

Sidcup Medical Centre

Subject Access Requests and

Individual's rights protocols

Data Protection Act 2018/General Data Protection Regulations 2018

September 2018

Subject Access request and individual right's protocols

1. Introduction and purpose

The purpose of this document is to ensure that appropriate procedures are in place at Sidcup Medical Centre to enable individuals to apply for access to their personal data held by the GP practice. These requests are known as Subject Access Requests (SAR). It also provides information for the public who wish to exercise their individual rights under the General Data Protection Regulations 2018.

As a GP practice, we hold and process personal data about individual's in order to manage health and social care needs and to enable us to comply with NHS legislation and other statutory requirements.

2. Scope

This document applies to individual's requesting a copy of their health record or wishing to exercise their individual rights under the data protection legislation. This document also supports GP practice staff in handling subject access requests made to the GP practice.

3. Process

3.1 Making a subject access request

Subject access requests can be made to the GP practice verbally or in writing, however in order for the practice to have all the appropriate information they need to process there request, patients are encouraged to complete the **Subject Access Request (SAR) form**.

All requests will be documented and recorded on the GP practice subject access request register.

The GP practice will provide copies of the original notes and records, as providing the original record could cause potential detriment to patient care should the record be lost.

3.2 Secure online records access

Our GP practice can offer, if appropriate for the patient (requester) to securely access their GP electronic record online. This will allow patients to access the information they might be seeking. Access is only granted following verification of their identity.

Please speak to a practice staff member to request **patient on-line services**

3.3 Verifying your identity

If the practice has any doubts regarding your identity, you will be asked to verify your identity before any information can be released or any changes made to your personal data. This can include the practice requesting to see valid identification documents, such as a passport, driving licence or valid photo ID.

The timescale for responding to requests will not begin until identification requirements have been confirmed.

3.3.1 Identification requirements

	Type of applicant	Type of documentation
A	An individual applying for his/her own records	One of the following identity is required, e.g. birth certificate, passport, driving licence, plus one copy of a utility bill or medical card, etc.
B	Someone applying on behalf of an individual (Representative)	One item showing proof of the patient's identity and one item showing proof of the representative's identity (see examples in 'A' above)
C	Person with parental responsibility applying on behalf of a child	Copy of birth certificate of child & copy of correspondence addressed to person with parental responsibility relating to the patient
D	Power of Attorney/Agent applying on behalf of an individual	Copy of a court order authorising Power of Attorney/Agent plus proof of the patient's identity (see examples in 'A' above)

3.4 Timescales

Identifying the various types of information we hold about you may take some time and we can take up to one month (30 days) to collate this information for you.

The time limit will be collated from the day after the request has been received (whether the day after is a working day or not) until the corresponding calendar date in the month.

Example: If the practice receives a request on 3rd September. The time limit will start from the next day (4th September). Our GP practice will have until the 4th October to comply with the request.

If this is not possible because the following month is shorter (and there is no corresponding calendar date), the date for response is the last day of the following month.

If the corresponding date falls on a weekend or public holiday, the practice will have until the next working day to respond.

This means the exact number of days to comply with the request varies, depending on the month in which the request is made.

Example: An organisation receives a request on 30 March. The time limit starts from the next day (31 March). As there is no equivalent date in April, the organisation has until 30 April to comply with the request.

If 30 April falls on a weekend, or is a public holiday, the organisation has until the end of the next working day to comply.

There may be times where requests are complex and paper records take time to replicate, review, etc.. When this is the case, we will inform you in writing to explain why an extension is necessary. The maximum extension period is two months.

3.5 Fees

In most cases, our GP practice will not charge a fee to comply with a subject access request, including when a patient authorises access by a third party such as a solicitor. However, there may be a fee incurred for the following reasons;

- If the request is seen as manifestly unfounded (unnecessary/unwarranted)
- Excessive (e.g. involving collation and copying of large amounts of hardcopy records)
- Postal costs are deemed excessive for confidential and bulk delivery
- Medical report requested by an insurance company

A fee can be charged for further copies of data following the request. These costs will be based on administrative costs of providing further copies.

3.6 Medical reports

If a request is made for a medical report to be created, or for interpretation of information within a medical report/record, this request falls under the Access to Medical Report Act (AMRA). As this requires new information to be created, which is outside the scope of the General Data Protection Regulations, **in these cases a fee will be charged.** Medical reports that have already been created or exist will be accessible for free.

3.7 Patients living abroad

Under the new GDPR regulation, former patients who are now residing outside of the UK and had previously been treated at the practice, have the same rights to apply for access to their UK health records. These requests will be dealt with in the same way and with the same identification process. Please note that your previous GP practice may no longer hold a copy of your records and therefore your application will need to be made to NHS England Primary Care Support or the health care provider who provided your care.

3.8 Patient Representatives

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

The practice 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 might be a written authority to make the request, or it might be a general power of attorney (Legal Power of Attorney for Health and Welfare) in the case of an individual who no longer has the mental capacity to manage their own health.

Consent for disclosing information must cover the nature and extent of the information to be disclosed under the subject access request (for example, past medical history) and should also detail who might have access to the information as part of any legal proceedings.

Where there is any doubt, the GP practice will confirm with you before disclosing the information. The practice is entitled to send the information requested *directly to the patient* if we think that the patient may not understand what information would be disclosed to a third party who has made a request on their behalf.

If you wish to refuse to give consent a solicitor or legal authority they may apply for a court order requiring disclosure of the information

A next of kin has no rights of access to a healthcare record, unless they have Power of Attorney.

3.9 Court Representatives

A person appointed by the court to manage the affairs of a patient who is incapable of managing his or her own affairs may make an application.

Access may be denied where the GP is of the opinion that the patient underwent relevant examinations or investigations in the expectation that the information would not be disclosed to the applicant.

3.10 Requests from insurance companies

The use of subject access requests by insurance companies to obtain medical information for life assurance purposes is an abuse of the subject access rights. When our practice receives a request from an insurance company, we will contact you to explain the extent of the disclosure that has been sought. In these circumstances, your records will be provided to you, rather than the insurance company directly. It will then be your choice as to whether, having reviewed the record whether you choose to share it with the insurance company.

There is a clear distinction between the use of SARs by a solicitor, who can be seen as an agent of the patient and who is acting on the patient's behalf, and the use of SARs by insurance companies.

Insurance companies should use the provisions of the Access to Medical Reports Act 1988 to seek a GP report.

3.11 Children

No matter a child's age, it is *the child* who has the right of access to their information.

Before responding to a subject access request for information held about a child, the practice will consider whether the child is mature enough to understand their rights. If the practice is confident that the child can understand their rights, then we will respond directly to the child.

The practice may however, allow the parent/s to exercise the child's rights *on their behalf* if the child authorises this, or if it is evident that this is in the best interests of the child.

What matters is that the child is 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.

When considering borderline cases, the practice will review and take into account, the following;

- the child's level of maturity and their ability to make decisions like this;
- 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 to the child's or young person's information. This is particularly important if there have been allegations of abuse or ill treatment;
- any detriment to the child or young person if individuals with parental responsibility cannot access this information
- any views the child or young person has on whether their parents should have access to information about them

- a person with parental responsibility is either;
 - the birth mother, or
 - the birth father (if married to the mother at the time of child's birth or subsequently) or,
 - an individual given parental responsibility by a court

(This is not an exhaustive list but contains the most common circumstances).

3.12 Deceased patients

Subject access requests do not apply under the General Data Protection Regulations for deceased patients.

Statutory rights of access to deceased patient's records are set out in the Access to Health Records Act 1990.

After a patient's death, GP health records may be held by Primary Care Support England. Where a patient has attended hospital, these records may have been retained in archive storage. Applications for access should be made to the records manager of these bodies. Where the practice still holds an electronic copy of the deceased record, the practice will respond to the request under Access to Health Records Act 1990.

Unless the patient requested confidentiality while alive, their personal representative and any other person who may have a claim arising out of their death has a right of access to information in their records, which is directly relevant to a claim.

The personal representative (the executor or administrator of the deceased person's estate) is the only person who has an unqualified right of access to a deceased patient's record and need give no reason for applying for access to a record. Individuals other than the personal representative have a legal right of access under the Act only where they can establish a claim arising from a patient's death (this could be a relative or another person).

The GP practice will ensure that they are satisfied that the person requesting the information is entitled to be given access to the health record.

Access to records which have been made in the 40 day period immediately preceding the application date will be provided within 21 days. Where the access is for information which was recorded more than 40 days before the date of application, access will be given within 40 days.

Legislative changes to the Data Protection Act 2018 has also amended the Access to Health Records Act 1990, which now states access to the records of deceased patients and any copies, will be provided free of charge.

4. Exercising your individual rights regarding your personal data

4.1 Exercising your individual rights

The General Data Protection Regulations/Data Protection Act 2018 provides more rights regarding individual's personal data. These rights are briefly described below and further information is available on the Information Commissioners Office (ICO) website.

Any applications made to the GP practice will be fully reviewed, prior to any action being taken against exercising individuals rights.

The GP practice can accept requests verbally and in writing, however, it is recommended that the attached individual's request form (Appendix C) is completed. This will ensure that our GP practice receives all the relevant information required to review and process your request.

The GP practice will review the evidence on a case by case and liaise with you when necessary to do so. We will endeavour to complete your request within 30 days, however, this period can be extended where there are complex cases and we will contact you in writing to explain why the extension is necessary.

In certain circumstances the request can be refused and the right to make the final decision will be made by Dr S Deshmukh, the Senior Partner, as there are exceptions where individual rights cannot be addressed.

4.2 General Data Protection Regulations individual's rights

Right to be informed

Our GP practice provides information about how your data is used through a privacy notice, which is available on the GP practice website. This information is available in hardcopy format on request.

Right to rectification

Individuals have the right to have inaccurate personal data rectified or incomplete personal data completed. Steps will be taken by the GP Practice to ensure that the rectification to the personal data is accurate. Evidence and discussions must take place with the data subject prior to any rectification takes place.

Right to erasure

Individuals have the right to have their personal data erased. This process must not be completed without further guidance and consultation from the Data Protection Lead/Lead GP and/or Caldicott Guardian, as there are various conditions and exceptions which apply.

Right to restrict processing

The right to restrict processing means that if an individual has a dispute regarding the accuracy of information, objects to its use or requires data which is due for destruction to be maintained for a legal claim, they can have the data stored by a care organisation, but no other uses are then permitted until the dispute is settled.

Right to data portability

The right to data portability allows individuals to obtain and reuse their personal data for their own purpose across different services. It allows them to move, copy or transfer data easily from one IT environment to another.

Right to object

Individuals have the right to object to the processing of their personal data in certain circumstances. This includes the right to object to data being used for other than your personal care. Further information is available through NHS Choices website *"your data matters"* <https://www.nhs.uk/your-nhs-data-matters/>

5. Circumstances in which your request may be refused

Exceptions

There may be some occasions where specific data may not be disclosable or your request to exercise your individual rights may be refused. When this is the case, the reason for this decision will be explained to you

5.1 Subject access requests refusal

The GP practice reserves the right to make the final decision as to what form of access is appropriate as there are various exceptions and conditions where some information may be restricted.

We may refuse to deal with your subject access request if it is manifestly unfounded or excessive, or if it is repetitive. Where it is our decision to refuse your request, we will contact you without undue delay and at the latest within one month of receipt, to inform you of this and to provide an explanation.

5.2 Data which may include information about other people

Information contained in the health care records which may identify or include information about other individuals will not be disclosed unless;

- the other individual has consented to the disclosure; or
- It is reasonable to comply with the request without that individual's consent.

In determining whether it is reasonable to disclose the information, the GP practice will take into account all of the relevant circumstances, including:

- the type of information that you would disclose;
- any duty of confidentiality you owe to the other individual;
- any steps you 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.

Further guidance will be sought from the Information Commissioners Office, where necessary.

5.3 Individuals rights refusal

Applications to carry out individual requests will be dealt with, case by case. These requests can be complex and therefore when a refusal or objections is made by the GP practice, we will contact you in writing to explain the justification. The practice will inform you without undue delay within one month of your applications;

- the reasons for not taking action
- details regarding your right to make a complaint to the ICO regarding the decision

6. Dispute process

If the applicant or representative is not satisfied with the outcome of the subject access request or individual's rights outcome they should contact James Cade, Data Protection Lead, in the first instance to resolve any disputes or queries.

If the applicant or representative is still not satisfied with the outcome, then contact can be made to the [Information Commissioners Office](#) for further advice and guidance.

7. Roles and responsibilities

Data Protection Lead

All subject access requests and applications for individuals rights will be overseen by the GP practice Data Protection Lead.

This lead will facilitate requests made under the General Data Protection Regulations on a day to day basis and will liaise and report directly to the senior partner/s (Clinicians) at the practice.

8. Training and support

All staff at the practice will be aware of this process and be able to support individual's making requests in order to support individuals.

The GP practice may also seek support or advice from the Information Commissioners officer, British Medical Association (BMA) or South East London Integrated Care System Data Protection Officer when necessary.

9. Supporting documents

Information Commissioners office – General Data Protection Regulations guidance

BMA – Access to health records – August 2018

BMA – Checklist for fees guidance