

ACCESS TO HEALTH RECORDS – A GUIDE FOR APPLICANTS (Data Protection Act 1998 / Access to Health Records Act 1990)

IT IS ADVISABLE TO READ THIS GUIDANCE BEFORE COMPLETING THE ENCLOSED FORM

GENERAL INFORMATION

- Under the Data Protection Act 1998 all patients have the right of access to their records subject to certain safeguards.
- The Access to Health Records Act 1990 is only relevant when dealing with applications to access medical records appertaining to the deceased.
- You have the right to have your personal health information kept confidential. Record holders are obliged to be satisfied that an applicant is the patient or is otherwise entitled to access. At the least, the Record Holder will need to check your identity, to avoid a possible breach of confidentiality. Therefore, if you are granted access under the Act, the Trust will require sight of your birth certificate or passport (or other form of identification) before access takes place.
- The process of administration may seem a complicated one, but it is of vital importance that the records are only released to those with a legitimate right of access.
- In accordance with the Acts, the appropriate health professional will advise on whether access should be granted.

WHO CAN GAIN ACCESS UNDER THESE ACTS?

- The patient.
- Any person authorised by the patient, in writing, to apply on behalf of the patient.
- The person having parental responsibility for a child under 16 years, although the competency of the child to agree will be considered, or if it is felt by the Trust to be in the child's best interest.
- Any person appointed by the Court to manage the affairs of a patient, who is deemed to be incapable and where the Trust feels it is in the patient's best interest.
- The personal representative of a deceased patient, i.e. Executor of the Will, or someone with a claim arising from the death.

NB: Under the Access to Health Records Act 1990 the Trust is only obliged to provide access to deceased patient's records made after November 1991 (although, in certain circumstances, voluntary disclosure may be considered).

WHOLE OR PARTIAL EXEMPTIONS (provisions for information to be with-held)

When the applicant is the patient:

- If the Trust considers that some information may cause serious harm to your physical or mental health, this will not be disclosed. You will not necessarily be told that this has been withheld because that, in itself, could be damaging.
- Information held within a health record that has been provided by a third party, this does not include health professionals, will not be disclosed without the permission of the third party who provided the information.

When the applicant is not the patient:

- Information given in the expectation that it would not be disclosed will be withheld.
- If a patient is incapable of managing their own affairs, the Trust will disclose records if it is deemed to be in the patient's best interest.

Deceased patient:

- Information given in the expectation that it would not be disclosed, will be withheld.
- Access to information which is not relevant to a claim arising from the death, will not be disclosed (*although, in certain circumstances, voluntary disclosure may be considered*).

APPLICATION FEES

- An administration fee plus photocopying and postage charges (were applicable) will apply before release.

NB: This fee is not payable if the record has been updated within 40 days of the application.

- Cheques should be made payable to Wirral Community NHS Trust.

TIME LIMIT FOR ACCESS

- From receipt of your Application Form, the Trust has 14 days to seek further information, or clarification of details, if necessary.
- With all correct/available information, the Trust has 40 days to respond.

VOLUNTARY ACCESS

- There is nothing in the Data Protection Act 1998, preventing the health professional, in charge of your clinical care, allowing voluntary disclosure to the record during or just after an episode of care (subject to the outlined exemptions).
- Such a request does not constitute an application under the Act and does NOT require completion of the enclosed form.

MISTAKES OR INACCURACIES

- If you consider that there are mistakes or factual inaccuracies in the record, you can request a note be made in the record stating your opinion.
NB: In Law, nothing may be erased from a health record, but a correction may be added and a copy given to you.

COMPLAINTS ON OUTCOME OF APPLICATION

- If you feel that you have been unfairly treated, or that the Trust has not complied with the Act, you should first contact the Health Records department (contact details on the enclosed Application Form).
- If you are unhappy with this outcome, you should contact the Trust's Complaints Manager, Sylvia Reynolds based in The Complaints Office Wirral Community NHS Trust Old Market House, Hamilton Street, Birkenhead, Merseyside. CH41 5FL.
- If you remain dissatisfied, you have the right to apply to the Courts.

NOTES TO ASSIST WITH COMPLETION OF THE APPLICATION FORM

Section 1 - Personal details of record to be accessed:

Please identify as many personal details as possible to assist with identifying the record to be accessed and speed up the process generally.

Section 2 - Details of applicant if not the patient:

This section should only be completed if the application is being made by a person other than the patient.

Section 3 - Details of attendance and treatment received:

This section to be completed as fully as possible. If you do not know, or cannot remember, the name of the member of staff who treated you, approximate dates when treatment was received, hospital / speciality / clinic or dept will assist the Trust in locating the relevant record.

Section 4 - Declaration:

Please highlight relevant points as appropriate. The Trust cannot allow access to health records until it is satisfied that the application is legal within the limitations of the Acts.

Section 5 - Witness Statement:

This section needs to be completed and signed by a witness who can confirm your signature.