

Meeting the Requirements

Right of Access



Introduction

...under the UK General Data Protection Regulation 2016 and the Data Protection Act 2018

The legislation regulates the processing (including the disclosure) of information about identifiable living individuals. They apply to personal information in general; therefore, it includes all information the organisation holds about its patients, staff, service users and all other living individuals.

Individuals have a right of access to their information, commonly referred to as subject access. It gives individuals the right to obtain a copy of their personal information, as well as other supplementary information held about them. It helps individuals to understand how and why you are using their information, and check you are doing it lawfully. This right is one of several provided under Article 15 of the UK General Data Protection Regulation (UK GDPR).

Individuals are only entitled to their own personal information, so it is important to establish whether the information falls within the definition of personal information. See the ICO website for guidance on '[What is personal data?](#)' In addition to a copy of their personal information, the organisation should provide individuals with other information, for example, the purposes of your processing, the recipients you disclose information to, the right to lodge a complaint with the ICO etc. This should correspond with the information you are providing in your privacy notices.

The ICO has a number of useful resources regarding access to personal information on their website, including the detailed guidance on the '[Right of Access](#)'.

...under the Access to Health Records Act 1990

If a request is received for access to information relating to the health records of a deceased patient, decisions will be made in the light of the requirements of the '[Access to Health Records Act 1990](#)' (AHRA). Only a small section of this Act remains after the implementation of the Data Protection Act 1998 and the Freedom of Information Act 2000, and that section only relates to the health records of deceased patients which were created on or after November 1991.

The AHRA provides certain individuals with a right of access to the health records of a deceased individual. These individuals are defined under Section 3(1)(f) of that Act as, 'the patient's personal representative and any person who may have a claim arising out of the patient's death'. A personal representative is the executor or administrator of the deceased person's estate.

This legislation does not grant a general right of access and there are circumstances which could limit disclosure:

- If there is evidence that, the deceased did not wish for any part of their information to be disclosed
- If the disclosure would cause serious harm to the physical or mental health of any person
- If the disclosure would identify a third party



There may be circumstances where individuals who do not have a statutory right of access under the Act request access to a deceased patient's record. Where requests of this nature are made, they should be considered on a case-by-case basis and dealt with under the common law duty of confidentiality which, in the absence of clear guidance to the contrary, should be taken to endure beyond death in most circumstances.

Charges and Timescales

The '[Department of Health: Guidance for access to Health Records Requests](#)' provides useful information to consider when such a request is received.

Note: Following the implementation of the Data Protection Act 2018 organisations can no longer charge for requests for access to personal information, this includes the personal information of a deceased patient. See '[Schedule 19 - Minor and Consequential Amendments, Part 1 - Amendments of Primary Legislation](#)'

...under the Access to Medical Reports Act 1988

The '[Access to Medical Reports Act 1988](#)' provides applicants the right to request a medical report from a health professional, who has provided care to an individual, for employment or insurance purposes.

Employment purposes:

where an individual is or has been, or is seeking to be, employed by the applicant

Insurance purposes:

where an individual has entered into, or seeking to enter into, a contract of insurance with an insurer

Medical report:

a report relating to the physical or mental health of an individual prepared by a medical practitioner who is, or has been, responsible for the clinical care of the individual. The report may include information written by the patient's GP or a specialist who has provided care and, in some circumstances, an occupational health professional.

Applicants (insurer or employer) must obtain consent from the individual/patient, being clear from the outset of its intentions, and supply confirmation of this consent to the health professional in their application. When the patient gives their consent to the applicant, the applicant should ask the patient if they wish to have access to the report, before it is released to the applicant, by the health professional. If the patient wishes to have such access, the applicant will advise the patient that they have just 21 days to contact the health professional to access the report. If the patient does not inspect the report within this timeframe, the health professional may release the report to the applicant.

Health professionals are only required to keep copies of reports for a period of six months, therefore the patient may request a copy of the report within this timeframe from the health professional.



Note: Withholding information is one of the considerations when dealing with Subject Access Requests and the same applies to medical reports. The medical professional has the responsibility to redact any information that may cause harm or distress to the patient by its disclosure or where information is likely to reveal the identity of another individual, however, patients should be informed of the restrictions and be able to view the rest of the report.

How do we reach Attainment Level 1?

The organisation should identify an individual or department who will have day-to-day responsibility for dealing with requests for access to personal information. The Lead should take responsibility for ensuring that procedures are in place and that the organisation is compliant with the ['Data Protection Act'](#), ['UK General Data Protection Regulation'](#), ['Access to Health Records Act'](#) and the ['Medical Reports Act'](#). The Lead should also be responsible for reporting any issues under these areas of legislation to the relevant forum.

Procedures should be developed for processing requests for access to personal information. The organisation may choose to combine all three areas: subject access requests for living patients, access to the health records of deceased patients and access to reports written for employment and insurance purposes or write individual procedures and guidance.

The organisation should ensure all staff are made aware of how to recognise a request and should be aware of the organisation's process for dealing with a request which is received by them, for example, who to contact within the organisation and the urgency for doing so due to the strict time limits which the law applies.

Both staff and members of the public should be informed on how to submit a request, including what a SAR entails and the process involved should they wish to submit a SAR. This should form part of the organisation's privacy notice along with details should they feel the need to escalate request or submit a complaint.

How do we reach Attainment Level 2?

Procedures for compliance with legislation should be implemented throughout the organisation to ensure the organisation effectively meets its statutory requirements.

All requests for information should be documented and managed by a register to track and record submissions and responses, this should include a log of requests, timelines, actions and responses. This will assist the organisation with response times to ensure it is compliant with the law and provide a record of actions taken and responses should evidence be required in the event of a complaint. The ICO recommends a having a checklist that records the key stages in the request handling process, for example, which systems or departments have been searched. This can form part of the log/register or be a separate document.

Training should be provided to the staff working in areas where requests are managed to ensure they understand how to recognise a request under the relevant legislation, how to respond to such



requests, timescales provided by legislation and when time limits can be extended. The ICO sets out their expectations on timely responses in '[Table One](#)'.

How do we reach Attainment Level 3?

An appropriate member of staff should be assigned with responsibility for dealing with any complaints and appeals against decisions not to supply exempt information. It should be an individual or group of individuals who did not have involvement with the original request. GMPs dealing with complex complaints/appeals should refer the complaint/appeal to the commissioning Health Board for consideration. '[Table Two](#)' sets out the ICO's expectation for individual's complaints regarding data protection.

The organisation should ensure that performance figures for responding to requests to access personal information are regularly reported to the relevant forum, such as the Board/Committee/Practice Management team. See '[Table Three](#)' for the ICO's expectations on monitoring and evaluating performance.

It is important that documented Access to Personal Information procedures are reviewed and updated on a regular basis, in line with any changes in legislation or internal approaches to compliance with the various Acts.

Supporting Resources

ICO: Right of Access Detailed Guidance - *Guide to the UK General Data protection Regulation (UK GDPR) "Right of Access"*

ICO: Subject access code of practice (2017) – explains the rights of individuals when accessing their personal information. Written pre DPA 2018 however, there are only subtle differences between this guidance and the new law.

ICO: Children and the UK GDPR - *Practical guidance for organisations who are processing children's personal information*

British Medical Association: GPs as data controllers - *A list of the key changes for GMPs under the GDPR*

BMA: Confidentiality and health records toolkit - *Guidance on the key issues to take into account when making decisions about patient confidentiality*

Royal National Institute for the Blind: Braille, Audio and Large Print Services - *RNIB provides a range of accessible information services, transcription services are also available via its regional offices*

British Sign Language: Home Page - *This site is designed as a guide to British Sign Language and not an authoritative reference. Signs vary by region as well as country; the signs reproduced on this site may vary to those used in local areas*

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Data Protection (Subject Access Modification) (Health) Order 2000 - This Order provides for the partial exemption from the provisions of the Data Protection Act 1998 which confer rights on data subjects to gain access to data held about them of data relating to the physical or mental health or condition of the data subject

Data Protection Act 2018

UK General Data Protection Regulation 2016

Access to Health Records Act 1990

Access to Medical Reports Act 1988

Summary Requirement

Attainment Level	Summary Requirement
1	There is a documented procedure and guidance in place for Subject Access Requests (SARs) that sets out clear responsibilities for responding to information requests efficiently and in accordance with the law
2	<p>GMPs: Procedures have been implemented by all staff and those who manage requests have been appropriately trained. A register of requests is maintained</p> <p>Health Boards and Trusts: Staff members who manage requests have been appropriately trained. A register of requests is maintained</p>
3	There is a robust review process in place in the event of appeals, internal reviews and complaints. Performance figures in relation to SARs are regularly reported to the relevant forum

