

# Subject Access Request Policy

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<b>Ratified By</b>	Quality and Safety Committee
<b>Ratified Date</b>	
<b>Review Date</b>	January 2016
<b>Version</b>	1.0
<b>New Policy Consultation Period</b>	21.01.2015 – 20.02.2015

Related Policies & Guidelines:

- Information Governance Policy
- Complaints Policy

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## Amendment History

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Version	Status	Date	Reason for Change	Authorised
1.0		January 2015	Initial policy for consultation	

## **1. Policy Statement**

Central London Healthcare (CLH) regards the Data Protection Act 1998 as an important mechanism in achieving an honest and safe relationship with its patients and employees.

The Data Protection Act 1998 came into force on 1st March 2000. The Act entitles an individual, with certain exceptions, to a copy of both manual data recorded in a relevant filing system and computer data relating to them that is held by a third party together with information as to why it is being processed and the sources and destination of the data. There is no time restriction as to when the record was created. A request for such information under the Act is known as a Data Subject Access Request.

Where individuals are applying for access to a deceased person records the Access to Health Records Act 1990 applies.

## **2. Key Principles**

The Access to Health Records Act 1990, formerly gave individuals a right of access to manual health records – i.e. to the sort of non-automated records that the Data Protection Act 1984 did not apply to. However, the Access to Health Records Act 1990 has now been repealed except for the sections dealing with requests for access to records relating to the deceased.

Requests for access to records relating to the deceased will continue to be made under the Access to Health Records Act 1990. However, requests for access to health records relating to living individuals, whether the records are manual or automated will now fall within the scope of the Data Protection Act 1998's subject access provisions and must be dealt with in the manner stipulated in the Act.

This policy relates to all records containing personal information held by CLH recorded in manual filing systems that form part of a relevant filing system or in computerised form.

## **3. Definitions**

### **3.1 Personal Data**

The provisions of the Data Protection Act 1998 apply only to personal data. The term 'personal data' is defined, in section 1(1) as data, which relate to a living individual who can be identified –

- from those data, or
- from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller,

and includes any expression of opinion about the individual and any indication of the intentions of the data controller or any other person in respect of the individual.

### **3.2 Data Controller**

A 'data controller' is a person who (either alone or jointly or in common with other persons) determines the purposes for which and the manner in which any personal data are, or are to be, processed.

### **3.3 Data Subject**

A 'data subject' means an individual who is the subject of personal data and must be a living individual. Organisations, such as companies and other corporate and unincorporated bodies of persons cannot, therefore, be data subjects.

The 'data subject' need not be a United Kingdom national or resident. Provided that the data controller is subject to the Act, rights with regards to personal data are available to every data subject, wherever his nationality or residence.

### **3.4 Relevant Filing System**

A 'relevant filing system' is defined in section 1(1) of the Act as: Any set of information relating to individuals to the extent that, although the information is not processed by means of equipment operating automatically in response to instructions given for that purpose, the set is structured, either by reference to individuals or by reference to criteria relating to individuals, in such a way that specific information relating to a particular individual is readily accessible.

### **3.5 Health Record**

A 'health record' is defined in the Act as being any record which consists of information relating to the physical or mental health 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 within the fee structure.

It is clear, therefore, that many of the records held by NHS Trusts, surgeries and other health care institutions will constitute 'health records' and will therefore fall within the scope of the Acts Subject Access provisions.

### **3.6 Health Professional**

A health professional is defined in the act as:

- a registered medical practitioner;
- a registered dentist as defined by section 53(1) of the Dentists Act 1984;
- a registered optician as defined by section 36(1) of the Opticians Act 1989;
- a registered pharmaceutical chemist as defined by section 24(1) of the Pharmacy Act 1954 or a registered person as defined by Article 2(2) of the Pharmacy (northern Ireland) Order 1976;

- a registered nurse, midwife or health visitor;
- a registered osteopath as defined by section 41 of the Osteopaths Act 1993;
- a registered chiropractor as defined by section 43 of the Chiropractors Act 1994;
- any person who is registered as a member of a profession to which the Professions Supplementary to Medicine Act 1960 for the time being extends;
- a clinical psychologist, child psychotherapist or a speech therapist;
- a music therapist employed by a health service body; and
- a scientist employed by such a body as a head of a department

## **4. Rights of the Subject Access**

An application for a Data Subject Access Request may be made by:

### **4.1 The Data Subject**

A data subject is entitled to make a request in writing to see any personal data held about them under the Act.

### **4.2 On Behalf of the Data Subject**

Anyone applying for Data Subject Access on behalf of someone else must apply in writing together with written authorisation from the data subject, which must be signed by the data subjects themselves.

### **4.3 A Person with Parental Responsibility**

An individual can only request access if they have either parental responsibility or legal guardianship of the child. Parental responsibility is defined in the Children Act 1989 and updated by the Adoption & Children Act 2002. A person with parental responsibility is:

- the natural mother;
- the natural father, if married to the mother either before or after the birth, even if divorced or separated;
- the natural father, if unmarried, and he registered the birth along with the mother after December 2003;
- the natural father, if unmarried, by agreement with the mother (evidenced by a form provided by a solicitor, signed by both parents and witnessed by an Officer of the Court) or by a court order (parental responsibility order);
- the natural father, if unmarried, and appointed as the child's guardian on the death of the natural mother;
- an individual (generally a family member) with a residence order for the child (if the order is for a period of time, then parental responsibility is removed at the end of the period);
- an individual who has legally adopted the child;
- a local authority under a care order - individual acting as a Children's Guardian.

If the application for access to a child's record is made by someone having parental responsibility access shall only be given where:

- the child is capable of understanding what the application is about and has consented to it.
- the child is not capable of understanding the nature of the application and giving access would be in his/her best interests. The relevant Health Professional will decide on the child's capacity to understand the application.

If an individual is claiming parental responsibility then they must provide a copy of the necessary evidence such as a parental responsibility order or birth certificate.

#### **4.4 A Person Appointed by the Courts**

Where a patient is incapable of managing their affairs someone appointed to act on their behalf by a court of law may submit a subject access request. Proof of the court order must be given.

#### **4.5 Solicitors acting on behalf of a Client or Insurance Companies**

Where a solicitor, lawyer or other legal professional requests access on behalf of a client they are representing, the signed consent of their client must be obtained and evidenced. The request must be dealt with in the same way as if it had come direct from the Data Subject.

#### **4.6 Other Agencies**

In some circumstances the organisation may be asked to provide information to other agencies. Unless there is a legal requirement to disclose, the Data Subject will be informed and their consent obtained in writing.

#### **4.7 Appointed Representative of the Deceased**

Health records relating to deceased patients will be treated with the same level of confidentiality as those relating to living people. Under the Access to Health Records Act 1990 a request to see a deceased patient's health record or to have a copy thereof can be made by the patient's personal representative or any person who may have a claim arising out of the patient's death.

The personal representative (executor or next of kin – who may be a relative, friend or solicitor) or anyone having a claim resulting from the death has the right to apply for access to the relevant part(s) of the deceased's health record under the 'Access to Health Records Act 1990'. Where the requestor is not acting in a legal capacity, they should detail why they need access in pursuing a claim. Where they are the executor or administrator they must provide proof of appointment under the Will/Grant of probate.

## **5. Roles and Responsibilities**

### **5.1 Medical Director**

The Medical Director holds overall responsibility for Subject Access Requests throughout the organisation, but on a day-to-day basis will be delegated to the Head of Performance and Information.

### **5.2 Health Professionals**

Health Professionals must ensure they are

- aware of this policy, and
- know where to direct enquires regarding Subject Access Requests

### **5.3 Head of Performance and Information**

The Head of Performance and Information is responsible for;

- the co-ordination of data subject access requests, ensuring requests are responded to correctly in accordance with statutory requirements
- record all applications received, obtain the relevant records and co-ordinate completion while liaising with the applicant and appropriate staff
- act as a reference point for procedure and complaints as detailed in this policy
- be responsible for identifying where additional personal information may be held within CLH that may assist in the request that may not be recorded in the individuals Health Record or held electronically.

### **5.4 Information Governance Lead (Head of Performance and Information)**

The Information Governance Lead is responsible for:

- ensuring CLH deals with Subject Access Requests in the manner stipulated in the Act
- reviewing this policy annually or whenever necessary in line with changes to associated legislation
- Monitoring performance in meeting the statutory timeframes

### **5.5 Employees**

All employees must understand their duty of care to ensure the confidentiality of all personal data. In addition they must have an understanding of this policy and where to direct individuals enquiring about subject access requests.

## **6. Guidelines on the Procedure**

### **6.1 Written Applications**

Applications must be made in writing to the address detailed below. Applications by fax and e-mail will only be acceptable with an electronic signature either from the data subject themselves or from someone who has the right of access to that record or has the data subject's written permission.



Central London Healthcare CIC  
1b Harewood Row  
London  
NW1 6SE

## **6.2 Verbal Applications**

Verbal applications can be dealt with locally in clinics and is down to the discretion of the health professional that created the record or specific patient episode. Any information disclosed must be recorded in the patient health record.

A verbal application is not a subject access request under the Act. If the data subject has any discrepancies about the information disclosed, that cannot be resolved with the health professional that created the record, then a formal application must be made by them in writing.

## **6.3 Determine Validity of Applications**

All applicants must provide proof of identity (driving license, passport or birth certificate), and proof of address (utility bill or bank statement).

## **6.4 Administration Fees**

Applications can be divided into two groups – applications from solicitors or insurance companies on behalf of clients and applications direct from patients or other data subjects. In all cases the fee to be charged must be assessed by the Head of Performance and Information and applicants advised.

Where the applicant is a solicitor or insurance company the relevant fee will be charged and an invoice raised with the Finance Department who will subsequently be responsible for collecting the fee.

Where the applicant is the data subject or a private individual acting on behalf of the data subject the fee will be quoted and requested prior to the information being provided. The organisation's Finance Officer will deal with all funds so received. A standard fee that is set by law of £10 will be charged for access to any personal information held in manual health records or computer records

No fee will be charged to view a record where at least part of that record was made or added to within 40 days of the date of receipt of a subject access request.

## **6.5 Exemptions**

There are a considerable number of exemptions from the right of subject access. The main exemptions relating to Health include:

- data relating to the physical or mental health or condition of the data subject to the extent to which the application would be likely to cause serious harm to the physical or mental health or condition of the data subject or any other persons. (To be assessed by the senior health professional involved)

- data recorded in the file supplied by a third party, who is not a health professional involved in the treatment or care given to the data subject, i.e. the data subject's family or friends and from whom no specific consent for disclosure is held.
- data processed for any crime and taxation purposes where the provision of this information would be likely to prejudice any of the crime and taxation purposes.
- data processed for the purposes of national security.
- data processed for the purposes of research, historic record or statistical purposes that will not cause distress to any data subject or is anonymised.
- the health record of a deceased person where the patient's express wish not to disclose is recorded or the information is not relevant to any claim arising from the patient's death.
- In the case of a child – see section 4.3
- Where the consultant in charge considers that the patient authorising access to another individual has not understood the meaning of the authorisation.

## 6.6 Timetable for Access

For living individuals, the Data Protection Act 1998 superseded the Access to Health Records Act 1990. The Access to Health Records Act 1990 required requests to be complied with within 21 days where the record has been amended within the previous 40 days, whereas the Data Protection Act 1998 requires requests to be complied with within 40 days. Ministers gave a commitment to Parliament that the 21 day period would be retained for the NHS and extended to all requests, not just those where the record has been recently amended.

A copy of the requested information will, whenever possible, be provided to the applicant within 21 days and by no later than 40 days. However, where a fee is to be charged or the data subject has provided insufficient information to identify himself, the 40-day clock will not begin to run until the fee is paid or the relevant information is supplied.

If compliance is not possible within this period, this must be in exceptional cases only, and the applicant advised accordingly within the 40-day period.

## 6.7 Providing Information

When gathering the information necessary to provide the data subject with all relevant information the following points will be considered:

- check for and remove any third party information or obtain the necessary consent;
- check with the relevant health profession to decide whether disclosure would result in serious physical or mental harm to the data subject or any other person;
- the method of delivery will be decided with the applicant, for instance whether a meeting should take place or whether the information is copied and posted out. All information will be posted to the applicant unless requested otherwise.

## 6.8 Explanation of the Data

The data supplied to the applicant should be in an intelligible form and interpretation of technical terminology given along with abbreviations or illegibility of records. Due to time restrictions in ensuring requests for information are provided within 40 days, it will not

always be possible to check with the relevant health professional, in the case of health records, if an explanation of the data is necessary and offer this to the applicant.

If sight only of the information [rather than a copy] is requested arrangements must be made for a suitable health care professional, manager or administrator to be present to answer any possible questions as to the content of the record or to provide supervision.

## **6.9 Inaccuracies in Health Records**

Any inaccuracies in the record, to be corrected at the request of the applicant will only be made in agreement with the relevant health care professional in charge. If the health professional does not agree with the request a note recording the matters alleged to be inaccurate will be made on the record and a copy sent to the applicant.

## **6.10 Non-Disclosure of Information**

Where access is to be denied the applicant will be informed and no explanation of the decision will be given. One of the following reasons for non-closure or partial disclosure will be included in the health record.

- Disclosure may be seriously harmful to the patient's health/Access would not be in accordance with the best interests of wishes of the patient for the following reasons:
- Disclosure might identify the following third person, whose approval must be sought in advance:
- In the case of a child requesting access, the child is/is not capable of understanding the nature and purpose of the application.

The applicant can challenge the decision by using the organisation's Complaint Procedure or by obtaining assistance through the Information Commissioners Office.

## **6.11 History and Completion of Requests**

A record of the request, its current status and completion will be recorded in line with Information Governance requirements. This information will be recorded and maintained by the Head of Performance and Information. A note of what information was supplied to the applicant together with any comment will be retained on file.

## **Appendix 1 – References**

Data Protection Act 1998

<http://www.legislation.gov.uk/ukpga/1998/29/contents>

Access to Health Records Act 1990

<http://www.legislation.gov.uk/ukpga/1990/23/contents>

Children Act 1989

<http://www.legislation.gov.uk/ukpga/1989/41/contents>

Adoption & Children Act 2002

<http://www.legislation.gov.uk/ukpga/2002/38/contents>

Information Commissioner's Office

<https://ico.org.uk/>