

Guidance For Staff

Access to Health Records Requests

The following guidance has been issued to assist in dealing with requests for health records in relation to both living and deceased patients. For more information please refer to the Access to Health Records Policy.

Living Patients

Legislation	Data Protection Act 1998
Who can make a request?	Usually the patient will make the request, but it could come from their representative (representatives must have written authority from the patient giving their consent)
How should the request be made?	All requests must be made in writing , this includes emails.
Fees	<ul style="list-style-type: none"> • The maximum fee for copies of records is £50, however for computerised records the maximum fee is £10 • For access to view records the maximum fee is £10 • No VAT should be charged
Timescales	<p>Once the Trust has the relevant information and fee, the request should be processed promptly and within 21 days where the record has been added to in the last 40 days, and within 40 days otherwise.</p> <p>Invoices should be sent to request payment within a reasonable period, ideally 1 -2 weeks</p>
When should information not be released?	<ul style="list-style-type: none"> • If the information released may cause serious harm to the physical or mental health condition of the patient or any other person. • Access would disclose information relating to a third party who has not consented to that disclosure (not including the health professionals involved in the patients care)
Patients living abroad	Have the same rights under DPA to request their records.
Parental access to their child's records	<ul style="list-style-type: none"> • Normally a person with parental responsibility will have the right to apply for access to their child's health record. • The law regards young people aged 16 or 17 to be adults in respect of their rights to confidentiality. • 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.
Disclosure of	If a patient is unable to authorise the release of their record due to a lack of

<p>information about those without capacity to consent</p>	<p>mental capacity then a person who has been legally appointed to act on the patient's behalf has the right to apply for access to the health record of the patient. They must be able to provide evidence that they hold a lasting power of attorney which allows the person to make decisions regarding finances, property and welfare</p>
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Deceased Patients

<p>Legislation</p>	<p>Access to Health Records Act 1990</p>
<p>Who can make a request?</p>	<p>The executor or administrator of the deceased person's estate or any person who may have a claim arising out of the patient's death. It is important to note that a next of kin does not have an automatic right to copies of the records.</p>
<p>How should the request be made?</p>	<p>All requests must be made in writing, this includes emails.</p>
<p>Fees</p>	<ul style="list-style-type: none"> • For computerised records the maximum fee is £10 • If an applicant wishes to obtain a copy of the record, they may be charged a fee. There is no limit on this charge, but it should not result in a profit for the record holder. • For access to view records the maximum fee is £10 • No VAT should be charged
<p>Timescales</p>	<p>Once the Trust has the relevant information and fee, the request should be processed promptly and within 21 days where the record has been added to in the last 40 days, and within 40 days otherwise. Invoices should be sent to request payment within a reasonable period, ideally 1 -2 weeks. It is important to note that you should not release any information prior to 1991, unless something is specific is relevant to the request.</p>
<p>When should information not be released?</p>	<ul style="list-style-type: none"> • If the deceased 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 should remain so unless there is an overriding public interest in disclosing. • If disclosure would cause serious harm to the physical or mental health of any other person • If disclosure would identify a third party, who has not consented to the release of that information (not including the health professionals involved in the patients care)

Access to Health Records – Guide

Category of Request	Justification	Consent Required	Fee Chargeable	From	Authority to release	Releasable Information
Subject Access Request	Statutory Basis - Data Protection Act 1998	Yes	Yes – Defined by Act	Subject or Representative i.e. Solicitor	Checked by appropriate health professional	No 3 rd party No information likely to cause physical or mental harm Release as requested
Deceased Record	Statutory Basis - Access to Health Records Act 1990	N/A	Yes – Defined by Act	Patient representative or person with a claim arising from the patient's death	Checked by appropriate health professional	No 3 rd party No information likely to cause physical or mental harm No information prior to 1991 & only relevant material
Court Order	Statutory Basis	No	No	Court or representative	Not required	All
Third party org Public – e.g. Department of Work and Pensions	Statutory Basis	Yes	Yes/No	3 rd Party	Individuals consent	All relevant
Third party org Private – e.g. Insurance claim	Claim	Yes	Yes – No limit	3 rd Party	Individuals consent	All relevant
Health care – Transfer between health professionals (NHS)	Continuity of care	Yes	No	Health care provider	Individuals consent	All relevant
Health care – Transfer between health professionals (Private)	Continuity of care	Yes	Yes – No limit	Health care provider	Individuals consent	All relevant

Police (or other recognised investigation authority)	Prevention and Detection of Crime	Yes	No	Agency	Individuals consent	All relevant
Police (or other recognised investigation authority)	Prevention and Detection of Crime – Section 29 request	No	No	Agency	Data Protection Act Section 29	All relevant

Notes:

- Deceased Records – Example of claim:
 1. Challenging the Will – Solicitors letter
 2. Legal Claim against Trust – Solicitors letter
 3. Compliant against Trust – Trust complaints department (not always applicable)
 4. Accident – Solicitor or Insurance company letter
 5. Genetic problem – Doctor / Solicitor letter

- Executor may give permission for another person to have a copy of the record e.g. family member – letter