

**ACCESSING MEDICAL RECORDS**

**GENERAL**

The NHS Information Authority is frequently asked how patients may access their medical records.

Basically, a patient has the right to have a copy of or access their record under the provisions of the Data Protection Act 1998 (but there is other legislation that may also apply).

The request to have a copy etc. of your record should be made directly to the organisation that is treating you e.g. GP Practice, Hospital etc. Each organisation will have a system in place for dealing with your request.

A minimum charge may be made and there is a maximum time limit that organisations have in which to respond to your request.

The following is provided to help patients through the process of gaining access to their records (common questions have been highlighted):

<p><b>ACCESS TO HEALTH RECORDS (FOR THE LIVING)</b> – What legislation governs access to health records?</p>	<ul style="list-style-type: none"> <li>▪ The Data Protection Act 1998 became effective from 01/03/00 (superseding the Data Protection Act 1984 and the Access to Health Records Act 1990)</li> </ul>
<p>What is a health record?</p>	<ul style="list-style-type: none"> <li>▪ The Data Protection Act 1998 gives every living person the right to apply for access to their health records.</li> <li>▪ The exception to this is the records of deceased persons which are still governed by the Access to Health Records Act 1990</li> </ul>
<p>How are health records recorded?</p>	<ul style="list-style-type: none"> <li>▪ This is any record which consists of information relating to the physical or mental health of an individual and has been made by or on behalf of a health professional in connection with the care of that individual. This includes X-rays etc.</li> </ul>
<p>What about private health records?</p>	<ul style="list-style-type: none"> <li>▪ A health record can be recorded in a computerised form, in a manual form or a mixture of both</li> <li>▪ Information that may be included within a health record is identified in HSC 1999/053 "For the Record"</li> </ul>
<p>Does it matter when the record was created?</p>	<ul style="list-style-type: none"> <li>▪ The Data Protection Act 1998 applies equally to the private health sector and to health professionals private practice records</li> <li>▪ It also applies to the records of employers who hold information relating to the physical or mental health of their employees if the record has been made by or on behalf of a health professional in connection with the care of the employee</li> </ul>
<p>Does it matter when the record was created?</p>	<ul style="list-style-type: none"> <li>▪ No. Individuals have a right to apply for access to records irrespective of when they were compiled</li> </ul>

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<p>Can patients directly inspect their records?</p> <p>Where it is agreed that an individual may directly inspect their medical record, does access need to be supervised?</p> <p><b>Are individuals entitled to apply for access to their complete health record?</b></p> <p>Who has a duty under the appropriate legislation to deal with access requests?</p> <p><b>How should access requests be made?</b></p> <p><b>Will there be a financial charge?</b></p>	<ul style="list-style-type: none"> <li>▪ The Act does not provide patients with a right to directly inspect health records, but this can be agreed between the patient and the data controller</li> <li>▪ It remains Department of Health policy that patients who wish to actually see what is written about them in their records should be allowed to do so, subject to given exemptions and unless there are compelling reasons to the contrary</li> <li>▪ The data controller should consider whether access should be supervised by the attendance of a health professional or by a lay administrator</li> <li>▪ In these circumstances, the lay administrator 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</li> <li>▪ <b>They are entitled to apply for access to their total health record as it stands at the time the request was received</b></li> <li>▪ Responsibility for dealing with a subject access request lies with the “data controller”</li> <li>▪ A data controller is defined as a person who (either alone or jointly in common with other persons) determines the purposes for which and the manner in which any personal data about an individual are, or are to be , processed</li> <li>▪ <b>Any request must be made in writing or electronically to the data controller i.e. GP for GP records, the Medical Records Manager at a hospital or addressed to the Data Protection Officer in any organisation type</b></li> <li>▪ <b>Under the Data Protection Act 1998 (Fees and Miscellaneous Provisions) Regulations 2001 the maximum fee that can be charged for computer records is £10 and £50 for copies of manual records (or mixture of computer and manual records)</b></li> <li>▪ No fee may be charged where the subject access request is to be complied with other than by supplying a copy of the information in a permanent form - i.e. by allowing the applicant to inspect the record</li> <li>▪ This provision only relates to requests for access to non-automated records at least some of which was made after the beginning of the period of 40 days immediately preceding the date of the request</li> <li>▪ This provision broadly replicates the provision of the Access to Health Records Act 1990 that, in effect, allows patients to look at recently created records for free</li> </ul>
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<p>What if the specified fee is not paid when the access request is made?</p> <p><b>What are the time limits for dealing with a subject access request?</b></p> <p>Does the applicant need to specify what period they are requesting access to?</p> <p>Do applicants need to give a reason for making a subject access request?</p> <p>What about when the application is being made on behalf of the data subject by another individual?</p> <p>Are there any circumstances in which information contained in a record may be withheld from the data subject?</p> <p>Where information has been withheld are record holders obliged to advise applicants that this is the case?</p> <p>Can a record holder refuse to process a subject access request?</p>	<ul style="list-style-type: none"> <li>▪ The £50 maximum charge only applies to manual health records</li> <li>▪ Data controllers do not have to release the information until the required fee has been paid</li> <li>▪ <b>There is no obligation to comply with an access request unless the data controller has such information as he or she needs to identify the applicant and locate the information and unless the required fee has been paid</b></li> <li>▪ <b>Once the data controller has all the relevant information etc., they must comply with the request promptly and by no later than 40 days after the request has been made (the “clock will have been stopped” whilst the establishing the identity of the requestor etc.)</b></li> <li>▪ Individuals may not wish to access their entire record and therefore NHS bodies may wish to confirm what material the applicant requires before processing the request</li> <li>▪ No reason need be given for an application and staff should be ready to assist applicants in making subject access requests</li> <li>▪ Where the applicant is not the data subject, the applicant should have access to only the information and explanation which would otherwise have been made available to the data subject. It would be necessary for the data controller to be convinced that the individual has given their consent for disclosure to someone other than themselves</li> <li>▪ Under the Data Protection Act 1998 there are certain circumstances in which the record holder may withhold information</li> <li>▪ Access may be denied, or limited, where the information might cause serious harm to the physical or mental health or condition of the patient OR</li> <li>▪ Where giving access would disclose information relating to or provided by a third person who had not consented to the disclosure</li> <li>▪ No. Record holders are free to advise applicants the grounds on which information has been withheld but are not obliged to do so</li> <li>▪ If it is likely to cause undue distress the record holder may not wish to volunteer the fact that information has been withheld</li> <li>▪ Yes. Where an access request has previously been complied with, the Data Protection Act 1998 permits record holders not to respond to a subsequent identical or similar request unless a reasonable interval has elapsed since the previous compliance</li> </ul>
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<p>How do record holders decide whether a reasonable interval has elapsed?</p> <p>Can the obligation to provide a copy be waived?</p> <p><b>What if the information is not readily intelligible?</b></p> <p>When dealing with a subject access request who should the data controller consult?</p> <p>What if there is more than one or no suitable health care professional to advise on access?</p> <p><b>What if the patient feels that their medical notes are incorrect – can they have them amended?</b></p> <p>How should data controllers deal with requests from solicitors acting on behalf of an individual?</p> <p>Can patient's original medical records be sent to a solicitor?</p>	<ul style="list-style-type: none"> <li>▪ Data controllers should consider the nature of the information, how often it is altered and the reason for its processing</li> <li>▪ The reason for the request(s) may also be relevant</li> <li>▪ The obligation to provide a copy may be waived where the patient agrees otherwise or it is not possible to supply a copy of the material sought, or to do so would involve disproportionate effort e.g. because papers have been destroyed</li> <li>▪ However, cost alone is not sufficient grounds on which to refuse to provide a copy</li> <li>▪ <b>An explanation e.g. abbreviations or medical terminology must be given</b></li> <li>▪ He or she should consult the appropriate health professional, normally the individual who is or was responsible for the clinical care of the patient during the period to which the application refers</li> <li>▪ Where there is more than one, the most suitable available health professional should advise on access, otherwise a health professional with the necessary qualifications and experience should advise on the matters to which the information requested relates</li> <li>▪ This only applies to data controllers who are not health professionals</li> <li>▪ <b>If a patient feels that 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</b></li> <li>▪ <b>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</b></li> <li>▪ <b>They could further complain to the Information Commissioner who may rule that any erroneous information is rectified, blocked, erased or destroyed</b></li> <li>▪ A request from a solicitor acting on a behalf of a data subject should be dealt with in exactly the same way as a request from the data subject</li> <li>▪ Whilst the Data Protection Act 1998 allows an applicant to be supplied with a copy of the medical record, it does not require data controllers to provide access to the original record</li> <li>▪ It is strongly recommended that controllers do not allow original notes to be sent to solicitors because of the potential detriment to patients should the records be lost</li> </ul>
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<p><b>ACCESS TO A CHILD'S HEALTH RECORD</b> – Who has the right of access to a child's health record</p> <p><b>What is parental responsibility?</b></p> <p><b>Can a parent not living with the child have access to a child's health record?</b></p> <p>Are there situations in which access to the child's records can be refused?</p> <p>Do parents have the right to know what treatment their adolescent child is receiving from their GP etc.?</p>	<ul style="list-style-type: none"> <li>▪ As a general rule a person with established parental responsibility will have the right to apply for access to a child's health record</li> <li>▪ <b>Parental responsibility is defined by the Children's Act 1989 and must be clearly established</b></li> <li>▪ <b>Parental responsibility for a child is defined 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"</b></li> <li>▪ <b>Yes, if they have parental responsibility for the child e.g. separated/divorced parent</b></li> <li>▪ Yes. As the child grows older and gains sufficient understanding, he/she will be able to make decisions about his/her own life</li> <li>▪ 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</li> <li>▪ Where, in the view of the appropriate health professional, the child patient is not capable of understanding the nature of the application, the holder of the record is entitled to deny access if it were not felt to be in the patient's best interests</li> <li>▪ The law regards young people aged 16 or 17 to be adults for the purposes of consent to treatment and right to confidentiality</li> <li>▪ Therefore, if a 16 year old wishes a medical practitioner to keep the treatment confidential then that wish should be respected</li> <li>▪ Children under the age of 16 who have the capacity and understanding to take decisions about their own treatment are also entitled to decide whether personal information may be passed on and generally to have their confidence respected</li> <li>▪ Case law has established that such a child is "Gillick Competent" i.e. where a child is under 16 but has sufficient understanding in relation to the proposed treatment to give, or withhold consent, consent or refusal should be respected</li> <li>▪ However, good practice dictates that the child should be encouraged to involve parents or other legal guardians in any treatment</li> </ul>
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<p><b>ACCESS TO HEALTH RECORDS (DECEASED)</b> – What are the rights of access to deceased persons’ health records?</p> <p>How can a person apply for access to a deceased persons’ health records?</p> <p>Can a person have unlimited access to the health records of the deceased person?</p> <p>Where should deceased health records be sent?</p>	<ul style="list-style-type: none"> <li>▪ Access to the health records of a deceased person is governed by the Access to Health Records Act 1990</li> <li>▪ When a person dies, 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</li> <li>▪ <b>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</b></li> <li>▪ <b>A fee will be applicable</b></li> <li>▪ If the deceased person had indicated that they did not wish information to be disclosed, or the record contains information that the deceased person expected to remain confidential then it must remain so</li> <li>▪ In addition, the record holder has the right to deny or restrict access if it felt that disclosure would cause serious harm to the physical or mental health of any other person, or would identify a third person</li> <li>▪ When a patient dies, their GP health records are transferred to the relevant PCT where they are retained for the recommended retention period before deciding whether to retain or destroy them</li> <li>▪ In the case of hospital records, these remain at the relevant NHS Trust where they are retained for the recommended retention period</li> <li>▪ The Department of Health recommends that GP records are kept for a minimum of 10 years</li> <li>▪ The Department of Health recommends that hospital records are kept for a minimum of 8 years following the end of any treatment, or the patient’s death if the patient died whilst receiving treatment</li> <li>▪ At the end of that specified time the health records would remain at the NHS Trust or in the case of GP health records, transferred to the relevant PCT who will then make a decision as to whether to retain or destroy the records</li> </ul> <p><b>For further details see HSC 1999/053 “For the Record”</b></p>
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<p><b>ACCESS TO MEDICAL REPORTS</b> – How should requests for medical reports be dealt with?</p>	<ul style="list-style-type: none"><li>▪ Specific provision is made in the Access to Medical Reports Act 1988 for a patient's medical practitioner to supply a third party, such as an employer or an insurance company, with a medical report about the patient</li><li>▪ The Act only applies to a report prepared by the medical practitioner who usually looks after the clinical care of the person</li><li>▪ Reports prepared by other medical practitioners such as those contracted by the employer or insurance company are not covered by the Act (these are covered by the Data Protection Act 1998)</li><li>▪ The Act provides that a person cannot ask a patient's medical practitioner for a medical report on him/her for insurance or employment reasons without the patient's knowledge and consent</li><li>▪ The patient then has the right to see the report, subject to certain safeguards, before it is supplied and to ask for any part that (s)he thinks incorrect to be amended</li><li>▪ The medical practitioner must seek the patient's consent before he or she supplies the report to the person who applied for it</li></ul>
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