

Technical Guidance Note

Subject access to health records by members of the public

A health record is defined in the Data Protection Act 1998 (the Act) as any record that:

- consists of information relating to the physical or mental health or condition of an individual, and
- has been made by or on behalf of a health professional in connection with the care of that individual.

The importance attached to the information in health records often results in individuals requesting access to their health records.

This guidance aims to explain to people who work with medical records how you should deal with these requests and what your responsibilities are under the Act. You may, for example, be working in GPs' surgeries, hospitals, or for other care providers.

How should we process a request once we receive it?

When you receive a subject access request, you will need to consider the following before deciding how to respond:

- Section 7 of the Act gives individuals the statutory right, subject to some exemptions, to see information that organisations hold about them. Requests must be made in writing to the person or organisation holding the health records. The type of access you must provide and the fee you are allowed to charge may vary depending on how the records are held.
- Organisations should have procedures for handling requests for health information. A request does not have to use the term 'subject access' or 'data protection' for it to be valid. Staff should be trained to recognise requests and must deal with them within 40 days or sooner if possible.

- Requests should include the full name and address of the person seeking access to their health record, plus any other information that may help identify them, such as their NHS number. If the record is open and there is an ongoing relationship between a health professional and the person making the request, you should confirm their identity with the lead practitioner. Confirming identity is very important if the request is for old information from closed records and there is no ongoing relationship that can be relied on to help with identification.
- Consider all information held about the individual, not only medical records, bearing in mind that the person may say they wish to restrict their request to specific information.
- You can ask the person to give you more information to help you find the information they are requesting.
- It is good practice to record all incoming requests for information and track them through to completion. You should acknowledge all requests for information and let the person know when they can expect a response.

Fees

- You are allowed to charge between £10 and £50 for complying with a subject access request, which will allow you to cover some of your costs, such as for photocopying. The fee is optional.
- The amount you can charge varies depending on how the health records are held.
- You can charge a maximum of £10 for complying with a subject access request to health records held on a computer system only.
- You can charge a maximum of £50 for complying with a subject access request to health records held in a manual filing system, or a combination of electronic and manual filing systems. Or you can offer the applicant the opportunity to inspect the documents in person free of charge, outside the right of subject access (see also below).
- Instead of providing copies, you can offer the applicant the opportunity to inspect their medical records in person if the health records:

- are held manually, and
- have been added to in the 40 days since the request was first made.

You are not allowed to charge a fee for this. Individuals may also choose to view the records rather than receive copies.

Are subject access requests subject to VAT?

No. Subject access requests fall outside Value Added Tax since responding to them is a legal duty. This applies in all cases, regardless of whether the request is made by the data subject or an agent acting on their behalf (including a solicitor making a request on behalf of their client).

Subject access requests made by a representative

Anyone with full mental capacity can authorise a representative to help them make a subject access request. When you receive a subject access request from a person's representative, you must satisfy yourself that they have the authority to make the request before disclosing any information to them.

Parents' access to the health records of their children

Parents can make subject access requests on behalf of their children who are too young to make their own request. A young person aged 12 or above is generally considered mature enough to understand what a subject access request is. They can make their own request and would need to provide their consent to allow their parents to make the request for them. You must use your judgement to decide whether a young person aged 12 or above is mature enough to make their own request as they do not always have the maturity to do so.

Subject access requests made on behalf of people who lack capacity

People who cannot make their own requests because of an illness or mental health problems have the same rights and protections under the Act as anyone else. Such a person is said to 'lack capacity'. Someone else may be able to make a request on their behalf however, you must be sure that the representative of a person who lacks capacity:

- is allowed to make a subject access request on their behalf, and
- is acting in their best interests.

If an adult has lost the mental capacity to appoint a representative, you will need to be cautious when deciding whether or not you can disclose the individual's health records to anyone claiming to act on their behalf.

Can we ask why an individual requires the information they have requested?

Yes, you may ask the data subject or their agent the purpose of their request. Information about why the information is needed may help you decide whether or not an agent is acting within the scope of their authority in asking for particular information. However, an individual or their agent is not obliged to provide this information.

What information do I have to provide?

You must provide the information requested plus:

- a description of the information
- an explanation of why you keep the information, and
- a list of people to whom you may disclose the information, and an explanation of why you may do so.

Do we have to supply all the information held in an individual's record?

Not necessarily. There may be information in an individual's health record about another person, such as a family member or partner. This information is known as third party data. An individual can make a subject access request only for their own information. If information is clearly personal data about more than one person, you must consider the interests of all the parties before deciding whether or not you may disclose the information. So you may sometimes have to withhold parts of an individual's record that relate to the third party if it would be unreasonable to the third party to disclose the information.

Information in a health record that identifies a professional carrying out their duties, such as a doctor, is not usually considered to be third party data. If the individual making the request already knows the third party data, and you are aware of this, you should not normally withhold the information.

Please see our Technical Guidance Note [Dealing with Subject Access Requests involving other people's information](#) for more information on this.

Disclosure of information that may harm someone's health – Statutory Instrument 2000 No. 413

A medical professional may believe that providing an individual with access to certain information in their health record might cause serious harm to their physical or mental health or to that of another person. If so, the Data Protection (Subject Access Modification) (Health) Order 2000 allows a data controller to withhold information. However, only a medical professional can make such a decision, and it must be fully documented. This exemption does not apply to information the individual already knows.

What happens if someone thinks there is a mistake in their medical record?

If, after an individual has seen their medical record, they think something in it is incorrect, they should first discuss it with you. If the incorrect information is non-clinical, such as a wrongly recorded name or address, this should be corrected.

If the information they think is incorrect is a professional's opinion, such as that of a GP, the information should not be amended but the individual's statement of correction will need to be recorded. This is because the original information is an accurate statement of the opinion on which treatment may have been based, even if the conclusions drawn in the opinion prove to be incorrect. Please see our Good Practice Note [Recording and retaining professional opinions](#) for more information on this.

If an individual disputes some clinical information in their medical record and it is not possible to get this removed, you may offer them the opportunity to add a statement of their own opinion.

Complaints

If an individual is dissatisfied with the way you dealt with their subject access request, they should first complain to you directly. If they are still dissatisfied, they can complain to the Information Commissioner's Office.

More information

If you need more about this or any other aspect of data protection, please contact us.

Phone: 0303 123 1113
Website: www.ico.gov.uk