

Standard Operating Procedure

Subject Access Requests and Access to Health Records

Relevant to:

All staff

Purpose of SOP:

This SOP has been created to provide guidance and advice on what to do if you receive a request made under the General Data Protection Regulations 2018 (**GDPR**) for living patients or the Access to Health Records Act 1990 (**AHRA**), which applies to deceased patients.

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

SARs can be made orally or in writing. Requests under AHRA must be made in writing.

When a request is made and there are reasonable doubts about the identity of the requester, the SARs team must request proof of ID (if it is not already provided) to ensure that we are disclosing information to the correct person.

All requests from patients and solicitors should be forwarded to the Subject Access Request (SAR) team who sit under Legal services and can be contacted on ext. 3495 or via email: medwayft.sars@nhs.net

Procedure to Follow:

Requests for living patients – Requests from patients directly

Patients have the right to access copies of their medical records.

We should ask patients to put their requests in writing and using the Trust's provided template which is available on the Trust's internet <https://www.medway.nhs.uk/patients-and-public/access-to-information/subject-access-requests/>. The Trust now has two forms:

- 1) for living patient including children and patients with carers; and
- 2) for deceased patients.

However, it should be noted that under GDPR there is no longer a specific requirement for SARs to be in writing. If a patient is unwilling or unable to put their request in writing, we should document the details of the request and act upon it, where possible.

These requests should be sent to the SAR team along with valid ID e.g. copy of a driving licence, passport, birth certificate or pension/benefit booklet. If you receive a request without ID please still send it to the SAR team who will contact the applicant to request copies of the required identification documents.

Inpatient requests - Patients directly/ next of kin requests/ next of kin requests when the patient lacks capacity

If a patient on the ward requests to view their notes, please ensure that a request is made in writing or documented (if made orally and the patient is unwilling or unable to put the request in writing) and ID is provided which should be forwarded to the SAR team.

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Generally, the only time medical records can be requested by someone else is if the patient with capacity has given consent (a written authority or a more general power of attorney) or that person has a valid and applicable Lasting Power of Attorney for Health and Welfare for a patient who lacks capacity.

Requests to view notes should also go through the SAR team, in these situations the SAR team will work with the ward to ensure that:

- The Consultant treating the patient is aware of the request and has reviewed the notes.
- The notes have been checked to ensure that they do not contain information relating to a third party in respect of whom it would not be reasonable to disclose the information without consent, information that the patient has specified or would expect to be kept confidential, or information the disclosure of which would be likely to cause serious harm to the physical or mental health of the patient or another individual (see *Can we withhold any of the information?* below).
- That a Clinician is present when the patient looks through the notes, in order to explain any medical terminology and to ensure that the patient does not tamper with the notes in any way.

Should patients want copies of their records, the SAR team should be made aware of this so they can arrange for photocopies to be made.

Overseas patients who are inpatients

Please note if you have an overseas patient who needs to take notes home with them for continuation of care; please ensure that the SARs team is notified in advance of their discharge date so the records can be prepared and are readily available for the patient when they leave the hospital.

These requests should be sent to the SAR team along with valid ID (where appropriate) e.g. copy of a driving licence, passport, birth certificate or pension/benefit booklet. If you receive a request without ID please still send it to the SAR team who will contact the individual to request copies of the required identification documents, where appropriate.

Requests for medical records of a child or a young person?

Children and young persons requests are normally sent via their parental guardian however, the Trust will respect the privacy rights of a child or young person and, where appropriate, seek their consent prior to disclosing any information. Even if a child is too young to understand the implications of subject access rights, it is still the right of the child rather than of anyone else such as a parent or guardian. So it is the child who has a right of access to the information held about them, even though in the case of young children these rights are likely to be exercised by those with parental responsibility for them.

Before responding to a subject access request for information held about a child, we should consider whether the child is mature enough to understand their rights. If we are confident that the child can understand their rights, then we should usually respond directly to the child.

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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.

If responding to a SAR made by a parent or guardian on behalf of the child, we should consider if there is any information that the child has specified or would expect to be kept confidential (see *Can we withhold any of the information?* below).

These requests should be sent to the SAR team along with valid ID (where appropriate) e.g., passport, birth certificate with the parents name included. If you receive a request without ID please still send it to the SAR team who will we contact the individual to request copies of the required identification documents, where appropriate.

Requests for living or deceased patients from solicitors

The Trust receives a large amount of requests from solicitors for both living and deceased patients. If you receive a request please ensure that it is immediately forwarded to the SAR team. They will take the following steps:

- Check that the request from the solicitor includes the consent of the individual who is entitled to make the request to provide the personal data, or other legal authority to act on behalf of the individual. If this is not provided in conjunction with the request the SAR team will e-mail, write to or call the person making the request, seeking the missing information and individual's consent.

Requests for deceased patients records?

Under the Access to Health Records Act 1990, the personal representative of the deceased and people who may have a claim arising from the patient's death are permitted access to the records.

Such requests must be in writing and the applicant must include proof of ID as well as proof they have a right to access the medical records.

These requests must be sent immediately to the SAR's team.

Please note, the Trust has found on a number of occasions that requests are made by a family member who is seeking closure regarding their loved ones passing. We have found that by arranging a meeting with the last clinician who treated their loved one and who can explain their last few days/weeks, this will provide the individual with the information they are seeking. Please ensure this conversation is had with the patient's family before forwarding them to the SAR's team.

Requests from the police

The Trust has a separate SOP on dealing with requests from the police; this is available on Qpulse ID reference **SOP0222**

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Requests from the court

Should you receive a Court Order please ensure that it is immediately sent to the Legal Team based in Residence 13.

Other types of requests

- Criminal Injuries Compensation Authority (CICA) should be sent to the Emergency Department.
- Requests for confirmation of conditions sent from Department of Works and Pensions (DWP) are to be forwarded to the appropriate Consultant.
- Army Services Medical Centres asking for a summary are to be forwarded to the appropriate Consultant.
- Health Insurance claim forms, i.e. HAS, DWP, SSP forms are passed to the Patient Service Centre via the Internal post.
- Freedom of Information requests should be redirected to: medwayft.foi@nhs.net

Requests for records from staff who are being treated at Medway

All staff are reminded that should they want copies of their own medical records or those of a loved one they should apply in the same way of a member of the public. Should staff be caught accessing their own medical records when they have no lawful reason for doing so this will result in HR action being taken.

Can we charge a fee?

Request for records are now free of charge under both the GDPR and AHRA.

However if the SAR team believes the request to be manifestly unfounded or excessive, or a repeated request, there are two options available:

1. They may request a “reasonable fee” to deal with the request, which will be based on the administrative costs of complying with the request; or
2. They may refuse to deal with the request.

However, it is unlikely that a valid request to access health records would meet this criteria.

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If they decide to charge a fee they will promptly notify the applicant of the reasons why and the amount before completing the request. If they refuse to deal with the request, they will promptly notify the applicant of the reasons why.

How long do we have to comply?

For SARs (living patients), the Trust must respond to a request without undue delay and within one calendar month from the date of receiving the request. At the same time, we must also provide supplementary information, including notifying the individual of their right to make a complaint to the ICO or another supervisory authority and informing them of their right to seek to enforce this right through a judicial remedy.

The Trust can extend the time to respond by a further two months if the request is complex or you have received a number of requests from the individual. Should the SAR team seek to extend the time to respond, they must notify the individual of the request to extend without undue delay and within one month of receiving the request and explain the reasons for the extension.

For requests made under AHRA (deceased patients), where the application relates to a record, or part of a record, none of which was made before the beginning of the period of 40 days immediately preceding the date of the application. The time to respond cannot be extended under AHRA.

Can we withhold any of the information?

The Data Protection Act 2018 includes exemptions to the subject access under the GDPR that allow us to withhold (i.e. redact) information in certain circumstances.

In relation to health records, the most relevant exemptions are:

- Where disclosure would involve disclosing information relating to another individual who can be identified from the information, where it is not reasonable to disclose the information without the consent of the other individual. This will not apply where the other individual is a health professional who has compiled or contributed to completing the health record or who, in his or her capacity as a health professional, has been involved in the diagnosis, care or treatment of the data subject.
- Where the request is made by a person with parental responsibility ("A") on behalf of an individual aged under 18 ("B"), in respect of information which was provided by B in the expectation that it would not be disclosed to A, obtained as a result of any examination or investigation to which B consented in the expectation that the information would not be disclosed to A, or which B has expressly indicated should not be disclosed to A.

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- Where disclosure would be likely to cause serious harm to the physical or mental health of the data subject or another individual.

Similar exemptions exist under AHRA in respect of deceased patients.

This is not an exhaustive list and other exemptions may apply.

These exemptions must be agreed by the SARs team.

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

Failure to comply with the GDPR could lead to complaints being reported to the Information Commissioner's Office (ICO) which could result in reputational damage. Under GDPR organisations in breach of GDPR can be fined up to 4% of annual global turnover or €20 Million (whichever is greater).

Useful Contacts:

Subject Access Request Assistants	ext. 3495
Head of Corporate Governance and Legal	ext. 3955
Assistant Head of Corporate Governance & Legal	ext. 5060
Information Governance Manager	ext. 3210

Monitoring the Process:

All requests for personal information under the GDPR are monitored:

- Bi-monthly through the Information Governance group responsible officer report which is sent to Board
- Weekly reports to monitor workflow and potential breaches

National Definitions:

ICO guidance: <https://ico.org.uk/for-organisations/guide-to-the-general-data-protection-regulation-gdpr/individual-rights/right-of-access/>

ICO Subject Access Code of Practice (note: at time of publication the Code has not been updated to reflect GDPR): <https://ico.org.uk/media/for-organisations/documents/1065/subject-access-code-of-practice.pdf>

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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>

Dealing with requests for personal information from the Police -SOP0222

AGN - Subject Access Requests for Living and Deceased patients

SOP0454 Individual Rights under the GDPR and DPA 2018 <http://qpulse-drs.medway.nhs.uk/Corporate/Documents.svc/documents/active/attachment?number=SOP0454>

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