

NHS Direct

**NP050 National Procedure for
Access to Medical Records**

1. Introduction

The Data Protection Act 1998 (Section 7) gives every living person the right to apply for access to information held about them by an organisation. The Data protection Act calls this 'Subject Access'. The Access to Health Records Act 1990 and the Human Rights Act 1998 provides similar rights to those who have authority on behalf of patients who are deceased. This procedure relates only to medical records and does not cover access to other personal data held by NHS Direct such as personnel records.

This procedure relates to requests for access to medical records outside of formal Information Sharing Agreements with other NHS organisations or outside agencies and should be read in conjunction with NP006 Confidentiality Policy and NP028 Special Patient Information Sharing Agreements (when approved). Immediate breaches of confidentiality, through the sharing of confidential patient information without consent, for the protection of the individual or the public should be done in accordance with Caldicott Principles and with the support and advice of a senior clinician and in line with NP006 Confidentiality Policy.

Proforma within this procedure include those that should be completed in application for access to records by individual members of the public, the police and / or solicitors (see appendices).

2. What is a medical record?

The Data Protection Act 1998 defines a medical record as a record consisting of information about the physical or mental health or condition of an individual made by and / or on behalf of a health professional in connection with the care of that individual. Records can be held in computerised format or held manually on record cards or in both styles. They may also include such things as hand written letters, notes, forms, laboratory reports, x-rays and other documents including computer records and voice recordings.

The definition of a 'Health Professional' under the Act includes Registered Medical Practitioners, Dentists, Opticians, Pharmaceutical Chemists, Registered Nurses, Registered Midwives, or Health Visitors, Osteopaths, Chiropractors, Psychologists and therapists such as Physiotherapists, Speech Therapists and Occupational Therapists.

3. Who can apply for access?

Under the Data Protection Act 1998 the 'Data Subject', their solicitor or other representative acting as their agent can apply. The 'Data Subject' in terms of NHS Direct could be:

- a patient;
- a caller or anyone who speaks to us on the telephone;
- E-mail users who contact us; and / or
- Digital TV users who input data.

The person applying for access to their records must be 16 years of age or over. If a person is under 16 years of age and they are able to provide NHS Direct with a declaration signed by a Doctor or other Healthcare Professional that they are capable of understanding the nature of the application then NHS Direct will accept that declaration and provide access.

In the case of children's records, a person who has parental responsibility for that child can apply. Only the following have legal parental responsibility:

NP050 National Procedure for Access to Medical Records		Sponsor: Helen Young, Clinical Director		Author: David Foord, Associate Director of Clinical Governance	
Status: FINAL	Version V1.3	Creation Date: 14/5/2007 Review Date: 2/2008	Implementation Date: 14/5/2007 Circulation: Service-wide	Page 1 of 14	

- Natural mother of the child;
- Legally adopted parent of the child;
- Birth father of the child, if married to your child's mother (either when the child is born or at a later date); and / or
- Since 1st December 2003, have been registered on the birth certificate as the natural father (this has nothing to do with what surname the baby has been given).

However, an application may only be made by a person having parental responsibility for the child where:

- The child has consented to the application
- The child is incapable of understanding the nature of the application and giving access would be in the child's best interests (generally children under 12 years of age).

In the case of people who lack the necessary mental capacity to request their own records, a request must be made by a person appointed by a court to manage their affairs. Generally this will mean someone who has the Power of Attorney.

Access to a deceased person's records can only be given to either the deceased patient's personal representative or any other person who may have a legal claim arising out of the persons' death. The legal representative will usually be the Executor or Administrator of the estate or spouse. If there is no spouse then a son or daughter can request the records. If the person is a minor then the mother or father might be the legal representative. It is very unlikely that any one other than a relative will have a legal claim arising out of a person's death unless they are a legal representative of the relation.

4. What must be disclosed?

The person making the application will be asked to indicate on the form (see Appendix 2) what it is that they wish to access. The main records that NHS Direct will hold will be:

- The computer record; and
- The voice recording of the call/s.

NHS Direct does not provide transcripts of recordings unless the person making the application informs NHS Direct that they are hearing impaired or have another disability, which requires us to provide another format.

In most instances these are the records that will need to be provided, however in some cases the request may indicate that any other records should also be disclosed and could include other documents such as Incident Investigations, Complaints Records, computerised guidelines etc. These should be only disclosed if they are appropriate for the purpose. The National Clinical Governance Team (NCGT) will decide if this is appropriate.

5. Time Limits

Under the Data Protection Act 1998, all requests for access to records should be dealt with within 40 days of receiving a written request for access. However Ministers have given a commitment to Parliament that all requests for records to Health organisations would be complied with within **21** calendar days (Hansard, 25 October 2000, Pages 459/460).

NP050 National Procedure for Access to Medical Records		Sponsor: Helen Young, Clinical Director		Author: David Foord, Associate Director of Clinical Governance	
Status: FINAL	Version V1.3	Creation Date: 14/5/2007 Review Date: 2/2008	Implementation Date: 14/5/2007 Circulation: Service-wide	Page 2 of 14	

This time limit will start to run when NHS Direct has received enough information to conduct a thorough and inclusive search for the required information, where this is not available from the original application.

NHS Direct will also acknowledge receipt of all written applications within 2 working days.

6. Fees

A maximum of £10 can be charged for any copies of records provided under 4.1 and 4.2 above. This is **not** dependant of what is provided and may only be charged once per request.

If the applicant requests copies of manually held data then a total of £50 can be charged. 'manually held data' includes copies of records kept in paper format that is not computerised.

7. Grounds for Refusing Access

The following are the grounds on which access to medical records may be refused:

- Disclosure would be likely to cause serious harm to the physical or mental health of the person concerned or any other person.
- The release of the information would identify an individual other than the person concerned and that the individual identified has not given their permission or has objected to the information being released. This does not apply to Health Professionals or staff).
- The information was given by the person concerned in the expectation that it would not be disclosed to the person making the application, or when the person has expressly indicated that it should not be disclosed to that applicant. This could include cases where there are records relating to deceased persons, children's records when the child is considered to be Fraser Competent¹ or to records of an incapacitated person when the instructions given by the incapacitated person were made when that person had mental capacity to give those instructions.
- In the case of an applicant who has a claim arising out of the person's death access can only be given to that specific part of the record relevant to the claim.

8. Wrongful Refusal to Disclose

Where an organisation fails to comply with a reasonable request, the requestor can apply to the court for an order that the request must be complied with.

It would be open to the Information Commissioner to serve an Information Notice on the organisation requiring it to supply the Information Commissioner with the details of why the organisation has not complied with the request. It is a criminal offence to fail to comply with an Information Notice.

¹ The Law Lords (Lord Fraser) have determined that "the ability of a child under the age of 16 to make his or her own medical decisions is evaluated according to chronological age, considered in conjunction with the child's mental and emotional maturity, intelligence and comprehension"; this concept is known colloquially as Fraser Competence.

NP050 National Procedure for Access to Medical Records		Sponsor: Helen Young, Clinical Director		Author: David Foord, Associate Director of Clinical Governance	
Status: FINAL	Version V1.3	Creation Date: 14/5/2007 Review Date: 2/2008	Implementation Date: 14/5/2007 Circulation: Service-wide	Page 3 of 14	

If the Information Commissioner is then satisfied that the organisation has contravened the Act, he may serve an Enforcement Notice requiring the records to be released. It is a criminal offence not to comply with an Enforcement Notice.

9. Storage and disposal of patients records

9.1 Medical records must be stored securely and disposed of at the appropriate time as laid down in the Records Management: NHS Code of Practice (April 2006). General medical records are stored for 10 years although there are other periods relating to specific records detailed in the Code including:

- Maternity records;
- Mental Health records; and
- Records relating to those under 18 years of age.

The Code details all other specialities which could require NHS Direct to keep some individual records longer.

9.2 Disposal of records will also be via the instruction contained within the Code of Practice.

10. The procedure for applying and supplying records

All requests for access to medical records should be made in writing and if received at other NHS Direct locations should be referred immediately to the NCGT at:

Marlborough Court,
Sunrise Parkway,
Linford Wood East,
Milton Keynes,
Buckinghamshire
MK14 6DY
NCGT@nhsdirect.nhs.uk
Fax. 01908 259817

Requests for Medical Records should be reported through Datix and a Datix reference number forwarded to NCGT for action. The NCGT will maintain a database of Medical Record requests as well as a Tracker to ensure timely response. Each step of the process will be recorded through the tracker.

On receipt of a application the NCGT will ensure that the request is:

- In writing with any necessary consent and if not will send out the necessary consent form; and
- Contains sufficient information to conduct the necessary search requirements. If not further information will be requested.

The NCGT will acknowledge all requests within two working days when the criteria in 10.3 have been met.

NP050 National Procedure for Access to Medical Records		Sponsor: Helen Young, Clinical Director		Author: David Foord, Associate Director of Clinical Governance	
Status: FINAL	Version V1.3	Creation Date: 14/5/2007 Review Date: 2/2008	Implementation Date: 14/5/2007 Circulation: Service-wide	Page 4 of 14	

The NCGT will contact the Commissioning² site to request all records required.

Records will be supplied by the Commissioning site within 14 days (Please note this is not 'working days' but calendar days and is a maximum time period).

The NCGT will review the records before they are sent to the applicant to ensure that the requirements of section 7.1 of this guidance are met.

The NCGT will then send out the required documents to the applicant within 21 calendar days.

In cases when the application has been refused for any or all of the records, the NCGT will write to the applicant to inform them of the grounds by which access has been denied. Information will be provided on how the applicant may appeal this decision.

11. Pre Action protocols

11.1 There is no obligation on the requestor to state why they require the records. This means, for example, that they do not have to disclose the fact that they are contemplating litigation.

11.2 However, the good practice rules for pre-action protocols state that a person or their solicitor should state at the earliest opportunity that they are considering litigation.

11.3 All applications from a solicitor should immediately be passed to the NCGT.

11.4 The NHS pre action protocol emphasises a climate of openness when something has gone wrong or if someone is dissatisfied with the contact they have had with our service. The aim of the protocol is to establish a time sequence of steps for people and their advisors to follow when disputes arise, without the resort to courts in the first instance.

11.5 Under the protocol, people (or their representatives) can apply for disclosure of their medical records and other relevant documentation, including complaint and serious adverse incident investigation files. NHS Direct is required to provide copies of the relevant documentation within 21 calendar days of the receipt of the request.

11.6 Whilst the Data Protection Act 1998 states that there is no requirement for the person to specify why they require their records, the pre action protocol states that persons (or their representatives) are obliged to provide sufficient information to alert NHS Direct that an adverse outcome has occurred when they apply for access to medical and other records. They should also be sufficiently specific about what records are required. If a letter applying for access is not sufficiently clear on these points, the NCGT will write to the solicitor requesting this information, before disclosure is given.

12. Amendment of inaccurate information

Where an applicant considers that any information to which they have been given access is inaccurate, then the person may request that the inaccurate data and any expression of opinion based on it is retracted, blocked, erased or destroyed.

² Commissioning site is defined as the site covering the geographical area where the data subject is resident or in the case of deceased patients / callers the area in which they were last resident prior to their death.

NP050 National Procedure for Access to Medical Records		Sponsor: Helen Young, Clinical Director		Author: David Foord, Associate Director of Clinical Governance	
Status: FINAL	Version V1.3	Creation Date: 14/5/2007 Review Date: 2/2008	Implementation Date: 14/5/2007 Circulation: Service-wide	Page 5 of 14	

Non-compliance with this request would entitle the patient to apply to court for an order to require the change to be made.

Where data is inaccurate, but the record is a correct record of information given by the person or another person, the applicant can require that the records be supplemented by a statement of the true facts. The original information cannot be retracted, blocked, erased or destroyed.


An opinion or judgement made by a Health Professional, whether accurate or not should not be amended subsequently. Retaining relevant information is essential for understanding the clinical decisions that were made and to audit the quality of care.

If a person feels that the information held on them is inaccurate then they should first make a formal approach to the NCGT in writing, who will respond to such requests appropriately.

13. Legal Advice

If staff have any questions regarding a request for access to records or the operation of this policy advice should be immediately sought from the NCGT.

14. Approval



Helen Young, Clinical Director November 2006 (Amended 14 May 2007)

NP050 National Procedure for Access to Medical Records		Sponsor: Helen Young, Clinical Director		Author: David Foord, Associate Director of Clinical Governance	
Status: FINAL	Version V1.3	Creation Date: 14/5/2007	Implementation Date: 14/5/2007	Page 6 of 14	
		Review Date: 2/2008	Circulation: Service-wide		

Appendices

The appendices to these procedures are as follows:

- Appendix 1. “Request by Constabulary for data or information held by NHS Direct that is CONFIDENTIAL” to be completed in all instances of police requests for access to records by police inspector rank or above.
- Appendix 2. “Consent Form (Solicitor Use Only)” to be completed in all instances of requests for access to records by solicitors.
- Appendix 3. “Consent Form (Public Use)” to be completed in all instances of requests for access to records other than those by constabulary or solicitors.
- Appendix 4. “Access to Records Requests Flowchart” description of process to be followed in all instances of requests for access to records.
- Appendix 5. “Release of Information to Police and other Authorities”

NP050 National Procedure for Access to Medical Records		Sponsor: Helen Young, Clinical Director		Author: David Foord, Associate Director of Clinical Governance	
Status: FINAL	Version V1.3	Creation Date: 14/5/2007 Review Date: 2/2008	Implementation Date: 14/5/2007 Circulation: Service-wide	Page 7 of 14	

Appendix One



Request by Constabulary³ for data or information held by NHS Direct that is CONFIDENTIAL⁴

This includes data regarding patient(s) and/or caller(s) held by **NHS Direct** in respect of information that may be disclosed⁵ in relation to enquiries being made in connection with Serious Arrestable Offences⁶. Information provided should consider the principle of proportionality set out in the Data Protection Act 1998 and the rights of the data subject. Once complete please return to NHS Direct National Clinical Governance Team, Marlborough Court, Sunrise Parkway, Linford Wood East, Milton Keynes, Buckinghamshire, MK14 6DY

Constabulary: _____	
Name of Officer: _____	Rank: _____ Identifying No: _____
Based at: _____	Tel. No: _____
Exact details of enquiry and what NHS Direct is requested to supply:	
Search made by (name of NHS Direct staff): _____	
State in detail	
CAS ID: _____	Source: _____
Nature of data Supplied	Format data provided
The above information is given to Constabulary for the express purpose of identifying a person who has been involved in a Serious Arrestable Offence enquiry and for no other purpose.	
Signature of acceptance by Police Officer: _____	Date: _____
Signature of NHS Direct Caldicott Data Owner: _____	Date: _____

³ This form should be signed by a representative of the relevant Constabulary of Inspector Rank or above.

⁴ Version 1 (November 2003)

⁵ Disclosure Models within Confidentiality: NHS Code of Practice (DH November 2003)

⁶ Police and Criminal Evidence Act 1984, Section 116 and Schedule 5 parts I and II

NP050 National Procedure for Access to Medical Records		Sponsor: Helen Young, Clinical Director		Author: David Foord, Associate Director of Clinical Governance	
Status: FINAL	Version V1.3	Creation Date: 14/5/2007	Implementation Date: 14/5/2007	Page 8 of 14	
		Review Date: 2/2008	Circulation: Service-wide		

Guidance Notes on Requests for Access to Medical Records by Police or other Authorities

The overriding principle that must be applied to all requests for access to medical records is that no patient information is to be disclosed without explicit consent. All requests for records should be accompanied with a completed consent form or formal justification as to the public interest in disclosure without consent.

Requests for access to medical records by the Police must be signed by a representative of the relevant Constabulary of Inspector Rank or above. Any forms or requests not meeting this criteria must be sent back to the requesting Constabulary by whoever initially receives the request for resubmission meeting this criteria.

All requests from the Police or other Authorities must be forwarded to the National Clinical Governance Team for decision whether to disclose or not. Ultimately the Police or another Authority may apply for a Court Order. In this way the Court will be the ultimate judge of where the public interest lies.

NP050 National Procedure for Access to Medical Records		Sponsor: Helen Young, Clinical Director		Author: David Foord, Associate Director of Clinical Governance	
Status: FINAL	Version V1.3	Creation Date: 14/5/2007 Review Date: 2/2008	Implementation Date: 14/5/2007 Circulation: Service-wide	Page 1 of 14	

Appendix Two

Consent Form (Solicitor Use Only)
(Releasing health records under the Data Protection Act 1998)

Part A – your, your representative’s and the appropriate health professional’s details

Your name:

Your address:

Representative’s name:

Representative’s address:

Health professional’s name:

Health professional’s address:

Part B – your declaration and signature

To the health professional

I understand that filling in and signing this form gives you permission to give all my health records to my representative whose details are given above.

Please give my representative copies of my health records, in line with the Data Protection Act 1998, within 40 days.

Yours signature: Date:

Part C – your representative’s declaration and signature

To the health professional

I have told my client the implications of giving me access to his or her health records. I confirm that I need the full records in this case.

Representative’s signature: Date:

On completion, please return to NHS Direct National Clinical Governance Team, Marlborough Court, Sunrise Parkway, Linford Wood East, Milton Keynes, Buckinghamshire, MK14 6DY

NP050 National Procedure for Access to Medical Records		Sponsor: Helen Young, Clinical Director		Author: David Foord, Associate Director of Clinical Governance	
Status: FINAL	Version V1.3	Creation Date: 14/5/2007	Implementation Date: 14/5/2007	Page 1 of 14	
		Review Date: 2/2008	Circulation: Service-wide		

Appendix Three



Consent Form (Public Use)
(Releasing health records under the Data Protection Act 1998)

Part A – your, your representative’s and the appropriate health professional’s details

Your name:

Your address:

Representative’s name:

Representative’s address:

Health professional’s name:

Health professional’s address:

Part B – your* declaration and signature

To the health professional

I understand that filling in and signing this form gives you* permission to give my health records to my representative or to myself whose details are given above.

Please give my representative the following copies of my health records, in line with the Data Protection Act 1998, within 40 days. (Detail exactly what records you* require)

Examples in Notes:

Your* signature: Date:

*** The term ‘you’ and ‘your’ refers to the person about whom the medical records or the caller records relate.**

Part C – your representative’s declaration and signature

To the health professional

I confirm that I am willing to act as the person’s representative and accept the records indicated.

Representative’s signature: Date:

On completion, please return to NHS Direct National Clinical Governance Team, Marlborough Court, Sunrise Parkway, Linford Wood East, Milton Keynes, Buckinghamshire, MK14 6DY

NP050 National Procedure for Access to Medical Records		Sponsor: Helen Young, Clinical Director		Author: David Foord, Associate Director of Clinical Governance	
Status: FINAL	Version V1.3	Creation Date: 14/5/2007	Implementation Date: 14/5/2007	Page 1 of 14	
		Review Date: 2/2008	Circulation: Service-wide		

NOTES:

PLEASE READ BEFORE COMPLETING THE FORM

1. The form overleaf gives NHS Direct the right to disclose your medical and / or call records listed to another party.
2. NHS Direct owes a duty of care to both the patients and the person/s making the call to NHS Direct where this is different from the patient. Therefore in some instances NHS Direct will need the permission of those involved before any records can be disclosed to others. In all calls where the name of the patient is given, a patient record is created in their name which then requires the consent of the patient to release, irrespective of who made the call.
3. Part A of the form is to identify the following people:
 - i) The Patient or Caller – i.e. “Your Name”
 - ii) The person’s representative – This is the person that the records are going to be released to.
 - iii) The Health Professional – This is the person within NHS Direct to whom the request is being made.
4. Part B of the form identifies what records you are giving NHS Direct permission to release. If this is ALL then that can be entered into the box. If it is more selective you will need to identify exactly what it is you wish to release. This must be signed and dated.

Examples of this:

- a) Records relating to an identified call, discounting records from other calls
 - b) Disclosure of the fact that a call was made without disclosing any medical information
 - c) Disclosure of medical information without disclosing any contact information
5. Part C of the form must be signed and dated by the person who is going to receive the records. We will send the records to the address given by the representative and communicate with them once this form has been received. The form gives permission for NHS Direct to discuss these records with the representative until such time as NHS Direct receives directions to cease such discussions.

NP050 National Procedure for Access to Medical Records		Sponsor: Helen Young, Clinical Director		Author: David Foord, Associate Director of Clinical Governance	
Status: FINAL	Version V1.3	Creation Date: 14/5/2007	Implementation Date: 14/5/2007	Page 2 of 14	
		Review Date: 2/2008	Circulation: Service-wide		

Appendix 4.

Access to Records Requests Flowchart

