nor the Local Authorities, Police or SFB are entitled to hold personal information for longer than is necessary. It is, however, not always easy to define how long it will be necessary to hold particular information, as circumstances may change and events may only come to light many years after they originally happened. The Parties will have their own policies on how long to keep different types of records (policies such as this are known as “retention schedules” as they describe how long to retain the different types of document or record). Shared information is covered by the retention schedule of the Party holding it subject to arrangements to ensure consistency of approach between the Parties on this. More detail on this can be found in section 5.

1.6 Security of Shared Information

1.6.1 The Board, Local Authorities, Police and SFB recognise that the sort of information they exchange with each other require high levels of information security. All Parties have strict information security policies which must be applied to information exchanged under this protocol. All staff having access to shared information have professional and contractual confidentiality obligations which the Parties agree to enforce if necessary. This is reinforced through staff induction procedures and training. More detail on this can be found in section 6.

1.7 Subject Access Requests

1.7.1 Everyone has the right to ask to see what information an organisation holds on them. This protocol spells out how this right will be given effect to in a joint working environment. Each party is responsible for responding to Subject Access Requests where it is the Data Controller, regardless of where the personal data originated. Where personal data includes health data of the data subject and the data controller is not a health professional (as defined in The Data Protection (Subject Access Modification) (Health) Order 2000 (S.I. No 4130)) the information should not be provided unless the appropriate health professional has been consulted. Parties should develop procedures for consulting health professionals in such cases. More detail on this can be found in section 7. Where the information has been supplied by another party then consultation should take place prior to any disclosure. This will ensure that information which would be subject to an exemption unique to the other party is not released.

1.8 Freedom of Information

1.8.1 All the Parties are Scottish public authorities for purposes of the Freedom of Information (Scotland) Act 2002 and must respond to any request for recorded information made to them in a permanent form (such as letter or email). Where information held has been supplied by another Party consultation should be made seeking that other Party's views on the harm of disclosure. What is apparent to one Party may not be apparent to another and consultation will minimise the risk of inadvertent or ill-considered disclosure. Final decisions on disclosure will of course

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be the responsibility of the public authority receiving the request. This would include an obligation to respond to requests about information sharing practices and procedures such as the arrangements under this protocol. It should be noted that the actual personal information exchanged between the Parties will, in almost every case, itself be exempt from disclosure under the freedom of information legislation. More detail on this can be found in section 8.

1.9 Review

- 1.9.1 Information sharing initiatives will be reviewed regularly to ensure that they continue to meet their objectives in a way which is consistent with the rights of the individuals concerned. This protocol builds on work previously undertaken between some of the Parties and supersedes previous protocols on the same subject matter and between the same parties. In preparing this protocol, the opportunity was taken by some parties to review the effectiveness of those existing arrangements and amend them where necessary. This protocol will itself be subject to review every two years. More detail on this can be found in section 9.

2. Deciding to share personal information

- 2.1 The Board has the statutory responsibility to provide or arrange for the provision of a comprehensive range of healthcare, health improvement and health protection services. The Local Authorities have the statutory responsibility to provide or arrange for the provision of social care services, education services and a number of other local authority functions which impact on the health and welfare of service users or those they are responsible for. The Police have a statutory duty to provide public protection. In each case, many of the services the organisations provide can be provided better or more efficiently if there is a joined-up approach to these services – and this can only be done if the organisations are able to exchange relevant information with each other. Specifically, information is shared for the following purposes:

- to improve the quality of services for service users
- to protect adults at risk of harm and children, who may or may not be service users themselves
- to provide staff with the information they need to deliver joined-up and integrated services
- to enable each Party to discharge its statutory duties within the joint working environment
- to produce consistent services and information
- to support joint care planning and commissioning.
- to support a single point of access and out of hours services for the community
- to support national initiatives on multi-agency working and information exchange
- to support statutory reporting functions and effective use of resources
- to assist the management teams of the Parties with planning and management information; and
- to enhance the robustness and effectiveness of systems to protect service users and others from harm
- other purposes which may emerge from time to time.

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Provided the Parties agree that such further uses are necessary and proportionate and that the information exchange underpinning such purposes is consistent with the over-arching principles of this Protocol, then this Protocol shall also apply to such other purposes. Any such additional purposes which are identified will be added to this list on the next review of this Protocol and reflected as quickly as possible in the fair processing information made available to clients which is described in Section 3 below. The Parties must ensure that any additional purposes identified meet all the necessary requirements of this Protocol.

2.1.1 SFB has the following statutory duties relevant to this protocol and corresponding purposes for which information may be shared are referred to namely:-

(a) in terms of Section 8 of the Fire (Scotland) Act 2005 for making provision for the purpose of promoting fire safety in its area and shall exchange information with the Parties to assist in facilitating that promotion:-

- to inform of any perceived risks encountered in domestic premises where an attendance has been or is likely to be requested and where appropriate to assist in encouraging future control measures to be taken to prevent fires and death or injury by fire;
- to provide fire safety advice if requested by the other parties to this protocol

(b) by virtue of Section 9 (2) (d) of the said 2005 Act SFB shall exchange information with the Parties required or likely to be required for the purpose of extinguishing fires in its area and protecting life and property in the event of fires in its area:-

- to inform of any perceived hazards within domestic premises which may potentially affect operational firefighting tactics or the safety of firefighters

(c) in terms of Section 16 of the Local Government in Scotland Act 2003 SFB has a duty to participate in community planning and acknowledges that, as with the other parties to this Protocol it has a duty to assist the local authority in the discharge of its duties under Section 15 of the 2003 Act and shall exchange information with the Councils who are parties to this Protocol for that purpose. All with the aim of making our communities safe places to live, work and visit:-

- to inform service delivery

All with the aim of making the parties' communities safe places to live, work and visit.

2.2 Where service planning or other objectives can be achieved equally well using statistical or anonymised data, then this is done in preference to exchanging details about identifiable people. The Parties only exchange information which can identify someone/can be related to a specific person where using statistical or anonymised data will not achieve the objective.

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2.3 In order to achieve the improvements in service delivery and the other purposes mentioned in paragraph 2.1, the following sorts of information are exchanged:

- non-personal statistical and financial information derived from personal data
- research data and findings derived from personal data
- standard demographic information about service users and those involved in their care (names, addresses, dates of birth, contact details etc)
- unique personal identifiers (including Community Health Index (CHI) numbers and internal reference numbers)
- the following information in respect of service users or those involved in their care only where relevant to the provision of joint services to those individuals or the protection of the service user and/or others from harm:
 - information concerning physical and mental health and condition
 - medication, aids, adaptations, social supports, therapeutic interventions
 - family history/circumstances and other significant relationships (eg marital status, dependants)
 - social circumstances and environmental factors
 - history of past involvement with any of the Parties
 - financial information
 - detail of enquiries or complaints received from and about service users and those involved in their care
 - history of violent or abusive behaviour
 - criminal record
 - assessment of risk or threat posed to or by an individual
 - addiction related information.

2.4 Information regarding individuals will always be treated as confidential and all sharing of personal information requires to be carried out in light of the legitimate rights and expectations of service users and others. In all cases, we will only exchange information which is relevant to and required for the purposes of data sharing, as detailed in 2.3; the information will be accessed only by the staff with a need to see it, and will be kept secure at all times no matter which of the Parties holds it at any given time, in accordance with the data security policies of the Local Authorities, the Board, Police and SFB, as appropriate. All staff of the Board, Local Authorities, Police and the SFB, who have access to personal information, are legally and contractually obliged to treat it as strictly confidential.

2.5 This protocol proceeds on the basis that information will be shared on the basis of the consent of the individual service user (or, if a person cannot consent by reason of age, mental condition etc, with the consent of the person able to take decisions on their behalf). Such consent must be informed and freely given, and the fact that consent has been given (or withheld, or withdrawn) must be clearly recorded in the appropriate service user file(s). Service users should also be advised as to the consequences which withholding consent may have in terms of affecting the services they can be offered. The status of this consent must be checked before information is released to the other Party. Everyone has the right to decline to give this consent, withdraw it once it has been given, or give consent only to a limited type of information sharing.

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- 2.6 Information may be exchanged without the consent of the individual on the basis of lack of capacity of the individual to consent, or because of concerns or perceived risks regarding the welfare of the individual or others. More specifically, it may be shared without consent in the following circumstances:
- 2.6.1 if the individual cannot consent due to their age (noting that children aged 12 or above are presumed to have the required capacity to consent or not; if aged less than 12, it is necessary to assess the child's capacity to do so): in these cases, the person having parental rights should be asked to consent on their behalf.
 - 2.6.2 if the individual has lost the required mental capacity due to a long-term condition, then a person lawfully appointed and able to take welfare decisions on behalf of that person should be asked to consent on their behalf;
 - 2.6.3 if the individual has lost the required mental capacity due to a long-term condition, and there is no person lawfully appointed and able to take welfare decisions on behalf of that person, then the relevant professionals will decide on behalf of that person in accordance with the tests laid down in incapacity legislation, on the basis of the person's known/ascertainable wishes, those of nearest relatives and primary carers etc. In all cases, the paramount consideration will be the welfare of the individual consistent with their expressed wishes;
 - 2.6.4 if a person has lost capacity due to a short-term event (such as unconsciousness), information will only be exchanged where necessary to protect their immediate interests, and then only to the minimum extent necessary;
 - 2.6.5 if one of the Parties' staff knows or believes that an adult is at risk from harm information on a service user may be shared without consent;
 - 2.6.6 if one of the Parties' staff has concerns that a child is at risk from harm information on a service user may be shared without consent;
 - 2.6.7 information will be exchanged in terms of the Multi-Agency Public Protection Arrangements (MAPPAs) which the Local Authorities, the Board and a range of other public bodies are party to under the laws governing management and supervision of offenders; and
 - 2.6.8 information may be exchanged in relation to suspected serious criminal acts or other seriously improper conduct where no reasonable local authority, health board, Police or SFB could fail to act on the information in its possession.
- 2.7 In any case where mental capacity is in issue, staff will follow procedures laid down in relevant local guidance documentation on how capacity is to be assessed, and will not make unsubstantiated assumptions regarding capacity or otherwise without a proper assessment being carried out.
- 2.8 In line with legislation and the Information Commissioner's advice, the Parties agree that it is not appropriate to ask for someone's consent in circumstances where the relevant professional staff acting in good faith have taken the view that the information in question will be released whether that consent has been given or not.

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3. Fairness and transparency

- 3.1 It is a basic requirement of data protection law that individuals should be told (or easily be able to find out) who is holding information relating to them, what that organisation will do with that information, and who they will pass it on to. This position should be made clear to any service user who approaches either Party and whose information may be shared under this protocol.
- 3.2 The arrangements for sharing information between the Parties will be publicised in a range of ways: through leaflets, poster, wording added to forms, and on the websites of the Parties. The minimum content of such a fair processing notice is described in Appendix 2. The Parties will, through ongoing contact with service users and engagement with them, continue to raise awareness of the content of the fair processing notice.
- 3.3 The Parties further recognise that this minimum approach to the fair processing notice requirements may not satisfy everyone and that there will still be some people with unanswered questions. All Parties have in place existing (separate) mechanisms for such inquiries from members of the public and any such request will be dealt with through these existing procedures (and see also section 8 below)
- 3.4 As described in section 2 above, most information will be exchanged on the basis of the express consent of the individual concerned. Such consent requires to be informed consent, and so will only be valid if the individual has been given an appropriate fair processing notice prior to consenting to what is described, i.e. they are fully aware of what they are consenting to. However, as described in paragraphs 2.6, 2.7 and 2.8 there are circumstances where consent is not required. The Parties will, so far as possible, continue to provide appropriate fair processing information to the affected individuals even when their consent is not required (and not asked for) prior to the information being released. However, in some cases this is not appropriate, for example where telling someone about the proposed release of information might actually endanger a child or adult at risk of harm. This will only happen in the circumstances described in paragraphs 2.6.5, 2.6.6 or 2.6.7 and even then only where the relevant professionals involved have formed a view that notifying the individual would have undesirable consequences for themselves or someone else.

4. Information Standards

- 4.1 Shared information only has value if it is accurate and up-to-date. The Local Authorities, the Board Police and SFB each have a range of initiatives underway to check the quality and accuracy of the data which they hold, and particular emphasis is placed on checking the accuracy and quality of information to be shared externally. Where opinion is recorded it must be clear that it is opinion. These include case recording audit and revision exercises, supervision of case management procedures and similar data quality exercises undertaken from time to time.
- 4.2 Similarly, information exchange can only work properly in practice if it is provided in a format which the Party receiving it can utilise.
- 4.3 In all cases of data exchange, local guidance documentation will examine the precise data sets and fields which require to be exchanged in order to achieve a particular objective. These will be subject to periodic review at a local level to ensure the continued relevance of all the information exchanged.

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- 4.4 The quality of data is important whether in shared records or in records held by one Party only. The Parties will make arrangements for periodic sampling of records held to evaluate the accuracy and general quality of data held.
- 4.5 The Parties undertake to notify the other as soon as practicable if an error is discovered in information which has been provided to the other Parties or if changes are made of the personal data e.g. demographic information, to ensure that the Parties are then able to correct or update their respective records. This will happen whether the error is discovered through existing data quality initiatives or is flagged up through some other route (such as the existence of errors being directly notified to one or other Parties by the data subjects themselves) or if any party has updated personal data.

5. Retention of shared information

- 5.1 The Parties have their own policies on how long to keep different types of records. For some records, the retention period is laid down by law; for others, the Parties determine themselves how long they need to keep the records for. Shared information will be covered by the relevant provision of the holding Party's retention schedule, although it should be noted that it is still also covered by the retention schedule of the originating Party. In terms of operational requirements, the other Parties may not need to keep the information for as long a period as the originating Party, particularly for files with an extremely long statutory retention period.
- 5.2 The Parties will ensure that their policies will be subject to periodic review to ensure that information is being kept for as long as required, but not any longer.
- 5.3 The respective policies of the Parties describe, where applicable, the relevant statutory or professional regulatory or other guidance which has informed or set the retention period for the information in question.
- 5.4 The Parties have established mechanisms for storing information which they require to retain for a period but which is not required for normal operational use. Such records retention rules help comply with respect for the privacy of those involved by significantly reducing the number of people with potential or actual access to that information.
- 5.5 In general, information exchanged under this protocol will be shared with the other Parties, and the originating Party will have retained a copy of the information for its own continuing use. Against this position, the Parties therefore agree that when information has reached the point where it is no longer required by one Party, that that Party will delete or destroy the information (in accordance with good information security practice) rather than returning it to the other Party.
- 5.6 Data quality initiatives undertaken by the Parties will include within their scope a review of adherence to the agreed retention periods to ensure these are being applied correctly.

6. Security of Shared Information

- 6.1 The information passed between the Board, Local Authorities, Police and SFB under this Protocol can include extremely sensitive data. Information shall be evaluated and as appropriate the highest available levels of both organisational and technical security measures will be applied to this information.

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- 6.2 The Board, Local Authorities, Police and SFB have information security policies which are designed to protect the information (particularly, but not exclusively, personal information) which they hold. These policies are binding on all staff of the employing Party and disciplinary action could be taken against staff who violate them. The policies apply to information held by that Party, whether it has originated with that Party or been passed to it by the others. Where there is a joint or integrated team, each member of staff continues to be bound by their own organisation's security policy and their host's information security policies.
- 6.3 The governance arrangements for such joint working will address any particular security issues which require to be addressed beyond the scope of the general information security policies. Where the Board, Local Authority, Police or SFB establish any joint data sharing platform, the agreements regulating the creation and use of such platforms will explicitly assign responsibility for information security to one or the other Party to ensure that this is not overlooked.
- 6.4 Staff employed by all parties have shared professional values and obligations of confidentiality to service users and may be subject to professional disciplinary action (as well as, or instead of, disciplinary action by their employer) if they breach those obligations. This is emphasised in staff training. In extreme cases of knowingly and recklessly, disclosing personal information without the consent of the data controller, a criminal offence may have been committed and in appropriate circumstances any Party may refer a member of staff (or other individual) to the appropriate authorities. Staff disclosing personal data in line with this Protocol and any relevant local procedural guidance will be deemed to be acting with the permission of the data controller.
- 6.5 The Parties will each ensure that the other Parties are promptly notified of any security breaches, or significant security risks, affecting shared information. In addition, should the breach be considered significant, the ICO will also be notified. The Parties will, where appropriate, work together to rectify any such breach or mitigate any such risk to information security. If personal data is lost as a result of a security breach, the Parties will consider on a case by case basis whether to notify the affected individuals of the breach.

7. Subject Access Requests

- 7.1 Everyone has the right to ask to see what information an organisation holds which relates to them. There are formal routes through subject access request or through normal client relationships. The Parties have existing client relationship routes to give individuals access to the information held, which are encouraged and should continue to operate even in a joint working environment. This Protocol accordingly makes clear how this right will be given effect to in a joint working environment.
- 7.2 The Parties have a policy of being as open with people as possible, but there are circumstances (described in paragraphs 7.4, 7.6 and 7.7 below) where someone will not be given full access to their file.
- 7.3 The Parties have existing accessibility strategies and access to translating and interpreting services should these be required to facilitate access by those with disabilities or for whom English is not their first language.
- 7.4 Where personal data includes health data of the data subject and the data controller is not a health professional (as defined in The Data Protection (Subject Access Modification) (Health) Order 2000 (S.I. No 4130)) the information should not be

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provided unless the appropriate health professional has been consulted. Parties should develop procedures for consulting health professionals in such cases.

- 7.5 A subject access request also includes the obligation on the data controller to advise the data subject as to the purpose the information is held and any potential recipients of that information. In terms of this Protocol, the Parties agree that they may refer to the fair processing material described in paragraph 3.3 above, and to this Protocol.
- 7.6 The Parties agree that, consistent with their respective obligations under the Data Protection Act 1998 (and regulations made under the Act), not all information exchanged in terms of this Protocol should be released in response to a subject access request. In particular, care needs to be taken in respect of requests relating to Schedule 1 offenders, adults with mental incapacity, children, and deceased persons. The Parties agree to issue local guidance to their staff on how to respond to requests relating to these groups.
- 7.7 Information may be withheld in responding to a subject access request for a number of reasons listed in the Data Protection Act 1998. In terms of the information shared in terms of this Protocol, information may be withheld on various grounds. The following are the most obvious examples but this list is not exhaustive and where appropriate (and if necessary following the joint team meeting referred to in paragraph 7.1) information may be withheld on other grounds permitted by the Act or regulations.
- 7.7.1 Schedule 1 offenders: information may be withheld which would prejudice any ongoing investigations or prosecutions, or would permit confidential witnesses or complainers to be identified, or would increase the risk posed by the offender to third parties.
- 7.7.2 Children and adults with incapacity: since by definition the request must be being made by someone acting on the data subject's behalf, information may be withheld if the data subject has made it clear that they did not expect or wish the person acting on their behalf to see the information.
- 7.7.3 In the case of children, a request may be declined if the Parties feel that the person making the request is exercising their parental rights by making the request other than in the best interests of the child. In particular, consideration should be given to the adult's role in any matter under investigation.
- 7.7.4 Deceased persons: while information relating to deceased persons is not covered by the provisions of the Data Protection Act, the Parties agree that this information remains sensitive and confidential in nature and should be protected by appropriate measures. In general, requests for information relating to the deceased will only be complied with where the law confers such a right (under the Access to Medical Records Act 1987 as amended) or where it can be seen to be compatible with ongoing professional obligations of confidentiality to the deceased person and their right to privacy. Where the information does not constitute a medical record, written requests for information will be processed in line with FOISA, which may provide suitable exemptions.
- 7.7.5 In all cases, information relating to someone other than the data subject may be withheld, other than information about health, social work or education staff (and even this may be withheld if there are concerns over eg staff safety).
- 7.7.6 Where clearly medically indicated, as per The Data Protection (Subject Access Modification) (Health) Order 2000 (S.I. No 4130)) health information may be

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withheld from a person because providing it to them will cause mental or physical harm. The information should not be disclosed without the consent of the appropriate health professional. Parties require to have systems in place to seek appropriate consent.

7.7.7 Information exchanged under the MAPPA arrangements (see paragraph 2.9.7), will almost always be exempt from data protection requests, although each request must be considered on a case by case basis. There is no blanket exemption to any class of information within the Data Protection Act 1998.

7.8 A service user who wishes to request a copy of all the information on them held by each of the Board, Local Authorities, Police and SFB must be advised that this can only be done by making separate requests, one addressed to each Party, from whom they want information.

8. Freedom of Information

8.1 As noted above at paragraph 1.8.1, The Board, Local Authorities, Police and SFB are Scottish public authorities for purposes of the Freedom of Information (Scotland) Act 2002. In consequence, the Parties are obliged to respond, within twenty working days, to any request for information submitted to them in a permanent form (such as letter or email). They are additionally required to produce and maintain a Publication Scheme (describing the classes of information which they publish), requiring the approval of the Scottish Information Commissioner.

8.2 The Parties' obligations under freedom of information legislation include an obligation to respond to requests about information sharing practices and procedures such as the arrangements under this Protocol.

8.3 A request for information may include a mixture of both personal information and non-personal information. Such requests will be handled accordingly. The website of the Scottish Information Commissioner (www.itspublicknowledge.info) includes detailed guidance on this issue and should be referred to in appropriate cases.

9. Review

9.1 Existing data sharing protocols between the parties hereof cease to have effect on the day this Protocol is signed by the Parties. This Protocol itself will continue in force until it is superseded by another Protocol in due course, or if all Parties agree to terminate it. Any Party may withdraw on giving six months' notice in writing of its intention to do so.

9.2 In addition to the two yearly scheduled review, the Parties will also review this Protocol and the operational arrangements which give effect to it, if any of the following events take place:

9.2.1 One (or more) of the Parties is found to have breached the terms of this Protocol in any significant way, including any data security breach or data loss in respect of personal data which is subject to this Protocol;

9.2.2 Any Party indicates that it intends to withdraw from this Protocol; or

9.2.3 The Information Commissioner or any of his or her authorised staff recommends that the Protocol be reviewed.

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- 9.2.4 Any such unscheduled review may be either in respect of the entire Protocol, or only in respect of the elements of the Protocol directly relating to the event which triggered the review, as the majority of the Parties agree is appropriate.
- 9.3 The local guidance procedures and other documentation to be issued under this Protocol will be subject to document control and approval procedures agreed jointly by the Parties affected by the procedures in question.
- 9.4 If there is a dispute between the Parties concerning this Protocol, the Parties shall attempt to settle matters amicably on the basis of their respective professional perspectives. If a dispute cannot be resolved by the officers immediately concerned, they shall escalate matters to a higher management tier, and ultimately to their respective Chief Executives/ Chief Officer IN WITNESS WHEREOF this information sharing protocol consisting of this and the twelve preceding pages, together with the three appendices attached, are signed for and on behalf of the Parties as follows:

Executed for and on behalf of:	NHS Ayrshire & Arran
Signature	
Name (Print)	
Job Title (Print)	
Date of Signature (Print)	
Location	

Executed for and on behalf of:	East Ayrshire Council
Signature	
Name (Print)	
Job Title (Print)	
Date of Signature (Print)	
Location	

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Executed for and on behalf of:	North Ayrshire Council
Signature	
Name (Print)	
Job Title (Print)	
Date of Signature (Print)	
Location	

Executed for and on behalf of:	South Ayrshire Council
Signature	
Name (Print)	
Job Title (Print)	
Date of Signature (Print)	
Location	

Executed for and on behalf of:	Strathclyde Police
Signature	
Name (Print)	
Job Title (Print)	
Date of Signature (Print)	
Location	

Executed for and on behalf of:	Strathclyde Fire Board
Signature	
Name (Print)	
Job Title (Print)	Assistant Chief Officer
Date of Signature (Print)	
Location	

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Appendix 1: Template for local guidance procedures

<p>Introduction</p> <p>This template exists to assist in identifying the key procedures that will be used to allow the legal sharing of information between partner agencies in providing effective joint services to their users.</p> <p>Type in your response to each area and attach this document to the information sharing protocol. Together this then forms both a legal and procedural framework document for information sharing.</p>
<p>1. Aims and Responsibilities:</p> <p>State the aims of your service here.</p>
<p>2. Information storage</p> <p>How many formats will information be stored in. (i.e. Paper systems, electronic systems including spreadsheets etc.) Give brief descriptions of each one.</p>
<p>3. Information Sharing / Security</p> <p>State when and how in the course of your work that information may get shared and any procedures that are followed in facilitating for this. Is data shared by written format, joint access to systems etc. Who has access to this data? How is this access monitored?</p>
<p>4. Consent Issues:</p> <p>How are Clients/Patients made aware of consent issues? How is consent obtained – by whom? How is this recorded? How are staff made aware of the client/patients consent? State any current procedures adhered to.</p>
<p>5. Care management</p> <p>State briefly how a persons care is managed from assessment through to service provision and what methods are used for recording by various parties involved (ie paper file, electronic, CareFirst etc)</p>
<p>6. Retention of information</p> <p>Give details of any relevant procedures for retention and archiving of data and include relevant link or contact to obtain access to this document</p>
<p>7. Subject access</p> <p>The Local Authorities, NHS Ayrshire & Arran and Police have separate procedures to comply with the requirements of the Data Protection Act, and access to personal records (include relevant link or contact to obtain access to this document)</p>
<p>8. Complaints</p> <p>The Local Authorities, NHS Ayrshire & Arran and Police have separate procedures to enable people to complain about any aspect of their services, including breaches of the data-sharing protocol (include relevant link or contact to obtain access to this document)</p>

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Appendix 2: Fair Processing Notice - Minimum Content

The Fair Processing Notices to be given or made readily available to Service Users whose personal data is or is likely to be shared in terms of the Protocol for sharing information shall as a minimum include the following:

- The identity of the Party whose notice it is;
- The fact that the Parties work jointly to provide improved services;
- The fact that such joint working requires information to be shared in order to work properly;
- The fact that such information will only be shared between the Parties in accordance with agreed policies and procedures with the result that
 - information will (except in exceptional circumstances) only be shared with the Service User's consent
 - information is only shared on a need to know basis where it is necessary for the better provision of Services
 - information shall be kept secure and confidential by all Parties and only accessed by the staff who need to access it for purposes of improved service delivery
- All parties may require to disclose information to other public bodies where this is necessary for the provision or detection of crime or the protection of children and vulnerable adults.

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Appendix 3: List of Local Authority Headquarters

East Ayrshire Council

East Ayrshire Council Headquarters, London Road, Kilmarnock, KA3 7BU
Chief Executive: Fiona Lees

North Ayrshire Council

North Ayrshire Council Headquarters, Cunninghame House, Irvine, Scotland, KA12 8EE
Chief Executive: Elma Murray

South Ayrshire Council

South Ayrshire Council Headquarters, County Buildings, Wellington Square, KA7 1DR
Chief Executive: David Anderson

NHS Ayrshire & Arran

Eglinton House, Dalmellington House, Ayr, KA6 6AB
Chief Executive: Wai-yin Hatton

Strathclyde Police

Strathclyde Police Headquarters, 173 Pitt Street, Glasgow, G2 4JS
Chief Constable: Stephen House, QPM

Strathclyde Fire Board

c/o Strathclyde Fire & Rescue Headquarters, 99 Bothwell Road, Hamilton, ML3 0EA
Chief Officer: Brian P Sweeney QFSM Duniv MA

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