**Access to Medical Records Policy (Scotland)**

# Introduction

## Policy statement

The law states that practices must, when requested by an individual, give that person access to their personal health information and, occasionally, certain relevant information pertaining to others. In order to do this, they must have procedures in place that allow for easy retrieval and assimilation of this information.

The purpose of this document is to ensure appropriate procedures are in place at Fortrose Medical Practice to enable individuals to apply for access to health records (commonly referred to as a medical record), or by requesting a copy, and to enable authorised individuals to apply for access to information held about other people.

Access to medical records can be provided via:

* A verbal subject access request (SAR)
* A written SAR including email and/or through social media

This policy is written in conjunction with the following government legislation:

* [Access to Health Records Act 1990](https://www.legislation.gov.uk/ukpga/1990/23/pdfs/ukpga_19900023_en.pdf#:~:text=Access%20to%20Health%20Records%20Act%20%201990%20c.,arising%20out%20%20of%20the%20%20patient%27s%20death.)
* [Access to Medical Reports Act 1988](https://www.legislation.gov.uk/ukpga/1988/28/contents)
* [UK General Data Protection Regulation](https://www.gov.uk/government/publications/guide-to-the-general-data-protection-regulation) (UK GDPR)
* [Data Protection Act 2018](https://www.legislation.gov.uk/ukpga/2018/12/contents/enacted)
* [Data Protection (Subject Access Modification) (Health) Order 2000](https://www.legislation.gov.uk/uksi/2000/413/contents/made)
* [Age of Legal Capacity (Scotland) Act 1991](https://www.legislation.gov.uk/ukpga/1991/50/section/2)
* [Adults with Incapacity (Scotland) Act 2000](https://www.legislation.gov.uk/asp/2000/4/contents)

## Status

The practice aims to design and implement policies and procedures that meet the diverse needs of our service and workforce ensuring that none are placed at a disadvantage over others, in accordance with the [Equality Act 2010](https://www.legislation.gov.uk/ukpga/2010/15/contents/enacted). Consideration has been given to the impact this policy might have regarding the individual protected characteristics of those to whom it applies.

This document and any procedures contained within it are non-contractual and may be modified or withdrawn at any time. For the avoidance of doubt, it does not form part of your contract of employment.

## Training and support

The practice will provide guidance and support to help those to whom it applies to understand their rights and responsibilities under this policy. Additional support will be provided to managers and supervisors to enable them to deal more effectively with matters arising from this policy.

# Scope

## Who it applies to

This document applies to all employees of the practice and other individuals performing functions in relation to the practice such as agency workers, locums and contractors.

Furthermore, it applies to clinicians who may or may not be employed by the practice but who are working under the management and control of the practice through Community Treatment and Care hubs provided via the GMS contract in Scotland 2018 or other support mechanism from the local Health and Social Care Partnership.

## Why and how it applies to them

In accordance with the UK General Data Protection Regulation, individuals have the right to access their data and any supplementary information held by Fortrose Medical Practice.

This document explains how patients can access their medical records or those of another individual by making a subject access request (SAR) at Fortrose Medical Practice. This is particularly relevant to administration and reception staff; however, all staff should be aware of the SARs process and be able to advise patients, relatives and carers of the appropriate process.

Failure to comply with the policy and any associated [breaches](https://ico.org.uk/for-organisations/guide-to-data-protection/guide-to-law-enforcement-processing/personal-data-breaches/) of patient data or confidentiality could lead to prosecution or imposition of [penalties](https://ico.org.uk/for-organisations/guide-to-data-protection/guide-to-law-enforcement-processing/penalties/) by the Information Commissioners Office (ICO).

# Definition of terms

## Data

The UK GDPR applies to both automated personal data and to manual filing systems where personal data is accessible according to specific criteria. This could include chronologically ordered sets of manual records containing personal data.

Personal data that has been pseudo-anonymised, e.g., key-coded, can fall within the scope of the UK GDPR depending on how difficult it is to attribute the pseudonym to a particular individual.

## Data Protection Act 2018

The [Data Protection Act 2018](https://www.legislation.gov.uk/ukpga/2018/12/contents/enacted) (DPA 2018) sets out the framework for data protection law in the UK. It sits alongside and supplements the UK General Data Protection Regulation (UK GDPR).[[1]](#footnote-1)

## UK General Data Protection Regulation (UK GDPR)

The UK GDPR sets out the key principles, rights and obligations for most processing of personal data in the UK.3

## Health record

A health record is defined as being any record which consists of information relating to the physical or mental or condition of an individual and has been made by or on behalf of a health professional in connection with the care of that individual.

The definition can also apply to material held on an x-ray or an MRI scan. This means that when a subject access request is made, the information contained in such material must be supplied to the applicant.

## Responsible clinician

The responsible clinician is the most appropriate health professional to deal with the access request who is the current or more recent responsible professional involved in the clinical care of the patient in connection with the information aspects which are the subject of the request.

Where there is more than one such professional, the most suitable should advise.

# Right to access

Fortrose Medical Practice ensures that all patients are aware of their right to access their data and has privacy notices displayed in the following locations:

* Waiting room
* Practice website
* Practice information leaflet

To comply with the UK GDPR, all practice privacy notices are written in a language that is understandable to all patients and meet the criteria detailed in Articles 12, 13 and 14 of the UK GDPR.

The reason for granting access to data subjects is to enable them to verify the lawfulness of the processing of data held about them. In addition, data subjects can authorise third party access, e.g., for solicitors and insurers, under the UK GDPR.

Identity verification is required to ensure that access is granted only to the patient or their authorised representative(s). All patients will be requested to provide two forms of ID verification in line with the NHS Good Practice Guidance on Identity Verification[[2]](#footnote-2) and the practice accepts appropriate forms of ID outlined in the [identity verification section](#_Identity_verification).

Completed documentation will be reviewed by the responsible clinician for processing including the review of the records for third party references and any information that may cause harm or distress to the patient/applicant which may need to be redacted under confidentiality policies (see [Third party information](#_Third_party_information_1) and [Non-disclosure](#_Non-disclosure_2) sections).

# Emergency Care Summary Records (ECS)

## About

Emergency Care Summaries (ECS) are an electronic record of important patient information created from GP medical records. They can be seen and used by authorised staff in other areas of the health and care system involved in the patient's direct care.

Access to ECS information means that care in other settings is safer, reducing the risk of prescribing errors. It also helps to avoid delays to urgent care. At a minimum, the ECS holds important information about:

* Current medication
* Allergies and details of any previous bad reactions to medicines
* The name, address, date of birth and CHI number of the patient

## COVID-19 and ECS

To help the NHS to respond to the coronavirus (COVID-19) pandemic, there is currently a temporary change to the ECS that includes COVID-19 specific codes in relation to the suspected, confirmed, shielded patient list and other COVID-19 related information.

# Subject Access Request (SAR) to medical records

## Background

In accordance with [Article 15 of the UK GDPR](https://www.legislation.gov.uk/eur/2016/679/article/15), individuals have the right to access their data and any supplementary information held by Fortrose Medical Practice.

The reason for granting access to data subjects is to enable them to verify the lawfulness of the processing of data held about them. In addition, data subjects can authorise third party access, e.g., for solicitors and insurers, under the UK GDPR.

When a data subject (individual) wishes to access their data, they should be encouraged to use the subject access request (SAR) form which can be found at [Annex A](#_Appendix_B_–). All staff must note, however, that the ICO state:

“An individual can make a SAR verbally or in writing, including on social media. A request is valid if it is clear that the individual is asking for their own personal data”.

Any requests not using the SAR form must therefore be processed.

This policy also outlines the procedure to gain access to health records at Fortrose Medical Practice in response to:

* Third party requests
* Requests from solicitors
* Requests from insurers (governed by the [Access to Medical Reports Act 1988](http://www.legislation.gov.uk/ukpga/1988/28/contents))

Further detailed information is available in the UK GDPR Policy.

## Overview

SARs are predominantly used for access to, and the provision of, copies of medical records. This type of request need not always be in writing (e.g., letter, e-mail). However, applicants should be offered the use of a SAR application form which allows for explicit indication of the required information (see [Annex A](#_Appendix_A_–)). Verbal requests should be documented and a clarification letter sent or a telephone call made to the patient for approval.[[3]](#footnote-3)

There should also be an electronic form for requesters to complete if they prefer. SARs can also be submitted via social media such as the practice’s Facebook page.

Requesters must be:

* The data subject OR
* Have the written permission of the data subject OR
* Have legal responsibility for managing the subject's affairs to access personal information about that person

It is the requester’s responsibility to satisfy Fortrose Medical Practice of their legal authority to act on behalf of the data subject.

The practice must be satisfied of the identity of the requester before they can provide any personal information (see [Identity verification section](#_Identity_verification)).

Requests may be received from the following:

* **Competent patients**

May apply for access to their own records or authorise third party access to their records.

* **Children and young people**

May also apply in the same manner as other competent patients and Fortrose Medical Practice will act in accordance with the provisions of [Age of Legal Capacity (Scotland) Act 1991](file:///C%3A%5CUsers%5Cmatdp%5CAppData%5CLocal%5CMicrosoft%5CWindows%5CINetCache%5CContent.Outlook%5CXK0W3QH8%5CAge%20of%20Legal%20Capacity%20%28Scotland%29%20Act%201991). However, it should be noted under UK GDPR those aged 13 or over are expected to have the capacity to consent to medical information being disclosed.[[4]](#footnote-4)

* **Parents**

May apply to access their child’s health record so long as it is not in contradiction of the wishes of the competent child.[[5]](#footnote-5) Further guidance on parental access to a child’s healthcare records is detailed at [Section 10.4](#_Children_and_young).

* **Individuals with a responsibility for adults who lack capacity**

Are not automatically entitled to access the individual’s health records. Fortrose Medical Practice will ensure that the patient’s capacity is judged in relation to the particular decisions being made. Any consideration to nominate an authorised individual to make proxy decisions for an individual who lacks capacity will comply with the [Adults with Incapacity (Scotland) Act 2000](https://www.legislation.gov.uk/asp/2000/4/contents)

* **Next of kin**

Have no rights of access to health records.

* **Police**

In all cases, the practice can release confidential information if the patient has given his/her consent (preferably in writing) and understands the consequences of making that decision. There is, however, no legal obligation to disclose information to the police without consent unless there is a court order or this is required under statutes (e.g., [Road Traffic Act 2006](https://www.legislation.gov.uk/ukpga/2006/49/contents)).

However, health professionals at Fortrose Medical Practice have a power under the [Data Protection Act 2018](https://www.legislation.gov.uk/ukpga/2018/12/contents/enacted) to release confidential health records without consent for the purposes of the prevention or detection of crime or the apprehension or prosecution of offenders. The release of the information must be necessary for the administration of justice and is only lawful if this is necessary:

* + To protect the patient or another person’s vital interests, or
	+ For the purposes of the prevention or detection of any unlawful act where seeking consent would prejudice those purposes and disclosure is in the substantial public interest (e.g., where the seriousness of the crime means there is a pressing social need for disclosure)

Only information that is strictly relevant to a specific police investigation should be considered for release and only then if the police investigation would be seriously prejudiced or delayed without it. The police should be asked to provide written reasons why this information is relevant and essential for them to conclude their investigations.

* **Court representatives**

A person appointed by the court to manage the affairs of a patient who is incapable of managing his or her own affairs may make an application. Access may be denied where the responsible clinician is of the opinion that the patient underwent relevant examinations or investigations in the expectation that the information would not be disclosed to the applicant.

* **Patient representatives/solicitors**

A patient can give written authorisation for a person (for example a solicitor or relative) to make an application on their behalf for copies of their medical records. Fortrose Medical Practice may withhold access if it is of the view that the patient authorising the access has not understood the meaning of the authorisation. It is important to stress to the patient that under a SARs request all health records are provided unless a specific time period is stated, and patients should be mindful of giving access to this level of health data.

Solicitors who are acting in civil litigation cases for patients should obtain consent from the patient using the form that has been agreed with the BMA and the Law Society of Scotland. If a consent form from the patient is not received with the application form then no information will be provided until this has been received.

* **Requests for insurance medical reports**

SARs are not appropriate should an insurance company require health data to assess a claim. The correct process for this at Fortrose Medical Practice is for the insurer to use the [Access to Medical Reports Act 1988](https://www.legislation.gov.uk/ukpga/1988/28/pdfs/ukpga_19880028_en.pdf#:~:text=Access%20to%20Medical%20Reports%20Act%201988%201988%20CHAPTER,by%20the%20Queen%27s%20most%20Excellent%20Majesty%2C%20by%20and) (AMRA) when requesting a GP report.

In most cases, the requester will provide the patient’s signed consent to release information held in their health record. The BMA have issued [guidance](https://www.bma.org.uk/advice-and-support/ethics/confidentiality-and-health-records/requests-for-medical-information-from-insurers) on requests for medical information from insurers

Fortrose Medical Practice will advise insurers of the relevant fees applicable.

It is the responsibility of the data controller to verify all requests from data subjects using reasonable measures.

The use of the practice’s SAR form supports the data controller in verifying the request. In addition, the data controller is permitted to ask for evidence to identify the data subject, usually by using photographic identification, e.g., driving licence or passport.

## Processing a SAR request

Upon receipt of a SAR, Fortrose Medical Practice will record the SAR within the health record of the individual to whom it relates. Once processed, a further entry into the health record will be made, including the date of posting or the date the record was collected by the patient or authorised individual.

Under [the Data Protection (Subject Access Modification) (Health) Order 2000](http://www.legislation.gov.uk/uksi/2000/413/made), Fortrose Medical Practice will ensure that an appropriate healthcare professional (responsible clinician) manages all access matters. At Fortrose Medical Practice, there are a number of such professionals and, wherever possible, the individual most recently involved in the care of the patient will review and deal with the request. If for some reason they are unable to manage the request, an appropriate professional will assume responsibility and manage the access request.

To maintain UK GDPR compliance, the data controller at Fortrose Medical Practice will ensure that data is processed in accordance with Article 5 of the UK GDPR and will be able to demonstrate compliance with the regulation (see the practice’s [UK GDPR policy](https://practiceindex.co.uk/gp/forum/resources/general-data-protection-regulation-gdpr-policy.740/) for detailed information).

Data processors at Fortrose Medical Practice will ensure that the processing of personal data is lawful and at least one of the following applies:

* The data subject has given consent to the processing of his/her personal data for one or more specific purposes
* Processing is necessary for the performance of a contract to which the data subject is party or in order to take steps at the request of the data subject prior to entering into a contract
* Processing is necessary for compliance with a legal obligation to which the data controller is subject
* Processing is necessary in order to protect the vital interests of the data subject or another natural person

Individuals will have to verify their identity[[6]](#footnote-6) at Fortrose Medical Practice and it is the responsibility of the data controller to verify all requests from data subjects using reasonable measures (see [Identity verification section](#_Refusal_to_requests)).

The process upon receipt of a SAR form is clearly illustrated at [Annex B](#_Appendix_D_–) which is an aide-memoire/flow diagram for staff.

A poster explaining how to access health records for use in waiting room areas can be found at [Annex C](#_Annex_D_–).

## Timeframe for responding to requests

In accordance with the UK GDPR, patients are entitled to receive a response within a maximum of one calendar month from the date of submission of the SAR. In the case of complex or multiple requests, the data controller may extend the response time by a period of two months. In such instances, the applicant must be informed in the first month and the reasons for the extension given.[[7]](#footnote-7)

Should the request involve a large amount of information, the data controller may ask the data subject to specify what data they require before responding to the request. Data controllers are permitted to ‘stop the clock’ in relation to the response time until clarification is received.

## Fees

Under UK GDPR, at Fortrose Medical Practice SARs are generally free of charge. Only if the SAR is considered to be ‘manifestly unfounded’ or ‘excessive’ can a ‘reasonable’ fee be charged although such circumstances are rare and should be judged on a case-by-case basis.

The ICO has advised that a request could be deemed as ‘excessive’ if an individual was to receive information via a SAR and then request a copy of the same information within a short period of time. In this scenario, the practice could charge a reasonable fee or refuse the request.

Postage costs for SARs should not be charged for unless they are for 'unfounded or excessive' requests.

## Method of response to requests

The decision on what format to provide the requested information in should take into consideration the circumstances of the request and whether the practice can provide the data in the format requested.

Should an individual submit a SAR electronically, Fortrose Medical Practice will usually reply in the same format unless the data subject requests otherwise. However, where the patient/applicant requests their information to be emailed to them, it is strongly recommended that the practice uses the nhs.scot encryption solution and explains to the patient/applicant the risks (for example, unauthorised interception of the data) of receiving the data via unencrypted means to a non-NHS email address.

The practice should document the patient’s agreement (expressed in writing or via email) to receive their data via unencrypted means in the medical record. If the patient/applicant agrees, a USB stick or a CD can be used as alternative electronic formats.

For those requests that are not made electronically, a paper copy can be provided unless the patient has explicitly requested a different format.

## Additional Privacy Information notice

Once the relevant information has been processed and is ready for issue to the patient, it is a requirement, in accordance with Article 15 of (UK GDPR), to provide an Additional Privacy Information notice (APIn), a template for which can be found at [Annex D](#_Appendix_F_–).

## Practice disclaimer

The template at [Annex E](#_Annex_E_–) can be used when issuing patients with copies of their medical records. This outlines the fact that the patient is responsible for the security and confidentiality of their records once they leave the practice and that the practice will not accept any responsibility for copies of medical records once they leave the premises.

# Refusal to comply with a request

Being the data controller, Fortrose Medical Practice has the right to refuse any online access or SAR, although any such refusal will be within the allotted timescale and the reasons for the refusal will be given.[[8]](#footnote-8)

Fortrose Medical Practice will only refuse to comply with a SAR where exemption applies or when the request is manifestly unfounded or manifestly excessive. In such situations, the data controller will inform the individual of:

* The reasons why the SAR was refused
* Their right to submit a complaint to the ICO
* Their ability to seek enforcement of this right through the courts

A letter template for refusal can be found at [Annex F](#_Annex_G_–).

Each request must be given careful consideration and should Fortrose Medical Practice refuse to comply, this must be recorded and the reasons for refusal be justifiable.

There are occasions when a GP may firmly believe that it is not appropriate to share all the information contained in the individual’s record, particularly if there is potential for such information to cause harm or distress to individuals or when the record contains information relating to a third party. This information can be redacted from the patient’s view but must not be deleted from the record (see [non-disclosure section](#_Non-disclosure_2)). If system functionality to redact information is not available, the record should not be shared with the patient.3

# Non-disclosure

The UK GDPR provides for a number of exemptions in respect of information falling within the scope of a SAR. In summary, information can generally be treated as exempt from disclosure and should not be disclosed, if11:

* It is likely to cause serious physical or mental harm to the patient or another person
* It relates to a third party who has not given consent for disclosure (where that third party is not a health professional who has cared for the patient) and after considering the balance between the duty of confidentiality to the third party and the right of access of the applicant, the data controller concludes it is reasonable to withhold third party information
* It is requested by a third party and the patient had asked that the information be kept confidential or, in Scotland, the records are subject to confidentiality as between client and professional legal advisor. This may arise in the case of an independent medical report written for the purpose of litigation. In such cases, the information will be exempt if, after considering the third party’s right to access and the patient’s right to confidentiality, the data controller reasonably concludes that confidentiality should prevail or it is restricted by order of the courts
* It relates to the keeping or using of gametes or embryos or pertains to an individual being born as a result of in vitro fertilisation

* In the case of children’s records, disclosure is prohibited by law, e.g., adoption records

The data controller must redact or block out any exempt information, but there is still an obligation to disclose the remainder of the records.

While the responsibility for the decision as to whether or not to disclose information rests with the data controller, advice about serious harm must be taken by the data controller from the responsible clinician. This is usually the health professional currently or most recently responsible for the clinical care of the patient in respect of the matters that are the subject of the request. If there is more than one, it should be the person most suitable to advise. If there is none, advice should be sought from another health professional who has suitable qualifications and experience.

Circumstances in which information may be withheld on the grounds of serious harm are extremely rare and this exemption does not justify withholding comments in the records because patients may find them upsetting. Where there is any doubt as to whether disclosure would cause serious harm, the BMA recommends that the responsible clinician discusses the matter anonymously with an experienced colleague, their Data Protection Officer, the Caldicott Guardian or a defence body.

# Proxy access and third-party requests

## Proxy access in adults (including those over 13 years) with capacity

Patients over the age 13 (under UK DPA 2018) are assumed to have mental capacity to consent to proxy access. Where a patient with capacity gives their consent, the application should be dealt with on the same basis as the patient.

## Proxy access in adults (including those over 13 Years) without capacity

Proxy access without the consent of the patient may be granted in the following circumstances:

* The patient has been assessed as lacking capacity to decide on granting proxy access and has registered the applicant as a continuing or welfare power of attorney with the Office of the Public Guardian
* The patient has been assessed as lacking capacity to decide on granting proxy access and the applicant is acting as a Court Appointed Deputy on behalf of the patient
* The patient has been assessed as lacking capacity to make a decision on granting proxy access and, in accordance with the [Adults with Incapacity (Scotland) Act 2000](https://www.legislation.gov.uk/asp/2000/4/contents) the responsible clinician considers it in the patient’s best interests to grant access to the applicant.
* When an adult patient has been assessed as lacking capacity and access is to be granted to a proxy acting in their best interests, it is the responsibility of the responsible clinician to ensure that the level of access enabled or information provided is necessary for the performance of the applicant’s duties

## Children and young people’s access

It is difficult to say at what age the child will become competent to make autonomous decisions regarding their healthcare.

In accordance with Article 8 of the UK GDPR[[9]](#footnote-9), from the age of 13 young people can provide their own consent and will be able to register for online services.

However, the provisions of [Age of Legal Capacity (Scotland) Act 1991](https://www.legislation.gov.uk/ukpga/1991/50/section/2) leaves room for this to be even younger if the child is deemed to be competent. Where there is doubt,

access to medical records should be assessed on a case-by-case basis.

The responsible clinician may invite the child for a confidential consultation to discuss the request for proxy access under the Data Protection Law, using their professional judgement to decide whether to grant parental access and/or whether to withhold information.

Further information on competency for children and young people can be sought in the practice’s [Consent Policy](https://practiceindex.co.uk/gp/forum/resources/consent-guidance.707/).

## Parents gaining access to a child’s medical record

This practice will allow parents access to their child’s medical records if the child or young person consents, or lacks capacity, and it does not go against the child’s best interests. However, if the records contain information given by the child or young person in confidence then this information should not normally be disclosed without their consent.

It should be noted that divorce or separation does not affect parental responsibility and therefore both parents will continue to have reasonable access to their children's health records unless legally advised not to do so. Further reading on this subject can be sought in the GMC document titled [Accessing medical records by children, young people and parents](https://www.gmc-uk.org/ethical-guidance/ethical-guidance-for-doctors/0-18-years/accessing-medical-records-by-children-young-people-parents).

# Identity verification

## Requirement

Before access to health records is granted, the patient’s identity and requestor’s identity in cases of proxy access requests, must be verified. There are three ways of confirming patient identity:

* Documentation (forms of identification)
* Vouching
* Vouching with confirmation of information held in the applicant’s records

All applications for SARs will require formal identification through two forms of ID, one of which must contain a photo. Acceptable documents include passports, photo driving licences and bank statements.

Where a patient may not have suitable photographic identification, vouching with confirmation of information held in the medical record can be considered by the data controller or responsible clinician. This should take place discreetly and ideally in the context of a planned appointment.

It is extremely important that the questions posed do not incidentally disclose confidential information to the applicant before their identity is verified.

## Adult proxy access verification

Before the practice provides proxy access to an individual or individuals on behalf of a patient further checks must be taken:

* There must be either the explicit informed consent of the patient or some other legitimate justification for authorising proxy access without the patient’s consent
* The identity of the individual who is asking for proxy access must be verified as outlined above
* The identity of the person giving consent for proxy access must also be verified as outlined above. This will normally be the patient but may be someone else acting under a power of attorney or as a Court Appointed Deputy
* When someone is applying for proxy access on the basis of an continuing power of attorney, welfare power of attorney or as a Court Appointed Deputy, their status should be verified by making an online check of the registers held by the Office of the Public Guardian

## Child proxy access verification

Before the practice provides parental proxy access to a child’s medical records the following checks must be made:

* The identity of the individual(s) requesting access via the method outlined above
* That the identified person is named on the birth certificate of the child

In the case of a child judged to have capacity to consent, there must be the explicit informed consent of the child.

# Deceased patients

## Access to deceased persons medical records

The UK GDPR does not apply to data concerning deceased persons. Such considerations are detailed in the [Access to Health Records Act 1990](https://www.legislation.gov.uk/ukpga/1990/23/contents).

Unless the patient requested confidentiality while alive, under the terms of this Act, Fortrose Medical Practice will only grant access to either:

* A personal representative (executor of the deceased person’s estate); or
* Someone who has a claim resulting from the death

Under section 5(4) of the Access to Health Records Act 1990, no information that is not directly relevant to a claim should be disclosed to either the personal representative or any other person who may have a claim arising out of the patient’s death.

The medical records of the deceased will be passed to the Practitioner Services Division (PSD) of NHS Scotland for storage. PSD will retain the GP records of deceased patients for 10 years after which time they will be destroyed.

However, should an applicant approach the practice and where the practice still holds an electronic copy of the deceased’s record, the practice is obliged to respond to the request under the Access to Health Records Act 1990.

## Chargeable fees

Legislative changes to the Data Protection Act 2018 have also amended the Access to Health Records Act 1990 which now states access to the records of deceased patients and any copies must be provided free of charge.[[10]](#footnote-10)

If the request is from a solicitor and they are asking for a report to be written or the request is asking for an interpretation of information within the record this request goes beyond a SAR and therefore a fee can be charged. The practice may ask the nature of the request from the solicitor to confirm if this should be charged for or not[[11]](#footnote-11).

If the solicitor confirms that they are seeking a copy of the medical record then this should be treated as a SAR and complied with in the usual way.

# Third party information

Patient and practice records may contain confidential information that relates to a third person. This may be information from or about another person. It may be entered in the record intentionally or by accident.

It does not include information about or provided by a third party that the patient would normally have access to, such as hospital letters.

All confidential third-party information must be removed or redacted. This will be reviewed and highlighted by the appropriate responsible clinician or data controller. If this is not possible then access to the information will be refused.

# Former NHS patients living outside the UK

Patients no longer resident in the UK still have the same rights to access their information as those who still reside here and must make their request for information in the same manner.

Original health records should not be given to an individual to take abroad with them. However, Fortrose Medical Practice may be prepared to provide a summary of the treatment given whilst resident in the UK.

# Disputes concerning content of records

Once access to records has been granted, patients or their proxy may dispute their accuracy or lack understanding of medical codes.

Patients or their proxy may notice and point out errors in their record, unexpected third-party references and entries they object to or want deleted. The right of rectification and erasure is established within the UK GDPR.

Any queries will be directed to the data controller who will contact the patient. They will investigate swiftly and thoroughly to identify the source and extent of the problem.

The responsible clinician and Caldicott Guardian/data controller will then decide on the most appropriate action. Where the dispute concerns a medical entry, the clinician who made the entry should be consulted and consideration given as to whether it is appropriate to change or delete an entry.

Where it is not possible or practical to contact the clinician concerned, the Caldicott Guardian or data controller should be consulted. If it is not possible to amend the records, a meeting with the patient or their proxy should be organised to explain why.

If a patient wishes to apply their UK GDPR rights of:

* Rectification (Article 16 UK GDPR)
* Erasure (Article 17 UK GDPR)
* Restriction of processing (Article 18 UK GDPR)
* Data portability (Article 20 UK GDPR)
* Right to object (Article 21 UK GDPR)

advice MUST be sought from the practice’s Data Protection Officer:

Donald Peterkin (Data Protection Officer)
NHS Highland
Assynt Huse
Beechwood Park
Inverness
IV2 3BW
Contact number: 01463 706 057
Email: nhsh.dpohighland@nhs.scot

Where it is not appropriate to amend a medical record, an entry may be made declaring that the patient disagrees with the entry. If the patient further disputes the accuracy once a decision has been made, they will be referred to the complaints procedure.

# Complaints

Fortrose Medical Practice has procedures in place to enable complaints about access to health records requests to be addressed. Please refer to the practice’s complaints procedure.

All complaints about access to records and SARs should be referred to the Practice Manager. If the issue remains unresolved, the patient should be informed that they have a right to make a complaint through the office of the Scottish Public Services Ombudsman (SPSO).

Sometimes the patient may not wish to make a complaint through the practice’s complaints procedure and instead take their complaint direct to the Information Commissioner’s Office (ICO) if they believe the practice is not complying with their request in accordance with the [Data Protection Act 2018](https://www.legislation.gov.uk/ukpga/2018/12/contents/enacted).

Alternatively, the patient may wish to seek legal independent advice.

# Annex A – Application for access to medical records (SAR)

**Application for Access to Medical Records (SAR)**

**In accordance with the UK General Data Protection Regulation (UK GDPR)**

**Section 1: Patient details**

|  |  |  |  |
| --- | --- | --- | --- |
| **Surname** |  | **Maiden name** |  |
| **Forename** |  | **Title** |  |
| **Date of birth** |  | **Address:** |  |
| **Telephone number** |  | **Postcode:** |  |
| **NHS number (if known)** |  | **Hospital number (if known)** |  |

**If you are applying to view your own records, please go to Section 2.**

**If you are applying to view another person’s record, please go to Section 3.**

**Section 2: Record requested**

Please tick the relevant boxes below. The more specific you can be, the easier it is for us to quickly provide you with the records requested.

|  |  |
| --- | --- |
| I am applying for access to **view** my records only | 🞏 |
| I am applying for an electronic copy of my medical record | 🞏 |
| I am applying for a printed copy of my medical record | 🞏 |

Please specify what information you are requesting:

|  |  |
| --- | --- |
| I would like a copy of records between specific dates only (please give dates below)  | 🞏 |
| I would like a copy of records relating to a specific condition/specific incident only (please detail below) | 🞏 |
| I would like a copy of all my electronic records (held on computer) | 🞏 |
| I would like a copy of all my electronic and paper records since birth | 🞏 |

|  |  |  |  |
| --- | --- | --- | --- |
| **Patient signature** |  | **Date** |  |

**Section 3: Details and Declaration of Applicant**

Please complete if you are requesting access on **behalf of** the above-named patient

|  |  |  |  |
| --- | --- | --- | --- |
| **Surname** |  | **Title**  |  |
| **Forename(s)** |  | **Address** |  |
| **Telephone number** |  | **Postcode** |  |
| **Relationship to Patient** |  |

(If more than one person is to be given access then please list the above details for each additional person on a separate sheet of paper)

|  |  |
| --- | --- |
| I am applying for access to **view** the records only | 🞏 |
| I am applying for an electronic copy of the medical record | 🞏 |
| I am applying for a printed copy of the medical record | 🞏 |

Please specify what information you are requesting:

|  |  |
| --- | --- |
| I would like a copy of records between specific dates only (please give dates below)  | 🞏 |
| I would like a copy of records relating to a specific condition/specific incident only (please detail below) | 🞏 |
| I would like a copy of all the electronic records (held on computer) | 🞏 |
| I would like a copy of all the electronic and paper records since birth | 🞏 |

**Reason for access:**

|  |  |
| --- | --- |
| I have been asked to act by the patient  | 🞏 |
| I have full parental responsibility for the patient, and the patient is under the age of 16 and:* Has consented to my making this request, or
* Is incapable of understanding the request (delete as appropriate)
 | 🞏 |
| I have been appointed by the Court to manage the patient’s affairs and attach a certified copy of the court order appointing me to do so | 🞏 |
| I am acting *in loco parentis* and the patient is incapable of understanding the request | 🞏 |
| I am the deceased person’s personal representative and attach confirmation of my appointment (grant of probate/letters of administration) | 🞏 |
| I have written, and witnessed, consent from the deceased person’s personalrepresentative and attach Proof of Appointment | 🞏 |
| I have a claim arising from the person’s death (please state details below) | 🞏 |

**Declaration**

I declare that the information given by me is correct to the best of my knowledge and that I am entitled to apply for access to the health records referred to above under the terms of the UK [Data Protection Act 2018](https://www.legislation.gov.uk/ukpga/2018/12/contents/enacted).

You are advised that the making of false or misleading statements in order to obtain

personal information to which you are not entitled is a criminal offence which could lead to prosecution.

|  |  |  |  |
| --- | --- | --- | --- |
| **Applicant signature** |  | **Date** |  |

|  |
| --- |
| I confirm that I give permission for the practice to communicate with the person identified above in regard to my medical records |
| **Patient signature** |  | **Date** |  |

**Section 4: Proof of identity**

Under the [Data Protection Act 2018](https://www.legislation.gov.uk/ukpga/2018/12/contents/enacted) you do not have to give a reason for applying for access to your health records.

Patients with capacity and proxy nominees will be asked to provide two forms of identification one of which must be photographic identification. Please speak to reception if you are unable to provide this.

**Section 5: Consent for children**

If a child is under 16 and not able to give consent for him/herself, someone with parental responsibility may do so on his/her behalf by signing this form below.

|  |
| --- |
| **I am the patient aged under 16 years** |
| **Signature** |  |
| **I am the parent/guardian/person with parental responsibility (delete as necessary)**  |
| **Signature** |  |
| **Full name** |  |
| **Address** |  |
| **Date** |  |

You will be telephoned when the copies are ready for collection or posting.

**ADDITIONAL NOTES:**

Before returning this form, please ensure that you have:

* Signed and dated the form
* Are able to provide proof of your identity or alternatively confirmed your identity by a countersignature
* Enclosed documentation to support your request (if applicable)

Incomplete applications will be returned; therefore, please ensure you have the correct documentation before returning the form.

**For office use only:**

**Identification verification must be verified through two forms of ID**

* One of which must contain a photo e.g., passport, photo driving licence or bank statement.

Where this is not available, vouching by a member of staff or by confirmation of information in the records by one of the clinicians may be used.

If this is a proxy request, where patient has capacity, both patient and proxy should provide identification as above in person.

|  |  |  |  |
| --- | --- | --- | --- |
| Request received |  | Request refused |  |
| Reviewed by |  | Request completed |  |
| Fee (see section 6.4) |  | Date sent |  |
| Comments |  |
| Patient identity verified by |  | Date |  |
| Method | 🞏 Photo ID or proof of residence – Type ………………………………..🞏 Photo ID or proof of residence – Type ………………………………..🞏 Vouching – by whom ……………………………………………………🞏 Vouching with information in record – by whom …………………… |
| Proxy identity verified by |  | Date |  |
| Method | 🞏 Photo ID or proof of residence – Type ………………………………..🞏 Photo ID or proof of residence – Type ………………………………..🞏 Vouching – by whom ……………………………………………………🞏 Vouching with information in record – by whom …………………… |

# Annex B – DSAR desktop aide-memoire

**Fortrose Medical Practice Data Subject Access Request desktop aide-memoire**

# Annex C – Access leaflet

**ACCESSING YOUR MEDICAL RECORDS AT**

**FORTROSE MEDICAL PRACTICE**

**Introduction**

In accordance with the UK General Data Protection Regulation, patients (data subjects) have the right to access their data and any supplementary information held by Fortrose Medical Practice. This is commonly known as a subject access request (SAR). Data subjects have a right to receive:

* Confirmation that their data is being processed
* Access to their personal data
* Access to any other supplementary information held about them

**Options for access**

You can make a request to be provided with copies of your health record. To do so and assist the practice in providing the correct information you should submit a SAR form. This can be submitted electronically and the SAR form is available on the practice website. Alternatively, a paper copy of the SAR is available from reception. Patients do not have to pay a fee for copies of their records.

**Time frame**

Once the SAR is received, Fortrose Medical Practice will seek to process the request within 28 days; however, this may not always be possible. The maximum time permitted to process SARs is one calendar month.

**Exemptions**

There may be occasions when the data controller will withhold information kept in the health record, particularly if the disclosure of such information is likely to cause undue stress or harm to you or any other person.

**Data controller**

At Fortrose Medical Practice the data controller is The Practice and should you have any questions relating to accessing your medical records, please ask to discuss this with your GP or the Practice Manager.

Fortrose Medical Practice

Data controller

Published: 15.03.2022

# Annex D – Additional Privacy Information notice

Fortrose Medical Practice

Station Road

Fortrose

Ross-shire

IV10 8SY

Tel 01381 622000

Dear [insert patient name],

On [insert date], you submitted a Subject Access Request (SAR) in order to receive copies of the information Fortrose Medical Practice holds about you. Please find enclosed all relevant information. To comply with Article 15 of the UK General Data Protection Regulation, we are obliged to advise you of the following:

1. **The purposes of the processing**: *Your data is collected for the purpose of providing direct patient care. In addition, the practice contributes to national clinical audits and will send information such as demographic data, i.e., date of birth and coded information about your health, to NHS Digital.*
2. **The categories of data concerned**:  *We process your personal and health data in accordance with Article 9 of the GDPR.*
3. **The recipients or categories of recipients**: *Your data has been shared with other healthcare professionals to enable the provision of healthcare, e.g. via referrals to secondary care or in your ECS.*
4. **How long your information will be retained**: *Records are retained in accordance with the NHS retention schedule; GP records are retained for a period of 10 years following the death of a patient.*
5. **The right to rectification or erasure of personal data**: *Should you find any inaccuracies within the data we hold, please advise us of the inaccuracies and we will discuss with you how to rectify these*.
6. **The right to lodge a complaint with the supervisory authority***: In the unlikely event that you are unhappy with any element of our data processing methods, you have the right to lodge a complaint with the ICO. For further details, visit ico.org.uk and select “Raising a concern”.*
7. **How we obtained any of the data we hold about you:** *NHS Health Boards provide us with data like results, discharge letters, vaccinations received etc.*
8. **Any automated processing activities:** *This is not applicable to your data.*

Should you have any questions relating to the information provided in this letter or about the copies of information we have provided, please contact the Practice Manager at the practice on 01381 622000 or NHSH.gp55381-admin@hns.scot .

Gaby Ormerod

Practice Manager

# Annex E – Practice disclaimer

Fortrose Medical Practice

Station Road

Fortrose

Ross-shire

IV10 8SY

Tel 01381 622000

Dear [insert patient name],

On [insert date], you submitted a Subject Access Request (SAR) in order to receive copies of the information that Fortrose Medical Practice holds about you. You have been provided with this information along with an Additional Privacy Information notice in order to comply with the UK General Data Protection Regulation (UK GDPR).

You are responsible for the confidentiality and safeguarding of the copies of your medical records which have been provided to you. This practice accepts no responsibility for the copies once they leave the premises.

By signing this form, you are accepting full responsibility for the security and confidentiality of the copies of your medical records.

Patient name: [Insert full name]

Patient ID number: [Insert system ID number]

Patient signature:

……………………………………………………………………………………

# Annex F – Refusal of SAR letter

Fortrose Medical Practice

Station Road

Fortrose

Ross-shire

IV10 8SY

Tel 01381 622000

Dear [insert third party name],

On [insert date], a Subject Access Request (SAR) was received requesting copies of the information that Fortrose Medical Practice holds about [insert patient name].

In order to process this request, the Information Commissioners Office (ICO) Code of Practice requires any application for a SAR to meet strict criteria and that the data controller must be satisfied that the request is meeting these. In some circumstances, there are reasons as to why information should not be given.

In this instance, it is felt that Fortrose Medical Practice cannot process this request for the following reason\*:

\*[delete as appropriate]

* It is manifestly unfounded (see footnote 7 for ICO explanation)
* It is an excessive request, i.e., the insurer is requesting a full copy of the medical records, when this could be deemed as being unreasonable or excessive for the purpose (See Art 3.2)
* The information required details a further third party therefore a separate SAR would be required
* The information may be detrimental or cause harm to the requesting patient or any other person
* It includes information about a child or non-capacious adult which would not be expected to be disclosed to the person making the request
* It is legally privileged information
* It is information that is subject to a Court Order

Should you have any questions relating to the information provided in this letter, please contact the Practice Manager at the practice on 01381 622000 or nhsh.gp55381-admin@nhs.scot .

If you disagree with the actions being taken, then you have the right to make a complaint to the Information Commissioners Office (ICO) at:

Address: Information Commissioner's Office

Wycliffe House

Water Lane

WILMSLOW

SK9 5AF

Telephone: 0303 123 1113

Website: <https://ico.org.uk/global/contact-us/>

Alternatively, you may seek to enforce your right through judicial remedy.

Yours sincerely,

Gaby Ormerod

Practice Manager

1. [ICO About the DPA 2018](https://ico.org.uk/for-organisations/guide-to-data-protection/introduction-to-data-protection/about-the-dpa-2018/#:~:text=The%20DPA%202018%20sets%20out%20the%20framework,protection%20law%20in%20the%20UK.&text=It%20also%20sets%20out%20separate,Information%20Commissioner's%20functions%20and%20powers.) [↑](#footnote-ref-1)
2. [Patient Online Services in Primary Care Good Practice Guidance on Identity Verification](https://www.england.nhs.uk/wp-content/uploads/2015/03/identity-verification.pdf) [↑](#footnote-ref-2)
3. [How to access your health records](https://www.nhs.uk/using-the-nhs/about-the-nhs/how-to-access-your-health-records/) [↑](#footnote-ref-3)
4. [Access to health records](https://www.bma.org.uk/advice/employment/ethics/confidentiality-and-health-records/access-to-health-records) [↑](#footnote-ref-4)
5. [Age of Legal Capacity (Scotland) Act 1991](https://www.legislation.gov.uk/ukpga/1991/50/section/2) [↑](#footnote-ref-5)
6. [NHS England Patient Online Services in Primary Care Good Practice on Identity Verification](https://www.england.nhs.uk/wp-content/uploads/2015/03/identity-verification.pdf) [↑](#footnote-ref-6)
7. [BMA - Access to Health Records](https://www.bma.org.uk/media/1868/bma-access-to-health-records-nov-19.pdf) [↑](#footnote-ref-7)
8. [ico.org.uk](https://ico.org.uk/for-organisations/guide-to-data-protection/guide-to-the-general-data-protection-regulation-gdpr/right-of-access/when-can-we-refuse-to-comply-with-a-request/) [↑](#footnote-ref-8)
9. [Article 8 UK GDPR](https://www.legislation.gov.uk/eur/2016/679/chapter/II) [↑](#footnote-ref-9)
10. [BMA guidance - Access to health records - Nov 19](https://www.bma.org.uk/media/1868/bma-access-to-health-records-nov-19.pdf) [↑](#footnote-ref-10)
11. [BMA Guidance – Access to health records - June 21](https://www.bma.org.uk/advice-and-support/ethics/confidentiality-and-health-records/access-to-health-records) [↑](#footnote-ref-11)