

STANDARD OPERATING PROCEDURE:	ACCESS TO HEALTH RECORDS PROCEDURE
SOP NO:	TW15-002 SOP 1
VERSION NO:	3
APPROVING COMMITTEE:	CALDICOTT COMMITTEE
DATE THIS VERSION APPROVED:	March 2021
RATIFYING COMMITTEE:	PARG (Policy Approval and Ratification Group)
DATE THIS VERSION RATIFIED:	April 2021
AUTHOR(S) (JOB TITLE)	INFORMATION GOVERNANCE LEAD
DIVISION/DIRECTORATE	Strategy and Planning
LINKS TO OTHER POLICIES, SOP'S, STRATEGIES ETC:	TW15-002 Health Records Access to Health Policy
CONSULTED WITH	Caldicott Committee Members

Date(s) previous version(s) approved (if known):	Version:1	Date: January 2015
	2	Date: April 2019
DATE OF NEXT REVIEW:	April 2024	
Manager responsible for review (Job title) <i>N.B. This should be the Author's line manager</i>	INFORMATION GOVERNANCE MANAGER	



**AT ALL TIMES, STAFF MUST TREAT EVERY INDIVIDUAL WITH RESPECT
 AND UPHOLD THEIR RIGHT TO PRIVACY AND DIGNITY**

Contents

Contents		Page No.
1	Introduction	2
2	Pathway of Requests	2
3	Types of Subject Access Requests	3
4	Access to Health Records of A Person Under The Age Of 18	5
5	Access to Health Records Act – Requests (Deceased Patients)	5
6	Access to Health Records Act 1990 Viewing Requests	6
7	Other Requests	6
8	Redactions	7
9	Exemptions	7
10	Information Governance	7
11	Human Rights Act	7
12	Accessibility Statement	7

Appendices		
App 1	Request for Copies of Original Health Records	8

1 INTRODUCTION

- 1.1 Health Care Information is essential to any NHS organisation in ensuring that the delivery of high quality evidence based health care is provided for and to the patients on a day-to-day basis.
- 1.2 Specific legislation governs the importance of health records keeping in NHS organisations and the way health records are managed and processed both internally and externally to the Trust. NHS bodies must ensure that the policies and procedures are fully compliant with the relevant legislation and Government policy.
- 1.3 Individuals have a right to apply for access to health information held about them, and in some cases, information held about other people. NHS organisations will ensure that they have adequate procedures in place to enable patients to exercise this right. The process of dealing with these requests can be challenging however the main legislative measures that give rights of access to health records include, The Data Protection Act 2018 which explains rights for living individuals to access their own records. This right can also be exercised by an authorised representative on the individuals' behalf, The Access to Health Records Act 1990 – which explains rights of access to deceased patient records by specified authorised persons and The Medical Reports Act 1988 – which explains right for individuals to have access to reports, relating to themselves, provided by medical practitioners for employment or insurance purposes.
- 1.4 Managers and Administrators in all directorates and departments must ensure that their staff are aware of the vital role that health records play in delivering health care and supporting corporate and legal processes which includes a responsibility for any Access to Health requests they receive. They have personal responsibility for any health records they create or use and must recognise, promote and adhere to National, legislative and localised policies and procedures associated with Health Records.
- 1.5 Individuals receiving any requests for access to health records must contact the Access to Health Records team before any information is further communicated.

2 PATHWAY OF REQUESTS

- 2.1 A request may be received by telephone, post, fax and e-mail. Verbal requests can be accepted, however steps must be taken to ensure that identity is verified before records are released. Each request is date stamped with the date of receipt. Requests not for the Access Team are sent on to the appropriate department.
- 2.2 There is either a one or three calendar month turnaround however this only starts once all relevant paperwork is received in order to process the request. This means that all the information relevant to the request must be received and authorised including the appropriate signed consent form.
- 2.3 Requests that are classified as simple have a timescale of one calendar month and those which are classified as complex have a timescale of three calendar months. However, every effort is made to release copies of records as soon as is practically possible.
- 2.4 All new requests are verified on arrival, date stamped and then uploaded to the Onbase Digital System. A confirmation letter is sent only if the request was made in writing as all email requests are confirmed as received – via an automated confirmation/response.
- 2.5 Requests are assessed on a case-by-case basis if they are deemed simple or complex. As soon as a request has been deemed to be complex in nature, requiring more time to

complete, then the requestor must be informed in writing within one calendar month of receipt of request, outlining the complexity of the case and the reason for a two-month extension.

2.6 Requests are processed using various methods

Type of Request	Method of Access
Accident and Emergency	Access team search MSS system, the HIS and possible the previous MNS and upload the relevant A & E records.
Audiology Records	Audiology records are requested by Access team from the Thomas Linacre Centre. Copies are sent to Access team through internal post or via WWL secure email.
Health Records	Health Records traced via CSC. Reviewed by Access team and relevant records copied/ retrieved from EPR and or HIS Systems.
Photographs	E-mail request to Medical Illustration – photographs are sent to X-RAY where images are burned to disc, encrypted and sent out / collected via the Access Team
Physio WWL – Upper Limb only (all other requests processed via Physio dept.)	Copy of request sent to Physio Department at Wrightington Hospital via e-mail.
X-Rays	Copy of request sent to X-Ray. Images burned to disc, encrypted and sent out from X-Ray.
Community Records – eg community physio, district nurse, health visitors, counselling	Forward request to relevant community access staff, using contact details recorded in the SAR Standardisation Contact List.

3 TYPES OF SUBJECT ACCESS REQUEST

3.1 Personal requests from individuals

3.1.1 This may be a request for their own personal records to take to another hospital for an appointment, it may be to support a benefits claim or for a continuing care claim

3.1.2 A signed and dated consent is required from the individual before any information can be released plus 2 forms of I.D - one to contain a photograph and one as proof of residence.

3.2 Solicitors request for individual records

3.2.1 These requests from solicitors may be as a claim against a third party.

3.2.2 A signed and dated patient consent is required.

3.3 Police Request for records

3.3.1 These are usually requested for patients who have received treatment and will be used in the prevention and detection of crime.

3.3.2 Police requests are made in writing and where appropriate, a consent form is supplied by either the patient or representative of a patient. These must be requested on an official Data Protection form signed by a senior officer, and also a signed patient consent is also required where practically possible.

- 3.3.3 If they are not in a position to supply a consent form, they must justify this by providing a completed Section 29 (3) Data Protection Form (819T form) stating the reason for lack of consent. The police will quote 'the prevention or detection of crime or apprehension or prosecution of offenders' and this signifies a serious crime may have occurred which may include murder, manslaughter, rape, treason, kidnapping and abuse of children or other vulnerable people.
 - 3.3.4 Once received the request is date-stamped and uploaded onto OnBase. Police requests are dealt with urgently and the relevant records are collated and uploaded to Onbase. The records are released using the electronic transfer system AMS.
- 3.4 Local Authorities e.g Wigan Council
- 3.4.1 These records are usually requested for children who are in the care of Wigan Council or in Foster care for use in Court Proceedings. This is a very sensitive area and often covers children at risk or ongoing care proceedings.
 - 3.4.2 In this case a copy of the sealed Court Order is required before any information can be released. Requests from Wigan Council are date-stamped and entered onto OnBase. The consent is checked or where provided, the court order is sealed and is in date. Once satisfied, the records are retrieved and uploaded to Onbase. Wigan Council requests are usually urgent requests and are required with not much notice given.
 - 3.4.3 If a request for information regarding a child is received in the context of proceedings, consultant consent need not be obtained due to the urgent nature. Once all the required records are collated, they should be checked ensuring the minimum relevant information is disclosed. The records are then sent out electronically vis AMS. If the council wish to collect the records or x-ray disk, then they are contacted and asked to produce identification as they collect the information and sign that they are in receipt of records.
 - 3.4.4 If there is no sealed court order, then an interim care order or proof of parental responsibility should be obtained plus consent from the last treating consultant.
- 3.5 Department of Works and Pensions
- Requests for copies of records in this case will be to support benefit claims however it is rare that copies are sent as the department requests a report to support the benefit claim. At this time no authorisation to release records is needed as the Department of Works and Pensions is considered a Government body and covered under Section 34B which excludes their need to get written consent.
- 3.6 Service Personnel and Veterans Agency – Ministry of Defence
- 3.6.1 Requests for copies of records in this case will be to support benefit claims. No consent is required and no charges levied. Section 34 (b) of the General Medical Council's Guidance for Doctors – "Confidentiality", as an officer of a government department, assurance provided that the patient or a person properly authorised to act on their behalf has consented to disclosure of information. This in layman's terms assures the Trust that the Ministry of Defence as a recognised Government body has the legal rights to act on behalf of the patient or individual named in the request.
 - 3.6.2 On 8th Jan 1999, the NHS Executive issued the Health Service Circular- HSC 1999/001 and reaffirms the long-standing responsibilities of the NHS Hospitals to supply patient information to the Ministry of Defence free of charge, the Service Personnel & Veterans Agency is an executive agency of the MOD.
- 3.7 Criminal Injuries Compensation Board (CICA)
- 3.7.1 Records are requested to support allegations of injury or assault.

3.7.2 A signed and dated patient consent is required.

3.8 Motor Insurers Bureau

3.8.1 These records would be requested in order to support allegations of injury by an un-insured.

3.8.2 Driver. A signed and dated patient consent is required.

3.9 Insurance Companies

Individuals making claims through their insurance company for accidents/injuries e.g Road Traffic Accidents, Critical Illness claims etc. A signed and dated patient consent is required.

3.10 Studies for Research

3.10.1 Reasons for requests include records required for inclusion in local or national studies.

3.10.2 A signed and dated patient consent however where a patient is deceased or deemed incompetent to provide written consent next of kin consent is required.

4 ACCESS TO HEALTH RECORDS OF A PERSON UNDER THE AGE OF 18

4.1 A person with parental responsibility will usually be entitled to access the records of a child under the age of 16. Proof of identification and in certain circumstances the child's consent should be included with the request. A child over the age of 12 may be competent to provide consent for their own records without parental consent (refer to Gillick Competence Guidelines) therefore consultant consent should be sought in these cases to ensure safeguarding. The release of children's data is subject to the same health sector exemptions under GDPR as for adults.

4.2 Children aged 16 and 17: The mental Capacity Act covers and empowers children aged 16 and 17. A young person can apply for their own health records unless it is established he or she lacks capacity (refer to Gillick Competence Guidelines).

4.3 If there is any doubt regarding the release of records advice can be sought from the last treating consultant or the legal team.

4.4 Equally any child deemed "Gillick Competent" can prevent their parents from viewing their medical records. If in any doubt regarding the release of records advice can be sought from the last treating consultant or legal team.

5 ACCESS TO HEALTH RECORDS ACT 1990 (DECEASED PATIENTS)

5.1 Requests from patient's personal representative (deceased patient)

5.1.1 The records may be requested for claims referring to Continuing Care, for their own personal records, dissatisfaction with the care of a relative or a claim against a Care Home.

5.1.2 A copy of the Death Certificate, Power of Attorney, Grant of Probate or Letters of Administration is required before information is released or the applicant must be able to prove a claim on the estate.

5.2 Solicitors (deceased patient)

Records may be requested to investigate a claim against a Care Home, a Continuing patient's Personal Representative along with one of the following documents as proof of entitlement e.g Grant of Probate, Power of Attorney, (if a will has been made), Letters of Administration (If no will has been made) or Death Certificate naming the personal representative as having registered the death.

- 5.3 Continuing Care Requests received via a Solicitor or a patient's personal representative (deceased patient)
 - 5.3.1 These are often requested to make a claim for recompense of Nursing/Care Home fees.
 - 5.3.2 A signed and dated consent is required from the Personal Representative.

6 VIEWING REQUESTS

- 6.1 Patients requiring to see own Records
In order to process these types of requests an application form and information leaflet is printed from the Health Records Service page on the intranet and sent out to the individual either by post or e-mail.
- 6.2 Viewing of Health Records
 - 6.2.1 A patient who wishes to view the notes for clarification of events or care provided. This may be around dissatisfaction of care received. Patients are at liberty to request their Health Records without giving reason and do not have to divulge why they want to view their own records.
 - 6.2.2 A signed and dated consent from the patient or the patient's representative is required; however, where a patient is deceased or deemed incompetent to provide written consent patient representation consent must be given.
 - 6.2.3 Where the personal representative of a patient makes an application proof of entitlement is required. This may be Letters of Administration, Grant of Probate, Death Certificate if named as having registered the death, Care order or Lasting Power of Attorney over Health and Welfare. An application form and information leaflet is sent out to the requestor, either by post or email. Upon sending the application form, a copy of the relevant documentation must be sent in with the completed application form as proof of their entitlement. Upon receipt of the completed application form and the supporting proof of entitlement the Health Records are located and processed in line with the localised procedures.
 - 6.2.4 It is at this point that the requestor is asked to come into the Trust to view the Records. The appointment is recorded in the Access to Health appointments Diary. They are required to bring proof of identification on the day of the viewing. This is checked on arrival before they see the Records. The individual whilst viewing the Records may identify specific pages or documents they require copying. After the viewing has taken place the records are copied. OnBase is then updated and the request is subsequently filed away as complete.

7 OTHER REQUESTS E.G REQUESTS FOR OTHER HOSPITALS/TRUSTS, GP SURGERIES, ASSESSMENTS UNITS (CLINICAL ASSESSMENT AND TREATMENT SERVICE), PHYSIO.

- 7.1 It must be clear that this is for the continuing care of the patient. On rare occasions original records may be released. It is more usual for copies of Health Records to be requested from other hospitals and for these cases a pro-forma must be completed before copies are sent.
- 7.2 Genetics (usually other hospital requests)
 - 7.2.1 In these cases records are requested to further investigate the patient's medical history relating to genetic conditions which may have an impact on other family members. These requests fall under 'other hospital requests.'
 - 7.2.2 A signed and dated patient consent is required, however where a patient is deceased or deemed incompetent to provide written consent, personal representation consent must be given.

- 7.3 Reasons for requests include: Patients are attending other hospitals/GP requests for information/Patients who are attending the CATS or PHYSIO Departments where casenotes are required for the provision of care/treatment.

8. REDACTIONS

- 8.1 Where the notes in question mention the health status of another individual (for example a parent) then the name and other personal information of this third party must be redacted.
- 8.2 When there appears to be any other information that does not look suitable for inclusion, although it is in the medical record, please check with the relevant consultant, or if not available, the last treating consultant, before redacting.
- 8.3 Methods of redaction.
In an electronic case record: Adobe writer is the preferred tool
In a paper record: a black marker is used to redact the copy of the record.

9. EXEMPTIONS

- 9.1 Exemptions to Subject Access Requests are rare.
- 9.1.1 If releasing the Case Notes is deemed to be harmful to the Requestor, seek the advice of the last treating consultant and senior Access to Health Staff before making any decision to exempt.
- 9.1.2 An exemption may be granted if the Health Records of a Gillick Capable child are requested by a parent against the wishes of the child in question.

10. INFORMATION GOVERNANCE

- 10.1 This system involves access to confidential personal information and all members of Trust staff are required to read, understand, and sign up to the Confidentiality Code of Conduct on a yearly basis.
- 10.2 All personal information remains confidential and is only accessed when necessary as part of duties.
- 10.3 Passwords are never shared, and all staff must log on as themselves.
- 10.4 All computer screens are locked when a staff member is away from them.
- 10.5 Links from unknown sources and spam must be reported to IT.
- 10.6 The Trust adheres strictly to Caldicott Principles.

11 HUMAN RIGHTS ACT

Implications of the Human Rights Act have been taken into account in the formulation of this document and they have, where appropriate, been fully reflected in its wording.

12 ACCESSIBILITY STATEMENT

This document can be made available in a range of alternative formats eg large print, Braille and audio CD.

For more details, please contact the HR Department on 01942 77 3766 or email equalityanddiversity@wwl.nhs.uk.

Application Form to Request Access to Health Records

Please read the accompanying guidance: "Access to Health Records Information Leaflet" regarding the rights of access together with charges that may be associated with your application, to assist you in completing this application form.

DETAILS OF APPLICANT:			
Surname:		Forename(s):	
Address:			
Email address:			
Telephone number:		May we leave an answer phone message?	Yes / No

Please tick the appropriate boxes:

- I am the patient and over the age of 16 years.
- I am the person who has legal responsibility for the patient, who is under the age of 14.
- The patient is over 14 years of age and under 16 years of age, has consented to my making this request and has authorised my application.
- I am acting on behalf of the patient (aged over 16). Please be advised that you will need to provide proof that you have power of attorney or that you are the legal representative.
- I am the deceased patient's personal representative and attach either letters of administration or a grant of probate
- I have a claim arising from the patient's death and wish to access information relevant to my claim on the grounds that:

Name of Patient:

Signature:

DETAILS OF THE PATIENT:

Surname:		Forename(s):	
Address:			
Date of birth:		Title:	Male/Female
NHS number:		Hospital number:	

If the name and / or address were different from above during the time period(s) to which the application relates - please give details below:

PREVIOUS DETAILS:		
Previous Surname:	1)	2)
Previous Address:	1)	2)
Applicable Dates:		

To help the NHS save time and resources it would be helpful if you could provide details below, informing us of the parts of the health records you require, along with details which you may feel have relevance i.e. dates, consultant name, location, written diagnosis and reports etc.

Please use the space below to document, continuing on another page if necessary.

HOSPITAL / CLINIC CONTACTS (Please provide as much information as possible)					
Date Attended	Hospital	Ward / Clinic	Consultant	Type of Record – please indicate	Hospital No.
				<input type="checkbox"/> Case notes <input type="checkbox"/> X-rays <input type="checkbox"/> A&E Records <input type="checkbox"/> Photographs	
				<input type="checkbox"/> Case notes <input type="checkbox"/> X-rays <input type="checkbox"/> A&E Records <input type="checkbox"/> Photographs	
				<input type="checkbox"/> Case notes <input type="checkbox"/> X-rays <input type="checkbox"/> A&E Records <input type="checkbox"/> Photographs	

Do you wish to arrange an appointment to view the original records in the presence of a member of staff? Please note this will be a member of the Information Governance Team who is not medically trained.

YES / NO

In order that we can process your application request efficiently would you please advise us if this application is in connection with an ongoing complaint against the Trust?

YES / NO

If yes, please enter your complaint reference number below:

Declaration

I declare that the information supplied above is correct to the best of my knowledge and that I am entitled to apply for access to the above record(s) under the terms of the Data Protection Act 2018. I enclose two forms of identification one of which must be a photocopy of photographic identification; the other must be a utility bill.

We cannot process your application without proof of identity.

Signature: _____

Date: _____

Please return this form to:-

Access to Health Records Department
Knowsley House
Royal Albert Edward Infirmary
Wigan Lane
Wigan
WN1 2NN
Tel:- 01942 822541