



Velindre NHS Trust

Standard Operating Procedure (SOP)

VCC- Health Records Department
Request to Access Health Records

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VHR105: Request to Access Health Records

1. Introduction

Individuals have a right to apply for access to health information held about them, and in some cases, information held about other people. This procedure has been developed to ensure the access to such information is being processed and handled in accordance with the relevant legislation and any subsequent considerations. Requests may be in writing or verbally, however there has to be confirmation of the requester's identity in paper format. The main legislative measures that give rights of access to health records include:-

Data Protection Law – rights for living individuals to access their own records. The rights can also be exercised by an authorised representative on the individual's behalf.

The Access to Health Records Act 1990 – rights of access to deceased patient health records by specified person (s).

The Medical Reports Act 1988 – right for individuals to have access to reports relating to themselves, provided by medical practitioners for employment or insurance purposes.

Common Law Duty of Confidentiality - Common law (*case law*) is law that has developed through the courts making decisions in cases on legal points and creating binding precedents—in contrast to statutory law, which is determined by acts of parliament.

To ensure the timely response and a copy of a health record is supplied when requested, all requests to access health records and health record information, both from patients and third parties (e.g. solicitors, police, courts etc) are processed by the Medical-Legal Officer and in accordance with the legislative provisions within the above Acts (i.e. compliance and exemptions). Each Act sets out and stipulates timescales in respect of compliance with the expectation being that all requests are complied to within 21 days (though Data Protection Law states one month to comply). Where requests are complex or numerous, under Data Protection Law the organisations can extend the period of compliance by a further two months. If this is the case, the organisation **MUST** inform the individual (applicant) within one month of the receipt of the request and explain why the extension is necessary.

As well as legislation, the Common Law Duty of Confidentiality applies to the management of health records. It is further defined as:

“When personal information is shared in confidence it must not be disclosed without some form of legal authority or justification. In practice this will often mean that the information cannot be disclosed without that person's explicit consent unless there is another valid legal basis. It is irrelevant whether the individual is old or has mental health issues or indeed lacks capacity: the duty still applies”.

Therefore, prior to the release of health records, the Medico-Legal Officer is to ascertain if there is an impact upon their release by the Common Law Duty of Confidentiality. Examples of such considerations are:

Where law enforcement authorities request copies of health records to prevent, investigate, detect or prosecute crime. In these circumstances the law enforcement authority may request a victims records. It is, on these occasions, the duty of the Caldicott Guardian to authorise the release of such records is key.

The General Medical Council (GMC) has specific guidance which is to be followed by both the Medical Records department and Caldicott Guardian when considering the release of health records. The link to their Guidance is [here](#)

A copy of the form to be used in these circumstances is at Appendix B.

However, there may be exceptional circumstances whereby the organisation receives notification (i.e. Welsh Health Circular, etc) of a requirement to expedite the processing of a health record request. Where such a need exists the organisation will endeavour to provide and turn around any such requests within 7 – 10 days. Where such circumstances and notifications are received, the Health Records Manager will notify the necessary staff for awareness.

This procedure much be read in conjunction with the relevant Trust and Divisional associated Policies and Procedures, namely:-

Data Protection and Confidentiality Policy

NHS Wales Information Governance Policy

Management of Individual Rights under Data Protection Legislation Procedure

2. Procedure

All requests for access to health records must be sent to the Health Records Manager. Upon receipt of the request: -

1. The organisation may wish to confirm in writing with the applicant what personal data is being requested (An application form (Appendix A) can be sent, however completion of the form is not mandatory by the applicant)
2. All requests received via mail to be legibly date stamped. Email requests printed.
3. The request to be logged and recorded internally on SAR spreadsheet in MS Teams
4. Folder set up in Subject Access Request file in Med Rec Drive and request scanned and saved.
5. The Medico-Legal Officer checks the request/application form for individual requests for the signature and other information confirming the identification of the requester. If there is a query in relation to the identification then this is noted and more identification **MUST** be asked for, SAR spreadsheet to be updated.
6. In cases where requests are being made on behalf of an individual checks **MUST** be made to ensure there is appropriate consent in place.
7. Acknowledgement letter to be sent to requestor and copy saved in named folder in Med Rec Subject Access Request.
8. Request to be annotated on WCP under Quick Notes.

9. SAR checklist sheet to be created
10. Physical Medical Record to be located and pulled (request if in off site storage), notes to be booked to Medico-Legal Clerk. All requested information must be photocopied in colour and all pages single sided.
11. Electronic Record reviewed and printed as per request.
Canisc, Welsh Clinical Portal, Chemocare.
12. Any identified missing information eg Radiotherapy treatment sheets or Chemotherapy prescriptions to be located and copied as part of the request.
13. If there are any Velindre Radiology images, the Medico-Legal Officer will request from Radiology.
14. Radiology will burn the images onto a disc and send to the Medico-Legal Officer.
15. Once the requested information has been collated, email request to Senior Responsible Consultant for confirmed of release of records.
16. The Medico-Legal Officer obtains the consultants signature for release of the health records (copy of release saved in named folder)
17. Both the paper records and electronic copies **MUST** be **CHECKED** and examined for accuracy and for any information that needs to be exempt (i.e. any 3rd party, sensitive, etc information). It is the responsibility of the Health Records Manager to authorise any exemptions. In the absence of the Health Records Manager, the Head of Outpatients and Medical Records can also authorise the non-disclosure of any information. The copies are sent via recorded delivery to the individual or 3rd party making the request.
18. When the physical medical record has been copied, this is to be booked back into Health Records Library via WPAS system.
19. All information must be sent to the requestor by either
 - Secure File Share
 - Double enveloped, both envelopes addressed and sent first class, recorded delivery.
20. The tracking reference to be recorded on the SAR spreadsheet. Copy of secure file details saved in named folder.

To Note

- Requests originating from Complaints/Concerns Manager require 2 copies.
- The Medico-Legal clerk must update the SAR register and named folder to ensure all information is up to date daily.
- A copy of the SAR Register must be forwarded to the Head of Information Governance and Health Records Manager every Monday by 12pm.
- An end of month report must be forwarded to the Information Governance Manager and Health Records Manager on the first Monday of every month.

PLEASE NOTE: Requests for access to records made under Data Protection Law and Access to Health Records Act 1990 are to be supplied to the applicant free of charge. The Organisation can charge a 'reasonable fee' when a request is manifestly unfounded or excessive, particularly if it is repetitive.

Charging a reasonable fee can be applied to requests for further copies of the same information. However, it does not mean a charge can be applied to all subsequent access requests. Fees are to be charged based on the administrative cost of providing the information.

APPLICATION BY OR ON BEHALF OF A PATIENT FOR THE RELEASE OF HOSPITAL HEALTH RECORDS/INFORMATION

This application form should be completed as fully as possible.

Please return to:

Health Records Manager
 Health Records Department
 Velindre Cancer Centre
 Velindre Road
 CARDIFF
 CF14 2TL

a)	Full name of patient: (including previous surnames)	
b)	Current Address:	
c)	Previous Address:	
d)	Date of Birth: (and death, if applicable)	
e)	Hospital or NHS Number: (if available)	
Name(s) of consultant(s) at Velindre Cancer Centre in charge of your care:		

<p>If you do not require a copy of the full set of the Health Records, please specify the date range required.</p>	<p>From:</p> <p>To:</p>
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Applicant's details

Name:	
Relationship to patient (If not patient):	
Address:	
<i>Please print name beneath each signature. Where appropriate, a signature by child over 12 but under 18 years requires signature by parent.</i>	
Signature of patient:
Signature of parent/guardian or next friend if appropriate:
Signature of applicant:
Signature of next of kin where patient has died:	Print Name:
	Signature:

PLEASE PROVIDE PROOF OF IDENTITY TOGETHER WITH THIS APPLICATION BEFORE RELEASE OF RECORDS

(e.g. Copy of birth certificate, adoption papers, marriage licence, etc)

If request is for photocopied notes:

Name of person to receive copies:	
Address copies to be sent to:	

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Please specify if full or part copy notes required or specific information only.

Request for disclosure of Medical Information – Schedule 2, section 2 of the Data Protection Act 2018 (DPA)

The purpose of this form is to provide justification to support a request for information from health professionals to the police for the discharge of their statutory functions.

Requester details	
Name of Force	
Contact details of requesting officer	
Date request submitted	
Reference	

Organisation details	
Organisation Name	Velindre University NHS Trust
Contact details	VelindreInformationGovernance@wales.nhs.uk

Lawful basis for request and disclosure
<p>The police have a common law power to exercise powers in relation to a policing purpose which is defined as (a) protecting life and property; (b) preserving order; (c) preventing the commission of offences; (d) bringing offenders to justice; (e) any duty or responsibility of the police arising from common or statute law.</p> <p>The lawful condition for collection of personal data by the police is that the processing is necessary for the performance of a task carried out for a law enforcement purpose (section 35 DPA) and in the case of sensitive processing, that it is strictly necessary for the law enforcement purpose and meets a condition in Schedule 8 DPA.</p> <p>Organisations which have collected personal data for their own purposes are not required to provide fair processing or comply with the purpose limitation principle under Part 2 DPA to the extent that it is necessary for the crime and taxation exemption to apply (Schedule 2, para 2 DPA)</p>

Part 1 – Request for information

Purpose of Request *(requesting officer to indicate which purpose applies to the request)*

The information is requested for the purpose of:

Serious Crime:

- Prevention of criminal activity – there is a substantial suspicion of the threat of criminal activity
- Detection – there is a substantial suspicion that criminal activity is taking place
- Investigation – a criminal investigation is ongoing
- Prosecution – an individual(s) will be charged

Please state the specific crime (e.g. section 18 assault) being charged:

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Serious Harm:

- Prevention of serious harm – please state the individual to whom harm could be prevented by disclosure and the nature of the harm prevented

Please confirm the individual to whom harm would be prevented by disclosure and the nature of the harm prevented:

Information requested (*requesting officer to specify each piece of medical information sought from health record and justification as to why it is strictly necessary in relation to the above purpose*)

The necessity for the disclosure of information must be in the public interest and outweigh the duty of confidentiality to the data subject. Only the minimum data necessary will be requested for a law enforcement purpose.

Information required:
(e.g. clinical statement, relevant section of the medical record, a specific blood sample)

This information is necessary for the above purpose because:

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Part 2 – Consent

<p>Use of this form presumes that consent to access medical records <u>is not forthcoming</u> from the data subject or that <u>requesting</u> consent would prejudice the investigation. Officers should complete the relevant option below.</p>	
<p>Requesting consent will prejudice the investigation because:</p>	
<p>Consent has been sought but has been refused because:</p>	
<p>Consent cannot be sought, as it is believed the patient lacks capacity to consent because: (including deceased patients)</p>	

Part 3 – Disclosure/Refusal of information

<p>Details of disclosure <i>(to be completed by disclosing organisation)</i> <i>Where information is to be provided by different formats please indicate nature of information to be provided. Where the request is refused please provide reasons, basis for refusal under the DPA'18 and contact details of Data Protection Officer.</i></p>
<p></p>