Access to Medical Records Policy

(Subject Access Request)

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| Next Revision Due: | June 2023 or earlier to reflect new national guidance |
| Developed by: | Paul Couldrey – IG Consultant/Coralie Lightfoot/Belinda Hamer |
| Policy Sponsor: | Practice Manager |
| Target Audience: | All currently registered patients at the practice.  This policy applies to any person directly employed, contracted, working on behalf of the Practice or volunteering with the Practice. |
| Associated Documents: | All Information Governance Policies and Data Security and Protection Toolkit |
| Reviewed and Updated: | Created Feb 2019  March 2020  June 2021 CL revision |

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**This leaflet explains:**

* Your right to see your health records
* How to request to view the information we hold about you
* Our commitment to assisting you with your request

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1. **Rights of Access Regulation**

Under the GDPR/DPA 2018, individuals will have the right to obtain:

* confirmation that their data is being processed
* access to their personal data (and only theirs)
* other supplementary information – this largely corresponds to the information that should be provided in our privacy notice and[GDPR (Article 15)](https://gdpr-info.eu/art-15-gdpr/)

The GDPR/DPA 2018 clarifies that the reason for allowing individuals to access their personal data is so they are aware of and can verify the lawfulness of the processing [(Recital 63),](https://www.privacy-regulation.eu/en/recital-63-GDPR.htm) and understand how and why the practice is using their data.

[https://ico.org.uk/for-organisations/guide-to-the-general-data-protection-](https://ico.org.uk/for-organisations/guide-to-the-general-data-protection-regulation-gdpr/individual-rights/right-of-access/) [regulation-gdpr/individual-rights/right-of-access/](https://ico.org.uk/for-organisations/guide-to-the-general-data-protection-regulation-gdpr/individual-rights/right-of-access/)

An application for access to health records may be made in any of the circumstances explained below.

1. **Access to Records**

2.1 Church Lane Surgery (hereby referred to as “we” or “the Practice”) has a policy of openness regarding health records and health professionals are encouraged to allow patients to access their health records on an informal basis.

A request for access to health records in accordance with the GDPR/DPA 2018 can be made in writing, to the data controller, i.e. the Practice. A simple form is available (and is appended to this policy).

A request for access to health records in accordance with the GDPR/DPA 2018 can also be made as a verbal request.

This can be can be made face-to-face or by telephone, and a written record of such a request will be documented. That written request should then be passed onto the data quality team.

A request does not have to include the phrase “subject access request” or “Article 15 of the GDPR” or “data protection” or “right of access”

The requester should provide enough proof to satisfy the Practice of their identity and the Practice is entitled to verify their identity using reasonable means. The Practice must only request information that is necessary to confirm who they are.

The default assumption when a requestor asks for “a copy of their GP

record” is that the information requested by the individual is the entire GP record. However, the Practice may check with the applicant whether all or just some of the information contained in the health record is required before processing the request. The GDPR/DPA 2018 permits the Practice to ask the individual to specify the information the request relates to ([Recital 63](https://www.privacy-regulation.eu/en/recital-63-GDPR.htm)) where the Practice is processing a large amount of information about the individual. As a result, the information disclosed can be less than the entire GP record by mutual agreement (the individual must agree so voluntarily and freely). This is also known as a “targeted” subject access request.

A patient, or their representative, is under no obligation to provide a reason for the request, even if asked by the Practice.

2.2 Secure Online Records Access

The Practice can offer a requestor to be enabled to securely access their full GP electronic record online, if appropriate. This would then allow them to access all information that they might be seeking.

[Recital 63](https://www.privacy-regulation.eu/en/recital-63-GDPR.htm) of the GDPR states:

[*“Where possible, the controller should be able to provide remote access to a secure system which would provide the data subject with direct access to his or her personal data.”*](https://www.privacy-regulation.eu/en/recital-63-GDPR.htm)

2.3 Patients living abroad

For former patients living outside of the UK and whom once had treatment for their stay here, under GDPR/DPA 2018 still have the same rights to apply for access to their UK health records. Such a request should be dealt with as someone making an access request from within the UK.

2.4 Patient Representatives

A patient can give written authorisation for a person (for example a solicitor or relative) to make an application on their behalf.

The Practice must be satisfied that the third party making the request is entitled to act on behalf of the individual, but it is the third party’s responsibility to provide evidence of this entitlement. This might be a written authority to make the request, or it might be a power of attorney (LPA for Health and Welfare) in the case of an individual who no longer has the mental capacity to manage their own health.

The Practice is entitled to supply the information requested directly to the patient if we think that the patient may not understand what information would be disclosed to a third party who has made a request on their behalf.

2.5 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 GP 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.

2.6 Next of kin

Despite the widespread use of the phrase ‘next of kin’ this is not defined, nor does it have formal legal status. A next of kin cannot give or withhold their consent to the sharing of information on a patient’s behalf. A next of kin has no rights of access to medical records.

2.7 Children

No matter their age, it is the child who has the right of access to their information.

Before responding to a subject access request for information held about a child, it should be considered whether the child is mature enough to understand their rights. If we are confident that the child can understand their rights, then we would usually respond directly to the child. We may, however, allow the parent to exercise the child’s rights on their behalf if the child authorises this, or if it is evident that this is in the best interests of the child.

What matters is that the child is able to understand (in broad terms) what it means to make a subject access request and how to interpret the information they receive as a result of doing so.

When considering borderline cases, The Practice will take into account, among other things:

* the child’s level of maturity and their ability to make decisions like this
* the nature of the personal data
* any court orders relating to parental access or responsibility that may apply
* any duty of confidence owed to the child or young person
* any consequences of allowing those with parental responsibility access to the child’s or young person’s information. This is particularly important if there have been allegations of abuse or ill treatment
* any detriment to the child or young person if individuals with parental responsibility cannot access this information
* any views the child or young person has on whether their parents should have access to information about them.

A person with parental responsibility can be

* the birth mother
* the birth father (if married to the mother at the time of child’s birth or subsequently)
* an individual given parental responsibility by a court

(This is not an exhaustive list but contains the most common circumstances).

If the appropriate health professional considers that a child patient is Gillick competent (i.e. has sufficient maturity and understanding to make decisions about disclosure of their records) then the child should be asked for his or her consent before disclosure is given to someone with parental responsibility.

If the child is not Gillick competent and there is more than one person with parental responsibility, each may independently exercise their right of access. Technically, if a child lives with, for example, their mother and the father applies for access to the child’s records, there is no “obligation” to inform the mother. In practical terms, however, this may not be possible and both parents should be made aware of access requests unless there is a good reason not to do so.

In all circumstances good practice dictates that a Gillick competent child should be encouraged to involve parents or other legal guardians in any treatment/disclosure decisions.

1. **Notification of requests**

The Practice will keep a record of all requests on the clinical system in order to ensure that requests are cross-referenced with any complaints or incidents and that the deadlines for response are monitored and adhered to.

1. **Fees**

The Practice must provide a copy of the information free of charge.

However, the practice may charge a reasonable fee to comply with requests for further copies of the same information. The fee must be based on the administrative cost of providing the information.

4.1 Manifestly unfounded or excessive requests

Where requests are manifestly unfounded or excessive, in particular because they are repetitive, the Practice can:

* charge a reasonable fee taking into account the administrative costs of providing the information; or
* refuse to respond

Where the Practice refuses to respond to a request, the Practice must explain why to the individual, informing them of their right to complain to the supervisory authority and to a judicial remedy without undue delay, and at the latest within one month.

1. **Requirement to consult an appropriate health professional**

It is the GP’s responsibility to consider an access request and to disclose the records if the correct procedure has been followed. Before the Practice discloses or provides copies of medical records the patient’s GP must have been consulted and he / she checked the records and authorised the release, or part-release.

It is the responsibility of the GP to ensure that the information to be released:

* Does not disclose anything that identifies any other data subject. The only exception to this is the identity of people involved in the care of the individual requestor, such as community staff or hospital specialists
* Does not disclose anything that is likely to result in harm to the data subject or anyone else
* Does not disclose anything subject to a court order or that is privileged or subject to fertilisation or adoption legislation

1. **Grounds for refusing disclosure to health records**

The GP wil refuse to disclose all or part of the health record if he / she is of the view that:

* disclosure would be likely to cause serious harm to the physical or mental health of the patient or any other person; or
* the records refer to another individual who can be identified from that information (apart from a health professional). This is unless
* that other individual’s consent is obtained, or
* the records can be anonymised, or
* it is reasonable in all the circumstances to comply with the request without that individual’s consent, taking into account any duty of confidentiality owed to the third party
* the request is being made for a child’s records by someone with parental responsibility or for an incapacitated person’s record by someone with power to manage their affairs, and:
* the information was given by the patient in the expectation that it would not be disclosed to the person making the request; or
* the patient has expressly indicated it should not be disclosed to that person

For the avoidance of doubt, we cannot refuse to provide access to personal data about an individual simply because we obtained that data from a third party.

The rules about third party data apply only to personal data which includes both information about the individual who is the subject of the request and information about someone else.

1. **Refusing Access to Medical Records**

7.1 Access to Medical Records Act.

The Practice will not provide information under a Subject Access Request made on behalf of a patient by a solicitor, insurance agency or employer, and where it is clear that such a request should be made under the Access to Medical Records Act. This would refer to reports for employment (proposed or actual) and insurance purposes (any “insurance contract” so covering accident claims, insured negligence, or anything covered by an insurance contract that requires a medical report to support an actual or potential insured claim).

If necessary, or unsure, the Practice will seek clarification from both the requestor and the patient concerned.

7.2 Informing of the decision not to disclose

If a decision is taken that the record should not be disclosed, a letter must be sent by recorded delivery to the patient or their representative stating that disclosure would be likely to cause serious harm to the physical or mental health of the patient, or to any other person. The general position is that the Practice should inform the patient if records are to be withheld on the above basis.

If however, the appropriate health professional thinks that telling the patient:

* will effectively amount to divulging that information; or
* is likely to cause serious physical or mental harm to the patient or another individual

then the GP could decide not to inform the patient, in which case an explanatory note should be made in the file.

7.3 Appeal

The decision to refuse can only be taken by the GP and an explanatory note should be made in the file. Although there is no right of appeal to such a decision, it is the Practice’s policy to give a patient the opportunity to have their case investigated by invoking the complaints procedure. The patient must be informed in writing that every assistance will be offered to them if they wish to do this. In addition, the patient may complain to the Information Commissioner for an independent ruling on whether non-disclosure is proper, and they have the ability to seek to enforce this right through a judicial remedy.

1. **Disclosure of the record**

8.1 Information must be provided without delay and at the latest 1calendar month. This is calculated from the day after the request is received (which will be day 1)

The period for responding to the request begins at receipt of the request, or:

* When the Practice receives any additional information required to confirm the identity of the requestor
* When the Practice receives any additional information requested (and required) to clarify the request

8.2 If a request is made verbally, for example within a GP consultation, then their GP can – if appropriate and possible within the consultation – provide the requested information immediately and provided it has been checked for third party data and redacted where appropriate.

8.3 The Practice will be able to extend the period of compliance by a further two months where requests are complex or numerous. If this is the case, the Practice must inform the individual within one month of the receipt of the request and explain why the extension is necessary.

8.4 Once the appropriate documentation has been received and disclosure approved, the copy of the health record may be sent to, or given to, the patient or their representative.

There should be no circumstances in which it would not be possible to supply permanent copies of health records.

It is the Practice preference for the information requested to be handed directly to the patient, when verifiable identification must be confirmed at the time of collection.

Confidential information should not be sent by email unless:

* the email address of the recipient is absolutely verified, and
* the information is sent securely in line with the Practice Email and SMS Messaging policy stipulations (unless the patient clearly expresses a preference to receive unencrypted information in this way)

It should be assumed that if an individual makes a request electronically (i.e. by email), the Practice should provide that information in a commonly used electronic format (e.g. as .pdf or .doc) and provide it to the requestor by email.

Records will only be sent by post in exceptional circumstances, where it is not possible for the requestor to collect in person with their verifying identification.

If sent by post:

* the record should be sent to a named individual
* by recorded delivery
* marked “private and confidential”
* “for addressee only”
* and the Practice details should be written on the reverse of the envelope.

**The Practice is under no obligation to provide records on USB sticks or CD/DVD ROMS.**

# Appendix A

**Church Lane Surgery**

**Subject Access Request Application Form**

Although we will accept a verbal request for access to your medical records, it would help, for our records, if this form were completed. Reception staff will be happy to complete on your behalf.

|  |  |
| --- | --- |
| **Patient Name** |  |
| **Date of Birth** |  |
| **NHS Number** |  |
| **Address** |  |
| **Email address** |  |

**Record Requested (please select one option)**

|  |  |
| --- | --- |
| Full record (computerised and paper notes) |  |
| Computerised record only |  |
| Record for these specific dates: |  |
| Record for these specific conditions: |  |
| Record for these specific events: |  |

|  |  |
| --- | --- |
| **Date request made** |  |

We aim to comply with the above request within one calendar month. If there is any reason why this may be delayed, we will inform you and provide an estimated time scale.

***Practice use only: Complete SAR template in patient record. Please put completed form in scanning tray***