Royal United Hospitals Bath NHS
NHS Foundation Trust

Application for Access to Health Records
Important Information for Applicants

The following guidance should be used by applicants when completing an application form (form SAR1) to access Health records, Accident and Emergency Records (ED) Radiology Images (Xray's) or Maternity Records.

1. Background

The Data Protection Act (2018) incorporating GDPR gives every living person the right to apply for access to his or her health records. However, there are certain circumstances in which we may withhold information. Access may be denied or limited where the information might cause serious harm to the physical or mental health or condition of the patient, or any other person, or where giving access would disclose information relating to or provided by a third party who had not consented to the disclosure.

Health records relating to deceased people do not carry a common law duty of confidentiality and the The Data Protection Act (2018) incorporating GDPR does not make provision for deceased people. Access to the health records of a deceased person is governed by the Access to Health Records Act (1990) See section 4.

The Trust has adopted the following procedures and terms and conditions to ensure that your application is processed in accordance with the requirements of the Data Protection Act (2018) incorporating GDPR or the Access to Health Records Act (1990) as necessary.

2. Terms and Conditions

An individual who makes a subject access request has the right to:

- be told by the Trust whether any personal data is held about him/her, and
- be supplied with a copy of the information that forms any such personal data
- obtain a copy of the record in permanent form, and
- view a record without obtaining a copy
- to have information explained where necessary e.g. medical abbreviations.

No reason needs be given for an application (unless the application is for the records of a deceased patient – please see below).

The applicant must confirm and prove that he/she is legitimately entitled to access the personal data requested. Therefore, the applicant must meet one of the following criteria:

- The applicant is the patient
- The applicant has been asked by the patient to apply and attaches his/her written consent
- The applicant is acting in *loco parentis* and the patient is between 13 and 16 years of age
- The applicant is acting in *loco parentis* and the patient is under 13 years of age
- The applicant may have a claim arising from the patient's death

3. Accessing the Records of Young people

Young people with capacity have the legal right to access their own health records and can allow or prevent access by others, including their parents. Children can access their own health records.

No patient should be given access to information that would cause them serious harm, or any information about another person without the other person's consent.

In England, the DPA sets the age of consent for access to medical records as **thirteen.** Parents can access their child's medical records if the child or young person consents, or lacks capacity, and it does not go against the child's best interests. If the records contain information given by the child or young person in confidence we will not disclose the information without their consent.

Divorce or separation does not affect parental responsibility, unless stated in the terms of the divorce or separation. For children aged under thirteen both parents are allowed reasonable access to their children's health records, unless there is a legal order preventing this.
There are specific reasons why access to personal data may be denied including:

4. Exemptions

There are specific reasons why access to personal data may be denied including:

- Where the data released may cause serious harm to the physical or mental health or condition of the patient, or any other person.
- Where access would disclose information relating to or provided by a third party.
- Where the consultant in charge of a patient's care assesses that a patient under the age of 16 cannot understand the implications of accessing his/her records.
- Where the patient expressly stated that information must not be disclosed.
- Where the information relates to, or has been given by, anyone except a clinician involved in the patient's care, unless his/her consent has been given.

The Trust must be prepared to justify decisions to withhold information.

There may be other occasions when either an entire record or part of the record is not released to the applicant:

- The obligation to provide a copy may be waived where the patient agrees otherwise or it is not possible to supply a copy of the material sought, or to do so would involve disproportionate effort.
- Records of Deceased patients (see below)

5. Access to Records of Deceased patients

Health records relating to deceased people is covered by the Access to Health Records Act (1990).

The Trust's duty of confidentiality to patients survives beyond their death.

Under this legislation when a patient has died, his/her personal representative or executor or administrator or anyone who may have a claim resulting from the death, has the right to apply for access to the deceased's health records.

However, the Trust will require evidence of an executor's appointment in the form of a full copy of the deceased persons Will or in addition a Grant of Probate as there will be occasions when the Will on its own is insufficient as evidence.

A request for access should be made in writing to the record holder 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, including details of any claim.

If the deceased person had indicated that he/she did not wish information to be disclosed, or the record contains information that the deceased person expected to remain confidential then it must remain so. In addition, the record holder has the right to deny or restrict access if it felt that disclosure would cause serious harm to the physical or mental health of any other person or would identify a third person.

6. When submitting an application

- If you require multiple document types (e.g. copies of your Health Record and Maternity Records) please only complete one application form to include details of all the documentation you require.

- Any information you have supplied in making this request will be treated in confidence. It will only be used for the purpose of carrying out the search for your information in accordance with the General Data Protection Regulation (2016).

- As part of your application, please complete the application form and provide two forms of identification as well as provide proof of address. If photocopies are provided with the form, then the originals must be provided if collecting your information in person from the medical records department.

- Radiology images - If you are requesting copies of your imaging performed at the Royal United Hospitals, we will send this to you electronically using a system called IEP (Image Exchange Portal.) In order for us to do this, we require an email address and a UK mobile phone number.

  A link to access your images will be sent to the email address provided by you on the SAR1 Application form. A password to access these images will be sent with a SMS message to the UK mobile phone number. If you don't have a UK Mobile phone number, we can send the password to a secondary email address.

- Send completed application form and two forms of identification to:

  Medical Records Manager
  Medical Records Department
  Apley House (Building E5)
  Royal United Hospitals NHS Foundation Trust
  Combe Park
  BATH
  BA1 3NG

Or email completed application with 2 forms of ID to: ruh-tr.medicalrecordenquiries@nhs.net

7. Supplying Information

- Once the request has been validated and checked for any information to be withheld, the Trust will provide either sight of the information or a permanent copy as requested.
- If your request is to view your health record only, then an appointment will be arranged at a time and for a duration that is convenient to both yourself and the Trust. If necessary, more than one appointment maybe required.

- If you have asked to be provided with copies of records, these will usually be sent to the address you have provided. Should you prefer to collect them in person, then please indicate this on the application form.
- You will receive a reply within 30 days (following receipt of all data necessary to process request).

8. Requesting Copies of a Health Record in relation to a Complaint about Healthcare

If you require copies of your Health Records in relation to a complaint about healthcare treatment then only the information specific to the complaint will be disclosed as default.

All other unrelated information contained within the Health Record can be provided separately if indicated as required on the Subject Access Request form.

9. Taking Further Action

If the Trust has failed to respond to your request to your satisfaction and you have sent all the information requested, you should address your concerns to the Medical Records Manager at the address given, by recorded delivery. You are advised keep a copy of your letter for your own records.

If you still do not receive a reply or if you think that the information is wrong or incomplete, you may ask the Information Commissioner to carry out an independent assessment as to whether the Trust is meeting the terms of the Data Protection Act (2018) incorporating GDPR. The Information Commissioner can be contacted at the following address: Information Commissioners Office, Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF.

Alternatively, you can pursue the matter yourself by taking your case to court.

10. Further Information

Should you require any additional information you are advised to contact the Trust's Data Protection Officer, either at the address below or by telephone (01225) 824803.

Data Protection Officer
Health Informatics Service (HIS), Apley House (E5)
Royal United Hospitals Bath NHS Foundation Trust
Combe Park
Bath BA1 3NG

11. Feedback

We are always looking to improve our services, if you would like to provide feedback regarding your subject access application, please do so by writing to the address below:-

Medical Records Manager
Medical Records Department
Apley House (E5)
Royal United Hospitals Bath NHS Foundation Trust,
Combe Park
Bath
Somerset
BA1 3NG