

Morecambe Bay



Primary Care Collaborative

Subject Access Policy

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| Document Reference | POL016 |
| Purpose | The purpose of this document is to ensure that all staff and clinicians working within the federation(s) understand their responsibility with regards to subject access requests under the Data Protection Act. |
| Author | Federation Support |
| Application/Scope | Organisation-wide |
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1. INTRODUCTION

1.1 Summary

The Data Protection Act 2018 (DPA) requires organisations to have a clear policy for providing individuals with a right of access to a copy of information held about them, encompassing the principles of GDPR.

1.2 Purpose

Under the Data Protection Act 2018 individuals have the right to obtain confirmation that their data is being processed, access to their personal data (only theirs) and other supplementary information. The purpose of this policy is to ensure that all subject access requests are dealt with in compliance with the Data Protection Act 2018 requirements.

1.3 Scope

This policy applies to all MBPCC employees and directors.

From time to time MBPCC may utilise the resources of sub-contractors to deliver contractual obligations. For avoidance of doubt, where a sub-contractor is providing care to patients, as laid out in the contracts between MBPCC and subcontractors, they are solely responsible for delivery of the regulated activity they are providing, and must ensure all their employees operate under their own policies which must meet the relevant CQC standards. MBPCC will seek assurance from all sub-contractors that suitable policies are in place, and may at their discretion request copies of any relevant policies for review and for verification. In such cases this policy document does not apply.

2. PROCEDURE

2.1 Patient Requests

A request for access to health records may be made in writing to the organisation. A simple form is appended to this policy for patients to use, if they wish, together with a patient information leaflet (Appendix 1). Requests may also be made verbally to any employee of the organisation. It is important to note that not all requests have to use the phrase 'subject access request' or 'Data Protection Act right of access request'.

All requests, including those made verbally, must be documented and passed to the organisation's Data Protection Officer (the Chief Executive) who will assign them to an appropriate person within the organisation for processing. Requests must be recorded in the Subject Access Request Register (Appendix 2).

The requester must provide satisfactory proof of identity to the organisation and the organisation is entitled to verify their identity using 'reasonable means'.

The default assumption when a requester asks for a copy of their records is that the information requested by the individual is the entire record held by the organisation. However, before processing the request the organisation may check with the applicant whether all or just some of the information held by the organisation is required.

The organisation may ask the requester to provide a reason for requesting access to their information but the requester is not under obligation to provide a reason for the request.



2.2 Secure Online Records Access

The organisation can offer, if appropriate, for a requester to be enabled to securely access their records online. Access would only be granted after the requester's identity has been verified and the records held have been reviewed.

Appropriate security measures must be taken to ensure that the person is only able to access their own information.

2.3 Patient Representatives

A patient can give written authorisation for a person (for example a solicitor or relative) to make an application to access records on their behalf (see Appendix 1).

The organisation must be satisfied that the third party making the request is entitled to act on behalf of the individual but it is the third party's responsibility to provide evidence of this entitlement. This may be in the form of written authorisation or it may be a general power of attorney. A next of kin has no rights of access to records, unless they have power of attorney or written authorisation from the patient.

The organisation is entitled to send the information requested directly to the patient if it believes that the patient may not fully understand what information would be disclosed to a third party making the request on their behalf.

A person appointed by the court to manage the affairs of a patient incapable of managing his or her own affairs may make an application. However, access may be denied if the Clinician responsible for the patient's care is of the opinion that the patient underwent examinations or investigations in the expectation that the information would not be disclosed to the applicant. In these circumstances advice must be sought from the organisation's Caldicott Guardian (the Medical Director).

2.4 Children

Regardless of age it is the child who has right of access to their information.

Before responding to a subject access request for information held about a child, the organisation should consider whether the child is mature enough to understand their rights. If the organisation believes that the child is mature enough to understand their rights, then they should usually respond directly to the child. However, the parent may exercise the child's rights on their behalf if the child authorises this, or if it is evidence that this is in the best interests of the child.

The child must be able to understand (in broad terms) what it means to make a subject access request and how to interpret the information they receive as a result of doing so. Advice must be sought from the Caldicott Guardian.

When considering individual cases the following should be taken into account:

- The child's level of maturity and their ability to make decisions,
- The nature of the personal data,
- Any court orders relating to parental access or responsibility that may apply,
- Any duty of confidence owed to the child or young person,



- Any consequences of allowing those with parental responsibility access to the child's information. This is particularly important if there have been allegations of abuse or ill treatment,
- Any detriment to the child if individuals with parental responsibility cannot access this information, and
- Any views the child has as to whether or not their parents should have access to information about them.

A person with parent responsibility is usually:

- The birth mother, or
- The birth father (if married to the mother at the time of the child's birth or subsequently), or
- An individual given parental responsibility by a court.

If the child is deemed to have sufficient maturity and understanding to make decisions about the disclosure of their records, then the child should be asked for his or her consent before disclosure is given to someone with parental responsibility. The child should be encouraged to involve parents or other legal guardians in any treatment/disclosure decisions.

If the child is not deemed to have sufficient maturity and understanding to make decisions about the disclosure of their records and there is more than one person with parental responsibility, each may independently exercise their right of access.

2.5 Subject Access Request Register

It is the Data Protection Officer's responsibility to ensure that a register is held of all subject access requests in order to ensure that requests and response deadlines are monitored and adhered to.

2.6 Fees

The organisation must provide a copy of the information free of charge.

However, the organisation may charge a reasonable fee to comply with requests for further copies of the same information. The fee must be based on the administrative cost of providing the information.

2.7 Manifestly Unfounded or Excessive Requests

Where requests are manifestly unfounded or excessive, in particular because they are repetitive, the organisation can charge a reasonable fee based upon administrative costs or refuse to respond.

Where the organisation refuses to respond to a request it must explain why to the requester and inform them of their right to complain to the supervisory authority and to a judicial remedy, without undue delay and at the latest within one month.

2.8 Requirement to Consult an Appropriate Health Professional

It is the organisation's responsibility to consider an access request and to disclose the records if the correct procedure has been followed. Before the organisation discloses or provides copies of medical records, the records must be checked, and the release must be documented and authorised by the Caldicott Guardian, or in their absence the Data Protection Officer.



It is the organisation's responsibility to ensure that the information to be released:

- Does not disclose anything that identifies any other data subject. The only exception to this is the identity of people involved in the care of the individual requester, such as community staff or hospital specialists.
- Does not disclose anything that is likely to result in harm to the data subject or anyone else.
- Does not disclose anything subject to a court order or that is privileged or subject to fertilisation or adoption legislation.

2.9 Grounds for Refusing Disclosure of Health Records

The organisation should refuse to disclose all or part of the health record if the appropriate Health Professional is of the view that:

- Disclosure would be likely to cause serious harm to the physical or mental health of the patient or any other person; or
- The records refer to another individual who can be identified from that information (apart from a health professional. Unless:
 - That other individual's consent is obtained, or
 - The records can be anonymised, or
 - It is reasonable to comply with the request without the individual's consent, taking into account any duty of confidentiality owed to the third party.
- The request is being made for a child's record by someone with parental responsibility or for an incapacitated person's record by someone with the legal power to manage their affairs and:
 - The information was given by the patient in the expectation that it would not be disclosed to the person making the request; or
 - The patient has expressly indicated it should not be disclosed to that person.

For the avoidance of doubt, the organisation cannot refuse to provide access to personal data about an individual simply because the data was obtained from a third party.

2.10 Access to Medical Records Act

The organisation will not provide information under a subject access request made on behalf of a patient by a solicitor, insurance agency or employer where it is clear that such a request should be made under the Access to Medical Records Act. This would include reports for employment and insurance purposes. If necessary the organisation will seek clarification from the requester and patient concerned.

2.11 Communicating the Decision Not to Disclose

If a decision is made not to disclose the record a letter must be sent by recorded delivery to the patient or their representative stating the grounds for refusing disclosure.

The letter must inform the patient or representative without undue delay and within one month of receipt of the request, and will state:

- The reasons you are not taking action;
- Their right to complain to the organisation
- Their right to complain to the Information Commissioner's Office or another supervisory authority; and

- Their right to seek to enforce this right through a judicial remedy.

This information should also be provided where a request for a reasonable fee is made or additional information to identify the individual is required.

2.12 Disclosure of the Record

Information must be provided without delay and at the latest within one month. This is calculated from the day after the request is received, which is classed as day 1 even if it is a non-working day.

The period for responding to the request begins at the receipt of the request, or:

- When the organisation receives any additional information required to confirm the identity of the requester, or
- When the organisation receives any additional information requested (and required) to clarify the request.

When information is provided by the organisation this is for the requestor's personal use only. The security and confidentiality of the record becomes the responsibility of the requestor and the organisation cannot be held responsible for any onward transmission or distribution.

If a request has been made verbally, for example, within a GP consultation, then the GP can, if appropriate and practical, and if no additional ID verification is required, provide the information requested immediately. Such requests should still be recorded on the Subject Access Request Register.

The organisation may be able to extend the period of compliance by a further two months where requests are complex or numerous. If this is the case, the organisation will inform the individual within one month of the receipt of the request and provide justification for the extension.

Once disclosure of information has been authorised by the Caldicott Guardian a copy of the health record may be disclosed to the requester. If the information is handed directly to the requester then verifiable identification must be confirmed at the time of collection.

If the request has been made electronically then the organisation should provide the information in a commonly used electronic format and provide it to a secure email address provided by the requestor and verified by the organisation who should send an email to the address requesting confirmation of receipt in order to verify the address. If there is any doubt about the security of the email address the organisation will not send the information via email.

If the records are sent by post they will be posted to a named individual by recorded delivery, clearly marked private and confidential and the organisation's details will be recorded on the reverse of the envelope in case it needs to be returned to sender.

Copies of health records will not be sent by fax unless there is absolutely no alternative. If a fax must be sent it should include minimal information and names should be removed and telephoned through separately. The intended recipient must be alerted to the fact that their record is being sent and must make a return telephone call to confirm safe receipt. The following disclaimer must accompany all confidential faxes:



'Warning: The information within this fax is confidential and may be subject to legal professional privilege. It is intended solely for the attention and use of the named addressee. If you are not the intended recipient, please notify the sender immediately. Unless you are the intended recipient or his/her authorised representative you are not authorised to, and must not, read, copy, distribute, use or retain this message or any part of it.'

The method of disclosure will be recorded on the Subject Access Register.

3. DEFINITIONS/GLOSSARY OF TERMS

| Abbreviation or Term | Definition |
|----------------------|--|
| MBPCC | Morecambe Bay Primary Care Collaborative |
| GDPR | General Data Protection Regulation |
| CQC | Care Quality Commission |
| DPA | Data Protection Act |

4. CONSULTATION WITH STAFF, PRACTICES AND PATIENTS

| Name | Job Title | Date Consulted |
|------|-----------|----------------|
| | | |
| | | |
| | | |

5. DISSEMINATION/TRAINING PLAN

| Action by | Action Required | Implementation Date |
|------------------------|---|---------------------|
| Jo Knight/Boyana Konar | Upload policy to MBPCC website | 30/09/2020 |
| Jo Knight | Delete out of date copies and host current copy on Federation G Drive (supporting induction process), updating Policy tracker | 30/09/2020 |
| Liz Stedman | Upload to TeamNet | Jan 2021 |
| Liz Stedman | Add new version to Teamnet, Shared Drive and Website | |

6. AMENDMENT HISTORY

| Version No. | Date of Issue | Section/Page changed | Description of change | Review Date |
|-------------|---------------|----------------------|--|-------------|
| V1.0 | 22/01/2020 | All | New policy | 22/01/2023 |
| V1.1 | 22/09/2020 | All | New format, no changes to content | 22/01/2023 |
| V1.2 | 19/01/2021 | Page 8 | Additional Definitions/Glossary of Terms added | |
| V1.3 | 25/04/2022 | Version Control | Review and approval in line with review dates | 25/04/2024 |



7. APPENDICES

Appendix 1: Patient Access to Medical Records - Information Leaflet

Access to Health Records under the General Data Protection Regulations 2018

The General Data Protection Regulations of 2018 in conjunction with the Data Protection Act 1998/2018 gives every living person, or an authorised representative, the right to apply for access to their health records.

A request for your medical health records held by Morecambe Bay Primary Care Collaborative should be made in writing via a subject access request form. (please contact the organisation for alternative methods of obtaining access if you are unable to make a request in writing).

There is no fee associated with providing access to your medical records. You or your representative will be asked to bring in a form of Identification when collecting or viewing the records.

The data controller is not obliged to comply with your access request unless they have sufficient information to identify you and to locate the information held about you.

Once the data controller has all the required information, your request should be fulfilled within 28 days (in exceptional circumstances where it is not possible to comply within this period you will be informed of the delay and given a timescale for when your request is likely to be met).

In some circumstances, the Act permits the data controller 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.

When making your request for access, it would be helpful if you could provide details of the time-periods and aspects of your health record you require as outlined in the request form.

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 not all may 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.

If you have any complaints about any aspect of your application to obtain access to your health records, you can make a complaint through the NHS Complaints Procedure by contacting the organisation formally.

Further information about the NHS Complaints Procedure is available on the NHS Choices website at: <http://www.nhs.uk/choiceinthenhs/rightsandpledges/complaints/pages/nhscomplaints.aspx>

Alternatively you can contact the Information Commissioners Office (responsible for governing Data Protection compliance). Wycliffe House, Water Lane, Wilmslow, Cheshire SK9 5AF.

Tel 0303 123 1113 or 01625 545 745 or www.ico.gov.uk/

Appendix 2: Patient Access to Medical Records - Request Form

Access to Health Records under the General Data Protection Regulations 2018 (Subject Access Request)

Patient's authority consent form for release of health records (Manual or Computerised Health Records)

(please print all details and use dark ink) Photo ID will be required when you collect the records

To: Morecambe Bay Primary Care Collaborative; Moor Lane Mills, Moor Lane, Lancaster LA1 1QD

Identity of individual about whom information is requested

| | |
|--|---------------------------------------|
| Full Name | Former name(s) |
| Current address | Former address (with dates of change) |
| Date of birth | NHS number (if known) |
| Contact phone number (including area code) | E-mail address: (optional) |

What is being applied for (tick as applicable).

| | |
|---|--------------------------|
| I am applying for access to view my health records | <input type="checkbox"/> |
| I am applying for hard copies of my health record | <input type="checkbox"/> |
| I am applying to have my copies transferred to a USB stick (A brand new, sealed stick to be supplied by myself) | <input type="checkbox"/> |

You do not have to give a reason for applying for access to your health records. However, please could you provide details regarding details of the information you require to access. Such information would be time periods and elements of your health records, along with details which you may feel have relevance i.e. consultant name, location, written diagnosis and reports etc. Please use the space on the following page to document this information:

Dates and types of records:



Please tick the appropriate box identifying whether you or a representative on your behalf is applying for access.

| | |
|--|--|
| I am applying to access my health records | |
| I have instructed my authorised representative to apply on my behalf | |

If you are the patient’s representative please give details here:

| |
|------------------------------------|
| Name and address of representative |
| Contact number and E-mail |
| Signature |

Signature of applicant:

Print name:

Date:

Received by:

Date:

Caldicott Guardian Authorised Signature:

Date:



Appendix 3: Subject Access Request Register

| Request number | Requester | Date SAR received | Response Due Date | Fee received (if applicable) | ID requested and verified | Reason for SAR (if known) | Third Party data? | Disclosed Y/N (if No record reason withheld) | Date and Method Sent |
|----------------|-----------|-------------------|-------------------|------------------------------|---------------------------|---------------------------|-------------------|--|----------------------|
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