

Access to health records



Access to the records of living patients

What records are covered?

All manual and computerised health records about living people are accessible under the Data Protection Act 1998. Access must be given equally to all records regardless of when they were created.

The Data Protection Act covers all of the UK.

Who can apply for access?

Patients may apply for access to their own records, or may authorise a third party, such as their lawyer, to do so on their behalf. Parents may have access to their child's records if this is in the child's best interests and not contrary to a competent child's wishes. People appointed by a court to manage the affairs of mentally incapacitated adults may have access to information necessary to fulfil their function.

Exemptions

The main exemptions are that information must not be disclosed if it:

- is likely to cause serious physical or mental harm to the patient or another person; or
- relates to a third party who has not given consent for disclosure (where that third party is not a health professional who has cared for the patient).

Copies or original records?

Patients or their representatives are entitled to a copy of their records, for example a photocopy of paper records or print out of computerised records.

Some members have reported to APIL that some GP practices, in particular, seek to comply with the subject access requirements by allowing solicitors to copy the file themselves on the medical practice's premises. APIL sought advice from the Information Commissioner on this practice. The Commissioner stated,

“The Act would not prevent such an arrangement (copying them on the GP’s premises) being entered into. Section 8(2) of the Data Protection Act 1998 requires a data controller to supply the information in permanent form by way of a copy (it does not go into detail regarding the arrangements for how this should be provided), except, amongst other things, where the data subject agrees otherwise. This provision allows the data subject and the data controller to make arrangements by mutual agreement for the data subject or a representative to copy the information themselves. However, the data controller would need to ensure that whilst copying the record the solicitor did not have access to other patient records held by the practice.

“The data subject is under no obligation to agree to such arrangements and must be provided with copies of the information by the data controller upon request, (unless the supply of a copy in permanent form is not possible or would involve disproportionate effort). This also means that a data controller cannot insist that solicitors acting on behalf of and with the consent of the data subject visit the data controller to view the records.”

Other members have reported that some GPs send the original medical notes in the post to the solicitor for them to be copied and returned to the GP. Again, APIL sought advice on this and the Information Commissioner stated,

“Sending records to the solicitor is particularly problematic. As you may be aware, the Seventh Data Protection Principle requires that personal data are held securely, in order to prevent unauthorised or unlawful loss and disclosure of personal data. If original health records are sent to solicitors this increases the possibility of such loss or disclosure, and may result in a breach of the Seventh Principle.”

Fee for access

The fee varies depending on the type of record and whether the patient wants copies of the records or just to see them.

To provide access and copies:

- Records held totally on computer: £10
- Records held in part on computer and in part manually: a reasonable fee of up to £50
- Records held totally manually: a reasonable fee of up to £50

The maximum fee is £50 which must not be exceeded. No VAT is chargeable. Postage and other associated costs cannot be charged in addition to the £50 fee.

To allow patients to read their records (where no copy is required):

- Records held totally on computer: £10

- Records held in part on computer and in part manually: £10
- Records held totally manually: £10 unless the records have been added to in the last 40 days when no charge can be made

Access to the records of deceased patients

These notes have been supplemented by commentary published on the British Medical Association's website.

The Data Protection Act 1998 does not cover the records of deceased patients. Statutory rights of access to these records are covered by the Access to Health Records Act 1990 and Access to Health Records (Northern Ireland) Order 1993. The provisions are summarised below.

Any person with a claim arising from the death of a patient has a right of access to information covered by the Act and directly relevant to that claim. No information which is not directly relevant to the claim may be released. Thus a personal representative or executor can access information to benefit the deceased's estate, as can an individual who was a dependant of the deceased and who has a claim relating to that dependency which has arisen from the death.

The Access to Health Records Act 1990 covers manual health records made since 1 November 1991. In Northern Ireland the corresponding legislation, the Access to Health Records (Northern Ireland) Order 1993, covers manual records since 30 May 1994. Access must also be given to information recorded before these dates if this is necessary to make any later part of the records intelligible.

There are certain exemptions to this right, and information may be withheld if:

- it identifies a third party without that person's consent unless that person is a health professional who has cared for the patient;
- in the opinion of the relevant health professional, it is likely to cause serious harm to somebody's physical or mental health; or;
- the patient gave it in the past on the understanding that it would be kept confidential. Likewise, no results of examinations or investigations which the patient thought would be confidential at the time they were carried out can be disclosed. No information at all can be revealed if the patient requested non-disclosure.

Note that after a patient's death the health records may be held by the health authority. The health authority is required to take advice before making a decision about disclosure, usually from the patient's last GP or, if several health professionals have contributed to the care of the patient, the doctor who was responsible for the patient's care during the period to which the application refers.

Time limits

Where the application concerns access to records any of which were made in the 40 day period immediately preceding the date of application access must be given within 21 days.

Where the information concerns information all of which was recorded more than 40 days before the date of application, access must be given within 40 days. If the records are held by a health service body (such as a health authority) access cannot be given before advice has been obtained.

Access can be given by allowing the applicant to inspect the records or extract or by supplying a copy if this is requested.

The courts may enforce compliance with the legislation if access is not given within the required time limits. The court may also require that the records be made available for its own inspection in order to come to a decision.

Access fees

Unlike access to living patients, there is no maximum prescribed fee for accessing the records of deceased patients.

An access fee of up to £10 may be charged for providing access to information where all of the records were made more than 40 days before the date of the application.

No access fee may be charged for providing access to information if the records have been amended or added to in the last 40 days.

Where a copy is supplied, a fee not exceeding the cost of making the copy may also be charged. The copy charges should be reasonable. If applicable, postage may also be charged. Doctors may also charge a professional fee to cover the costs of giving access to the records of deceased patients not covered by legislation.

Helen Blundell

Legal Information Manager

14 August 2008

Association of Personal Injury Lawyers

▶ 11 Castle Quay, Nottingham, NG7 1FW ● T: 0115 958 0585
● W: www.apil.org.uk