



**South Warwickshire**  
Clinical Commissioning Group

# Access to Health Records Policy and Procedure

## VERSION CONTROL

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## VERSION HISTORY

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15/02/2019	1.1	New version produced by Information Governance Officer – Arden & GEM Commissioning Support Unit.
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20/03/2019	2.0	Approved by Governing Body.

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## 1. Introduction

- 1.1. For deceased persons, applications are made under the Access to Health Records Act 1990, as the Data Protection Act 2018 only applies to living individuals. This policy provides the right of access to the health records of deceased individuals for their personal representative and others having a claim under the estate of the deceased.

## 2. Definitions

- 2.1. A health record can be in computerised and/or manual form. It may include such documentation as hand written clinical notes, letters to and from other health professionals, laboratory reports, radiographs and other imaging records, printouts, photographs, videos and tape/digital recordings.
- 2.2. Personal information relating to an individual includes factual information, expressions of opinion, and the intentions of the health professional in relation to the individual concerned.

## 3. Scope

- 3.1. This policy has been created to enable NHS South Warwickshire CCG to comply with the Access to Health Records Act.
- 3.2. This policy is complementary to other NHS South Warwickshire CCG policies and should be used/read in conjunction with them.

## 4. Audience

- 4.1. This policy applies to full-time and part-time employees of NHS South Warwickshire CCG, lay members, contracted third party organisations and individuals (including agency and Bank staff), students/trainees, secondees and other staff on placement with NHS South Warwickshire CCG, and staff or partner organisations with approved access (hereafter referred to as staff).

## 5. The General Data Protection Regulations

- 5.1. Individual Staff Responsibilities

NHS South Warwickshire CCG Governing Body, Chiefs, managers and staff are responsible for complying with this Access to Health Records Policy.

- 5.2. Governing Body

NHS South Warwickshire CCG's Governing Body has a duty to ensure that the requirements of the Access to Health Records Policy 1990 are upheld.

- 5.3. Accountable Officer

The Accountable Officer has overall responsibility for the organisation's compliance with the Access to Health Records Policy 1990 and adherence to this policy.

- 5.4. Chief Strategy Officer

Chief Strategy Officer will regularly report to NHS South Warwickshire CCG's Governing Body in relation to access to health records activities, and will liaise with other senior members of NHS South Warwickshire CCG staff as required.

- 5.5. Caldicott Guardian

The Caldicott Guardian is responsible for ensuring that NHS South Warwickshire CCG is compliant with the confidentiality requirements of the Access to Health Records Policy 1990.

#### 5.6. Corporate Governance Manager

The Corporate Governance Manager is responsible for processing all access to health records requests and providing regular updates to the Information Governance Steering Group and Clinical Quality and Governance Committee.

#### 5.7. Managers

Managers are responsible for ensuring that information within the notes is disclosable under the requirements of the Access to Health Records Policy 1990. They must also ensure that records are provided in a timely fashion in order to meet the timescale for releasing information.

#### 5.8. All Staff

All staff across NHS South Warwickshire CCG have a responsibility to ensure they comply with NHS South Warwickshire CCG's statutory obligation under the Access to Health Records Policy, and any policies and procedures laid down by NHS South Warwickshire CCG to ensure compliance. Failure to do so may result in disciplinary action.

#### 5.9. Coventry and Warwickshire Information Governance Steering Group

The Information Governance Steering Group is responsible for reviewing all aspects of access to health records within NHS South Warwickshire CCG. This group reports to NHS South Warwickshire CCG's Clinical Quality and Governance Committee.

## 6. Data Subject Access

- 6.1. An individual does not have the right to access information recorded about someone else, unless they are an authorised representative, have parental responsibility, or are acting on behalf of a deceased person.
- 6.2. NHS South Warwickshire CCG is not required to respond to requests for accessing health records unless it is provided with sufficient details to enable the location of the required information and to satisfy itself as to the identity of the individual making the request.

## 7. Procedures

### 7.1. Receiving an Access to Health Records Request

All requests should be sent to the Corporate Governance Manager at South Warwickshire CCG, where they must be logged on receipt.

NHS South Warwickshire CCG can only provide records produced and owned by the organisation. These do not include acute/general hospitals, mental health, learning disability and GP records.

### 7.2. Patient or Relative Requests

The access request letter will be reviewed to make sure that it contains the minimum data required, as follows:

- Full name of the patient;

- Full address of the patient;
- Date of Birth of the patient;
- 10 digit NHS number of the patient (if available);
- Signature of the patient or person representing the patient;
- There must be evidence of the relationship to the deceased patient and evidence of the death;
- Sufficient information to be clear as to the exact records required – this could state all records or physiotherapy records for example;
- Specific dates of the records required

If this minimum data requirement is not met, the requestor will be sent the Access to Health Records Application form at Appendix 1.

### 7.3. Requests By a Solicitor Or Other Agency

In addition to the information above, the request must be accompanied by signed authorisation from the patient giving their consent to release the information.

### 7.4. Requests from the Police

Duty of confidentiality extends to deceased patients, but where the police are working on behalf of the coroner's office, they are entitled to obtain copies of medical information that is relevant and necessary to their investigations.

Otherwise, the consent of the executor of the estate or the personal representative would be needed before such information could be released, unless you believe the situation justifies a breach of confidentiality (i.e. it is in the public interest).

### 7.5. Requests from the Court

All Court Orders will come directly from the court and will have the relevant court's seal or stamp.

The Court Order must be date stamped on receipt.

The Court Order should be specific in its requirements. If necessary, the Access to Health Records Officer can seek clarification from the Clerk of the Court over any points of concern.

Where appropriate, the court will be advised that all other organisations e.g. Acute/General Hospital, Mental Health & Learning Disability and GPs and Local Government, will require individual court orders.

The Corporate Governance Manager will note the timescale given by the court for producing the relevant records.

The Court Order will be accompanied by a court letter, the content of which must be followed. The Corporate Governance Manager will be required to serve non-redacted notes to the court/authorised Solicitor.

## 8. Processing an Access to Health Records Request

### 8.1. Obtaining the Records

Once the validity of the request has been established, the Corporate Governance Manager will take steps to locate the records and obtain copies.

If the request is for all healthcare records for an individual, the Corporate Governance Manager will liaise with the relevant healthcare professionals and service leads to ascertain which records relate to services provided directly by NHS South Warwickshire CCG.

Where specific records only are requested, the Corporate Governance Manager will write to the relevant healthcare professional(s) detailing which records are being requested.

Once the records are available and forwarded to the Corporate Governance Manager, he/she will take copies and return original records to the relevant healthcare professional.

The copies then need to be scrutinised by the relevant healthcare professionals to determine if any information contained therein needs to be restricted. The Arden Commissioning Support Compliance Lead can also be contacted directly for further advice/guidance.

Copies of the redacted/restricted records(s) should then be returned to the Corporate Governance Manager with a signed 'Clinical Consent to Release' form (Appendix 2), for release to the requestor.

## 8.2. Sending the Copies of Records

Once all relevant copies of records have been provided with authority to release, the Corporate Governance Manager will send them to the requestor.

In line with the Safe Haven Policy, originals of records should not be sent. If this option is being contemplated because of the volume or for any other reason then the Chief Strategy Officer or Caldicott Guardian must be contacted for approval prior to sending.

Copies of records will be sent by Recorded Delivery in a secure and sealed envelope to a named person. NB: Copies of records to the court will be sent Special Delivery to ensure compliance with the Court Order.

Sending via Recorded Delivery will enable NHS South Warwickshire CCG to provide proof of posting and to track receipt of the copies.

The Recorded Delivery slip will be added to the individual patient's Access to Health Records file by the Corporate Governance Manager.

## 8.3. Recording the Access Request

The relevant Healthcare Professional will make a note of the pages and/or entries that have been redacted or removed and why. This is necessary in case there are any challenges by the patient or their representative to what has and has not been disclosed. It is also helpful if further request is received at a later date or by another legitimate requestor.

The Corporate Governance Manager will log all access requests received on the Access to Health Records log and track NHS South Warwickshire CCG's progress and response to all such requests.

All of the data fields will be completed by the Corporate Governance Manager

The original request, subsequent correspondence and a record of any information not disclosed should be kept in the patient's health care record.

## 8.4. Timescales

The records will be sent to the recipient wherever possible within 21 calendar days.

These timescales will not be applicable in the case of Court Orders as they will stipulate the date records are required.

The Corporate Lead will keep copies of the correspondence relating to the access request for 3 calendar years following completion of the request, in case of queries and subsequent access requests.

## 8.5. Appeals Procedure

8.5.1. If the requestor believes that there is some data that NHS South Warwickshire CCG has not supplied or is not satisfied with the response from NHS South Warwickshire CCG, they should be advised that they will be able to seek an internal review of that decision by a senior NHS South Warwickshire CCG officer. An officer who was not involved with the original decision would be commissioned by the Director of Strategy and Engagement to undertake the internal review. The requestor will be informed of the outcome of the review in due course. Complaints regarding information that individuals consider should have been provided but was not can be made to the SWCCG Corporate Governance Manager in the first instance.

8.5.2. (ii) Following the internal review, if the individual still remains dissatisfied, they should be advised that they can seek an independent review from the Information Commissioner. Requests for a review by the Information Commissioner should be made in writing directly to:

The Information Commissioner  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF

Tel: 01625 545 700

## 9. Training

9.1. There are no training requirements in relation to this policy; however staff will be made aware of this policy via the Corporate Governance induction process.

## 10. Monitoring and Assurance

10.1. The Clinical Quality and Governance Committee will receive regular reports regarding Access to Health Record requests.

## 11. Equality & Diversity Impact Assessment

11.1. In reviewing this policy, the CCG considered, as a minimum, the following questions:

- Are the aims of this policy clear?
- Are responsibilities clearly identified?
- Has the policy been reviewed to ascertain any potential discrimination?

- Are there any specific groups impacted upon?
  - Is this impact positive or negative?
  - Could any impact constitute unlawful discrimination?
  - Are communication proposals adequate?
  - Does training need to be given? If so, is this planned?
- 11.2. Adverse impact has been considered for age, disability, gender reassignment, marriage and civil partnership, pregnancy, race, religion or belief, sex, sexual orientation. No adverse impacts have been identified.

## **12. Monitoring Compliance and Effectiveness of the Policy**

12.1. The Clinical Quality and Governance Committee will oversee implementation of the policy.

12.2. The policy will be reviewed every three years by the Governing Body. Staff will be notified of any key amendments made.

## **13. References and Further Reading**

13.1. This policy should be read in conjunction with the following:

- Subject Access Request Procedure;
- Safe Haven Policy and Procedure.

**End of Policy**

# APPENDIX 1 Application for Access to Health Records

Please complete this form and return it with any other necessary paperwork to:

Corporate Governance Manager

NHS South Warwickshire Clinical Commissioning Group

Westgate House, Market Street, Warwick, CV34 4DE

## Application for Access to Health Records

(Access to Health Records 1990)

<b>1. Name of Health Professional(s) from whom records requested</b> <i>(e.g. Doctor, Nurse, Community Dentist, Physiotherapist)</i>	
<b>2. Address of Service</b> <i>(e.g. Royal Leamington Rehabilitation Hospital, Bramcote Hospital, )</i>	
<b>3. Name of the Patient whose records are to be accessed</b>	
<b>Surname</b>	
<b>Forename(s)</b>	

<b>Address (with postcode)</b>	
<b>Date of Birth</b>	
<i>(If applicable)</i> <b>Date of Death</b>	
<b>NHS Number</b>	
<b>4. Type of records to be accessed:</b>	
Please say which records you wish to access ( <i>e.g. In patient mental health records, learning disability services records</i> ) and if relevant for what dates i.e. records made between July 05 to date)	
<b>5. Name of the applicant (if not the patient as shown on page 1)</b>	
<b>Surname:</b>	<b>First Name:</b>
<b>Address (with postcode):</b>	
<b>If you are the patient go straight to number 6 – Declaration</b>	

(Please tick the relevant box below)

I am a deceased patient's personal representative

I am a person who has a claim arising from the patient's death

**6. Declaration by applicant:**

I, \_\_\_\_\_ (name) **declare that the information given by me is correct to the best of my knowledge and that I am entitled to apply for access to the health records referred to on page one under the terms of the Access to Health Records Act 1990.**

(please tick as applicable)

**I am acting for the patient and attach the patient's written authority/consent form or other proof of authority i.e. for deceased patient - being Executor of the will/or where no will Letters of Administration/for child relevant birth certificate of the child**

**Signed:**

**Date:**

**Witness' Signature:**

**Date:**

\_\_\_\_\_

\_\_\_\_\_

**Print name:**

**Address:**

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**Relationship to applicant:**

\_\_\_\_\_

(please ask someone who knows you, for example an employer, work colleague or personal friend to witness your signature on this form)

## APPENDIX 2 – AUTHORISATION TO RELEASE RECORDS

Corporate Governance Manager

NHS South Warwickshire Clinical Commissioning Group

Westgate House, Market Street, Warwick, CV34 4DE

### Urgent attention

A request (Under the Access to Records Act 1990) has been received for access to the records of

### **Client name:**

We enclose the patient's notes for your perusal and authorisation to release copies (which we will process within our department).

Before you do, please identify any information to be restricted. The restrictions only apply in the following circumstances:

- (i) the release of information is likely to cause serious harm to the patient or of any other individual.
- (ii) would identify an individual other than the patient/client who has not given permission for information to be released (other than health professionals concerned)
- (iii) in the case of a child, a patient who is incapable of managing their own affairs, or a patient who has since died, access cannot be given to information which the patient gave in the expectation that it would not be disclosed, or to information obtained as a result of any examination or investigation to which the patient consented in the expectation that information would not be disclosed.
- (iv) in the case of an applicant who has a claim arising out of the patient's death, access can only be given to that part of the records which is relevant to the claim.
- (v) where the patient has died, access cannot be given if the record includes a note made at the patient's request, that access should not be given.

### **Consultant/Clinician's authorisation to release copies**

Signature .....

Name in Block Capitals .....

Date .....

*Please return to above address with the attached notes. Thank you.*

**Blank Page**

**End of Policy**