

## SUBJECT ACCESS REQUEST POLICY

### Introduction

This policy provides the Practice with a process for the management of requests for personal information (for living individuals) under the Data Protection Act (DPA), the General Data Protection Regulations (GDPR) and (for deceased individuals) the Access to Health Records Act 1990.

It defines a process for achieving legislative requirements and ensuring effective and consistent management of such requests.

The policy ensures that all staff are aware of how a subject access request should be made and to respond quickly.

Under the Data Protection Act, subject to certain conditions, an individual is entitled to be:

- Told whether any personal data is being processed;
- Given a description of the personal data, the reasons it is being processed, and whether it will be given to any other organisations or people; and
- Given a copy of the information comprising the data; and given details of the source of the data (where this is available).

The Data Protection Act extends equally to all relevant records relating to living individuals, including records held in the private health sector and health professionals' private practice records.

Personal data held by the Practice may be:-

- Personnel/Staff records relating to a member of staff, present, past or prospective, whether permanent, temporary or volunteer
- Health records consisting of information about the physical or mental health of an identifiable individual made by, or on behalf of, a health professional in connection with the care of that individual.

Access encompasses the following rights:-

- To obtain a copy of the record in permanent form
- To have information provided in an intelligible format (and explained where necessary)

The Data Protection Act also gives subjects who now reside outside the UK the right to apply for access to their former UK health and employment records:

- Employees are legally entitled to request their personal records and may take them outside of the UK at their own discretion.
-

- Original health records should not be given to people to keep/take outside the UK. A GP or community health professional may be prepared to provide the patient with a summary of treatment; alternatively the patient may make a request for access in the usual way.

Organisations must have procedures in place to ensure that individual's rights of access are met within a timely and appropriate fashion.

Individual's rights regarding the sharing of their personal information are supported by the Care Record Guarantees, which set out high-level commitments for protecting and safeguarding service user information, particularly in regard to individuals' rights of access to their own information, how information will be shared (both within and outside of the organisation) and how decisions on sharing information will be made.

In the response to the Caldicott2 Report, the Department of Health confirmed that service users should have access to information about themselves even if it was obtained through new or non-traditional approaches (for example, virtual consultations) to delivering health and care services.

The BMA Confidentiality and Health Records Toolkit helps identify the key factors to take into consideration when making a decision around confidentiality and disclosure of health records.

## **Scope**

This policy applies to any request by a patient or member of staff for access to their personal information held by the Practice.

This policy applies to all staff (employees, governing body members, contractors) of the Practice.

## **Who can make an Access Request?**

An application for access to personal data may be made to the Practice by any of the following:-

- an individual
- a person authorised by the individual in writing to make the application on an individual's behalf e.g. solicitor, family member, carer
- a person having parental responsibility for the individual where he/she is a child.
- a person appointed by a court to manage the affairs of an individual who is deemed incompetent
- individuals who hold a health and welfare Lasting Power of Attorney
- where the individual has died, the personal representative and any person who may have a claim arising out of the individual's death (the executor of the deceased's will; someone who has been appointed as an Administrator of the Estate by the Courts; someone who has the written consent of either of the above to be given access, someone who is in the process of challenging the deceased's will)

The Police may, on occasion, request access to personal data of individuals. Whilst there is an exemption in the Data Protection Act which permits the Practice to disclose information to support the prevention and detection of crime, the Police have no automatic right to access; however they can obtain a Court Order.

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 a child and his property'. Although not defined specifically, responsibilities would include safeguarding and promoting a child's health, development and welfare, including if relevant their employment records. Included in the parental rights which would fulfil 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.

Foster parents are not ordinarily awarded parental responsibility for a child. It is more likely that this responsibility rests with the child's social worker and appropriate evidence of identity should be sought in the usual way.

The law regards young people aged 16 or 17 to be adults for the purposes of consent to employment or treatment and the right to confidentiality. Therefore, if a 16 year old wishes HR or a medical practitioner to keep their information confidential then that wish must be respected.

In some certain cases, 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.

Where a child is considered capable of making decisions, e.g. about his/her employment or medical treatment, the consent of the child must be sought before a person with parental responsibility may be given access. Where, in the view of the appropriate professional, the child is not capable of understanding the nature of the application, the holder of the record is entitled to deny access if it is not felt to be in the patient's best interests.

The identity and consent of the applicant must always be established.

The applicant does not have to give a reason for applying for access.

The Practice is a Data Controller and can only provide information held by the organisation. Data controllers in their own right must be applied to directly, the Practice will not transfer requests from one organisation to another.

## Application

Individuals wishing to exercise their right of access should:

- Make a written application to the Practice holding the records, including via email
- Provide such further information as the Practice may require to sufficiently identify the individual

An individual may also raise a request using the form, however this is not mandatory.

The Practice as “data controller” is responsible for ascertaining the purpose of the request and the manner in which the information is supplied.

## Fees and Response Time

Under GDPR the Practice must provide information free of charge. However, we can charge a “reasonable fee” when a request is manifestly unfounded or excessive, particularly if it is repetitive.

The fee must be based on the administrative cost of providing the information only.

The request should be initially passed to the Data Protection Officer who will manage Subject Access Request.

The request must be complied with without delay and at least within **one calendar month** of receipt of the request. This period can be extended for a further two months where requests are complex or numerous, however the Practice must inform the individual within one month of receipt of the request and explain why the extension is necessary.

The identity of an individual who provided/recorded information should not be disclosed, nor should the identity of any other person/s referred to in the record(s) of the individual requesting access, unless explicit consent has been given.

## The Release Stage

The format of the released information must comply with the requester’s wishes. Where no specific format is requested, the Practice should provide the information in the same manner as the original request. For example, requests received via email can be satisfied via email.

The release of a health record is subject to consultation with either:-

- The health professional who is currently, or was most recently, responsible for the clinical care of the data subject in connection with the information which is the subject of the request
- Where there is more than one such health professional, the health professional who is the most suitable to advise on the information which is the subject of the request

Once the records have been collated, redacted where applicable and signed off by the Caldicott Lead, they should be sent to the requester. On no account must the original record be released.

In denying or restricting access, a reason for the decision does not need to be given but the applicant should be directed through the appropriate complaint channels.

Where information is not readily intelligible, an explanation (e.g. of abbreviations or terminology) must be given.

If it is agreed that the subject or their representative may directly inspect the record, a health professional or HR administrator must supervise the access. If supervised by an administrator, this person must not comment or advise on the content of the record and if the applicant raises enquiries, an appointment with a health professional must be offered

## **Exemptions**

Access may be denied or restricted where:

- The record contains information which relates to or identifies a third party that is not a care professional and has not consented to the disclosure. If possible, the individual should be provided with access to that part of the record which does not contain the third party information
- Access to all or part of the record will prejudice the carrying out of social work by reason of the fact that serious harm to the physical or mental well-being of the individual or any other person is likely. If possible the individual should be provided with access to that part of the record that does not pose the risk of serious harm
- Access to all or part of the record will seriously harm the physical or mental well-being of the individual or any other person. If possible the individual should be provided with access to that part of the record that does not pose the risk of serious harm
- If an assessment identifies that to comply with a SAR would involve disproportionate effort under section 8(2)(a) of the Data Protection Act.

There is no requirement to disclose to the applicant the fact that certain information may have been withheld.

In addition, Article 23 of the GDPR enables Member States, such as the United Kingdom to introduce further exemptions from the GDPR's transparency obligations and individual rights. The Data Protection Officer can provide further information regarding exemptions applicable at the time of receipt of the subject access request.

## **Complaints and Appeals**

The applicant has the right to appeal against the decision of the Practice to refuse access to their information. This appeal should be made to the Practice Manager

If an applicant is unhappy with the outcome of their access request, the following complaint channels should be offered:

Merton Lodge Surgery

- meet with the applicant to resolve the complaint locally
- Advise a patient to make a complaint through the complaint's process
- Advise a member of staff to consult with their trade union representative

If individuals remain unhappy with the Practice response, they have the right to appeal to the Information Commissioner's Office:

[https://www.ico.org.uk/Global/contact\\_us](https://www.ico.org.uk/Global/contact_us).

Information Commissioner's Office

Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF  
Telephone: 0303 123 1113

Email: [casework@ico.gsi.gov.uk](mailto:casework@ico.gsi.gov.uk)

## **Roles and Responsibilities**

The Caldicott Lead has executive responsibility for Subject Access Requests.

The Data Protection Officer has operational responsibility for Subject Access Requests.

All staff must be aware of how to recognise and manage a subject access request. Training will be provided to staff likely to be in receipt of requests covering:-

- Required format of a subject access request
- Correct identification of the requesting individual
- Location of personal information
- Timescales for compliance
- Provision of information in an intelligible format
- Action to be taken if the information includes third party data or if it has been determined that access will seriously harm an individual (see exemptions)

## **Monitoring and Review**

The Practice Manager monitors all Subject Access Requests to ensure the correct process has been followed and monitors any appeals/complaints relating to Subject Access Requests.

## **Equality Impact**

In applying this policy, the organisation will have due regard for the need to eliminate unlawful discrimination, promote equality of opportunity, and provide for good relations between people of diverse groups, in particular on the grounds of the following characteristics protected by the Equality Act (2010); age, disability, gender, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, and sexual orientation, in addition to offending background, trade union membership, or any other personal characteristic.

This guidance sheet is based on the revised Information Commissioner Subject Access Code of Practice that was issued in July 2017:

<https://ico.org.uk/media/for-organisations/documents/2014223/subject-access-code-of-practice.pdf>

## 1. What is disproportionate effort?

- The 'disproportionate effort' exception is in section 8(2) of the DPA. The Court of Appeal has provided clarification as to its application in its 2017 judgments in the cases of Dawson–Damer<sup>1</sup> and Ittihadieh/Deer and Oxford University<sup>2</sup>
- The DPA does not define 'disproportionate effort', but the court has explained that there is scope for assessing whether, in the circumstances of a particular case, complying with a request by supplying a copy of the requested information in permanent form would result in so much work or expense as to outweigh the requester's right of access to their personal data
- The court also made it clear that in assessing whether complying with a SAR would involve disproportionate effort under section 8(2)(a) you may take into account difficulties which occur throughout the process of complying with the request, including any difficulties you encounter in finding the requested information
- This approach accords with the concept of proportionality in EU law, on which the DPA is based. When responding to SARs, the Information Commissioner expects you to evaluate the particular circumstances of each request, balancing any difficulties involved in complying with the request against the benefits the information might bring to the data subject, whilst bearing in mind the fundamental nature of the right of subject access

## 2. How is this applied in practice?

- In order to apply the exception, the burden of proof is on you as data controller to show that you have taken all reasonable steps to comply with the SAR, and that it would be disproportionate in all the circumstances of the case for you to take further steps
- The Information Commissioner considers it good practice for you to engage with the applicant, having an open conversation about the information they require. This might help you to reduce the costs and effort that you would otherwise incur in searching for the information
- If the Information Commissioner receives a complaint about your handling of a subject access request, they may take into account your readiness to engage with the applicant and balance this against the benefit and importance of the information to them, as well as taking into account their level of co-operation with you in the course of the handling of a request
-



- Even if you can show that supplying a copy of information in permanent form would involve disproportionate effort, you must still try to comply with the request in some other way, if the applicant agrees. This could form a useful part of your discussions with the applicant, in order to identify an alternative way of satisfying their request
- In addition, even if you do not have to supply a copy of the information in permanent form, the requester still has the right:
  - to be informed whether you are processing their personal data; and
  - if so, to be given a description of:
    - the personal data in question; o the purpose of the processing; and o the recipients or classes of recipients; and
    - to be given information about the source of the personal data.

### **3. Example**

- An organisation has decided that to supply copies of an individual's records in permanent form would involve disproportionate effort
- Rather than refuse the individual access, they speak to her and agree that it would be preferable if she visited their premises and viewed the original documents. They also agree that if there are documents she would like to take away with her, they can arrange to provide copies

### **4. Key things to remember**

- Where the disproportionate effort argument is used this is NOT a reason for not seeking to respond to a request
- This is about recognizing the difficulties that an organisation at times may have in finding information and providing a constructive approach that recognizes this
- The applicant still has the right of appeal and an organisation MUST be able to demonstrate the structured approach that it has taken if the disproportionate effort argument is used