

Title	<b>SUBJECT DATA ACCESS REQUESTS</b>			Number	<b>G04</b>
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Author:	Scott Barnes			Version:	1.2
Other Ref:					
Contacts:	Quality & Compliance Officer				

## Version Control

(Only last 3 versions, earlier versions can be found in the appropriate Archive directory for the document)

<b>DATE</b>	<b>CHANGE</b>	<b>CHANGED BY</b>
19.09.18	Procedure for Subject Data Access Requests	SBr
21.01.21	UK added to GDPR	SBr
12.04.22	Updated and reviewed with DPO	SB/SBr/KE

Under the Data Protection Act 2018 and the UK General Data Protection Regulations (GDPR) individuals referred to in the legislation as Data Subjects have the following rights:

- Transparency over how we use their personal information (right to be informed).
- To request a copy of the personal information we hold about them, which will be provided to them within one month (right of access).
- An update or amendment of the personal information we hold about them (right of rectification).
- To ask us to stop using personal information (right to restrict processing).
- To ask us to remove their personal information from our records (right to be forgotten).
- To request us to remove their personal information for marketing purposes (right to object).
- To obtain and reuse their personal data for their own purposes (right to portability).
- Not to be subject to a decision based on automated processing.

Our Privacy Policy details these rights and advises individuals that they can contact us by letter or email to exercise any of these rights.

In this document reference to Data Subject includes a patient, employee or any individual on whom we hold personal information.

## MAKING A REQUEST

The legislation does not require a Data Subject to make a request in writing but Badger Group is of the view it is preferable for record purposes that if any Data Subject makes contact whether by telephone or text, or in any other way asking how they should make a

request they should be advised that they can make the request by letter or email to [qualityandcompliance@badger.nhs.uk](mailto:qualityandcompliance@badger.nhs.uk)

If a request is made in person, we accept we cannot insist upon the request being made in writing, but for record purposes, we will ask the Data Subject to put their request in writing.

If a request is made by phone, we will ask that the request is made either in writing or in person for security purposes.

## ON RECEIPT OF A REQUEST

On receipt of any request to exercise one of the rights this should be immediately passed to Quality & Compliance who will deal with this request. We have one month to respond to the request which can in certain circumstances be extended by two further months. For operation purposes we will adopt a 28 day period which will ensure we always comply within the monthly period.

### 1) **Matters to Consider**

On receiving the request Quality & Compliance Officer will:

- a) Consider whether they are satisfied the request is from the Data Subject or whether identification should be requested before responding. *See Identification paragraph below for additional guidance.*
- b) If the request is from an individual or organisation acting on behalf of the Data Subject, they ask for and receive written authorisation (consent) from the Data Subject to provide the access to that individual or organisation. *See Request from Solicitors below for additional guidance.*
- c) In a situation where the Data Subject has given written authorisation (consent) to the release of information to another individual or organisation but there is concern as to whether the Data Subject has understood the meaning of the authorisation, consideration will be given to sending the response or the information direct to the Data Subject.
- d) If the request is made by an individual or organisation (e.g., the Police) who does not act on behalf of the Data Subject they will ensure that they have the appropriate legal authority to make the request.
- e) If the request is made after the death of the Data Subject, they will check whether it is the Personal Representatives who are making the request. Careful consideration will also be given as to whether there are issues of confidentiality in respect of the personal information and if there are, whether this means the information should not be disclosed. *See below for additional guidance on responding to a request in respect of a deceased patient.*
- f) If agreeing to the request would result in disclosing personal information of another Data Subject, then the consent of the other Data Subject should be obtained or the information relating to them redacted. *See additional guidance below on Confidentiality.*

## **2) Matters to Consider – Children**

In addition to the matters set out at a) to f) of paragraph 1 above, when the request is for the medical records or information for the medical records of a child under the age of 16, we will also consider:

- a) If the Data Subject is a child under 16 years whether they are mature enough to give their own consent to access the personal information. If the child is considered to be mature enough, then their consent will be required.
- b) If the child is not considered to be mature enough, who is the person/s with parental responsibility who can give consent.
- c) When considering the question of parental responsibility we will take into account the following factors:
  - a mother has parental responsibility, unless it has been removed by the court.
  - a father will have parental responsibility if he was married to the mother, or he is on the child's birth certificate, unless it has been removed by the court
- d) Whether the parents are separated or there is a possibility of a dispute between the parents of the child and if this could be the case, we will delete any information about the child which could give information of the residence of a parent including but not limited to the address of the child.

## **3) Steps to Take**

- a) Record on both any data base relating to the Data Subject and in the data subject access database the receipt of the request and the 28<sup>th</sup> day by which it must be dealt with.
- b) Acknowledge the request within 7 days. We have standard draft letters to be used for acknowledging these requests.
- c) Undertake full consideration of the request and decide whether to agree to the request or whether there are proper grounds for not agreeing to the whole or any part of the request. *See guidance below on when we can refuse a request for access.*
- d) Prepare a response in respect of the decision and send this to the individual making the request. We have draft responses which can be used as templates.
- e) Record on the subject access request data base and on any records relating to the individual copies of the full response or setting out the decision made.

## **IDENTIFICATION**

The following identification can be requested:

1. A photocopy of a passport or driving licence which must include a photograph.
2. A signed consent form provided we hold a copy of the Data Subject's signature and a good comparison can be made.

3. If there is doubt over identification, then the Data Subject can be contacted by phone.
4. The Data Subject is requested to attend Badger Head office in person bringing with them a copy of their passport or driving licence which must include a photograph.]

## REQUESTS FROM SOLICITORS FOR MEDICAL RECORDS

When we receive a request for medical records from a solicitor the following should be considered in addition to the Subject Access Request procedure:

1. If there is a proper consent form signed by the Data Subject agreeing to the release of the medical records to the solicitor. A record and copy of this letter will be retained on the patient's medical records. The 28 day period for responding to a SAR will not commence until we receive a proper consent form. Our template letter confirms this.
2. A SAR by a solicitor is in effect a SAR by the patient. Solicitors will usually need to see full medical records so that they can assess which parts are relevant to the patient's case. Past medical histories can be highly relevant in compensation or insurance claims. There might still be a concern about releasing all the medical records due to the patient's medical history or other reason. If this applies, we will
  - Contact the patient by telephone to ensure they are aware that all medical records will be sent to the solicitor and note the patient's response in their records.
  - If we are unable to contact the patient] [ we will send the records to the patient so that they can decide whether to release all the contents to the solicitor. We have a template letter for this.
  - If there is any difficulty in making the decision the DPO will be consulted
3. If there is confidential information about another person on the medical records, we will consider the Confidential Information guidance below.
4. It is essential for the copies of the medical records to be sent to the solicitor or patient securely. We have decided:
  - the medical records will be sent by recorded delivery
5. If a solicitor requests copies of medical records via a SAR, and then requests a copy of the same information within a short period of time we will in this scenario, consider charging a reasonable fee, or refuse the request.

If we decide to charge a fee the amount will be based on the administrative costs of complying with the request. If we decide to charge a fee, we will contact the individual promptly and inform them. We will not need to comply with the request until we have received the fee.

## REQUEST WHEN PATIENT IS DECEASED

If we receive a subject access request for medical records for a patient who has died:

1. This request for information is not a subject access request because the patient has died. GDPR only applies to a “natural person” which means a living person, so GDPR does not apply in these circumstances and the information is no longer subject to the regulations.
2. However, we must also consider the duty of confidentiality to the patient even though they have died. The duty of confidentiality attaches to the medical records of a deceased patient. If there is any difficulty in making the decision the DPO will be consulted
3. Consideration should also be given to the Access to Health Records Act 1990. Unless the patient requested confidentiality whilst alive, a personal representative or anyone who may have a claim arising out of a patient’s death has a right of access to information directly relevant to the claim. Disclosure may take place unless it may cause serious harm or there is other information about a third party which is confidential to them. (If any third party is still alive then GDPR would apply to a third party). If there is information relating to a third party, then in the absence of consent to disclose it, this should be redacted.
4. Whilst there is no legal entitlement other than the limited circumstances covered under the Access to Health Records legislation, the BMA recognises that health professionals have discretion to disclose information to a deceased person’s relatives or others when there is a clear justification.
5. Disclosure in such cases is likely to be what the deceased person would have wanted and may also be in the interests of justice. It can also be preferable to agree a release of the information to prevent ongoing problems with the patient’s relatives
6. When releasing this information, it is important to ensure that personal information relating to a third party is not accidentally disclosed.

## CONFIDENTIAL INFORMATION

If within the medical records, employees records or other documents there is confidential information of another individual:

1. The DPA 2018 says that you do not have to comply with the request if it would mean disclosing information about another individual who can be identified from that information, except if:
  - the other individual has consented to the disclosure; or

- it is reasonable to comply with the request without that individual’s consent. This would usually be the case in respect of the name and contact details of any treating clinician.
2. In determining whether it is reasonable to disclose the information, consideration must be given to all the relevant circumstances, including:
- the type of information that we would disclose.
  - any duty of confidentiality we owe to the other individual.
  - any steps we have taken to seek consent from the other individual.
  - whether the other individual is capable of giving consent; and
  - any express refusal of consent by the other individual.

Although we may sometimes be able to disclose information relating to a third party, we need to decide whether it is appropriate to do so in each case. This decision will involve balancing the Data Subject’s right of access against the other individual’s rights. If the other person consents to us disclosing the information about them, then it would be unreasonable not to do so. However, if there is no such consent, we must decide whether to disclose the information anyway.

3. If a decision is reached not to disclose the personal information of the other individual, then it will be necessary to redact any information which could identify that individual. This may well be more than redacting their name and address and may require redaction of information they have provided to ensure the other individual cannot be identified.
4. If there is any difficulty in making the decision the DPO will be consulted

## **WHEN CAN WE REFUSE A DATA ACCESS REQUEST?**

There are few circumstances when we will be able to refuse a request for access to medical records, employees records or other documents. These are:

1. If it is “manifestly unfounded or excessive”, taking into account whether the request is repetitive in nature. The onus will be on us to establish that it is manifestly unreasonable, and this will not be easy to establish.

The BMA have commented that the ICO advise that a request may be deemed “manifestly unfounded” if the requestor makes it clear they are only requesting the information to cause disruption to the organisation or if the requestor makes completely unsubstantiated accusations against the organisation. If, however, the requestor has some form of genuine intention in obtaining their information, it is unlikely the request could be deemed as manifestly unfounded.

Guidance should always be sought from our DPO.

A request could be deemed as 'excessive' if an individual was to receive information via a SAR, and then request a copy of the same information or request that the same information be sent to a third party within a short period of time. In this scenario, we could charge a reasonable fee based on the administrative costs of providing further copies or refuse the request.

2. If in the opinion of the health professional who has the care or treatment of the individual, agreeing to disclose information pursuant to a SAR, concerning health records would be likely to cause serious harm to the physical or mental health of the data subject or another individual, then the request can be refused.

Guidance should be sought from the Caldicot Guardian or our DPO.