

Standard Operating Procedure

Dealing with requests for personal information made under the Data Protection Act

Relevant to:

All staff

Purpose of SOP:

To provide guidance and advice on what to do if you receive a request made under the Data Protection act

Procedure to Follow:

The Data Protection Act gives individuals a number of rights which includes the right of access to their personal information held by the Trust. This is known as a Subject Access Request (SAR).

Requests must be made in writing and requesters are required to submit proof of ID to the Trust to ensure that we are disclosing information to the correct person.

A SAR is not a free service, however the maximum charge that can be levied for access to health records is £50. In the majority of cases the timeline for the Trust to respond is 40 calendar days from the date payment for the records is received. The Trust adopted a pre-payment approach to requests in July 2016 and this means that the process of compiling a response to a request does not commence until payment has been received. There are some exemptions to both the timeline and payment but these exemptions will be applied by the Information Governance (IG) team.

All requests must initially be passed to the IG team on met-tr.informationgovernancemedft@nhs.net

Can someone apply for records of a child or young person?

Yes, but the Trust will respect the right to privacy of a child or young person and, where appropriate, seek their consent to disclosure. Whilst the NHS considers this to be around the age of 16, the right to privacy under the Data Protection Act suggests a younger threshold and the personal right to privacy will be considered by the Trust from the age of 12.

Can someone apply for records of a deceased person?

Yes, but what can be disclosed may be extremely limited. The level of confidentiality given to a patient during their care with us extends beyond their death under the Code of Confidentiality. The Data Protection Act itself only applies to living individuals.

Can the Trust refuse to disclose a person's personal information to them?

Only in a very specific circumstance – this is where the disclosure of the information may place them (or someone else) *at significant risk of harm*. However, even in these circumstances we must confirm that we hold the information and state why we are

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withholding it. The decision to withhold the information can only be made by a qualified medical professional.

Action if you are asked to contribute to a SAR

The vast majority of requests received by the Trust are requests for patient health records by solicitors, medical insurers or the individual themselves. These cases are facilitated by the IG team. However there are a few instances where you may be asked to contribute to a SAR by someone other than a patient or their representative.

Current or former colleagues may ask for their personal information made by the Trust – this can include such areas as feedback sheets / notes from interviews, sickness information, or disciplinary meetings.

Where you are asked to provide contributions to a SAR you will be given a deadline within the 40 calendar days to allow for the IG team to review information prior to disclosure.

Can someone ask for copies of emails?

Yes, where someone is discussed by email and they are the focus of the content, emails count as their personal data.

What if emails/records have been deleted, or a person has left?

The Information Commissioner's Office sets the expectation that these are recoverable.

What if I have expressed an opinion about someone in an email?

When you express an opinion about someone this becomes their personal data. Any and all opinions about someone should be based on evidential information.

Does this mean that someone is given a copy of a document?

It can do, but where giving a direct copy may reveal personal information of a third party records may be redacted, or the personal information transposed to a new document.

What if I've given information in confidence?

The IG team will always ask your consent to disclose information given in confidence, however, the Trust must also apply a balancing test, weighing up the duty of confidence to the person who gave the information against the rights of the requester under the Data Protection Act.

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Can someone ask for a copy of a reference?

Yes, but not to the organisation that issued it. A person can however; approach the receiving organisation and make a SAR request of them and the reference copy would be disclosable.

Is there a time limit we are supposed to spend on producing records for a SAR?

Not really. Unlike the Freedom of Information Act where we are expected to spend up to 18 hours and can refuse anything over this, we are expected to provide someone with their personal information. However where someone repeatedly makes a SAR, we can refuse if we have previously disclosed it.

Implications of not following procedure

Failing to disclose personal information within the statutory timeframe could lead to:

- Complaints to the ICO
- Enforced compliance audit of the Trust by the ICO
- Fines or enforcement notices issued by the ICO against the Trust

Useful Contacts:

Information Governance Manager: Beverley Adams-Reynolds Beverley.adams-reynolds@nhs.net ext 3210

Information Governance Officer: Rachel Adams: Rachel.adams123@nhs.net

Monitoring the Process:

All requests for personal information under the DPA are monitored:

- Monthly and escalated to the Trust SIRO through the IG team scorecard
- Six monthly to the Trust Board via the SIRO report

National Definitions:

See the Trust Data Protection Policy POLCGR007 <http://qpulse-drs.medway.nhs.uk/Corporate/Documents.svc/documents/active/attachment?number=POLCGR007>

Reference Material & Associated Documents:

See the Trust Data Protection Policy POLCGR007 <http://qpulse-drs.medway.nhs.uk/Corporate/Documents.svc/documents/active/attachment?number=POLCGR007> ICO guidance: <https://ico.org.uk/for-organisations/guide-to-data-protection/principle-6-rights/subject-access-request/>

ICO Subject Access Code of Practice: <https://ico.org.uk/media/for-organisations/documents/1065/subject-access-code-of-practice.pdf>

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