

## Access to records

All patients have the right to see and receive a copy of information we hold about them in their Health Record. This is known as the right to subject access.

The right to subject access is contained within acts of parliament:

The Data Protection Act 2018- covering access to the records of living individuals

- The Access to Health Records Act 1990 -covering access to the records of deceased patients.
- The General Data Protection Regulation 2016- extending the rights of the individual

### Who can apply for access to health records?

Under the Data Protection Act 2018 you can apply for access if you are:

- The patient (you may apply for access to your own records)
- The patient's representative. This could be a person with parental responsibility for a child (unless the child is 8-14 and is capable of understanding and consenting, then their consent is needed), a person authorised in writing by the patient to act on their behalf, or a person appointed by the court to act on behalf of the patient.

Under the Access to Health Records Act 1990 the only people who can apply for access are personal representatives of a deceased patient and any person who may have a claim arising from the death. A personal representative refers to a person who has been appointed as Executor or Administrator to the estate. Such appointment can be substantiated by production of a Grant of Probate or Letters of Administration issued by the Probate Registry. If the applicant is not a personal representative, then the applicant must be able to demonstrate that he or she may have a claim arising out of the patient's death in order to qualify for access under this provision. However, under this provision access may only be made in respect of information relevant to any claim that may arise out of the patient's death. It does not authorise disclosure of all the records. Furthermore, access may not be given to any part of the patient's record if it includes a note, made at the patient's request that he or she did not wish access to be given on such an application.

### Can information be withheld from you?

Under the Data Protection Act you, or your representative, has the right of access to information contained within your health record, except where:

- A health professional considers that giving access to that information would cause serious harm to the physical or mental health or condition of the patient or any other person
- Any information that identifies a third party, where the third party is not a health professional and has not consented to the disclosure
- the applicant is acting as a representative of the patient, who is capable of understanding the request for access, but where the applicant is not considered to be acting with the patient's permission
- Where the patient is not capable of understanding the request for access, and it is considered that the release of information would not be in the best interests of the patient.

- Any information which is restricted by law from disclosure under other Acts of Parliament. These include the Human Fertilisation and Embryology Act 1990, the Human Fertilisation and Embryology (Disclosure of Information) Act 1992, NHS (Venereal Diseases) Regulations 1974, NHS Trust (Venereal Diseases) Regulations 1991 and the Abortion Regulations 1991.

Under the Access to Health Records Act the patient's representative has a right of access to all records kept on or after the 1st November 1991, or any records before that date if they are relevant in explaining records on or after the 1st November 1991. However, all the exceptions above for the Data Protection Act equally apply to the Access to Health Records Act. There is also an additional exemption:

- Access is not given to the patient's representative, where that patient has explicitly requested that no access be given to records after their death.

### **How to apply**

You may verbally ask the health professional treating you for access to your records in their presence and to discuss it with them. These requests are not formal applications under the Data Protection Act and may be done at any time during your care.

To formally make an application, you must do so in writing to:  
Director of Clinical Services,  
St Luke's Hospice,  
Stamford Road,  
Turnchapel,  
Plymouth,  
PL9 9XA

Include your: name, date of birth, address, contact number. Please include details of where you wish us to send your notes. For personal representatives making applications, please include the details outlined above for yourself, and similar details for the person about whom you are making the request. Please note that under the Access to Health Records Act 1990 you can stipulate that after your death access to all or part of your personal health record is restricted. Once your request has been received by us your notes will be located, copies made, and arrangements will be made for you to receive them.

Once this has been received and your application considered, you can expect to receive a copy of your records within 20 working days. If any of your record is abbreviated or has detailed medical terminology, which you do not understand, these will be explained to you. If you want to discuss any part of your record, you must contact the person responsible for your healthcare directly.

There is no charge for the release of medical information: