

Rosebank Health

Patient Access to Medical Records - Information Leaflet

Access to Your Health Record (Right of Subject Access) Under Data Protection Act 2018

Health Records

What is a health record?

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 in computerised and/or manual form. It may include such documentation as handwritten clinical notes, letters to and from other health professionals, laboratory reports, radiographs and other imaging records, printouts, photographs, videos and tape recordings.

What legislation governs access to health records?

The Data Protection Act 2018 governs access to the health records of living people. Individuals have a right to apply for access to records irrespective of when they were compiled under the Data Protection Act. The Data Protection Act gives every living person (or authorised representative) the right to apply for access to their health records.

The Access to Health Records Act 1990 governs access to the health records of deceased people. Access to Health Records Act 1990 did not provide individuals with a statutory right of access to records compiled prior to November 1991. The Access to Medical Reports Act 1988 governs requests for medical reports.

Requesting Access to your Health Records

How should access to my health record be requested?

Any request for access to your health record held by the Practice must be made to the Practice Manager in writing. Please contact the practice for alternative methods of access if you are unable to make a request in writing.

To help us respond as appropriately as possible to your request, we ask that you complete an access to records form provided by Reception staff or on our website (www.rosebankhealth.nhs.uk). There are different forms depending who is requesting access to the medical records. If you do not use one of our forms, it would be helpful if you could provide details of the time-periods and aspects of your health record you require (this is optional, but it may help save practice time and resources).

Once we have all the required information, and fee where relevant, your request should be fulfilled within one month. In exceptional circumstances where it is not possible to comply within this period, you will be informed of the delay within one month of the request. We will provide you with a timescale of when the information will be made available, which will be no more than three months after the request was made.

Practice's online services

Information from your Medical Records can be accessed as part of the Practice's online services. Please ask for a form at reception or download a copy from the surgery website (www.rosebankhealth.nhs.uk). For security reasons you will have to visit the practice to undertake an identity check before you are granted access to these records.

What are the charges for accessing your health record?

Under the Data Protection Act you will not normally be charged a fee to view your health records or to be provided with a copy of them unless the request is judged to be unfounded or excessive. If a request is deemed to be unfounded or excessive, a fee will be incurred based on the administrative cost of providing the information.

Accessing your Health Records

Where it is agreed that an individual may directly inspect their health record, does access need to be supervised?

Yes. The Practice will consider whether access should be supervised by a health professional or whether an appointment should be made for supervision by a lay administrator. Lay administrators must not comment or advise on the content of the record and if the applicant raises enquiries, an appointment with a health professional will be offered. Where the information is not readily intelligible, an explanation (e.g. of abbreviations or medical terminology) will be given.

Are there any circumstances in which information contained in health records may be withheld from the person requesting access?

In some circumstances, the Act permits the Practice to withhold information held in your health record. These rare cases are:

- Where it has been judged that supplying you with the information is likely to cause serious harm to the physical or mental health or condition of you, or any other person, or;
- Where providing you with access would disclose information relating to or provided by a third person who had not consented to the disclosure. This exemption does not apply where that third person is a clinician involved in your care.

Where information has been withheld is the Practice obliged to advise applicants that this is the case?

No. The Practice is free to advise applicants of the grounds on which information has been withheld but are not obliged to do so. If it is thought likely to cause undue distress the Practice may not wish to volunteer the fact that information has been withheld.

Can the Practice refuse to process an application for access to health records?

Yes. Where an access request has previously been complied with, the Act permits the Practice not to respond to a subsequent identical or similar request unless a reasonable interval has elapsed since the previous compliance. To decide when a reasonable interval has elapsed, the Practice will consider the nature of the information, how often it is altered and the reason for its processing. The reason for the request(s) may also be relevant.

How can a person apply for access to their health records if they are not living in the UK?

Patients no longer resident in the UK still have the same rights to access their information as those who still reside here and must make their request for information in the same manner. Original health records should not be given to an individual to take abroad with them; however, a full or partial copy may be requested using a SAR.

Medical records cannot be sent outside Europe without explicit consent from the patient. Following verbal feedback from the ICO's office, the surgery will consider requests to post Subject Access Requests outside the UK but may request a financial contribution from the requestor if the request is deemed excessive (for example, the applicant may be asked to pay the difference between UK and international postage costs). Each request will be reviewed on an individual basis.

Can a person take their health records with them for their new doctor if they are living outside the UK?

No. However patients can make a Subject Access Request for copies of their records, and then take the copies with them. The GP may be prepared to provide the patient with a summary of the patient's treatment to take to their new GP.

What if the patient feels their health records are incorrect, can they have them amended?

If a patient feels 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 Information Commissioner at Wycliffe House, Water Lane, Wilmslow, Cheshire SK9 5AF, telephone number 0303 123 1113 or website www.ico.org.uk

Third-Party Access to Health Records

Can I apply for the health record of another person?

Not normally, unless you have the persons written consent. However, for access to the records of a child or a deceased person please read on.

What if the person is unable to give consent?

If this is the case, then you should contact the Practice Manager for advice.

How will the surgery deal with requests from solicitors acting on behalf of an individual?

Requests from a solicitor for access to the patient's medical records must be submitted with consent from the patient. The surgery may contact the patient prior to sending a copy to check they understand the implications of their full medical record being sent to the solicitor. The surgery will not charge for a Subject Access Request but will charge for a request for a medical report from a solicitor made under the Access to Medical Reports Act 1988.

If you are using an authorised representative, you need to be aware that in doing so, they may gain access to all health records concerning you, which may not all be relevant. If this is a concern, you should inform your representative of what information you wish them to specifically request when they are applying for access.

The Practice has ethical obligations around how patient records are shared, and will explain to patients, in broad terms, the implications of making a Subject Access Request so they can make an informed decision on whether they wish to exercise their rights under the Data Protection Act.

Access to Children's Health Records

Who has the right of access to a child's health record?

As a general rule, a person with parental responsibility will have the right to apply for access to a child's health record. Individuals with parental responsibility for an under 18 year old will have a right to request access to those medical records. Access may be granted if access is not contrary to the wishes of the competent child.

What is parental responsibility?

Parental responsibility for a child is defined in the Children's 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".

A person with parental responsibility is defined as either:

- the birth mother, or
- the birth father (if married to the mother at the time of child's birth or subsequently) if both are on the birth certificate, or,
- an individual given parental responsibility by a court.

Are there situations in which access to the child's records can be refused?

Yes. As the child grows older and gains sufficient understanding, he/she will be able to make decisions about his/her own life. From the age of 13 a child may be considered capable of making decisions about his/her medical treatment. Those under 16 should demonstrate that they have the capacity to make these decisions. Once the child is capable of making decisions, the consent of the child must be sought before a person with parental responsibility can be given access to the child's health records.

Where, in the view of the health professional, the child is not capable of understanding the application for access to records, the Practice is entitled to deny access as being against the best interests of the patient.

Access to a Deceased Persons' Health Records

What are the rights of access to deceased persons' health records?

Health records relating to deceased people do not carry a common law duty of confidentiality. However, it is Department of Health and General Medical Council policy that records relating to deceased people should be treated with the same level of confidentiality as those relating to living people. Access to the health records of a deceased person is governed by the Access to Health Records Act 1990. Under this legislation when a patient has died, their personal representative, or executor, or administrator, or anyone having a claim resulting from the death (this could be a relative or another person), has the right to apply for access to the deceased's health records.

How can a person apply for access to a deceased persons' health records?

A request for access should be made in writing to the Practice ensuring that it contains sufficient information to enable the correct records to be identified. The request should also give details of the applicant's right to access the records.

Who is the relevant record holder to apply to?

The practice will hold a deceased persons paper record for approximately 6-8 weeks, afterwards they will be sent with a computer print out to Primary Care Support England (PCSE). Please contact the surgery if you wish to check who holds the paper records.

NHS England is the data controller of GP health records where an individual is deceased. PCSE stores medical records on behalf of NHS England. These medical records comprise of paper records and computer printouts from GP practices for patients who are deceased. They only administer requests for access to GP paper records and computer printouts. They do not store electronic records, x-rays, hospital records, community services (e.g. health visitors, district nursing, school nurses) or records relating to private treatments and clinics or consulting rooms. For access to any other types of records you should contact the clinician or organisation who created them.

For more information please contact:

Primary Care Support England, 3 Caxton Road, Fulwood, Preston PR2 9ZZ

Telephone: 01772 221 385

www.pcse.england.nhs.uk/recordsrequests

Will there be a financial charge for accessing copies of the records of deceased people?

Unless the request is deemed excessive or unfounded, the surgery will not make a charge. There may be a charge for records held by PCSE. Please contact them directly for information.

How can someone make a complaint if they are unsatisfied?

If you have any complaints about any aspect of your application to obtain access to your health records, you should first discuss this with the Practice. Please ask for a copy of the Practice complaints leaflet for more information.

Alternatively you can contact the Information Commissioners Office (responsible for governing Data Protection compliance) – Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF. Tel 01625 545745 or www.ico.org.uk/