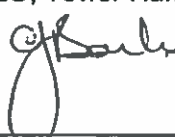


Tower Hamlets GP Care Group Policy

Date Issued	November 2017
Date to be reviewed	Periodically or if statutory changes are required
Title	Subject Access Request
Supersedes	All previous Policies
This policy will impact on	All staff
Financial Implications	No change
Policy Area	Governance
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Author	Ruth Walters
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Guidance to Staff Concerning the Disclosure of Personal Information (including Health Records)

1. Scope

1.1. This Policy has been updated to apply to all staff who work for Tower Hamlets GP Care Group including contractors and Board members.

1.2. This policy and procedure will apply to any request from a member of staff for access to their personal information held by THGPCG and to requests from patients and members of the public about information held about them.

2. Introduction

2.1. It is the policy of THGPCG to comply with all relevant legislation and regulation in every aspect as it applies to their duties as providers of healthcare and as employers.

2.2. The Data Protection Act 1998 became effective from 1st March 2000 superseding the Act of 1984 and the Access to Health Records Act 1990, the exception to the latter being that medical records of the deceased are still governed by the Access to Health Records Act.

2.3. The Data Protection Act 1998 gives every living person, or their authorised representative, the right to apply for access to records of their personal information held by a registered organisation irrespective of when they were compiled. These are referred to as "Subject Access Requests" (SAR) as the person to whom the data relates is referred to as the "Data Subject". This applies equally to Staff as well as Health Records where:

- Personnel / Staff records are defined as the personal information held by THGPCG relating to a member of staff, present, past or prospective, whether permanent, temporary or a volunteer.
- Health records are defined as a record consisting of information about the physical or mental health of an identifiable individual made by, or on behalf of, a health professional in connection with the care of that individual.

2.4. The Data Protection Act 1998 also gives subjects who now reside outside the UK the right to apply for access to their former UK health and employment records.

2.5. As a general rule a person with parental responsibility will have the right to apply for access to their child's health record.

3. Receiving the Access Request

3.1. A member of staff, patient or their representative, with consent, has the right to apply for access to personal records. **Unless an applicant is very well known to the member of staff receiving the request, and unless the member of staff is fully conversant with the intricacies of the Data Protection Act 1998, all requests must be passed to the Director of Quality & Assurance in the first instance to be processed.** The Director of Quality & Assurance will determine the applicant's entitlement to access a record before passing the request to the relevant HR or Healthcare Professional who will determine if any part of the record is subject to restrictions as set out in the Data Protection Act.

3.2. The Act allows for requests to be made in writing or electronically; requests in writing from patients should be made using the patient authority consent (PAC) form in appendix two to ensure that absolute clarity about the nature and legitimacy of the request exists. Electronic requests should only be accepted with an electronic signature. If this last is not possible, the applicant should be advised to complete a manual PAC Form as described above. In cases where consent can only be taken verbally, the details of this consent should be recorded on the individual's file.

3.3. Once the subject access request is received, you must be able to verify the consent (identity) of the applicant. For both members of staff and patients (in addition to the PAC Form, which will bear a signature from the patient) requesting the release of their records, ensure that you have the following:

- A copy of some form of identity that shows the applicant's name and current address.
- If an employee's or a patient's representative, e.g. solicitor, is applying for access, ensure that you have the signature of the data subject (i.e. staff member or patient) to do this. In some circumstances the Director of Quality & Assurance processing the request may wish to contact the subject to clarify that he/she understands fully that they will be consenting to release their health or personnel records to a third party.
- If a parent, or person authorised with parental responsibility, is applying for access to their child's records, the HR / Health Professional should consider if the child is of an age to be capable of making his or her own judgement about their personal information. If they are, their consent should be sought before their application is accepted. Issues to be considered when processing applications from those with parental responsibility follow at Section 5.

3.6 After obtaining consent for an access request, ensure you have enough information to identify the data relating to the data subject in question. Such details would include:

- Full name – including previous names
- Full address – including any recent previous address
- Date of birth
- NHS number, if known (where relevant)

3.7 Under the Data Protection Act 1998, there is no obligation to comply with an access request unless you have sufficient information to identify the applicant and locate the information.

3.8 Check with the applicant if they require access to their entire personal record and, if not; confirm what material the applicant requires before processing their request. Note, however, that the applicant does not have to give a reason for applying for access.

3.9 Once you have all the relevant and necessary information to comply with the access request, you must comply promptly and by no later than forty days after the request has been made. **In exceptional circumstances, if it is not possible to comply within this period, the applicant should be informed.**

3.10 The staff member charged with reviewing the personal record prior to release is normally the person who is or was responsible for the HR Records of the employee or the Healthcare Professional responsible for the clinical care of the patient during the period to which the application refers. It is not necessary to approach every individual professional associated with the subject;

Key factors why access could be denied:

- Where the information released may cause serious harm to the physical or mental health or condition of the employee/patient, or any other person
- Where access would disclose information relating to or provided by a third party, who is not a THGPCG or a professional engaged in the provision of the patient's healthcare.

3.11 In terms of the second statement, access may be given if the third party gives their consent to the disclosure, although the Data Protection Act 1998 does not require the THGPCG to approach a third party for this purpose. The following are common examples, relating to the health records, of when a third party may be involved; they may also be interpreted for staff records:

- **Example 1**

A parent may apply for access to their 14 year-old child's health records. Contained within the health record may be some reference to his/her parents (third party) made by the child, which the child would not want disclosed. The doctor or community health professional may withhold this information from the child's parents.



- **Example 2**

A son (third party) contacts the doctor or community health professional because he is concerned about his elderly mother who is having problems with memory loss and self-care. The doctor makes notes in his mother's health records of the visit, but if for any reason the mother decided to apply for access to her health records, the doctor may withhold any information relating to her son's visit, unless the son gives his consent to disclose the information.

NB: There is no requirement to disclose to the applicant the fact that certain information may have been withheld.

3.12 For patient SAR's, keep a copy of the PAC Form on file in the patient's medical record for the following reason:

- Where an access request has been complied where previously the Act permitted that you do not have to respond to a subsequent identical or similar request unless a reasonable interval has elapsed since the previous compliance.

4. Subjects Living / Moving Abroad Requiring Access to their Personal Records

4.1 Employees are legally entitled to request their personal records and may take them outside of the UK at their own discretion and liability.

4.2 Original health records should not be given to people to keep/take outside the UK. A GP or community health professional may be prepared to provide the patient with a summary of treatment; alternatively the patient may make a request for access in the usual way.

4.4 If records have been placed into the organisation's archive storage, direct the enquiry to the Director of Quality & Assurance

5. Parental Responsibility

5.1 A person with parental responsibility will have the right to apply for access to a child's record. **It is important that staff who are dealing with a request for access to a child's record from someone who says that they have parental responsibility, secure evidence that will have been provided by the Courts to that effect.**

5.2 Parental responsibility for a child is defined in the Children's Act 1989 as *"all the rights, duties, powers, responsibilities and authority, which by law a parent of a child has in relation to a child and his property"*.

Although not defined specifically, responsibilities would include safeguarding and promoting a child's health, development and welfare, including if relevant their employment records. Included in the parental rights which would fulfil the parental responsibilities above are:

- Having the child live with the person with responsibility, or having a say in where the child lives
- If the child is not living with her/him, having a personal relationship and regular contact with the child
- Controlling, guiding and directing the child's upbringing

5.3 **It is important to note that foster parents are not ordinarily awarded parental responsibility for a child. It is more likely that this responsibility rests with the child's social worker and appropriate evidence of identity should be sought in the usual way.**

5.4 As a child grows older he/she will be able to make decisions about his/her own life. **The law regards young people aged 16 to 17 to be adults for the purposes of consent to employment or treatment and the right to confidentiality.** Therefore, if a 16 year old wishes HR or a medical practitioner to keep their information confidential then that wish must be respected.

5.6 In certain cases, children under the age of 16 who have the capacity and undertaking to take decisions about their own treatment are also entitled to decide whether personal information may be passed on and generally to have their confidence respected. Case law has established that such a child is "Gillick Competent" or meets the "Fraser guidelines".

5.7 **Where a child is considered capable of making decisions, e.g. about his/her employment or medical treatment, the consent of the child must be sought before a person with parental responsibility may be given access. Where, in the view of the appropriate professional, the child is not capable of understanding the nature of the application, the holder of the record is entitled to deny access if it is not felt to be in the patient's best interests.**

6. Power of Attorney

6.1 A person with Power of Attorney for another is entitled to be given access to that person's staff or medical record subject to the proper scrutiny of appropriate evidence. Appropriate evidence is sight of the original document giving Power of Attorney, a photocopy of which should be retained.

7. Deceased Persons

7.1 Should a SAR be received relating to a deceased member of staff, the Director of Quality & Assurance must ensure that the person making the request is entitled to receive the information, such as Power of Attorney (see above) or as their Executor (see below).

7.2 Despite the passing into law of the Data Protection Act 1998, the terms of the Access to Health Records Act 1990 (AHRA 90) still apply with regard to the health records of the deceased.

7.3 The requirements of the Act are precisely the same as those contained within the Data Protection Act 1998 apart from one key area; the period of time from when records may be disclosed. Under the AHRA 90, health records made since 1st November 1991 may be released; there is no requirement whatsoever to release records from any date earlier than this.

7.4 An applicant wishing to access the health records of a deceased person must either be:

- The executor of the deceased's Will;
- Someone who has been appointed as Administrator of the Estate by the Courts;
- Someone who has the written consent of either of the above to be given access; or
- Someone who is in the process of challenging the deceased's Will.

7.5 In all circumstances, evidence must be secured that confirms the status described above.

8. Disproportionate Effort

8.1 The term "disproportionate effort" is not defined in the Act; what does or does not amount to disproportionate effort is a question of fact to be determined in each and every case. The fact that the THGPCG (the data controller) may have had to expend substantial effort/cost in responding to an access request does not permit an argument to be made that the request may be denied or the permissible fees increased. The Information Commissioner considers that quite considerable effort can reasonably be expected.

9. Fees to Access and Copy Records

9.1 A subject can be charged to view their health records or to be provided with a copy of them.

9.2 To provide copies of patient health records, the maximum costs are:

- Health records held totally on computer; up to a maximum of £10 charged
- Health records held in part on computer, and in part manually; up to a maximum of £50 charged
- Health records held totally manually; up to a maximum of £50 charged

These are maximum charges, to include postage and packaging costs. Any charges for access should not be seen to make a financial gain.

To allow patients to view their health records (i.e. where no copy is required), the maximum costs are:

- Health records held totally on computer; up to a maximum £10 charge
- Health records held in part on computer, and in part manually; up to a maximum £10 charge
- Health records held totally manually; up to a maximum £10 charge

NB: If the records have been added to in the last 28 days, no charge may be made for viewing these particular entries.

9.3 If a person who has viewed their record, then wishes to be provided with a copy of any of the information held, this should be regarded as once access request. The £10 maximum fee for viewing, notwithstanding the exceptions outlined above, would be included in the maximum fees detailed for the provision of copies, not charged as an extra fee.

9.4 In addition you should note that, whilst the Data Protection Act 1998 states that you are under no obligation to comply with an access request unless the requisite fee has been paid, in practice an organisation may choose not to ask for the fee until the release stage of the access request.

10. The Release Stage

10.1 Once you have received the relevant fee, release those copies of the records that are adjudged appropriate subject to the foregoing. On no account must the original record be released.

10.2 If you are denying or restricting access, you do not have to give a reason for the decision but you should be willing to direct the subject through the appropriate complaints channels.

10.3 Where information is not readily intelligible, an explanation (e.g. of abbreviations or terminology) must be given.

10.4 If it is agreed that the subject or their representative may directly inspect the record, a health professional or HR administrator must supervise the access.

11. Rectifying Entries

11.1 Data Subjects, or those acting for them, have the right to request the erasure or amendment of any entries in a personal record that they believe to be factually incorrect and the record holder must consider any such petition made by the data subject. If, however, the record holder believes the statements in question to be accurate, and is therefore unwilling to amend them, the subject has the right to have recorded in the employee or medical record the fact of this dispute.

12. Dealing with Complaints

12.1 If an applicant is unhappy with the outcome of their access request, the following complaints channels should be offered:

- The HR or health professional may wish to have an informal meeting in an effort to resolve the complaint locally
- If the HR or health professional feels that they cannot do anything for the data subject locally a patient should be advised to make a complaint through the THGPCG complaints process. A staff member may wish to consult with their trade union representative.
- The data subject may not wish to take this route and, alternatively, may make a complaint direct to the Information Commissioner at:

Information Commissioner's Office (ICO)
Wycliffe House
Water Lane
Wilmslow
Cheshire SK9 5AF
Website: www.ico.org.uk
Telephone: 0303 123 1113
Information Line: 01625 545 745
Email: notification@ico.org.uk

13. Further Advice

13.1 Further advice may be obtained from the Director of Quality & Assurance.



Appendix One

Information about accessing your health record

Your records, your rights

Tower Hamlets GP Care Group (THGPCG) is committed to full compliance with the Data Protection Act 1998 and recognises the rights and obligations established by the Act in relation to the management and processing of personal data.

What is The Data Protection Act 1998?

Patients, as data subjects, have a number of rights under the Data Protection Act, including a general right of access to personal data (electronic or paper) held on them. This is called a **Subject Access Request (SAR)**. Information about your personal treatment and care is confidential and will normally be something you will discuss with the healthcare professionals you meet. However there may be other issues about which you would like further information or may just want to have a copy of the information we hold about you.

What is a health record?

A health record contains information about your mental and physical health recorded by a Health care professional as part of your care. A health record can be held electronically, written or a mixture of both. It may include such things as, hand-written clinical notes, letters to and from other health care professionals and laboratory reports.

How do I access my health records?

You can make your own application to see your records, or you can authorise someone else to make an application for you. A parent or guardian, a patient representative, or a person appointed by the Court can also apply. Any request for access to health records must be made in writing to the Director of Quality & Assurance. In order to fulfil our responsibilities under the Data Protection Act you will be asked to provide proof of your identity.

Will there be a financial charge for access to health records?

Under the Data Protection Act 1998 the maximum fee that can be charged for providing copies of health records is:

- £10 for computer records
- £50 for copies of manual records or a mixture of both.

Fees may be waived in some cases. If your records have been updated in the last 28 days, you are entitled to see your records free of charge.

What are the time limits for dealing with a subject access request?

Once the THGPCG has all the relevant information and fee (if applicable), the health records will be made available within 28 days.

Do I need to specify what period I am requesting access to?

You may not wish to access your entire record and therefore may wish to confirm what information you require before the THGPCG processes the request. This may decrease the cost of copying for you.

Do applicants need to give reason for making a subject access request?

No.

How will the THGPCG process my application for access to health records?

On receiving a request, you will be requested to complete an application form.

Are there any circumstances in which information contained within health records may be withheld from me?

There are certain circumstances in which the record holder may withhold information, for example where it would identify a third party. Access can be denied, or limited where the information is likely to cause serious harm to the physical or mental health condition of you or any other person, or where



giving access would disclose information relating to or provided by a third person who has not consented to the disclosure.

Where information has been withheld is the THGPCG obliged to tell me?

No, however when information has been withheld the THGPCG will usually tell you why.

What if I feel my health records are incorrect, can I have them amended?

We have a duty to ensure your information is accurate and up to date. If you feel that information recorded on your health record is incorrect you should contact the THGPCG Caldicott Guardian for advice via the Director of Quality & Assurance.

If your request to amend your records is unsuccessful then you can make a complaint to the THGPCG. You can also complain to the Information Commissioner, who may rule that any incorrect information is rectified, blocked or erased.

Further information can be obtained from:

Director of Quality & Assurance, Tower Hamlets GP Care Group, St Andrews Health Centre, 2 Hannaford Walk, London, E3 3FF

Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF. Tel: 0303 123 1113

Making an application

1. To apply for access to your health record you should ask your health care professional for a request form or contact the Director of Quality & Assurance.
2. Upon receipt of the request form the team will ensure that your application form is correctly completed.
3. Your information is then sent to the appropriate Health Care Professional.
4. The appropriate Health Care Professional will decide whether access is to be granted or denied and will ensure that any terminology is explained.
5. If access is granted, or an extract is to be made available to you, you may request paper copies or alternatively an appointment will be offered with the appropriate health care professional.
6. If access is denied you shall be advised accordingly.

Can I access someone else's health records?

Health records are confidential, so you can only access someone else's records if you are authorised to do so.

To access someone else's health records, you must have:

- their written permission, or
- the legal authority to make decisions on their behalf (power of attorney)

Lasting Power of Attorney

A Lasting Power of Attorney (LPA) is a legal document that allows a person to appoint someone else to make decisions on their behalf. The person appointed is called an attorney.

There are two types of LPA relating to:

- health and welfare
- property and financial affairs

An attorney appointed on a health and welfare LPA can only make decisions when

- the person lacks the mental capacity to make decisions
- the LPA document has been registered with the Office of the Public Guardian

Access to a patient's records after their death

The duty of confidentiality remains after a patient has died. Under the Access to Health Records Act 1990, the personal representative of the deceased and people who may have a claim arising from the patient's death are normally permitted access to the records.



Appendix Two

**Subject Access Request for Access to Health Records
Data Protection Act 1998/Access to Health Records Act 1990**

Full Name of Patient/Staff Member

Former Name (Names)

Date of Birth

NHS Number (if known)

Current Address

(Optional) Telephone Number (including area code)

Former Address (if applicable)

Evidence of Identity Attached? (copy of photo identification)

Requests for Access from Third Parties

Full Name of Requester

Current Address

(Optional) Telephone Number (including area code)

Evidence of Identity Attached? (copy of photo identification)

Relationship to Patient

(e.g., Executor; Parent; Legal Advisor)



Evidence of Relationship Enclosed

Yes/No

NB: the application cannot be processed without evidencing both your own identity and the relationship to the patient

I am applying for access to view the health record/personnel file specified above*

I am applying for copies of the health record/personnel file specified above *

* Delete as appropriate

IMPORTANT INFORMATION

Under the Data Protection Act 1998 and the Access to Health Records Act 1990, you do not have to give a reason for applying for access to your/a (if you are a third party applicant) health or personnel record. However, to save time and resources, if you wish, it would be helpful if you could provide details below informing us of parts of your health records you require, along with details which you may feel have relevance, i.e. consultant name, location, dates, etc.

Optional – please use this space below to inform us of certain periods and parts of your health record you may require to see/have copies of.

Example:

1st March 2015 – 1st July 2015. All my child's notes and the development check.

I am applying to access my health records under the Data Protection Act 1998/Access to Health Records Act 1990.

I understand that under this legislation, there may be a charge for me to view, or to be provided with, a copy of the health records identified.

Signed: Date:

Witnessed by* (only to be signed by THGPCG Staff member if no photo ID seen and identity confirmed by HCP):

Name:

Signature: Date:

Office Use Only

Date Application Received:

Received by:

Evidence of Identity Attached?:

Date by which access must be given:



Equality Impact Assessment Tool for this Policy

To be completed and attached to any procedural document when submitted to the appropriate committee for consideration and approval

Policy Name: Subject Access Request Name of Assessor: Ruth Walters

		Yes/No/Possible/Not Applicable	Comments
1.	Does the policy/guidance affect one group less or more favourably than another on the basis of:		
	Race	No	
	Religion or belief	No	
	Disability – learning disabilities, physical disability, sensory impairment and mental health problems	Possible	Written request may not be possible. In this situation advice should be sought from the Director of Quality & Assurance as indicated on the form
	Gender	No	
	Sexual Orientation	No	
	Age	No	
2.	Is there any evidence that some groups are affected differently?	No	
3.	If you have identified potential discrimination, are any exceptions valid, legal and/or justifiable?	No	
4.	Is the impact of the policy/guidance likely to be negative?	No	
5.	If so can the impact be avoided?	N/A	
6.	What alternatives are there to achieving the policy/guidance without the impact?	N/A	

7.	Can we reduce the impact by taking different action?	N/A	
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