

ACCESS TO HEALTH RECORDS POLICY & PROCEDURE

Document Number	2009/45 Version 3
Document Title	Access to Health Records Policy & Procedure
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Department	Legal Services
Ratifying Committee	The Information Governance Committee
Ratified Date	14 July 2011
Review Date	July 2014
Owner	Gwyneth Wilson
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ACCESS TO HEALTH RECORDS POLICY & PROCEDURE

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1 BACKGROUND

- 1.1 The Access to Health Records Policy & Procedure for The Queen Elizabeth Hospital King's Lynn NHS Foundation Trust complies with the Data Protection Act (1998) (The Act), which came into effect on 1st March 2000. The 1998 Act repeals and replaces the Data Protection Act (1984).
- 1.2 The Act provides a right of access to living individuals in respect of all personal data both manual and automated, of which they are the subject.
- 1.3 The Access to Health Records Act (1990) remains in force to govern access by personal representatives of deceased patients to a deceased's medical records. Otherwise the previous legislation is inapplicable.

2 ROLES & RESPONSIBILITIES

- 2.1 The Trust Board is responsible for ensuring that all valid Subject Access requests are managed in accordance with the Act. The Trust will ensure that a senior manager is appointed to manage all Subject Access requests in accordance with the Act and this policy and procedure.
- 2.2 The Director of Nursing has executive responsibility for ensuring compliance with the arrangements made under the Act.
- 2.3 The Head of Legal Services is the senior manager responsible for the day-to-day management of all Subject Access requests in accordance with the Act and this policy and procedure.
- 2.4 The Legal Services Support Officer is responsible for the day-to-day administration of requests in accordance with the Act and this policy and procedure.
- 2.5 The Information Governance Committee (IGC) is the overview committee for subject access requests and will ensure that they are managed in accordance with the Act and this policy and procedure. The IGC is also responsible for setting the required disclosure fee in line with the Data Protection (Subject Access) (Fees and Miscellaneous Provisions) Regulations 2000 (SI 191).

3 DEFINITIONS UNDER THE DATA PROTECTION ACT (1998)

- 3.1 **Accessible Record** - "Any health record which consists of information relating to the physical or mental health or condition of an individual made by or on behalf of a health professional in connection with the care of that individual." Health records fall under the Act irrespective of the date upon which the record was made (i.e. includes records compiled prior to 1991).
- 3.2 X-rays are "health records" for the purposes of the Data Protection Act 1998 (ref: *Hubble -v- Peterborough Hospitals NHS Trust*).

4 EXEMPTIONS

- 4.1 A request can be refused if the Hospital is not supplied with the fee as prescribed under the Act and reasonable information as to the identity of the applicant.
- 4.2 If disclosing the personal data would reveal information regarding a third party, (e.g. regarding a relative, or information provided by another identified person), unless that person has consented to the disclosure, or it is reasonable to comply with the request without that consent, this information can be withheld.
- 4.3 In the case of personal data consisting of information about the physical or mental health or condition of the data subject the Data Protection (Subject Access Modification) (Health) Order 2000 provides exemptions from the subject access rights in two situations:
- a. Where permitting access to the data would be likely to cause serious harm to the physical or mental health or condition of the data subject or any other person (which may include a health professional).
 - b. Where the request for access is made by another person on behalf of the patient, (such as a parent for a child), access can be refused if the patient had provided the information on the basis that it would not be disclosed.

5 CONSENT BY A HEALTH PROFESSIONAL

- 5.1 Before deciding whether any of the exemptions in Section 4 apply, where necessary, the health professional responsible for the clinical care of the patient will be consulted prior to disclosure.

6 RESPONDING TO ACCESS REQUESTS

- 6.1 A request for access must be made in writing; no reason for the request need be given. Subject to any applicable exemption, the applicant will be given a copy of the information and, where the data is not readily intelligible, an explanation (e.g. of abbreviations or medical terminology). The hospital will not charge for the explanation, but can charge a fee for the application and copying charges.
- 6.2 Regulations on subject access fees provide that a maximum fee of £50 can be charged for access to health records, (including copies of x-rays and scans).
- 6.3 The hospital is entitled to satisfy itself that the applicant is either the patient or, if the applicant is applying on behalf the patient, that the person has been authorised to do so.
- 6.4 The obligation to provide a copy may be waived if it is not possible to supply a copy, or to do so would involve disproportionate effort (e.g. because papers have been destroyed, or are spread around the country).
- 6.5 The Act does not provide an express right to directly inspect records, although it is permitted with the agreement of the patient and the hospital. It remains Department of Health policy that such requests should be accommodated subject to the exemptions listed in paragraph 3.

- 6.6 Requests for access will be responded to promptly and no later than forty days after the receipt of a completed and signed application form and fee, (and any additional information as to the identity of the applicant or the location of the information). In exceptional circumstances, if compliance is not possible within this period, the applicant will be advised accordingly.
- 6.7 Where an access request has previously been complied with, the Act permits data controllers not to respond to a subsequent identical or similar request unless a reasonable interval has elapsed since the previous compliance. There is no definition of "reasonable interval", but regard will be given to the nature of the data and how often it is added to. The reason for the request(s) will also be considered.

7 RIGHTS OF RECTIFICATION

- 7.1 Where an applicant considers that information contained in their health records is inaccurate, they may apply for a correction to be made. If the health professional is satisfied that the information is inaccurate, i.e. incorrect, misleading or incomplete, the health records may be corrected. If the health professional is not satisfied that the applicant's concerns are justified, a note of the applicant's comments must be appended in the part of the record to which the comments relate. Whether or not the record is corrected, the health professional will supply the applicant with a copy of the correction/appended note, without charge. Care will be taken not to obliterate information significant to the future care and treatment of the patient.
- 7.2 If the Trust's attempt to rectify the records and resolve the concerns is not accepted, the patient may apply to the Court, for an order, or to the Data Protection Commissioner for an enforcement notice. Either of which may require that the inaccurate data and any expression of opinion based on it, is rectified, blocked, erased or destroyed.
- 7.3 However, where the data is inaccurate but accurately records information given by the data subject or another person, the Court of the Commissioner may instead order that the record should be supplemented by a statement of the true facts as approved by the Court/Commissioner.

8 THE DATA PROTECTION (SUBJECT ACCESS MODIFICATION) (HEALTH) ORDER 1999

- 8.1 This Order came into effect on 1st March 2000 and modifies the Data Protection Act 1998 so as to prevent a data controller refusing access on the grounds that the identity of a third party would be disclosed. This is applicable where the information is contained in the health records and identifies a third party who is a health professional.
- 8.2 Access to medical records cannot therefore be excluded because they identify medical, nursing, or other healthcare professionals.

9 PROCEDURE FOR ACCESS TO HEALTH RECORDS GENERAL INFORMATION

- 9.1 Informal requests for access to health records by patients undergoing treatment, or during a consultation with the doctor in charge of their care are not bound by this procedure. The doctor will decide whether access is appropriate at that time and may wish to explain the contents of the relevant part of the medical records to the patient.

- 9.2 All formal applications for access to health records must be made in writing to the Legal Services Department.
- 9.3 Under the Data Protection Act 1998 the Trust is required to provide access within **40 days** of receipt of a completed and signed application form and the appropriate fee. Therefore, in order to comply with this time-scale, where necessary, health professionals will be given 10 days to review the records and give their consent or to indicate if any part of the record is exempt from access (see item paragraph 3).

10 REQUESTS FOR ACCESS BY THE PATIENT

- 10.1 Upon receipt of a telephone enquiry or letter from a patient requesting access to their health records, an Access to Health Records Form will be sent to the patient together with an information leaflet.
- 10.2 When the completed and signed Access to Health Records Form is returned, the request will be logged onto the DATIX Request for Information (RFI) database. The form will be carefully checked to ensure that it has been completed correctly and countersigned to ensure the identity of the applicant is validated and an acknowledgement letter sent to the applicant.
- 10.3 The records will be disclosed within 40-days of receipt of a completed application form and fee, however, if the patient has been treated or their medical records have been updated during the 40-days immediately preceding the application, the expectation is that a response will be made within 21 days.
- 10.4 The medical notes will be obtained and, where necessary, a letter sent to the Consultant(s) who treated the patient within the relevant episodes requested asking for consent for disclosure, or reasons for any exemptions (see Section 5). The application form will be attached for information.
- 10.5 When a Consultant has been contacted for consent for disclosure, if a response is not received within 10 days it will be assumed that there is no objection to the disclosure and the application will be processed.
- 10.6 **If a Consultant does not give consent for disclosure of the records, the Head of Legal Services must be informed immediately to deal with the concerns.**
- 10.7 If copies of the full set of records have been requested, the medical notes will be scanned by the Patient Services Department in accordance with the current Service-Level Agreement in force. The date the records are requested (and subsequently provided) will be entered onto the Datix database.
- 10.8 Copies of the medical records will be sent to the patient with a covering letter, which will include a disclaimer (See Appendix 1).
- 10.9 If only part of the medical records have been requested, photocopies of the appropriate sections will be provided. The original medical records will then be returned to the Medical Records Library and PAS updated accordingly.

11 REQUESTS FOR X-RAYS BY THE PATIENT

- 11.1 If x-rays have also been requested, a copy of the x-ray schedule will be sent to the Radiology Department in order that they may produce a CD containing the digital images. *(NB Consent from the Consultant is not needed for the disclosure of x-rays).*
- 11.2 The Radiology department is responsible for copying the x-rays onto CD and passing it to the Legal Services Support Officer for disclosure.
- 11.3 It is important to note that the maximum fee is £50 for the disclosure of both medical records and x-rays and the Legal Services Support Officer will invoice the requester with the appropriate fee.

12 PACS IMAGE TRANSFER

- 12.1 Patient Studies are routinely shared between Health Care Organisations as a means of completing the Patient Care pathway, either for referrals or, in the case of a visiting Patient, to compliment their Medical Records
- 12.2 The purpose of this Section is not only to ensure that the transfer of Patient studies is carried out efficiently, securely and within Information Governance guidelines but also to define the circumstances under which studies should be transferred and the method of transmission

Responsibility & Scope

- 12.3 Where possible, studies are shared between health care establishments electronically, using a secure network connection - this guarantees that the transfer is completed securely, within Information Governance guidelines and without any potential requirement for encryption. The PACS Team is responsible for any outbound or inbound transfers, and can be contacted (within working hours) either on extension 3074 or 2481.
- 12.4 For urgent, out of hours, transfers the Trust has network links with Addenbrookes, Papworth and Norfolk & Norwich. In cases where studies require emergency transfer the Radiographer on call can carry out the transfer using eFilm. Whilst eFilm is a secure method of transfer, this legacy system doesn't utilise the NHS number and as such is considered to be for emergency use only.
- 12.5 There are occasions whereby the only method of image transferral is by creating and posting a CD. This is considered as a last resort, and is routinely carried out in the case of studies sent to an individual, to a Solicitor for medico-legal purposes, to a Dental or GP Practice or to non-IEP connected Healthcare Organisations. Any individual requesting a CD for personal use must be directed to The Legal Services Department who will validate the request and determine whether the Patient is required to be charged an appropriate fee.
- 12.6 All CD's containing radiology images that leave the Trust is to be either physically handed to the Patient by a member of Trust Staff, following verification of their identity, or despatched to a verified address by Recorded Delivery. In all cases a written disclaimer is to be printed and included with the CD media containing the salient paragraph at Appendix 1. All Patient CD's must have the NHS number written on the media (if available).

- 12.7 Any transfer request that the recipient is unable to verify must be clarified with a member of The Legal Services Department prior to either sending the study or creating a CD.
- 12.8 In cases whereby a member of Trust Staff requests that a CD is created on behalf of a Patient, the member of Staff must validate the requester's identity and must subsequently pass the CD to the requester in person. As the CD is passed to the requestor, or their representative, a signature will be requested; this is to acknowledge receipt of the CD only, and is in no way to be seen as passing responsibility for the contents of the disk to the recipient.
- 12.9 Trust policy dictates that all Radiographers and Career Grade Doctors PACS smartcards are to be provided with the ability to export studies directly from PACS to memory sticks for presentations and the like. Trust policy stipulates that such exports must only be carried out using encrypted memory sticks, and images are to have all Patient demographics removed, instructions for which are available within the PACS Help file under the headings "Export Study Images as JPEG" and "Hiding Patient Demographics". This is the only allowable means of PACS Study export to be carried by Clinicians and medical staff within the Trust. Failure to adhere to these stipulations will be considered as a disciplinary matter.

Documentation

- 12.10 It is a requirement that the PACS Team maintain an inventory of Patient Study Data that leaves the Trust either by electronic Transfer or CD. In cases whereby an out of hours transfer is completed, or a CD is produced, the member of Staff involved must inform a member of the PACS Team either by phone or email. Contact details for the Team are
- CDRequests@qehkl.nhs.uk (email)
 - Extension 3074 or
 - Extension 2481

The details required are

- Patients name and Hospital Identifier (D. number)
 - Study details
 - Date and Time
- 12.13 If a CD is created, either by the Radiographer on call or by a member of the PACS Team, a signature will be requested to authorise collection, a copy of which has been reproduced in Appendix 2 – the intention of this is to create an audit trail for the CD

13 THIRD PARTY REQUESTS FOR ACCESS TO HEALTH RECORDS

This procedure only applies where there is no litigation intended against the hospital.

- 13.1 Third party requests can be received from firms of solicitors, the Criminal Injury Compensation Authority (CICA) and Independent Health Professionals requesting the medical records for medical reports. Requests should be accompanied by the patient's consent for disclosure of their medical records. If there is no consent, the solicitors will be contacted and asked to provide authorisation. The Trust will be unable to release any records until in receipt of the patient's written consent. Checks will be undertaken to determine whether litigation against the hospital is being contemplated.
- 13.2 The procedure for patients' requests in paragraph 10 will be followed.

14 INVOICING

- 14.1 Under the Data Protection (Subject Access) (Fees and Miscellaneous Provisions) Regulations 2000 (SI 191) the maximum fee that can be charge for each disclosure (including x-rays and scans) is £50.00. The Trust operates a sliding scale of charges which is currently:

Up to 10 sheets photocopied	£25.00
Up to 20 sheets	£27.00
Up to 30 sheets	£30.00
Up to 40 sheets	£33.00
Up to 50 sheets	£36.00
Up to 60 sheets	£39.00
Up to 70 sheets	£43.00
Up to 80 sheets photocopied	£46.00
Up to 90 sheets photocopied	£48.00
90+	£50.00 (maximum)

If radiology images have been requested together with medical records, the standard fee is £50:00 regardless of the amount of sheets disclosed.

- 14.2 When the appropriate fee is received, a Receipt Request Form will be printed from the Request for Information Module on the Datix database and authorised by the Head of Legal Services. The cheque will be attached to the Receipt Request Form and forwarded to the Finance Department for action.

15 MONITORING OF COMPLIANCE

- 15.1 Compliance of this policy will be monitored by the Information Governance Committee. Further, compliance will be assured by the Trust's internal audit programme, user feedback, complaints received and feedback from the Office of the Information Commissioner's. Access to Health Records disclosure performance will also be tabled on a quarterly basis at the Information Governance Committee. Compliance with roles and responsibilities is monitored at appraisal, following review of the individual's knowledge & skills framework (KSF) together with the job description.
- 15.2 The effectiveness of the Access to Health Records service will be evaluated by way of a Service Users Satisfaction Audit, which will form part of the Department's Annual Audit Plan.

16 EQUALITY IMPACT ASSESSMENT

- 16.1 This policy has been subject to an Equality Impact Assessment and is not considered to have a discriminatory impact on any individual or groups. A translated version of this policy will be provided upon receipt of request.

Appendix 1

The Queen Elizabeth Hospital

King's Lynn

NHS Foundation Trust

Please be advised that these documents/CD(s) contains **confidential medical information**. It is the recipient's responsibility to ensure that all reasonable care is taken to protect the data contained within. The Queen Elizabeth Hospital Kings Lynn NHS Foundation Trust will not be held responsible for the loss or misuse of this data once it is in the hands of the recipient.

Chair: Kate Gordon Chief Executive: Nerissa Vaughan
Patron: Her Majesty The Queen

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EQUALITY IMPACT ASSESSMENT TOOL

STAGE 1 - SCREENING

Name & Job Title of Assessor: Karl Perryman, Head of Legal Services	Date of Initial Screening: 28 June 2011
Policy or Function to be assessed: Access to Health Records Policy & Procedure	

		Yes/No	Comments
1.	Does the policy, function, service or project affect one group more or less favourably than another on the basis of:		
	3.1 Race & Ethnic background	No	
	3.2 Gender including transgender	No	
	3.3 Disability	No	
	3.4 Religion or belief	No	
	3.5 Sexual orientation	No	
	3.6 Age	No	
2.	Does the public have a perception/concern regarding the potential for discrimination?	No	

If the answer to any of the questions above is yes, please complete a full Stage 2 Equality Impact Assessment.

Signature of Assessor: Karl Perryman

Date: 28 June 2011

Signature of Line Manager: Claire Roberts

Date: 28 June 2011

Chair: Kate Gordon Chief Executive: Nerissa Vaughan
Patron: Her Majesty The Queen

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