

Guidance for Access to Health Records Requests under the Data Protection Act 1998

Version 1 – July 2002
Version 2 – June 2003

Guidance for Access to Health Records Requests under the Data Protection Act 1998

Quick Reference Access to Health Records Checklist.....	Page 2
--	---------------

Box A

The Eight Principles of the Data Protection Act 1998.....	Page 3
A Few Pointers You Should Know Surrounding The DPA 1998.....	Page 4
Patients Living Abroad Requiring Access To Their Health Records.....	Page 5
Parental Responsibility.....	Page 6

Box B

Checking the appropriate access request details.....	Page 7
Disproportionate Effort.....	Page 8
Fees to access and copy health records.....	Page 8

Box D

Logging the Access Request.....	Page 9
---------------------------------	--------

Box E

Two reasons why access could be denied.....	Page 10
---	---------

Box F

The Release Stage of the Health Record request.....	Page 11
Third Party Disclosure.....	Page 12

Box G

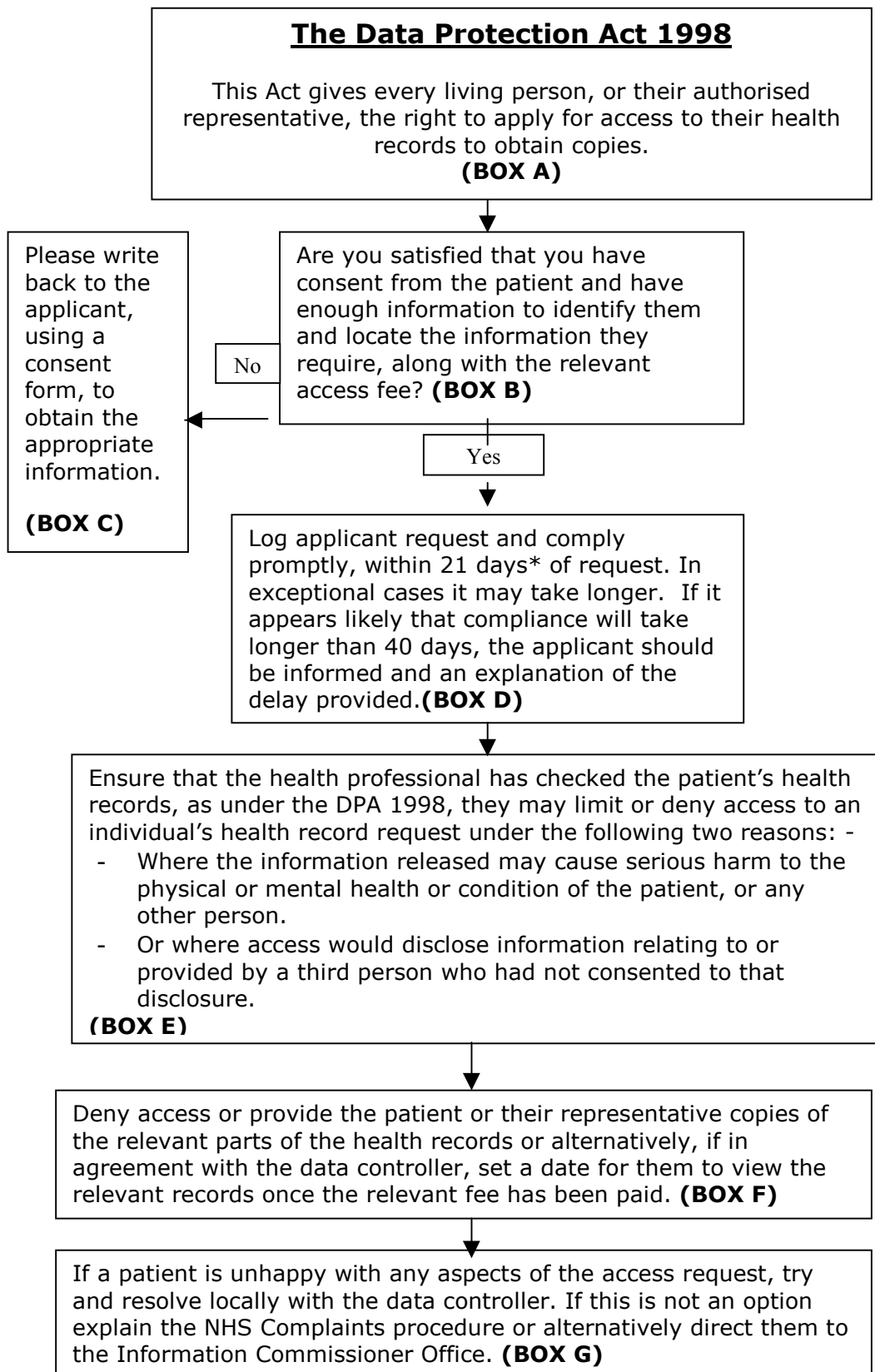
Dealing with complaints.....	Page 13
Useful Contact Addresses.....	Page 13

Annexes

Box C

Patient Authority Consent Form.....	Page 14
Patient Representative Authority Consent Form.....	Page 15

Quick Reference Access to Health Records Checklist



* This 21 day requirement is part of a commitment that ministers made to parliament in order to maintain obligations under the superseded Access to Health Records Act 1990. See page 9, last bullet point.

DPA 98- The Eight Principles

1. First Principle

"Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless –

- at least one of the conditions in Schedule 2 is met; and
- in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met."

2. Second Principle

"Personal data shall be obtained only for one or more specified and lawful purposes, and shall not be further processed in any manner incompatible with that purpose or those purposes".

3. Third Principle

Personal data shall be adequate, relevant and not excessive in relation to the purpose or purposes for which they are processed".

4. Fourth Principle

"Personal data shall be accurate and, where necessary, kept up to date".

5. Fifth Principle

"Personal data processed for any purpose or purposes shall not be kept for longer than is necessary for that purpose or those purposes".

6. Sixth Principle

"Personal data shall be processed in accordance with the rights of data subjects under this Act".

7. Seventh Principle

"Appropriate technical and organisational measures shall be taken against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data".

8. Eighth Principle

"Personal data shall not be transferred to a country or territory outside the European Economic Area, unless that country or territory ensures an adequate level of protection of the rights and freedoms of data subjects in relation to the processing of personal data".

A Few Pointers You Should Know Surrounding The DPA 1998

- The Data Protection Act 1998 became effective from 1st March 2000, and superseded the Data Protection Act 1984 and the Access to Health Records Act 1990. The exception to this is the records of the deceased persons, which are still governed by the Access to Health Records Act 1990.
- The Data Protection Act 1998, gives every living person or their authorised representative, the right to apply for access to their health records irrespective of when they were compiled.
- Within the Data Protection Act 1998 a health record is defined as a record consisting of information about the physical or mental health or condition of an identifiable individual made by or on behalf of a health professional in connection with the care of that individual.
- A health record can be recorded in a **computerised form** or in a **manual form** or even a mixture of both. They may include such things as, hand-written clinical notes, letters to and from other health professionals, laboratory reports, radiographs and other imaging records e.g. X-rays and not just X-ray reports, printouts from monitoring equipment, photographs, videos and tape-recordings of telephone conversations.
- The Data Protection Act 1998 is not confined to health records held for the purposes of the National Health Service. It applies equally to the private health sector and to health professionals' private practice records. It also applies to the records, for example, of employers who hold information relating to the physical or mental health of their employees if the record has been made by or on behalf of a health professional in connection with the care of the employee.
- Responsibility for dealing with an access to health record request lies with the "data controller". **A health professional i.e. the patient GP, is known as a data controller.** A data controller is defined as 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 about an individual are, or are to be, processed. A **data subject** would refer to the GP's patient.
- The Data Protection Act 1998, also gives patients who now reside outside the UK, the right to apply for access to their former UK health records. Further details can be found on page 5.
- As a general rule a person with parental responsibility will have the right to apply for access to their child's health record. Further details can be found on page 6.
- The Information Commissioners Office is the statutory body which has been established to perform various functions under the Data Protection Act 1998. They have a Website with useful guidance around the Act www.dataprotection.gov.uk or E-mail data@dataprotection.gov.uk. Alternatively to view the Act please visit the HMSO website www.legislation.hmso.gov.uk

Patients Living Abroad Requiring Access to their Health Records

- For former patients living outside of the UK and whom once had treatment during their stay here, under the DPA 1998 they 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.
- When a patient moves abroad, their GP health records are transferred to the relevant Primary care Trust/Health Authority where they are retained for the recommended retention period before deciding whether to further retain or destroy them. In the case of hospital health records, these remain at the relevant NHS Trust where they are retained for the recommended retention period.
- The Department of Health recommends that GP records are kept for a minimum of 10 years and recommends that hospital records are kept for a minimum of 8 years following the end of any treatment, or the patient's death if the patient died whilst receiving treatment. At the end of that specified time the health records would remain at the NHS Trust or in the case of GP health records, transferred to the relevant Primary Care Trust/Health Authority who will then make a decision as to whether to retain or destroy the records.

For further details on guidance on retention of GP records please read the following guidance:-

Health Service Circular 1998/217 'Preservation, Retention, and Destruction of GP General Medical Services Records Relating to Patients'.

For further details on the retention of hospital records please read the following guidance:-

Health Service Circular 1999/053 'for the record'.

- Original health records should not be given to patients to keep/take to a new GP outside the UK. The DH recommends that original patient health records should not be sent to patients or their authorised representative because of the potential detriment to patients should the records be lost and for medico-legal purposes. However, in instances when a patient moves abroad, a GP may be prepared to provide the patient with a summary of the patient's treatment to take to their new GP. Alternatively, the patient should be encouraged to make a request for access to their record under the Data Protection Act 1998, to obtain a copy.

Parental Responsibility

- As a general rule a person with parental responsibility will have the right to apply for access to a child's health record.
- Parental responsibility for a child is defined in the Children Act 1989 as "all the rights, duties, powers, responsibilities and authority which by law a parent of a child has in relation to the child and his property". Although not defined specifically, responsibilities therefore would include:-
 - Safeguarding and promoting a child's health, development and welfare.
 - Financially supporting the child.
 - Maintaining direct and regular contact with the child.
- 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.
- As a child grows older and gains sufficient understanding, he/she will be able to make decisions about his/her own life. Where a child is considered capable of making decisions about his/her medical treatment, the consent of the child must be sought before a person with parental responsibility can be given access. Where, in the view of the appropriate health professional, the child patient is not capable of understanding the nature of the application, the holder of the record is entitled to deny access if it were not felt to be in the patient's best interests.
- The law regards young people aged 16 or 17 to be adults for the purposes of consent to treatment and right to confidentiality. Therefore if a 16 year old wishes a medical practitioner to keep the treatment confidential then that wish should 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, for example if they were receiving counselling or treatment about something they did not wish their parent to know. Case law has established that such a child is known as 'Gillick Competent', i.e. where a child is under 16 but has sufficient understanding in relation to the proposed treatment to give, or withhold consent, consent or refusal should be respected. However, **good practice dictates that the child should be encouraged to involve parents or other legal guardians in any treatment.**

Receiving the Access Request

Checking the appropriate access request details

- A patient or their representative, with patient consent, has the right to apply for access to their health records.
 - Any request for access to health records should be made in writing or electronically to the GP, with the patient signature. In cases where consent can only be taken verbally, then the details of this consent should be recorded on the individual's file. Electronic requests should only be accepted with an electronic signature. If this is not possible, the applicant should be advised to fill in a manual consent form within your practice. **You may wish to use/adapt the following consent forms in the Annexes.**
 - Once a subject access request is received, you must be able to verify the consent of the applicant. Ensure you have the following:-
 - ◆ A signature from the patient to the release of their records.
 - ◆ If a patient's representative i.e. solicitor, is applying for access, ensure you have the signature of the patient to do this. In some circumstances, the health professional may wish to contact the patient to clarify that they fully understand they will be consenting to the release of their health records to a third party.
 - ◆ If a parent or a person authorised with parental responsibility is applying for access to their child's health records. The GP should consider if the child is of a capable age of making his or her own judgement on their healthcare. If they are, consent should be sort before the application is accepted. For further information on **parental responsibility** see page 6.
 - After obtaining patient consent for an access request, ensure you have enough information to identify the data relating to the data subject. Such details would include:-
 - ◆ Full name -including previous names
 - ◆ Full address -including previous address(es).
 - ◆ NHS Number (optional)
 - ◆ If applicable, certain dates/periods of their health records along with the name of GP/Name of consultant *
- *You may wish to check with the applicant if they require access to their entire health record and confirm what material the applicant requires before processing the request. This could decrease the cost of copying for the applicant and eliminate unnecessary work by staff. **However, you should also note this is optional, as an applicant does not have to give a reason for applying for access.**
- Where an access request has previously been complied with, the Act permits that you do not have to respond to a subsequent identical or similar request unless a reasonable interval has elapsed since the previous compliance.

➤ **Disproportionate Effort**

The term “disproportionate effort” is not defined in the Act. In assessing what does or does not amount to disproportionate effort the starting point must be that data controllers are **not** generally exempt from providing the fair processing information because they have not obtained data directly from the data subject.

What does or does not amount to disproportionate effort is a question of fact to be determined in each and every case.

In deciding this, the Information Commissioner will take into account a number of factors, including the nature of the data, the length of time and the cost involved to the data controller in providing the information. The fact that the data controller has had to expend a substantial amount of effort and/or cost in providing the information does not necessarily mean that the Commissioner will reach the decision that the data controller can legitimately rely upon the disproportionate effort ground. In certain circumstances, the Commissioner would consider that a quite considerable effort could reasonably be expected. The above factors will always be balanced against the prejudicial or effectively prejudicial effect to the data subject and in this respect a relevant consideration would be the extent to which the data subject already knows about the processing of his personal data by the data controller.

➤ **Fees to access and copy health records**

Under the Data Protection Act 1998 (Fees and Miscellaneous Provisions) Regulations 2001, a patient could be charged to view their health records or to be provided with a copy of them.

To provide **copies** of patient health records the **maximum** costs are:-

- Health records held totally on computer: up to a maximum £10 charge.
- Health records held in part on computer and in part manually: up to a maximum £50 charge.
- Health records held totally manually: up to a maximum £50 charge.

All these maximum charges include postage and packaging costs. Remember these are the maximum costs and any charges for access requests should not be seen to make a financial gain.

To allow patients to **view** their health records (where no copy is required) the maximum costs are:-

- Health records held totally on computer: up to a maximum £10 charge **unless the records have been added to in the last 40 days.**
- Health records held manually: up to a maximum £10 charge, **unless the records have been added to in the last 40 days.**
- Health records held in part on computer and in part manually: a maximum of £10 **unless the records have been added to in the last 40 days.**

Note: if a person wishes to view their health records and then wants to be provided with copies this would still come under the one access request. The £10 maximum fee for viewing would be included within the £50 maximum fee for copies of health records, held in part on computer and in part manually.

- Under the Data Protection Act 1998, there is no obligation to comply with an access request unless you have enough information as he or she needs to identify the applicant and locate the information and unless the required fee has been paid. Although the act says the fee has to be paid up front before you comply with an access request, your organisation may not ask for the fee until the release stage of the access request.

Logging the Access Request

- Once you have all the necessary information for an access request and fee, where relevant you must comply with the request promptly and within twenty one days. **The Data Protection Act requires subject access requests to be complied within forty days and in exceptional circumstances if it is not possible to comply within this period then the applicant should be informed.**
- As best practice, you should sign and date the appropriate access to health records consent form and log them on a secure computer database. Below are some suggested headings to use to log an access request on a computer database.

Date Application received	Received by	21 Day response date	40 day response date	If more than 40 days give approx date of likely response	Applicant Name	Applicant Address	Response date to applicant

- All the manual paper copies of the consent forms should be filed and held in a secure area. This is important as patients have a right to have their personal health information kept secure and confidential.
- Once all the information is logged you should then consult the appropriate health professional, normally the individual who is or was responsible for the clinical care of the patient during the period to which the application refers. In cases where there is more than one health professional to approach, it is not necessarily appropriate to approach every health professional associated with the patient's care. Therefore, the most suitable available health professional who access was made to i.e. the patients GP should advise on whether to release other health professional's notes about that patient.
- 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, where as 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.

*Hansard ref, 25/10/2000, col. 464. Hansard debates can be accessed via the following website: <http://www.parliament.uk/hansard/hansard2.cfm>.

Two Reasons why access could be denied

- Before the patient's health records are released to the patient or their authorised representative, under the DPA 1998 the GP should ensure they have checked them so that the release of them wouldn't cause the following :-
 1. Where the information released may cause serious harm to the physical or mental health or condition of the patient, or any other person.
 2. Or where access would disclose information relating to or provided by a third person, this would not be a health professional who had not consented to that disclosure. **(Further information on third party disclosure can be found on page 11).**

Under the Data Protection Act 1998, these are the only two reasons where access could be denied or limited to a patient or their authorised representative.

The Release Stage

- Once you have received the relevant **fee (you may have required this at the earlier stage of the access)**, then release or deny/restrict the patient or their representative copies or access to their health records. Remember you do not have to give a reason for denying/ restricting access, but you should be willing to direct the patient through the appropriate complaint channels provided on page 13, if they have been denied access.
- On the release of the records, where the information is not readily intelligible, an explanation (e.g. of abbreviations or medical terminology) must be given.
- Remember whilst the Data Protection Act 1998 allows a patient or their authorised representative to be supplied with a copy of a medical record, it does not require that you give the patient or their representative the original health records to keep. It is strongly recommended that GP's do not allow original notes to be sent to patients or their representative because of the potential detriment to patients should the records be lost and for medico-legal purposes.
- If it is agreed that the patient or their representative may directly inspect their health records, you should consider whether access should be supervised by the attendance of a health professional or whether an appointment should be made for supervision by a lay administrator. In these circumstances the lay administrator must not comment or advise on the content of the record and if the applicant raises enquiries, an appointment with a health professional should be offered.
- If consent has not been satisfied from details about a third party contained within the patient's health records, then information should still be disclosed without revealing the identity of the third party. The DPA 98 suggests that this might be done by omitting names and identifying particulars from the records and care should be taken to ensure that the information if released is genuinely anonymous.

Third Party Disclosure

Third party information contained within a health record

Where records contain information that relates to an identifiable third party, that information may not be released **unless**:

1. The third party is a health professional who has compiled or contributed to the health records or who has been involved in the care of the patient.
2. The third party, who is not a health professional, gives their consent to the disclosure of that information.
3. It is reasonable to dispense with that third party's consent (taking into account duty of confidentiality owed to the other individual, any steps to seek his or her consent, whether he or she is capable of giving consent and whether consent has been expressly refused).

Health professionals, under the DPA 98 are not required to approach a third party for disclosure, but in some cases they may wish to do so.

Some examples of where a third party may be involved

A parent may apply for access to their fourteen-year-old child's health records. The child may have made some reference to his/ hers parents (the third party), contained within their health record, of which the child didn't want disclosing. The doctor may withhold this information from the child's parents.

A son (the third party) visits the doctor for he is concerned about his elderly mother, who is having problems with memory loss and self care. The doctor makes notes in his mother's health records of the visit, but if for any reason the mother decided to apply to access her health records, the doctor may withhold any information within her health records leading to the identity of her son's visit, unless the son gave his consent to do so.

Amendments to Health Records

Patient records should reflect the observations, judgements and factual information collected by the contributing health professional. General Medical Council guidance states that health records should be clear, accurate and contemporaneous. The Data Protection Act fourth principle also states that information should be accurate and kept up-to-date and this provides the legal basis for enforcing corrections when appropriate. However, an opinion or judgement recorded by a health professional, whether accurate or not should not be amended subsequently. Retaining relevant information is essential for understanding the clinical decisions that were made and to audit the quality of care.

If a patient feels that information recorded on their health record is incorrect then they should firstly make an informal approach to the health professional concerned to discuss the situation in an attempt to have the records amended. If this avenue is unsuccessful then they may pursue a complaint under the NHS complaints procedure in an attempt to have the information corrected or erased. They could further complain to the Information Commissioner, who may rule that any erroneous information is rectified, blocked, erased or destroyed. Further information can be obtained from the Commissioner at Wycliffe House, Water Lane, Wilmslow, Cheshire SK9 5AF, telephone number 01625 545700.

If the patient is still not satisfied it is good practice for data controllers to allow patients to include a statement within their record that they disagree with the content.

Dealing with Complaints

- If a patient is unhappy with the outcome of their access request, such examples may include, information withheld from them or they feel their information has been recorded incorrectly within their health record. To help rectify the complaint, the patient should be encouraged to go through the following channels:-
1. The health professional may wish to have an informal meeting with the individual in the hope to resolve the complaint locally.
 2. If the health professional feels that they cannot do anything for the patient locally, the patient should be advised to make a complaint through the NHS Complaints procedure.
 3. Ultimately, the patient may not wish to make a complaint through the NHS Complaints Procedure and take their complaint direct to the Information Commissioner. The Information Commissioner has such powers to rule that any erroneous information is rectified, blocked, erased or destroyed.
 4. Alternatively, if the patient wishes to do so, they may wish to seek legal independent advice to pursue their complaint.

Useful contact addresses

Information Commissioner's Office	British Medical Association	General Medical Council
Wycliffe House Water Lane Wilmslow Cheshire SK9 5AF	BMA House Tavistock Square London WC1H 9JP	178 Great Portland Street London W1W 5JE
To Notify call: 01625 545740	Switchboard: 020 7387 4499	Switchboard: 020 75807642
Information Line: 01625 545745	Website: www.bma.org.uk	Website: www.gmc-uk.org
Switchboard: 01625 545700		
Fax: 01625 524510		
Website: www.dataprotection.gov.uk		
E-mail: data@dataprotection.gov.uk		

Annex

Good Practice Patient Authority Consent Form

This form should be used between the organisation and patient.

Patient Authority Consent Form

Access to Health Records under the Data Protection Act 1998

IMPORTANT-Please read these notes before you proceed with your application.

The Data Protection Act 1998, gives every living person the right to apply for access to their health records. Any request for access to health records must be made in writing or electronically to your local GP, for GP records or the Records Manager at the hospital, for your hospital records.

Under the Data Protection Act 1998 (Fees and Miscellaneous Provisions) Regulations 2001, you may be charged to view your health records or to be provided with a copy of them.

To provide copies of patient health records the costs are:-

- Health records held totally on computer: up to a maximum £10 charge.
- Health records held in part on computer and in part manually: up to a maximum £50 charge
- Health records held totally manually: up to a maximum £50 charge

All these maximum charges include postage and packaging costs.

To allow patients to view their health records (where no copy is required) the costs are:-

- Health records held totally on computer: up to a maximum £10 charge. **unless the records have been added to in the last 40 days.**
- Health records held manually: up to a maximum £10 charge. **unless the records have been added to in the last 40 days.**
- Health records held in part on computer and in part manually: a maximum of £10 **unless the records have been added to in the last 40 days.**

Note: if a person wishes to view their health records and then wants to be provided with copies this would still come under the one access request. The £10 maximum fee for viewing would be include within the £50 maximum fee for copies of health records, held in part on computer and in part manually.

Under the Data Protection Act 1998, there is no obligation to comply with an access request unless the health professional has such information as he or she needs to identify the applicant and locate the information and unless the required fee has been paid. **Although the act says the fee has to be paid up front before the health professionals complies with an access request, some organisations may not ask for the fee until all the information is gathered or copied. Please check with the organisation to see what procedure they have in place.**

Once the health professional has all the relevant information and fee where relevant, they should comply with the request promptly, within 21 days and by no later than forty days after the request has been made. In exceptional circumstances if it is not possible to comply within the forty day period the applicant should be informed.

Under the Data Protection Act 1998 there are certain circumstances in which **the record holder may withhold information**. Access may be denied, or limited, where the information might cause serious harm to the physical or mental health or condition of the patient, or any other person, or where giving access would disclose information relating to or provided by a third person who had not consented to the disclosure.

Complaints about any aspect of an application to obtain access to health records should be discussed firstly, with the health professional. If this avenue is unsuccessful a complaint can be made under the NHS Complaints Procedure. Having followed this procedure and being dissatisfied with that outcome of the investigation a person does have the right to take their complaint to the Health Service Ombudsman or, as a last resort, to court. Alternatively, a person has the right to complain to the Information Commissioner, formerly the Data Protection Commissioner at Wycliffe House, Water Lane, Wilmslow, Cheshire SK9 5AF. Tel 01625 545700 or www.dataprotection.gov.uk

Point 7 on the consent form is **optional**. However, due to the increased demand on access to health record requests, it would be helpful if you could provide details of the periods and parts of your health records you require. Not only would this save time and resources on the NHS, but is also likely to reduce the costs of your access request.

Finally, please ensure you have filled in the details on the consent form and sign it. You may wish to keep a copy for yourself. **Thank you.**

Patient Authority Consent Form
Access to Health Records under the Data Protection
Act 1998 (Subject Access Request)

Patient's authority for release of health records
(Manual or Computerised Health Records)

To:

(full name and address of GP/NHS Trust)

1. Full name (including former name(s)): (Mr/Mrs/Miss/Ms).....
(please **print** all details and use dark ink)

Former name(s).....

2. Date of Birth:

3. NHS Number (if known)

4. Current Address

.....

.....

(optional) Tel number (including area code).....

(optional) Fax number

5. Former Address/es (if applicable)

(Use separate sheet if necessary)

.....

.....

6. **I am applying for access to view my health records/** I am applying for copies of my health record
(Delete as appropriate).

IMPORTANT INFORMATION

7. Under the Data Protection Act 1998 you do not have to give a reason for applying for access to your health records. However, to help us save time and resources, **if you wish**, it would be helpful if you could provide details on **page 3**, informing us of periods and parts of your health records you require, along with details which you may feel have relevance i.e. consultant name and location etc.
(Please turn over to page 3).

Optional-Please use this space below to inform us of certain periods and parts of your health record you may require. This may include specific dates, consultant name and location, and parts of the records you require i.e. written diagnosis and reports.

Below is an example of using the space provided.

Example

1st March 1993 – 31st March 1995- All my GP notes and the consultant reports to my GP concerning back pain within this period.

8. I am applying to access my health records under the Data Protection Act 1998 for health records held at I understand that under the Data Protection Act 1998 (Fees and Miscellaneous Provisions) Regulations 2001, there may be a charge for me to view or to be provided with a copy of my health records.

9. Signed: Date:

(Office use only) Date of application received Received by
--

Good Practice Patient Representative Authority Consent Form

This form should be used between the organisation and the patient's representative e.g. solicitors.

Patient Representative Authority Consent
Form

**Access to Health Records under the Data
Protection Act 1998**

IMPORTANT-Please read these notes before you proceed with your application.

The Data Protection Act 1998, gives a patient, or their representative, with client consent, the right to apply for access to their clients health records. The health records of the deceased are governed by the Access to Health Records Act 1990.

Any request for access to health records must be made in writing or electronically to your GP, for GP records or the Records Manager at the hospital, for hospital records.

Under the Data Protection Act 1998 (Fees and Miscellaneous Provisions) Regulations 2001, your representative may be charged to view your health records or to be provided with a copy of them. Below are the maximum fee costs. **The fees are the same whether it is an individual applying for access or a representative i.e. solicitor applying on their behalf.**

To provide copies of patient health records the costs are:-

- Health records held totally on computer: up to a maximum £10 charge.
- Health records held in part on computer and in part manually: up to a maximum £50 charge
- Health records held totally manually: up to a maximum £50 charge

All these maximum charges include VAT, postage and packaging costs.

To allow patients to view their health records (where no copy is required) the costs are:-

- Health records held totally on computer: up to a maximum £10 charge, **unless the records have been added to in the last 40 days.**
- Health records held in part on computer and in part manually: up to a maximum £10 charge **unless the records have been added to in the last 40 days.**
- Health records held in part on computer and in part manually: a maximum of £10 **unless the records have been added to in the last 40 days.**

Under the Data Protection Act 1998, there is no obligation to comply with an access request unless the health professional has such information as he or she needs to identify the applicant and locate the information and unless the required fee has been paid. **Although the act says the fee has to be paid up front before the health professional complies with an access request, some organisations may not ask for the fee until all the information is gathered and or copied. Your representative should check with the organisation to see what procedure they have in place.**

Once the health professional has all the relevant information and fee where relevant, they should comply with the request promptly, within 21 days and by no later than forty days after the request has been made. In exceptional circumstances if it is not possible to comply within the forty day period the applicant should be informed.

Under the Data Protection Act 1998 the health professional has a duty to read through the health records of a patient before they are released. Access may be denied, or limited, where the information might cause serious harm to the physical or mental health or condition of the patient, or any other person, or where giving access would disclose information relating to or provided by a third person who had not consented to the disclosure. **The health professional would only provide the appropriate parts of the health records to the representative as he would the patient.**

When or if the health records are released, if the information is not readily intelligible, an explanation (e.g. of abbreviations or medical terminology) must be given by the data controller.

Page 3 on the consent form is **optional**. You should be aware that if you provide details on **Page 3** of specific parts/periods of your health records you require i.e. information relating to a specific incident, you would eliminate the need for your representative to see irrelevant matters of your health record. There is also the added benefit of saving time and resources on the NHS and possibly reducing the cost of your access request.

Finally, please ensure you have filled in the details on the form and before you sign please discuss with your representative any uncertain issues regarding the release of your health records before you do so. Thank you.

Patient Representative Authority Consent Form Access to Health Records under the Data Protection Act 1998 (Subject Access Request)

Patient's authority for release of health records
(Manual or Computerised Health Records)

To:

(full name and address of GP/NHS Trust)

1. Full name of patient (including former name(s)): (Mr/Mrs/Miss/Ms).....
(please **print** all details and use dark ink)

Former name(s).....

2. Date of Birth:

3. NHS Number (if known)

4. Current Address

(optional) Tel number (including area code).....

(optional) Fax number

5. Former Address/es (if applicable)

(Use separate sheet if necessary)

6. IMPORTANT INFORMATION

- Please ensure you have read the accompanying application notes on page 2 and discussed any queries you have regarding the release of your health records with your representative.
- Under the Data Protection Act 1998 you do not have to give a reason for applying for access to your health records. However, to help the NHS save time and resources, if you wish, it would be helpful if you could provide details on **page 3**, informing us of periods and parts of your health records you require, along with details which you may feel have relevance i.e. consultant name.
- You should also understand that failing to provide details on **page 3**, your representative would be applying for access to the whole of your health record history held at that particular organisation. Subject to certain safeguards, they could be provided with details of your full health history that may not be relevant for your case with your representative.
- You should be aware that your representative could use your health records for legal proceedings and therefore make them available to all other parties to the litigation.

(Please turn over to page 3).

Optional- Please use the space below to inform us of certain periods and parts of your health record you may require. This may include specific dates, consultant name and location, and parts of the records you require i.e. written diagnosis and reports.

Below is an example of using the space provided.

Example

1st March 1993 – 31st March 1995- All my GP notes and the consultant reports to my GP concerning back pain within this period.

7. I authorise (name of representative)..... to apply for access to my health records under the Data Protection Act 1998 for health records held at I understand that under the Data Protection Act 1998 (Fees and Miscellaneous Provisions) Regulations 2001, there may be a charge for my representative to view or to be provided with a copy of my health records.

8. Signed: Date:

(Office use only) Date of application received Received by
--