NHS
East Riding of Yorkshire

Access to Medical Records Protocol

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PROTOCOL AMENDMENTS

Amendments to the protocol will be issued from time to time. A new amendment history will be issued with each change.

Amendment Reference	Date of Issue	Issued by	Nature of Amendment
Draft 0.1	Sep 2009	T Hammond	Various
Draft 0.2	March 2010	T Hammond	• Exemption added in section 3 • Parental Access updated section 4.5 • Circumstances of access updated section 10 • Section 13 (Fees) updated • New appendix D added (FAQ'S) • Update to appendix B (request to health records form)
Version 1	April 2010	T Hammond	Published

Contents

1 INTRODUCTION

This protocol provides information in relation to the Access to Health Records Act 1990, and the Data Protection Act 1998 and details the procedures that NHS East Riding of Yorkshire (NHSERY) has in place to enable patients and service users access to their health records. Also included, is the protocol for managing access requests from other parties representing the patient, for example, a solicitor.

2 BACKGROUND

The Data Protection Act 1998 imposes constraints on the processing of personal information in relation to living individuals. It identifies eight data protection principles that set out standards for information handling. In the context of confidentiality, the most significant principles are:

- Principle 1 which requires processing to be fair and lawful and imposes other restrictions
- Principle 2 which requires personal data to be processed for one or more specified and lawful purpose;
- Principle 7 which requires personal data to be protected against unauthorised or unlawful processing and against accidental loss, destruction or damage.

Under the Data Protection Act 1998, the following people are entitled to request access to individual health records, regardless of when the record was created:

- the patient;
- another person (on receipt of the patient's consent);
- the parent or guardian for a child under the age of 16

  (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);

- A court appointed representative of someone who is not able to manage their own affairs.

2.1 Access to Health Records of deceased patients

Under the Access to Health Records Act 1990, when a patient has died, the personal representative, executor or administrator, or anyone having a claim resulting from the death (this could be a relative or another person), may apply to see the health records or part of them. Only records created after the 1 November, 1991 will be provided and a minimal charge will be applied. (See section 13 for charges).

3 EXEMPTIONS

Certain information may be exempt from disclosure under the terms of the Data Protection Act 1998 and access may therefore be refused should the information be covered by one of the following exemptions:

- Prevention or detection of serious crime.
- To avoid prejudicing the carrying out of professional/clinical work by causing serious harm to the physical or mental health or condition of the data subject or another person.
- Where disclosure would, in the view of a health professional, be likely to cause serious harm to the physical or mental health or condition of the data subject or any other person.
- Where other enactments themselves prevent disclosure e.g. adoption records and reports.
- Where an access request has previously been met the Act permits that a subsequent identical or similar request does not have to be fulfilled unless a reasonable time interval has elapsed between.

(See section 6 for further details as to how to apply the above exemptions)

4 RIGHT OF ACCESS

Any living person, who is the subject of personal information held and processed by a statutory agency, has a right of access to the data held about them (subject to the limited number of exemptions above).

A person does not have the right to know what is recorded about someone else. For example, where records contain information about a family, one member is not entitled to see information about another member without that person's consent, although there may be circumstances in which it may be considered reasonable to disclose such information without consent (see 6.4). An example would be when a request received for access to very old files and the possibility of establishing the consent of third parties is remote, or non-existent. Each case would be assessed on an individual basis.

4.1 Requests made on behalf of an adult lacking mental capacity

If a person lacks the capacity or ability to manage their own affairs, a person acting under an order of the Court of Protection or acting within the terms of a registered Enduring Power of Attorney can request access on her or his behalf.

Many people suffering from mental disorder have sufficient capacity to enable them to deal with their affairs. Requests for access by persons with a mental disorder will require a judgement in respect of their capacity to understand the nature of the request and the information sought. This judgement should be made by a health professional. Each case would be assessed on an individual basis.

4.2 Requests made through another person (an agent)

If a person has the capacity and they have appointed an agent, that person can make a valid request for access on behalf of the "data subject". Agents should provide evidence of their authority and confirm their identity and relationship to the individual. Such evidence should be provided in writing. Once it is confirmed that the data subject has authorised the agent to make the request, it may be treated as if the request had been made by the person themselves. If someone is acting on someone else's behalf under a general power of attorney, written authorisation is also required.

A person who is profoundly physically disabled may not be able to give written consent for an agent to seek access on their behalf. Where the person is unable to give written consent, health services should provide appropriate assistance. A qualified health professional will be required to make a judgement on whether the individual has given consent for an agent to act on their behalf.

4.3 Requests by solicitors etc, regarding criminal injuries, persons

Requests for access from a person's legal representative must be treated in the same way as requests made by an agent as outlined above.

4.4 Requests for access to the records of a deceased person

The Data Protection Act 1998 applies only to the processing of personal information in relation to living individuals. Information held on the deceased is not personal data, as defined by the Act, and is therefore covered by the Access to Health Records Act 1990. There may still be issues of confidentiality surrounding the rights of others to access the records of a deceased patient and again, each case will be assessed on an individual basis.

This protocol is not intended to support or facilitate open access to the health records of the deceased. Individual(s) requesting access to deceased patient health information should be able to demonstrate a legitimate purpose, generally a strong public interest justification and in many cases a legitimate relationship with the deceased patient. On making a request for information, the requestor should be asked to provide authenticating details to prove their identity and their relationship with the deceased individual. They should also provide a reason for the request and where possible, specify the parts of the deceased health record they require.

4.5 Parental access to their child's health record

Normally a person with parental responsibility will have the right to apply for access to their child's health record. However, in exercising this right a health professional should give careful consideration to the duty of confidentiality owed to the child before disclosure is given.

The law regards young people aged 16 or 17 to be adults in respect of their rights confidentiality. 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. However, good practice dictates that the child should be encouraged to involve parents or other legal guardians in their healthcare.

5 INFORMATION ABLE TO BE DISCLOSED

All of the data held by an organisation in relation to a specific patient/service user should be disclosed, providing an exemption does not apply or another person has declined to consent to the disclosure of any data identifying them. The term data, includes all formats (written records, computer files, video recordings etc) and covers records held within all of the locations where different parts of the record may be held. The rights of access are also irrespective of when the information was recorded, in relation to a live patient.

6 REFUSING ACCESS BASED ON AN EXEMPTION FROM THE DATA PROTECTION ACT 1998

Use of the exemptions should be made on an individual case basis and should be the exception rather than the rule. Legal advice should be sought where doubt exists. (See Protocol for accessing external legal Advice)

6.1 Prevention or detection of crime

Information may be withheld if the disclosure would prejudice the prevention or detection of a crime or the apprehension or prosecution of an offender.

6.2 Information about physical or mental health or condition

Information may be withheld if, in the opinion of an appropriate health professional, disclosure would be likely to cause serious harm to the physical or mental health or condition of the subject, or any other person.

6.3 Where other enactments themselves prevent disclosure

In this instance, a data subject cannot rely on the DPA 1998 to seek access to these records, for example, adoption records and reports; parental order records and reports under Section 30 of the Human Fertilisation and Embryology Act 1990.

6.4 Information identifying another person

In circumstances where disclosure of the data requested is not possible without disclosing information about another person e.g. information given by a family member, the request should be declined unless the other person has provided written consent for the disclosure. Where possible, the provision of as much of the information sought should be disclosed without revealing that person's identity, whether omission of names or other identifying particulars. There may however be occasions where it is "reasonable in all the circumstances" to comply without that other persons' consent. This includes the disclosure of details identifying a "source" of information included in the record where that person's consent cannot be categorically established, but has not been expressly refused.

7 Role of the Caldicott Guardian

The Caldicott Guardian plays a key role in ensuring that NHS and partner organisations satisfy the highest practical standards for handling patient identifiable information. Acting as the 'conscience' of an organisation, the Caldicott Guardian actively supports work to facilitate and enable information sharing and advise on options for lawful and ethical processing of information as required. Local issues will inevitably arise for Caldicott Guardians to resolve. Many of these will relate to the legal and ethical decisions required to ensure appropriate information sharing. It is essential in these circumstances for Guardians to know when, and where, to seek advice.

A key recommendation of the Caldicott Committee was that every use or flow of patient-identifiable information should be regularly justified and routinely tested against the six defined principles:

Principle 1 – Justify the purpose(s) for using confidential information

Principle 2 – Only use it when absolutely necessary

Principle 3 – use the minimum that is required

Principle 4 – Access should be on a strict need-to-know basis

Principle 5 – Everyone must understand his or her responsibilities

Principle 6 – Understand and comply with the law

8 REQUESTS AND PREPARATION FOR ACCESS

Explain the access procedures to the patient/service user, including an explanation of the time periods and deadlines applicable (see Appendix A – Access to Records Flowchart) and (see Appendix C for Guidance Notes for Applicants). An FAQ section can be found in Appendix D.

The subject should be asked to complete an application form (see Appendix B Application Form for Processing Subject Access Requests) for submission to the relevant locality. If necessary, offer assistance in doing this by engaging the advice or support of an advocacy service, interpreting service or Citizen's Advice Bureau as necessary.

Ensure the subject submits sufficient details to identify themselves, as highlighted within the application form, and a clear indication as to the information requested and where it may be held (i.e. treatment locations). This will ensure the request can be processed and managed successfully and efficiently.

Should an exemption apply, the data-controller should agree with their manager, and in consultation with the relevant health care professional, exactly what information cannot be shared with the patient/service user. The subject should then be contacted as soon as possible to inform them of the decision, and this should be supported in writing detailing the reasons for the decision at the earliest opportunity.

Written consent must be obtained from all third parties who have contributed to the record, if that information is to be shared with the subject.

9 TIMESCALES:

It is important to note that:

If the person has been receiving treatment during the preceding 40 days, no more than 21 calendar days must elapse between receiving the written request for access (which must include the consent to release were applicable) and the records being released.

If treatment was last given over 40 days ago then no more than 40 calendar days must elapse after the application has been made before access is given.

The 21 and 40 calendar days periods do not start until the written request has been received in full and the identity or authority of the person making the request can be validated. In exceptional circumstances these timescales can be extended by mutual agreement of both parties.

Consents from third parties should be sought to fit within this 40 calendar days period.

Access can be refused where the authority has previously complied with an identical or similar request from the same individual, unless a reasonable interval has

elapsed between compliance with the initial request and the receipt of a further request.

10 CIRCUMSTANCES OF ACCESS:

Access should be provided to the patient/service user in the presence of the data controller or appropriate clinician.

The person may find it helpful to be accompanied by a friend or relative. Separate access must not be given to a friend or relative unless they are the person's appointed agent.

Under no circumstances can any information be removed from the record, although a request for amendments can be submitted where required.

Patients may also apply to NHS organisations for the correction or deletion of their information under section 10 of the DPA where the processing of the information is causing substantial and unwarranted damage or distress. NHS bodies should respond within 21 days to such requests, confirming compliance, or non-compliance and reasons which they believe the request is unjustified.

11 FORMAT:

The person is entitled to have a permanent photocopy of the information, unless:

- The person agrees otherwise, for example only having photo-copies of relevant extracts or documents taken from the complete record; or
- It is not possible, or would involve disproportionate effort.

12 ACCESSIBILITY:

People who are unable to read or have a physical disability may have a friend, relative or advocate present at the access interview who can read the record to them.

13 CHARGES:

The DPA states that fees for a subject access should be paid in advance, but in the interest of providing a helpful service to patients, NHS organisations may request the fee at the release stage of the access request.

The Data Protection (Subject Access) (Fees and Miscellaneous Provisions) Regulations 2000 sets out the fees a patient may be charged to view their records or to be provided with a copy of them. These are summarised below:

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

Health records held electronically: up to a maximum £10 charge.

Health records held in part electronically and in part on other media (paper, x-ray film): up to a maximum £50 charge.

Health records held totally on other media: up to a maximum £50 charge.

All these maximum charges include postage and packaging costs. Any charges for access requests should not be made in order 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 electronically: a maximum of £10.

Health records held in part on computer and in part on other media: a maximum of £10.

Health records held entirely on other media: up to a maximum £10 charge, **unless the records have been added to in the last 40 days in which case there should be no charge.**

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.
Cheques should be made payable to H M Paymaster General.

14 AMENDMENTS/CORRECTIONS:

A patient/service user is entitled to ask the agency to correct data if the personal information is inaccurate in any way i.e. it is factually incorrect or misleading. They are not entitled to alter clinical judgements, diagnosis etc.

The person must be informed within 21 days of receiving the request of any action that is to be taken in response to their request to correct inaccurate data.

If there is an administrative error within the record and both the subject and the data-controller agree, a correction can be made. A copy of the corrected data should be given to the subject.

Where there is a disagreement about the accuracy of a record, the subject should have his/her account of the situation added and the fact of the disagreement recorded. The person can:

- Approach the Information Commissioner (IC) if they consider the organisation has not made the requested correction;

- Apply to the courts for an order requiring the organisation to rectify, block, erase or destroy the data.

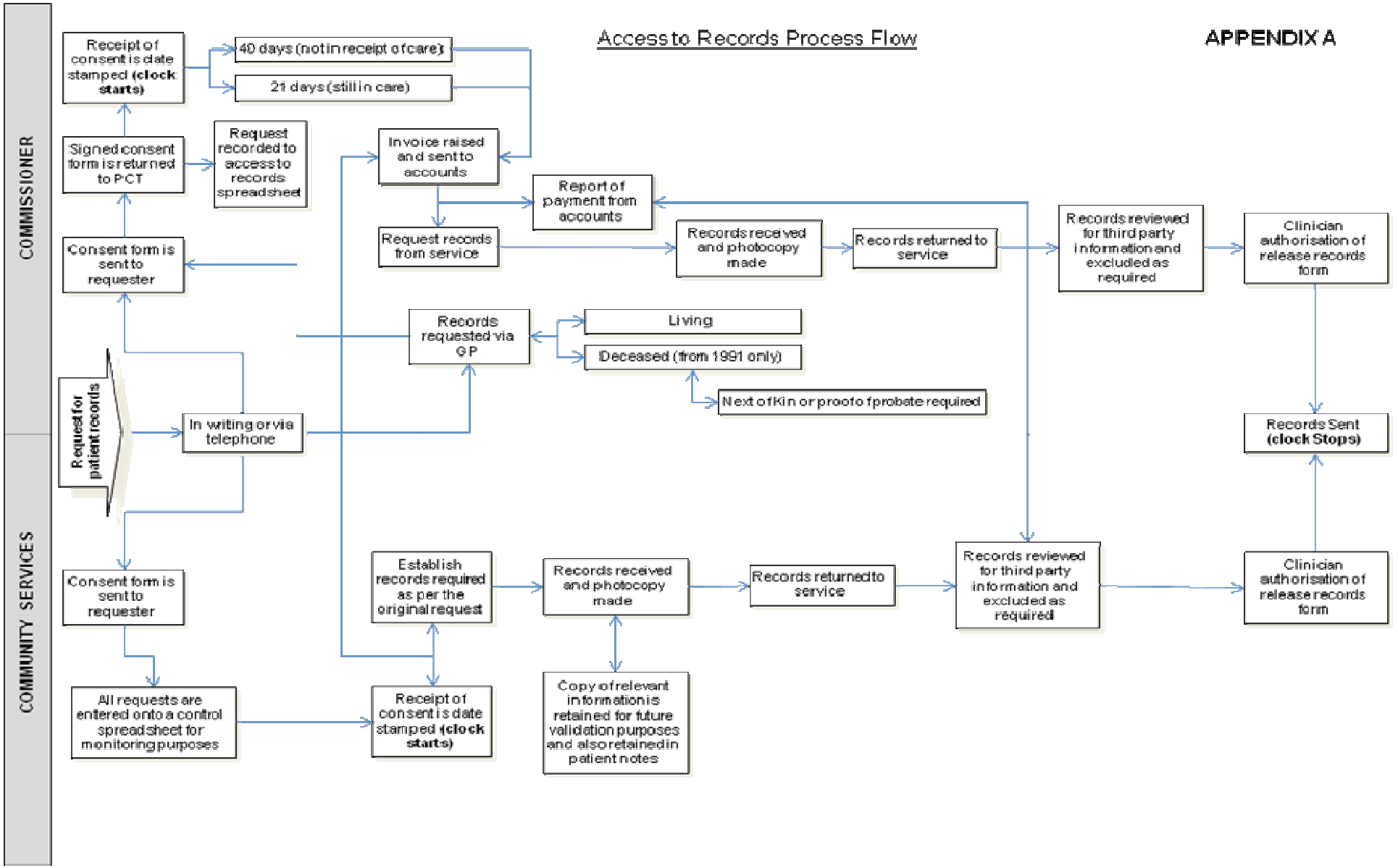
The organisation may be required to correct the data if the IC or courts judge it to be inaccurate, and to inform other organisations who may have reviewed the information of the correction.

15 ACCESS TO VIDEO AND AUDIO RECORDINGS

The same rules apply to access to video and audio recording as to other types of record.

If a patient/service user is to be recorded or videoed, the procedure for handling and deleting the recording must be explained to them before hand.

If a video/audio recording has been deleted the patient/service user must be shown the entry in the case record which must state the date and reason for deletion.


Access to Records Process Flow
APPENDIX A
COMMISSIONER
COMMUNITY SERVICES
Receipt of consent is date stamped (clock starts)
40 days (not in receipt of care)
21 days (still in care)
Signed consent form is returned to PCT
Request recorded to access to records spreadsheet
Invoice raised and sent to accounts
Report of payment from accounts
Request records from service
Records received and photocopy made
Records returned to service
Records reviewed for third party information and excluded as required
Clinician authorisation of release records form
Consent form is sent to requester
Records requested via GP
Living
Deceased (from 1991 only)
Next of Kin or proof of probate required
Request for patient records
In writing or via telephone
Records Sent (clock Stops)
Consent form is sent to requester
Establish records required as per the original request
Records received and photocopy made
Records returned to service
Records reviewed for third party information and excluded as required
Clinician authorisation of release records form
All requests are entered onto a control spreadsheet for monitoring purposes
Receipt of consent is date stamped (clock starts)
Copy of relevant information is retained for future validation purposes and also retained in patient notes

APPENDIX B

NHS
East Riding of Yorkshire

REQUEST FOR ACCESS TO HEALTH RECORDS

DETAILS OF THE RECORD TO BE ACCESSED

Patient Surname .....

Forename(s) .....

Date of Birth ..... / ..... / ..... NHS Number *(if known)* .....

Hospital Reference Number *(if known)* .....

Please indicate which records you require to enable us to locate the information within the specified timescale.

……..

Details of Applicant (if different from above)

Applicant's Surname .....

Forename(s).....

DECLARATION

I declare that information given by me is correct to the best of my knowledge and that I am entitled to apply for access to the health record referred to above, under the terms of the Access to Health Records Act (1990) / Data Protection Act (1998).

- ❑ I am the patient
- ❑ I have been asked to act by the patient and attach the patient's written authorisation.
- ❑ I have parental responsibility/legal guardianship for the patient who is under age 16 and [is incapable of understanding the request][has consented to me making this request] (delete appropriately)
- ❑ I have been appointed the Guardian for the patient, who is over age 16 under a Guardianship order
- ❑ I am the deceased patient's personal representative and attach confirmation of my appointment.
- ❑ I have a claim arising from the patient's death and wish to access information relevant to my claim on grounds that:

.....

.....

I am aware that a charge may be payable (up to £10.00 for an electronic copy; up to £50.00 for a copy of manual records or a combination of electronic and manual records), which includes the cost of copying and postage. [Note: The maximum charge is £50.00, and NO fee will be payable if the record is being viewed and copies are not being made].

Signed ..... Date .....

Please Note: It will be necessary to provide evidence of identity (i.e.: Driving Licence). If there is any doubt of the applicant's identity or entitlement, information may not be released. You will be informed if this is the case. (See guidance for applicants proof of identity in Appendix C)

Official Use Only:

Pre-processing check

❑ Sufficient details to process application *[date]* ..... / ..... / ..... Signed: ……

'NO': Letter sent to seek further information *[date]*: ..... / ..... / ..... Signed: ……

❑ Proceed

NOTE: INFORMATION MUST BE PROVIDED WITHIN 40 DAYS OF RECEIPT OF THE COMPLETED APPLICATION.

Administration Fee

❑ (£10.00 for computerised records) received / not appropriate / to be charged

❑ (£50.00 maximum for manual accessible records) received / not appropriate / to be charged

Signed ..... Date .....

Processing of request

Name of Lead Health Professional: .....

❑ Correspondence sent / contacted *[date]*:…… Signed: ……

Outcome: ❑ Appointment to be made with Lead Health Professional

made for [date]: …….. at [time]: …… Initials: ……

❑ Supervised Appointment to be made with: …… …..

made for [date]: …….. at [time]: …… Initials: ……

❑ Copies of notes to be sent

❑ Applicant advised of outcome *[date]:* ……..…Signed: ……..

Processing Application:

Access provided on *[date]* ..... / ..... / .....

Further Action: Corrections requested Yes / No

Copies provided Yes / No Copying fee (£.....) Yes / No

Comments:

Copy of notes: ❑ made *[date]* ..... / ..... / ..... Signed: ……

Copying fee: £ …… P & P: £ ……..... Total: £…….

❑ sent *[date]* ..... / ..... / ..... Signed: ……..

❑ Finance Advised *[date]* ..... / ..... / ..... Signed: ……..

❑ Fee received *[date]* ..... / ..... / ..... Signed: ……..

APPENDIX C

GUIDANCE FOR APPLICANTS

REQUEST FOR ACCESS TO HEALTH RECORDS
GUIDANCE NOTES FOR APPLICANTS

Introduction

The Data Protection Act 1998 provides individuals with the right to access personal information held about them. Under the Subject Access procedure you, as an individual, are entitled to:

- Be informed whether personal information is held about you;
- Be supplied with a copy of that information, a description of the purpose(s) for which the information has been processed and to whom has access to the information;
- Be supplied with a description of the data and its sources(s), and
- Know the logic involved in any decision-making affecting the individual where the data forms the basis for that decision.

Who can access a medical record?

- The patient;
- Another person (with the patient's written permission);
- A parent or a guardian of a person under 16. (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);
- A court appointed representative of someone who is not able to manage their own affairs;
- Where the patient has died, the personal representative or executor or administrator or anyone having a claim resulting from the death (this could be a relative or another person), may apply to see the records, or part of them.

When can the record holder refuse to provide the information?

Under the Data Protection Act 1998 you have a right to see information held about you subject to certain safeguards (exemptions):

- When the record holder thinks access is likely to cause you or anyone else serious physical and mental harm;
- When the record contains details that the patient has asked not to be revealed to a third party;
- When disclosing the records would reveal information that relates to or identifies another person unless their consent has been given (except where it is reasonable to disclose the records without that person's consent);
- When the records have been destroyed under Records Management NHS Code of Practice.

Proof of identity

If you are applying for your own records please send a copy of one of the following:

- Passport
- Photo card Driving License
- Birth Certificate

Please DO NOT send the original documents.

If you re applying for records on behalf of a patient you will need to provide proof of your identity (as above) and you must also include the patient's written authorisation for you to have access to their records.

If you are applying for the records of a deceased individual you must include proof of your own identity together with proof of a court appointment as personal representative.

Type of records required

It is important that you provide us with as much information as possible regarding the records you wish to have access to and the time period for which you are referring to.

GENERAL NOTES

Fees

For most requests the fee will be £10. For any requests that include the retrieval and copy of manual health records this charge could rise to a maximum of £50. You will be advised accordingly should a higher charge be required. Cheques or Postal Orders should be made payable to ***"HM PAYMASTER GENERAL"***.

Your completed application form together with the appropriate fee and identification should be forwarded to:

Rebecca Thompson

Risk Management Department

East Riding of Yorkshire PCT

Health House

Grange Park Lane

Willerby

HU10 6DT

Please note that the information will not be released until payment has been received.

How long will it take to process my application?

We aim to ensure you have access to your records within 40 days of receiving your completed application form, proof of your identity and the fee (if applicable). If the person has been receiving treatment within the preceding 4o days then we will aim to release the records within 21 days. In exceptional circumstances it may be necessary to exceed these dead lines, however you will be informed accordingly should this prove to be the case.

In some cases, a clinician may invite you to attend a "counselling" meeting in order to explain the meaning of the data we hold about you. You are not obliged to accept such an invitation unless you wish to do so but it would be in your best interests to accept. If, on the receipt of any data, you wish to seek further clarification, challenge the accuracy of the data or require further advice about your rights under the Data Protection Act 1998, please contact, in writing, the Primary Care Trust in the first instance.

APPENDIX D

Frequently Asked Questions

Q. Do I have to use an Act to apply for access to my health information?
A. Although Acts such as the DPA and AHRA provide a statutory right of access to information; NHS organisations can chose to disclose information to individuals outside of the provisions of these Acts, subject to confidentiality considerations.

Q. Can information about third parties be disclosed within a health record?
A. Careful consideration should be made before disclosing third party information, and consent should normally be sought before disclosure. Where it can be demonstrated that consent is not practicable, the NHS organisation should weigh up whether the third party information should be fully released or removed. All disclosures of information about third parties need to be considered on a case-by-case basis, and decisions about disclosure should be fully documented.

Q. Can information within a health record which identifies health professionals be disclosed to a patient?
A. Information about health professionals is not normally considered as 'third party' information, and as such should normally be disclosed as part of a request unless disclosure would put any person at risk of harm.

Q. Should individuals be informed if information is withheld from a request?

A. NHS bodies should normally inform patients if information is withheld from them during an access request unless doing so would put any person at risk, or would disclose information or inappropriately identify a third party.

Q. Do researchers have a right to access information from patient health records when they are unable to gain patient consent?
A. Research using health information can provide many potential benefits. Researchers wishing to access information should follow NHS Research Governance processes and in most cases where access to identifiable information is sought they should obtain approval from the Ethics and Confidentiality Committee of the statutory National Information Governance Advisory Board.

Q. Can MPs have access to health information about their constituents?
A. The term 'elected representative' covers Members of Parliament (UK, Scotland, Wales, Northern Ireland and EU), local authority councillors and mayors (and their equivalents in the devolved countries). Specific legislation under the Statutory Instrument, 2002, No. 2905, The Data Protection (Processing of Sensitive Personal Data) (Elected Representatives) Order 2002 enables information to be disclosed to elected representatives without contravening the Data Protection Act 1998. However, it does not remove the constraints of the common law duty of confidentiality and as such the common law should still be satisfied (normally by consent) before information is disclosed.[1]

Q. Should all information available be disclosed to a LSCB when investigating a child's death?
A. Local Safeguarding Children's Boards may require access to health records relevant to a deceased child from an NHS body to conduct an investigation/inquiry. It is highly likely that the

public interest served by this process warrants full disclosure of all relevant information within the child's own records. However, in some circumstances the LSCB may also require access to information about third parties (e.g. members of the child's immediate family or carers). In all cases the LSCB should explain why it believes information about third parties is relevant to its enquiries, and you should use this to consider whether or not there is an overriding public interest to justify the disclosure of the information requested. In cases where you determine disclosure to be in the public interest you must ensure that any information you disclose about a third party is both necessary and proportionate.

Q. Should all information requested be disclosed to Coroners for the purpose of carrying out an inquiry? [2]

A. It is the Department of Health's view that the public interest served by Coroners' inquiries will outweigh considerations of confidentiality unless exceptional circumstances apply.

When an NHS organisation feels that there are reasons why full disclosure is not appropriate, e.g. due to confidentiality obligations or Human Rights considerations, the following steps should be taken:

a) the Coroner should be informed about the existence of information relevant to an inquiry in all cases;

b) the concern about disclosure should be discussed with the Coroner and attempts made to reach agreement on the confidential handling of records or partial redaction of record content;

c) where agreement cannot be reached the issue will need to be considered by an administrative court.

[1] Section 13 of Model B3 in Confidentiality: NHS Code of Practice (DH 2003) provides more information about disclosures to MPs

[2] Coroners' inquiries are an important part of determining cause of death in a huge number of cases in the UK. Prompt access to confidential information regarding patients and others involved in an investigation is often vital to the reliability of the outcome of an inquiry.

Q. Should consideration be given to surviving family members when disclosing information about deceased patients?

A. NHS body's should have consideration to the potential harm or distress to the requester or other individuals either through supplying or withholding information. Where information is disclosed the amount of information provided should be proportionate to the need. Requesters should be sensitively informed where the decision is taken to withhold information.

Q. How do Independent Mental Health Advocates (IMHAs) and The Mental Health Act 1983 apply to access to health records?

A. Under this Act, certain people ("qualifying patients") are entitled to support from an IMHA. Subject to certain conditions, section 130B of that Act says that, for the purpose of providing help to a qualifying patient, IMHAs may require the production of and inspect any records relating to the patient's detention or treatment in any hospital or to any after-care services provided for the patient under section 117 of the Act.[3]

The Department has published guidance on IMHAs' rights to information which would not be disclosed in response to an access request from the qualifying patient themselves. This is available on the Department of Health website:

http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_098828

Q. How do Deputies and Lasting Powers of Attorney and The Mental Capacity Act 2005 (MCA) apply to access to health records?

A. The MCA generally only affects people aged 16 or over. The Act provides a statutory framework to empower and protect people who may lack capacity to make some decisions. The MCA set up a new Court of Protection, which is permitted to appoint a deputy, to deal with property and affairs and/or personal welfare decisions. People whilst they still have capacity can appoint a Lasting Power of Attorney, also either for property and affairs and / or personal welfare decisions. Personal welfare deputies and attorneys can ask to see information concerning the person they are representing as long as the information applies to decisions they have the legal right to make.[4]

[3] Chapter 20 of the Code of Practice: Mental Health Act 1983 provides more information: www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_084597

[4] The Department of Health, in partnership with the Welsh Assembly Government and the Social Care Institute for Excellence, has published a range of materials including training materials to support the implementation of the MCA that can be downloaded from the DH website: http://www.dh.gov.uk/en/SocialCare/Deliveringadultsocialcare/MentalCapacity/MentalCapacityAct2005/index.htm

Q. Can NHS bodies disclose information in response to allegations made about the operation and conduct of its staff?

A. Where allegations are made against a NHS body in the media by patients or relatives the NHS body may wish to respond in order to maintain the reputation of the NHS. However, in doing so, NHS body should not disclose further confidential information and the level of disclosure should be proportionate to the need, with strong considerations on the impact of possible harm caused to others.

Q. How long should health records be kept for?

A. NHS organisations should retain records in accordance with the retention schedules outlined in the Department of Health Records Management NHS Code of Practice before determining whether they should be archived or destroyed[5]. Where records are to be archived they should be transferred to a designated local Place of Deposit (POD) or to the National Archives. The Code is available from the following link: http://www.dh.gov.uk/en/Managingyourorganisation/Informationpolicy/Recordsmanagement/index.htm

Q. What if records are stored at an archive?

A. Archives may also receive requests for deceased health information from individuals and may consider the use of this guidance as a framework on decisions for disclosure.

[5] The Department of Health's Records Management: NHS Code of Practice provides best practice guidance on records management issues and includes a retention schedule for various categories of records.