



Patient Access to Medical Records - Information Leaflet

Access to Your Health Record (Right of Subject Access) Under Data Protection Act 1998

Health Records

What is a health record?

A health record is defined in the Data Protection Act 1998 as a record consisting of information about the physical, mental health or condition of an identifiable individual made by or on behalf of a health professional in connection with the care of that individual.

What legislation governs access to health records?

The Data Protection Act 1998 governs access to the health records of living people. It became effective from 1st March 2000, and superseded the Data Protection Act 1984 and the Access to Health Records Act 1990, though the Access to Health Records Act 1990 still governs access to the health records of deceased people. The Data Protection Act 1998 gives every living person the right to apply for access to their health records.

How are health records recorded?

A health record can be recorded in a computerised form or in a manual form or a mixture of both. Health records may include such things as: hand-written clinical notes, letters to and from other health professionals, laboratory reports, radiographs and other imaging records e.g. X-rays and not just X-ray reports, printouts from monitoring equipment, photographs, videos.

Does it matter when the record was created?

No. Individuals have a right to apply for access to records irrespective of when they were compiled. Whereas the Access to Health Records Act 1990 did not provide individuals with a statutory right of access to records compiled prior to November 1991, under the Data Protection Act 1998 there is no such limitation.

Access to your Health Records

How should access to my health record be made?

Any request for access to your health record held by the Practice must be made to the Practice Manager in writing using the appropriate form (please ask at Reception).

In order to reply to your request we will need to ask some questions to help us locate the information requested. To assist with this we ask that you complete the appropriate form provided by Reception staff.

Once we have all the relevant information and fee where appropriate we will deal your request.

Practice's online services

From March 2016, information from your Medical Records can be accessed as part of the Practice's online services. Please contact the Practice for access, for security reasons you will have to visit the practice to undertake an identity check before you are granted access to these records.

What are the charges for accessing your health record?

Under the Data Protection Act 1998 (Fees and Miscellaneous Provisions) Regulation 2001, you may be charged to view your health record or be provided with a copy.

The Fees that may be charged are:

£10.00	Maximum fee for copies of health records held on computer only
£50.00	Maximum fee for copies of health records held manually
£50.00	Maximum fee for copies of health records held in part on computer and in part manually
£10.00	To view the record where no copies required and changes have not been made in the last 40 days
No Fee	To view the record where no copy is required and changes have been made to the record in the last 40 days

The maximum fee that can be charged is £50.00. This includes photocopying, postage and packing. The £50.00 will not be charged in all cases but on a recovery basis.

Where it is agreed that an individual may directly inspect their health record, does access need to be supervised?

Yes. The data controller should consider whether access should be supervised by the attendance of a health professional or whether an appointment should be made for supervision by a lay administrator. Lay administrators must not comment or advise on the content of the record and if the applicant raises enquiries, an appointment with a health professional should be offered. Where the information is not readily intelligible, an explanation (e.g. of abbreviations or medical terminology) must be given.

What are the time limits for dealing with a subject access request?

There is no obligation to comply with an access request unless the data controller has the necessary information to identify the applicant and locate the information and unless the required fee has been paid. Once the data controller has all the relevant information and fee where relevant, they should comply with the request promptly and within 21 days, though in exceptional circumstances this may take up to 40 days. *Please note that the 21 day limit is Department of Health policy, not a legal obligation.* However the 40 day limit is a requirement under the Data Protection Act 1998. In exceptional circumstances if it is not possible to comply within this period the applicant should be informed.

Are there any circumstances in which information contained in health records may be withheld from the data subject?

Under the Data Protection Act 1998 there are certain circumstances in which the record holder may withhold information. Access may be denied, or limited, where the data controller judges that information in the records would cause serious harm to the physical or mental health or condition of the patient, or any other person, or where giving access would disclose information relating to or provided by a third person who had not consented to the disclosure. Data controllers must be prepared to justify decisions to withhold information.

Where information has been withheld are record holders obliged to advise applicants that this is the case?

No. Record holders are free to advise applicants of the grounds on which information has been withheld but are not obliged to do so. If it is thought likely to cause undue distress the record holder may not wish to volunteer the fact that information has been withheld.

Can a record holder refuse to process an application for access to health records?

Yes. Where an access request has previously been complied with, the Act permits record holders not to respond to a subsequent identical or similar request unless a reasonable interval has elapsed since the previous compliance.

How do record holders decide whether a reasonable interval has elapsed?

Data controllers should consider the nature of the information, how often it is altered and the reason for its processing. The reason for the request(s) may also be relevant.

How can a person apply for access to their health records if they are not living in the UK?

In cases where a patient moves abroad, their GP health records are sent to the local Primary Care Trust and their hospital records are stored in the hospital or sent to a local archive. They are retained for the minimum period. Hospital records are kept for a minimum of 8 years following the end of treatment and GP records for 10 years, though please note that certain types of records are kept for longer. At the end of the minimum retention period the Records Manager at the Trust/hospital/archive will decide whether to retain further or destroy the records. Under the UK Data Protection Act 1998, a patient has the right to apply for access to copies of their health records.

Can a person take their health records with them for their new doctor, if they are living outside the UK?

No. However patients can make a subject access request for copies of their records, and then take the copies with them. The GP may be prepared to provide the patient with a summary of the patient's treatment to take to their new GP.

What if the patient feels their health records are incorrect, can they have them amended?

If a patient feels information recorded on their health record is incorrect then they should firstly make an informal approach to the health professional concerned to discuss the situation in an attempt to have the records amended. If this avenue is unsuccessful then they may pursue a complaint under the NHS Complaints procedure in an attempt to have the information corrected or erased. They could further complain to the Information Commissioner, who may rule that any erroneous information is rectified, blocked, erased or destroyed. Further information can be obtained from the Information Commissioner at Wycliffe House, Water Lane, Wilmslow, Cheshire SK9 5AF, telephone number 0303 123 1113 or website www.ico.org.uk

Third-Party Access to Health Records

Can I apply for the health record of another person?

Not normally, unless you have the persons written consent. However, for access to the records of a child or a deceased person please read on.

What if the person is unable to give consent?

If this is the case then you should contact the Practice Manager for advice.

How should data controllers deal with requests from solicitors acting on behalf of an individual?

A request from a solicitor acting on behalf of a patient should be dealt with in exactly the same way as a request from a patient.

Are the charging arrangements different for solicitors?

The arrangements for charging for access to health records are no different for solicitors i.e. the maximum fee that can be charged for providing copies of health records is £10 for computer records and £50 for copies of manual records or a mixture of manual and computer records.

Can a patient's original health records be sent to a solicitor?

Whilst the Data Protection Act 1998 allows an applicant to be supplied with a copy of a health record, it does not require data controllers to provide access to the original record. It is strongly recommended that data controllers

do not allow original notes to be sent to solicitors because of the potential detriment to patients should the records be lost.

Access to Children's Health Records

Who has the right of access to a child's health record?

As a general rule a person with parental responsibility will have the right to apply for access to a child's health record.

What is parental responsibility?

Parental responsibility for a child is defined in the Children's Act 1989 as "all the rights, duties, powers, responsibilities and authority which by law a parent of a child has in relation to the child and his property".

A person with parental responsibility is defined as either:

- the birth mother, or
- the birth father (if married to the mother at the time of child's birth or subsequently) if both are on the birth certificate, or,
- an individual given parental responsibility by a court.

Although not defined specifically, responsibilities therefore would include: - Safeguarding and promoting a child's health, development and welfare. - Financially supporting the child. - Maintaining direct and regular contact with the child.

What rights could be considered to fulfill these responsibilities?

Included in the parental rights which would fulfill the parental responsibilities above are: - Having the child live with the person with responsibility or having a say in where the child lives. - If the child is not living with her/him, having a personal relationship and regular contact with the child. - Controlling, guiding and directing the child's upbringing.

Can a parent not living with the child have access to the child's health record?

Yes, if they have parental responsibility for the child e.g. separated/divorced parent.

Are there situations in which access to the child's records can be refused?

Yes. As the child grows older and gains sufficient understanding, he/she will be able to make decisions about his/her own life. Where a child is considered capable of making decisions about his/her medical 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, the Practice is entitled to deny access as being against the best interests of the patient.

Do parents have the right to know what treatment their adolescent child is receiving from their health care provider?

Children over the age of 12 are generally considered to have the capacity to give or withhold consent to release medical records, but those under 16 should demonstrate that they have the capacity to make these decisions.

Individuals with parental responsibility for an under 18 year old will have a right to request access to those medical records. Access may be granted if access is not contrary to the wishes of the competent child.

Access to a Deceased Persons' Health Records

What are the rights of access to deceased persons' health records?

Health records relating to deceased people do not carry a common law duty of confidentiality. However, it is Department of Health and General Medical Council policy that records relating to deceased people should be treated with the same level of confidentiality as those relating to living people. Access to the health records of a deceased person is governed by the Access to Health Records Act 1990. Under this legislation when a patient has died, their personal representative, or executor, or administrator, or anyone having a claim resulting from the death (this could be a relative or another person), has the right to apply for access to the deceased's health records.

How can a person apply for access to a deceased persons' health records?

A request for access should be made in writing to the record holder ensuring that it contains sufficient information to enable the correct records to be identified. The request should also give details of the applicant's right to access the records.

Who is the relevant record holder to apply to?

The practice will hold a deceased persons paper record for approximately 6-8 weeks, afterwards they will be sent with a computer print out to Primary Care Support England (PCSE). Please contact the surgery if you wish to check who holds the paper records.

NHS England is the data controller of GP health records where an individual is deceased. PCSE stores medical records on behalf of NHS England. These medical records comprise of paper records and computer print-outs from GP practices for patients who are deceased. They only administer requests for access to GP paper records and computer print-outs. They do not store electronic records, x-rays, hospital records, community services (e.g. health visitors, district nursing, school nurses) or records relating to private treatments and clinics or consulting rooms. For access to any other types of records you should contact the clinician or organisation who created them.

For more information please contact:

Primary Care Support England, 3 Caxton Road, Fulwood, Preston PR2 9ZZ

Telephone: 01772 221 385

www.pcse.england.nhs.uk/recordsrequests

For hospital records, the record holder would be the Records Manager at the hospital that patient attended. The hospital may have retained the records there, or they may have gone to a local archive for storage.

Will there be a financial charge for accessing copies of the records of deceased people?

For records still held at the practice fees will apply, the maximum fee that can be charged is £50.00. This includes photocopying, postage and packing.

The PCSE has a £50 administration charge for the provision of a copy of a health record to cover the administration and photocopying costs incurred to meet your request. Any fees will be payable prior to your application being finalised.

Requests for hospital records will also incur a charge and these should be clarified with the hospital at the time of application.

How can someone make a complaint if they are unsatisfied?

Complaints about any aspect of an application to obtain access to health records should first be made to the person concerned. If this does not resolve the matter, a complaint can be made. If a patient is dissatisfied with the outcome of the investigation, they have the right to take their complaint to court or to the Information Commissioner at Wycliffe House, Water Lane, Wilmslow, Cheshire SK9 5AF, telephone number 0303 123 1113 or website www.ico.org.uk.